

# **SOCIAL SERVICES AND WELL-BEING (WALES) ACT 2014**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes are for the Social Services and Well-being (Wales) Act 2014 which was passed by the National Assembly for Wales on 18 March 2014 and received Royal Assent on 1 May 2014. They have been prepared by the Department for Health and Social Services of the Welsh Government to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it.

### **COMMENTARY ON SECTIONS**

#### **Section 2 - Meaning of “well-being”**

2. This section sets out the aspects of a person’s well-being which are included within this term. Subsection (2) sets out the aspects which are included in the concept of well-being in relation to all persons, whether adults or children. Subsections (3) and (4) set out those additional aspects which are included in the concept of well-being in relation to children and adults respectively.

#### **Section 3 - Meaning of “adult”, “child”, “carer” and “disabled”**

3. Section 3 defines certain key terms for the purposes of the Act. Subsection (4) defines a carer as a person who provides or intends to provide care for an adult or disabled child (disability being defined in subsection (5) by reference to the Equality Act 2010). The general premise is that professional carers who receive payment should not be included within the scope of the definition (see subsection (7)). However, local authorities are afforded a wide discretion to treat a person as a carer if they consider that, in the context of the caring relationship, it would be appropriate for a person to be treated as a carer (see subsection (8)). This would, for example, enable a local authority to treat a person as a carer in cases where the caring relationship was not principally a commercial one.
4. A person cannot be a carer if that person is detained in prison or youth detention accommodation, or is residing in approved premises after having been convicted of an offence (see section 187(1)). Approved premises are those used to accommodate persons granted bail in criminal proceedings or for use for, or in connection with, the supervision or rehabilitation of persons convicted of offences (see section 188(1) of this Act, which defines ‘approved premises’ by reference to section 13 of the Offender Management Act 2013).

#### **Section 4 - Meaning of “care and support”**

5. Section 4 sets out the meaning of the term care and support, which is used frequently throughout the Act.

### **Section 5 - Well-being duty**

6. Section 5 requires persons exercising functions under the Act to promote the well-being of people who need care and support and carers who need support.
7. This overarching well-being duty applies to all persons and bodies exercising functions under this Act, including the Welsh Ministers, local authorities, Local Health Boards (LHBs) and other statutory agencies.

### **Section 6 - Other overarching duties: general**

8. Section 6 gives effect to certain key principles by setting out the matters to which a person must have regard when exercising functions under the Act in relation to certain individuals. Subsection (1) makes clear that the duty to have regard to these matters applies at the point when a person is being assessed as to whether they have needs for care and support (or needs for support in the case of carer), as well as when it has been determined that the person has such needs. The duty to have regard to these matters also applies where a person is exercising functions under Part 6 of the Act. Such functions could be exercised in relation to a looked after child or in relation to other children and young people, for example care leavers.
9. Subsection (2) sets out matters to which a person must have regard when exercising functions under the Act in relation to the individuals listed in subsection (1).
10. Subsections (3) and (4) set out additional matters to which a person must have regard when exercising functions under the Act in relation to adults and children respectively.

### **Section 7 - Other overarching duties: UN Principles and Convention**

11. Section 7 contains two duties. The first is a duty upon persons carrying out functions under the Act in relation to adults with needs for care and support, or carers with needs for support. The duty, in this case, is to have due regard to the United Nations Principles for Older Persons (as adopted by the General Assembly of the United Nations on 16<sup>th</sup> December 1991).
12. The second is a duty upon persons carrying out functions under the Act in relation to children with needs for care and support, child carers with needs for support and persons in respect of which functions are carried out under Part 6 (looked after and accommodated children). The duty, in this case, is to have due regard to Part 1 of the United Nations Convention on the Rights of the Child (see General Assembly resolution 44/25 of November 1989). The United Nations Convention on the Rights of the Child is to be treated as having effect in the form set out in the Rights of Children and Young Persons (Wales) Measure 2011 (see subsection (3)).

13. The Welsh Ministers are already subject to a duty to have regard to the United Nations Convention on the Rights of the Child, including its Operational Protocols, when exercising their functions: this duty is imposed by the Rights of Children and Young Persons (Wales) Measure 2011. Subsection (4) takes this into account and provides that the duty in subsection (2) does not apply to the Welsh Ministers.

### **Section 8 – Duty to issue a statement of the outcomes to be achieved**

14. Section 8 requires the Welsh Ministers to issue a statement of the well-being outcomes that are to be achieved by the provision of care and support. It also sets a deadline by which the statement must be issued and specifies what must be included in the statement. The Welsh Ministers must keep the statement under review and may revise the statement if they consider this appropriate. The Welsh Ministers must consult such persons as they think fit before issuing or revising the statement and they must lay the issued or revised statement before the National Assembly for Wales and publish it.

### **Section 9 – Power to issue a code to help achieve the outcomes**

15. Section 9 requires the Welsh Ministers to issue, and from time to time revise, a code to help achieve the outcomes specified in the statement issued under section 8. The code can give guidance and in the case of local authorities, it can also impose requirements. Examples of the matters which may be set out in the code include quality standards, performance measures and performance targets. The current code must be published, and any versions of the code which are no longer in force must be made available.

### **Section 10 – Local authorities and the code**

16. Section 10 requires local authorities to act in accordance with any requirements imposed by the code and to have regard to any relevant guidance contained within it. Where performance measures are specified in the code, they will be treated as performance indicators that have been specified under the framework for local government improvement in Part 1 of the Local Government (Wales) Measure 2009. Performance indicators are the matters by reference to which a local authority's performance in exercising its functions are measured. In the same way, where the code specifies performance targets, these will be treated as performance standards that have been specified under Part 1 of the 2009 Measure.

### **Section 12 – Power to help local authorities to comply with the code's requirements**

17. Section 12 provides the Welsh Ministers with a general power to do anything which they consider is likely to help a local authority to comply with the requirements of the code. Subsection (2) describes some of the things which the Welsh Ministers can do in the exercise of this general power. Before doing any of these things, the Welsh Ministers must consult the local authority they intend to assist and any relevant stakeholders (unless these things are being done at the local authority's request).

## **Section 14 - Assessment of needs for care and support, support for carers and preventative services**

18. Subsection (1) requires local authorities and LHBs to work together to assess the extent of the needs for care and support (including the needs of carers for support) in the local authority's area and the extent to which those needs are not being met. They must also assess the range and level of services needed to meet the care and support needs that have been identified, and the range and level of services needed to prevent, delay or reduce needs for care and support and to achieve the other purposes set out in section 15. There is also a requirement to assess the actions required to provide this combined range and level of services through the medium of Welsh.
19. The requirement to carry out a local needs assessment under this section is separate from (and additional to) any requirement to assess the health and well-being needs of the local population which is imposed by regulations under section 40 of the National Health Service (Wales) Act 2006. Subsection (3) amends section 40 of the Act 2006 to require that this local needs assessment is taken into account when preparing or reviewing the relevant health and well-being strategy and to place an obligation on LHBs to take the lead role in submitting to Welsh Ministers those parts of health and well-being strategy that relate to carers.
20. Subsection (4) amends section 26 of the Children Act 2004 to require the local needs assessment be taken into account in the same way when preparing children and young people's plans.

## **Section 15 - Preventative services**

21. Section 15 places a general duty on local authorities to provide or arrange the provision of services (generally referred to as "preventative services"). The purposes that are to be achieved by the provision of preventative services are described in subsection (2) and include contributing towards preventing or delaying the development of people's needs for care and support and reducing the needs for care and support of people who have such needs. One of the other purposes described is the promotion of the upbringing of children by their families, where this is consistent with the well-being of children. This element of section 15 replaces provision formerly contained in section 17 of the Children Act 1989.
22. Local authorities also have to consider the importance of achieving these purposes when exercising their other functions. This means that it is the responsibility of the local authority as a whole, not just the social services department, to consider the kind of preventative services which could be provided.
23. In the same way, LHBs also have to consider the importance of achieving these purposes when exercising their functions. Although this does not confer any new function on LHBs, it means that LHBs have to consider whether there are things they can provide or arrange under their existing functions which would achieve these purposes.

### **Section 16 – Promoting social enterprises, co-operatives, user led services and the third sector**

24. Subsection (1) places a duty on local authorities to promote the development of social enterprises and co-operative organisations or arrangements in their areas to provide care and support and preventative services. It also places a duty on local authorities to promote the involvement of persons for whom care and support or preventative services are to be provided in the design and running of that provision and the availability of care and support and preventative services from third sector organisations (whether or not they are social enterprises or co-operative organisations).
25. Subsection (2) provides definitions for a number of the terms used in subsection (1), including “social enterprise” and “third sector organisation”.

### **Section 17 – Provision of information, advice and assistance**

26. Section 17 places a duty on local authorities to secure the provision of an information, advice and assistance service. The purpose of the service is to provide people with information and advice relating to care and support, including support for carers, and to provide assistance to them in accessing it. Information, advice and assistance must be provided in a manner that makes it accessible to the individual for whom it is intended.
27. Information and advice is to be made available to all people regardless of whether they have needs for care and support. Such persons could include carers or interested parties, for example.
28. The service must include information (including, but not limited to, financial information) and advice about the care and support system provided for under the Act, the types of care and support available in a local authority area and how to access it, and how to raise concerns about people who appear to have needs for care and support, or support.
29. LHBs and National Health Service (NHS) Trusts are under a duty to facilitate the service by providing the local authority with information about the care and support that they provide.
30. Two or more local authorities may jointly secure the provision of an information, advice and assistance service.
31. This section replaces and expands the duties in section 1(2) of the Chronically Sick and Disabled Persons Act 1970 and paragraph 1(2) of Schedule 2 to the Children Act 1989.

### **Section 18 – Registers of sight-impaired, hearing-impaired and other disabled people**

32. Subsection (1) requires local authorities to establish and maintain a register of people who are ordinarily resident in the authority’s area and who are sight-impaired, hearing-impaired or who suffer from sight and hearing impairments which, in combination, have a significant effect on their day to day lives. This requirement replaces the requirement in section 29(4)(g) of the National Assistance Act 1948.

33. The section does not provide definitions for “sight impairment”, “severe sight impairment”, “hearing impairment” or “severe hearing impairment”. However, the regulation-making power in subsection (3) may be used to describe what these terms mean for the purposes of the local authority’s obligation to establish and maintain a register so that clinical staff and local authorities have a shared understanding of the terminology.
34. Subsection (4) requires local authorities to establish and maintain a register of children who are in their area and who are either disabled or who have a physical or mental impairment which may result in needs for social care services. This obligation replaces the requirement in paragraph 2 of Schedule 2 to the Children Act 1989.
35. Subsections (5) to (7) give local authorities power to establish and maintain registers of adults who are disabled and adults who are not disabled but have a physical or mental impairment or otherwise have needs which the local authority considers may lead to a requirement for care and support in the future.
36. Registers established in accordance with subsections (4) to (8) will assist a local authority in assessing future needs for care and support within its area by identifying persons who may be suffering from a degenerative condition who, whilst they may not need local authority assistance at the present time, may well do so in the future as their condition deteriorates.
37. Subsections (9) and (10) provide that local authorities are not required to include any person in a register unless that person has applied to be included in it or an application to be included has been made on their behalf. A local authority must inform a person that they have been included in a register and, if requested by the person, or someone acting on their behalf, they must remove any personal data relating to that person (although they may retain the anonymised data).

### **Section 19 – Duty to assess the needs of an adult for care and support**

38. Section 19 requires local authorities to assess whether an adult has needs for care and support and if so, what those needs are. The duty is triggered where it appears to a local authority that an adult may have such needs.
39. Subsection (3) makes it clear that the duty to carry out an assessment applies regardless of the level of need for care and support and the level of the adult’s financial resources.
40. The assessment must focus on the outcomes the adult wishes to achieve in his or her daily life: for example, to be able to live at home and feed himself or herself. The local authority must consider the extent to which the provision of care and support, preventative services, or the provision of information, advice or assistance, could help the adult to achieve those outcomes. It might be possible, for example, to help the adult achieve those outcomes by giving the adult support to access a range of services in the person’s locality such as community equipment, community transport, and volunteer befriending services, as well as by providing more formal care and support.

41. Subsection (4)(c) requires the local authority to consider whether and to what extent other matters could help the adult reach the outcomes they want to achieve. These matters might include the adult's own capabilities and those of others, to achieve those outcomes themselves, or the removal of barriers to the achievement of those outcomes.
42. The assessment itself must be proportionate and must involve the adult and, where feasible, the adult's carer. Regulations under section 30 may impose further requirements in relation to the assessment.

### **Section 20 – Refusal of a needs assessment for an adult**

43. Section 20 provides that, in general, the local authority's duty to assess an adult does not apply if the adult refuses the assessment.
44. This provision ensures that adults have control over whether an assessment is carried out. They can decide that they wish to make their own arrangements for meeting their needs for care and support without the involvement of the local authority.
45. Similarly, the duty to assess an adult's needs does not apply if the adult lacks capacity to decide whether to refuse an assessment and an 'authorised person' makes the decision to refuse the assessment on the adult's behalf. An 'authorised person' is defined in subsection (4) as a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide whether to refuse, or ask for, a needs assessment on the adult's behalf.
46. However, there are some cases where the local authority will be obliged to carry out an assessment notwithstanding the refusal of the adult concerned or the refusal of an authorised person. Where the local authority suspects that the adult is experiencing or is at risk of abuse or neglect, the authority remains under a duty to assess the adult's needs. "Abuse" and "neglect" are defined in section 197(1) of the Act.
47. Where the local authority is satisfied that the adult lacks capacity to decide whether to refuse an assessment but there is an authorised person to make the decision on the adult's behalf, the adult's refusal of an assessment does not discharge the local authority from its duty to carry out the assessment although the refusal of the authorised person may do so.
48. Where the local authority is satisfied that the adult lacks capacity to decide whether to refuse an assessment and there is no authorised person to make the decision on the adult's behalf, the local authority must carry out the assessment notwithstanding the adult's refusal if it considers that this would be in the adult's best interests.

49. Where the duty to assess an adult's needs has been discharged by a refusal, the duty is re-engaged if the adult in question (or an authorised person acting on his or her behalf) changes their mind and subsequently asks for an assessment; or if the local authority considers that the adult's needs or circumstances have changed.

### **Section 21 – Duty to assess the needs of a child for care and support**

50. Section 21 makes similar provision in relation to the assessment of a child's needs to that which is made by section 19 in relation to the assessment of an adult's needs. Local authorities are required to assess whether a child has needs for care and support in addition to, or instead of, the care and support provided by the child's family and if so, what those needs are. The duty is triggered where it appears to a local authority that a child may have needs for care and support. A disabled child is presumed to need care and support in addition to, or instead of, the care and support provided by the child's family. This means that in most cases a local authority will be obliged to assess the needs of a disabled child.
51. The duty to carry out the assessment applies regardless of the level of the child's need for care and support. The duty to assess also applies regardless of the financial resources of any adult on whom a charge might be imposed for meeting the child's needs for care and support.
52. There are particular considerations that apply to the assessment of children. The assessment must take into account the developmental needs of the child, and seek to identify the outcomes the child wishes to achieve, taking account of the child's age and understanding in doing so. It must also seek to identify the outcomes that those with parental responsibility for the child wish the child to achieve, to the extent that this is appropriate having regard to the need to promote the child's well-being, and to identify the outcomes that any persons specified in regulations wish the child to achieve. Such outcomes might include outcomes relating to physical, social or behavioural development and, for older children, outcomes relating to self-care skills or access to education and training.
53. There must be an assessment of the extent to which the provision of care and support, preventative services, or the provision of information, advice or assistance, could contribute to the achievement of those outcomes or otherwise meet needs identified by the assessment. For example a child might be capable of having some needs met through access to services such as youth clubs, Families First or Flying Start, whilst requiring a managed care and support plan to meet other needs identified through the assessment framework.
54. Subsection (4)(d) requires the assessment to consider, in addition, the extent to which other matters could contribute to the achievement of the desired outcomes or otherwise meet the child's needs. Such matters might, for example, include education or housing provision.



55. In undertaking the assessment, the local authority must involve the child and any person who has parental responsibility for the child.
56. The assessment itself must be proportionate. Regulations under section 30 may impose further requirements in relation to the assessment.
57. The duty to carry out an assessment under this section does not apply in relation to a child looked after by a local authority in Wales, England or Scotland or by a Health and Social Care Trust in Northern Ireland. Separate provision is made in Part 6 for children who are looked after by a local authority in Wales.

## **Section 22 – Refusal of a needs assessment for a child aged 16 or 17**

58. Section 22 makes similar provision in relation to children aged 16 or 17 to that which is made by section 20 in relation to adults.
59. In general, the local authority is not obliged to assess the needs of a child aged 16 or 17 if the child refuses the assessment. This recognises the importance of ensuring that older children have the same control as adults over whether the local authority is to be involved in providing or arranging services to meet their care and support needs.
60. There is also no obligation on a local authority to carry out an assessment if a child aged 16 or 17 lacks capacity to decide whether to refuse an assessment and an authorised person makes the decision to refuse the assessment on the child's behalf. An 'authorised person' is defined in subsection (5) as a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide whether to refuse, or ask for, a needs assessment on the child's behalf. Where there is no authorised person to make the decision on behalf of such a child, the local authority is not normally obliged to carry out an assessment if a person with parental responsibility for the child refuses the assessment for the child.
61. However, there are some cases where the local authority will be obliged to carry out an assessment notwithstanding the refusal of the child concerned and notwithstanding the refusal of an authorised person or a person with parental responsibility for the child.
62. Where the local authority suspects that the child is experiencing or is at risk of abuse, neglect or other kinds of harm, the authority remains under a duty to assess the child's needs. "Abuse", "neglect" and "harm" are defined in section 197(1). Where the local authority is satisfied that a child aged 16 or 17 lacks capacity to refuse an assessment the child's refusal will not discharge the local authority from its duty to carry out the assessment. However, a refusal given by a person with parental responsibility for the child may discharge that duty, unless the local authority believes that not having the assessment would not be in the child's best interests.

63. Where the duty to assess a child's needs has been discharged by a refusal, the duty is re-engaged if the child subsequently asks for an assessment. If the child lacks capacity, the duty is re-engaged if an authorised person (or, if there is no authorised person, a person with parental responsibility for the child) subsequently asks for an assessment.
64. A change in the needs or circumstances of the child, or a change in the needs or circumstances of a person with parental responsibility for the child, may also lead to the duty to assess being re-engaged.

### **Section 23 – Refusal of a needs assessment for a child aged under 16**

65. In the case of children under 16, there is no presumption in law that they have capacity to make decisions. In order for a refusal by a child under 16 to discharge the local authority's duty to carry out an assessment, the local authority must be satisfied that the child is able to make an informed decision about the refusal of an assessment.
66. As a general rule, there is no duty on a local authority to assess the needs of a child aged under 16 if a person with parental responsibility for the child refuses such an assessment. However, the duty to undertake an assessment continues to apply if the child has sufficient understanding to make an informed decision about the refusal of the assessment and does not agree with the refusal given by the person with parental responsibility.
67. There are also other safeguards in place to allow a refusal of a needs assessment for a child under 16 to be overridden in certain circumstances so that the duty to assess continues to apply.
68. Where the local authority suspects that the child is experiencing or is at risk of abuse, neglect or other kinds of harm, the local authority remains under a duty to assess the child's needs. "Abuse", "neglect" and "harm" are defined in section 197(1).
69. Where the local authority is satisfied that not having an assessment would be inconsistent with the child's well-being, the local authority must disregard any refusal given by a person with parental responsibility for the child and must undertake an assessment of the child's needs. Where the duty to assess a child's needs has been discharged by a refusal, the duty is re-engaged if the child subsequently asks for an assessment and has sufficient understanding to make an informed decision about having an assessment. The duty to assess is also re-engaged if a person with parental responsibility for the child subsequently asks for an assessment.
70. A change in the needs or circumstances of the child, or a change in the needs or circumstances of a person with parental responsibility for the child, may also lead to the duty to assess being re-engaged.

### **Section 24 – Duty to assess the needs of a carer for support**

71. Section 24 requires a local authority to carry out an assessment of a carer's needs for support. See the explanatory note to section 3 for further information about who is a carer for the purposes of the Act.

72. The duty to assess is triggered if it appears to the local authority that a carer may have needs for support. The duty applies regardless of the authority's view of the level of support the carer needs or the level of the financial resources of the carer or the person needing care.
73. The assessment must include an assessment of the extent to which the carer is able and willing to provide the care and to continue to provide the care, the outcomes the carer wishes to achieve and, if a child is the carer, the outcomes the parent of that child (and such other persons as are specified in regulations) wishes to achieve for them. The assessment must also identify the extent to which support, preventative services, or the provision of information, advice or assistance or any other matters could assist in achieving the identified outcomes. In carrying out the assessment, the local authority must involve the carer and, where feasible, the person for whom the carer provides or intends to provide care.
74. The assessment also must have regard to whether the carer wishes to work and participate in education, training or leisure activities and, if the carer is a child, must also have regard to his or her developmental needs and the extent to which it is appropriate for the child to provide the care. This should lead to consideration by the local authority of whether a child carer is actually a child with care and support needs in his or her own right who should be assessed under section 21.
75. The assessment itself must be proportionate and must involve the adult and, where feasible, the adult's carer. Regulations under section 30 may impose further requirements in relation to the assessment.

### **Section 25 – Refusal of a needs assessment for an adult carer**

76. Section 25 provides that the local authority's duty to assess an adult carer's needs does not apply if the carer refuses a needs assessment and has capacity to decide whether to refuse the assessment.
77. Similarly, the duty to assess an adult carer's needs does not apply if the carer lacks capacity to decide whether to refuse an assessment, and an authorised person makes the decision to refuse the assessment on their behalf. An 'authorised person' is defined in subsection (4) as a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide whether to refuse, or ask for, a needs assessment on the carer's behalf.
78. However, if an adult carer refuses a needs assessment in circumstances in which the local authority is satisfied that the carer lacks capacity and that there is no authorised person who can act on the carer's behalf, the local authority is nonetheless required to undertake an assessment of the carer's needs if it is satisfied that having the assessment would be in the carer's best interests.

79. Where the duty to assess a carer's needs has been discharged by a refusal, the duty is re-engaged if the carer (or an authorised person acting on his or her behalf) asks at a later date for an assessment or if the local authority is satisfied that the carer's circumstances have changed.

### **Section 26 – Refusal of a needs assessment for a carer aged 16 or 17**

80. Section 26 provides that the local authority's duty to assess the needs of a carer aged 16 or 17 does not apply if the carer refuses a needs assessment and has capacity to decide whether to refuse the assessment
81. Similarly, the duty to assess the needs of a carer aged 16 or 17 does not apply if the carer lacks capacity to decide whether to refuse the assessment and an authorised person makes the decision to refuse on their behalf. An 'authorised person' is defined in subsection (5) as a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide whether to refuse, or ask for, a needs assessment on the carer's behalf.
82. Where the carer lacks capacity to decide whether to have a needs assessment and there is no authorised person to make the decision on the carer's behalf, a person with parental responsibility may refuse the assessment. Such a refusal discharges the local authority's duty to assess the carer's needs unless the local authority is satisfied that not having the assessment would not be in the carer's best interests.
83. Where the duty to discharge a carer's needs has been discharged by a refusal, the duty is re-engaged if the carer asks at a later date for an assessment. Where the carer lacks capacity, the duty to assess is also re-engaged if the authorised person (or person with parental responsibility if there is no authorised person) subsequently asks for an assessment.
84. A change in the needs or circumstances of the carer or a change in the needs or circumstances of a person with parental responsibility for the carer may also lead to the duty to assess being re-engaged.

### **Section 27 – Refusal of a needs assessment for a carer aged under 16**

85. Section 27 provides that the local authority's duty to assess a carer aged under 16 does not apply if the carer refuses the assessment and the local authority is satisfied that the carer has sufficient understanding to make an informed decision about the refusal of an assessment.
86. Similarly, the duty to assess a carer's needs does not apply where a person with parental responsibility for a carer aged under 16 refuses a needs assessment for the carer. The effect of such a refusal is overridden, however, if the carer has sufficient understanding to make an informed decision about the refusal of the assessment and does not agree with the refusal. In such circumstances the local authority continues to be under a duty to assess the carer's needs.

87. A local authority is also required to undertake a needs assessment for a carer under 16, notwithstanding the refusal of the person with parental responsibility for the carer where it is satisfied that not having the assessment would be inconsistent with the carer's well-being.
88. Where the duty to assess a carer's needs has been discharged by a refusal, the duty is re-engaged if the carer subsequently asks for an assessment and the local authority is satisfied that the carer has sufficient understanding to make an informed decision about having an assessment. The duty to assess is also re-engaged if a person with parental responsibility for the carer subsequently asks for an assessment, or if the local authority is satisfied that the needs or circumstances of the carer, or any person with parental responsibility for the carer, have changed.

### **Section 28 – Combining needs assessments for a carer and a cared for person**

89. Section 28 allows a local authority to combine a person's needs assessment with the needs assessment of his or her carer. However, the local authority may only do so if valid consent is given by or in respect of those persons, or if the circumstances are such that the requirement for valid consent may be dispensed with.
90. An adult or a child aged 16 or 17 is presumed to have capacity to give valid consent to the combining of the assessments. A child under the age of 16 can give valid consent to the combining of the assessments if the child has sufficient understanding to make an informed decision about the matter.
91. A person with parental responsibility for a child can give valid consent on behalf of a child under the age of 16, although this consent will be invalid if the child has sufficient understanding to make an informed decision about the combining of assessments and does not agree with the consent given by the person with parental responsibility.
92. Where the local authority is satisfied that an adult or a child aged 16 or 17 lacks capacity to give valid consent, such consent can be given instead by an authorised person. An 'authorised person' is defined in subsection (7) as a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide whether to refuse, or ask for, a needs assessment on the adult or child's behalf.
93. Where a local authority is satisfied that an adult lacks capacity to give valid consent and that there is no authorised person who can do so, the local authority can dispense with the requirement for valid consent and combine the adult's assessment if it is satisfied that this would be in the adult's best interests.
94. Where a local authority is satisfied that a child aged 16 or 17 lacks capacity to give valid consent to the combining of the assessments and that there is no authorised person who can do so, the valid consent of a person with parental responsibility for the child is required. However, the local authority can dispense with need for this consent if it is satisfied that combining needs assessments would be in the child's best interests.

95. In the case of a child under the age of 16 who does not have sufficient understanding to be able to give valid consent to the combining of the assessments, the valid consent of a person with parental responsibility is required. However, the need for this consent can be dispensed with if the local authority is satisfied that combining the needs assessments would be consistent with the child's well-being.

### **Section 29 – Combining needs assessments and other assessments**

96. Section 29 provides that where someone appears to need support as a carer and also appears to have needs for care and support in their own right, a local authority can combine those assessments.
97. A local authority may carry out a person's needs assessment at the same time as it or another body carries out another statutory assessment in relation to that person.
98. In such cases, the local authority may carry out the other statutory assessment on behalf of, or jointly with, the other body. If the other body has already arranged for the other assessment to be carried out jointly with a third party, the local authority may carry out the other assessment jointly with the other body and the third party.
99. This provision is designed to allow local authorities to carry out multiple assessments at the same time so that individuals do not need to undergo a series of separate assessments.

### **Section 30 – Regulations about assessment**

100. Section 30 requires regulations to be made by the Welsh Ministers about the carrying out of needs assessments under Part 3.
101. Subsection (2) requires the regulations to make provision for the review of assessments. The regulations may, for example, specify who can request a review, the circumstances in which a local authority must comply with a request, and the circumstances in which it may refuse to do so.
102. Subsection (3) gives examples of further kinds of provision that may be made in the regulations. This provision could include requirements to involve other people, in addition to those specified in sections 19, 21 and 24, in the assessment process. The regulations could also require assessments to be carried out in a particular way and could specify the persons by whom assessments are to be carried out: for example, local authorities or persons or bodies acting on behalf of local authorities. The regulations could, in addition, set time limits within which assessments must be completed and require the results of an assessment to be recorded in a particular way so as to ensure consistency. Other provision could include a requirement for local authorities to have regard to additional considerations when carrying out an assessment and a power for local authorities to provide information for the purpose of the assessment.

### **Section 31 – Part 3: interpretation**

103. Section 31 defines some of the key terms used in Part 3, namely 'information, advice or assistance' and 'preventative services'.

## **Section 32 – Determination of eligibility and consideration of what to do to meet needs**

104. Section 32 provides that if an assessment concludes that a person has needs for care and support, or, in the case of a carer, needs for support, the local authority must determine whether those needs meet the eligibility criteria which are to be set out in regulations.
105. If the needs do not meet the eligibility criteria, the local authority will need to consider whether it is necessary to meet the person's assessed needs in order to protect them from abuse or neglect or a risk of abuse or neglect. In the case of a child, this will also include protection from harm or risk of harm. "Abuse", "neglect" and "harm" are defined in section 197(1). If it is concluded that it is necessary to meet the needs for this reason, the local authority will be obliged to meet those needs, even if they do not meet the eligibility criteria.
106. The local authority must also consider whether the needs identified call for the exercise of any of its functions under this Act or under Parts 4 and 5 of the Children Act 1989. For example, it may be that the needs of a child could be met by the local authority providing accommodation in accordance with its duty under section 76 of this Act (accommodation for children without parents or who are lost or abandoned etc.) or there might be the need for the local authority to consider whether there are grounds for a care order or supervision order or the taking other steps to protect the child under Part 5 of the 1989 Act.
107. If the local authority determines that it is under a duty to meet the person's needs or decides to exercise its powers to meet needs, it must go on to consider what could be done to meet the identified needs. Section 34 gives examples of what can be provided or arranged to meet needs, including making direct payments. The local authority must also consider whether to exercise its powers in Part 5 of this Act to charge for meeting the identified needs and how much it would charge. If there is to be a charge, the person will only be required to pay an amount which it is determined it is reasonably practicable for them to pay, having regard to the outcome of a financial assessment.
108. The local authority must also consider whether the person would benefit from the provision of preventative services, or information, advice and assistance, or anything else that may be available in the community. This applies whether or not the person has needs that meet the eligibility criteria.
109. Regulations describe the needs which meet the eligibility criteria. The regulations can describe needs by reference to the effect the needs have on the person concerned or by reference to the person's circumstances. The regulations will replace the local eligibility criteria that local authorities currently apply in accordance with guidance in "Creating a Unified and Fair System for Assessing and Managing Care" and "Integrated Assessment, Planning and Review Arrangements for Older People".

### **Section 33 – Procedures for regulations under section 32**

110. Section 33 provides for the procedure to apply to the making of regulations under section 32. When the Welsh Ministers make regulations about the eligibility criteria they must consult such persons as appear likely to be affected by the regulations, such organisations who appear to represent the interests of those likely to be affected by the regulations and any other persons they consider appropriate.
111. The Welsh Ministers must allow a period of 12 weeks for those consulted to submit comments on the proposed draft regulations on eligibility. They must then consider those comments and publish a summary of those comments.
112. Following the consultation the Welsh Ministers must lay a draft of the regulations before the National Assembly for Wales, accompanied by a statement giving details of the differences between the draft regulations as consulted on and the draft regulations as laid before the National Assembly.
113. Regulations on eligibility may only be made where a draft of the instrument has been laid before and approved by a resolution of the National Assembly, and the draft regulations may not be approved by a resolution of the National Assembly until after the expiry of a period of 60 days from the date on which the draft regulations are laid.

### **Section 34 – How to meet needs**

114. Once a local authority has determined it is going to meet a person's needs and is considering what could be done to meet those needs, it can seek to meet those needs in a number of ways. Unlike the current legal framework, the Act does not specify the provision that local authorities may or must provide.
115. Section 34 sets out examples of what may be provided to meet a person's needs and examples of the ways in which it may meet a person's needs. The examples include aids and adaptations and payments, including direct payments. Local authorities can also decide whether to provide services itself or to arrange for the services to be provided by someone else. A person's needs could also be met by providing services to another person, for example providing support to the family of a child in order to meet the child's needs for care and support.
116. Where a local authority is supporting someone's needs by providing or arranging care and support in that person's own home, the local authority must satisfy itself that the visits to the home are of sufficient length to provide the care and support required. A code on the exercise of social services functions, issued by Welsh Ministers under section 145, will include guidelines on the lengths of visits to people's homes.
117. There are some limitations on what a local authority is able to do to meet a person's needs. These are set out in sections 47 to 49.



### **Section 35 – Duty to meet care and support needs of an adult**

118. Section 35 sets out the conditions that must be met for a local authority to be under a duty to meet the care and support needs of an adult in its area. It is a condition that the needs meet the eligibility criteria set under section 32. However, subsection (3)(b) provides safeguards to ensure that local authorities also have a duty to meet an adult's needs for care and support if this is necessary to protect the adult from abuse or neglect, or a risk of abuse or neglect, even if their needs do not meet the eligibility criteria. "Abuse" and "neglect" are defined in section 197(1).
119. The local authority is not under a duty to meet any of the adult's needs which are being met by a carer. If a carer was to cease providing care and to stop meeting any of the adult's needs, this would trigger a review of the adult's care and support plan, and may mean that the local authority would then be required to meet the needs. Similarly, if the person cared for indicates that they do not want some or all of their needs to be met by a carer, or no longer want their needs to be met in this way, this may mean that the local authority would then be under a duty to meet the adult's needs and will need to consider other ways of doing this.
120. Subsection (4) provides that the local authority must meet the needs of adults who are entitled to receive services without charge or whose means are such that they do not have to pay the full charge.
121. The local authority does not have to meet the needs of a "self funder": an adult whose means are assessed as being above the financial limit so that he or she is liable to pay the full charge unless the adult asks the authority to meet his or her needs. In that case, the local authority will be under a duty to meet the adult's needs and will be able to recover the cost of providing or arranging services. The local authority will also be able to impose a "brokerage" charge (see section 59(3) in Part 5).
122. Where there is a charge for care and support, the local authority is also under a duty to meet an adult's needs for care and support if the adult lacks the capacity to arrange the provision of care and support himself or herself, and there is no person authorised under the Mental Capacity Act 2005 or otherwise in a position to do so on the adult's behalf. This duty will apply regardless of the level of the adult's financial resources.
123. Even if these conditions are met, a local authority will only be under a duty to meet a person's needs if the residence condition in subsection (2) is met. Subsection (2) provides that a local authority will be under a duty to meet the needs of an adult if they are "ordinarily resident" in its area.

124. A local authority must also meet the needs of adults who are within its area and have no settled residence. The local authority does not have to meet the needs of adults who are temporarily within its area but are ordinarily resident elsewhere.

### **Section 36 – Power to meet care and support needs of adult**

125. Section 36 confers a power on local authorities to meet the care and support needs of an adult without necessarily having first completed a needs assessment or a financial assessment. This power is available, for example, where it is considered necessary to meet needs as a matter of urgency.
126. This power is also available in cases where an assessment has been carried out but the needs do not meet the eligibility criteria. In these circumstances, the local authority may nonetheless decide to meet the needs, even though they are not under a duty to do so. If the local authority is meeting the care and support needs of an adult who is ordinarily resident in the area of another local authority, then it must notify that other authority that it is doing so.

### **Section 37 – Duty to meet care and support needs of a child**

127. Section 37 sets out the conditions that must be met for a local authority to be under a duty to meet the care and support needs of a child in its area.
128. It is a condition that the needs meet the eligibility criteria set under section 32. However, subsection (3) provides safeguards to ensure that local authorities have a duty to meet a child's needs for care and support if this is necessary to protect the child from abuse or neglect, or a risk of abuse or neglect, or other harm or a risk of such harm, even if their needs do not meet the eligibility criteria. "Abuse", "neglect" and "harm" are defined in section 197(1).
129. The local authority is not under a duty to meet the needs of a child which are being met by a carer or by the child's family. If a carer or the child's family ceased providing care and stopped meeting the child's needs, this would trigger a review of the child's care and support plan, and may mean that the local authority would then be required to meet the needs. Similarly, if the child indicates that they do not want some or all of their needs to be met by a carer, or no longer want their needs to be met in this way, this may mean that the local authority would be under a duty to meet the child's needs and will need to consider other ways of doing this.
130. The duty is owed to any child who is within a local authority's area, even if they ordinarily resident elsewhere. The duty is also owed to children who are being accommodated outside the local authority's area but who were ordinarily resident in its area before they were accommodated (and about whom the authority has been notified under section 120).

*These notes refer to the Social Services and Well-being (Wales) Act 2014 (anaw 4)  
which received Royal Assent on 1 May 2014*

131. This section does not apply if the child is looked after by a local authority in Wales. They are separately provided for in Part 6. (For the meaning of a child who is looked after by a local authority, see section 74). Neither does the section apply to children looked after by a local authority in England or Scotland or by a Health and Social Care Trust in Northern Ireland.
132. A local authority may also have a duty to provide accommodation for children under section 76 or section 77 of the Act and may have other duties to safeguard and protect the child under Parts 4 or 5 of the Children Act 1989.

### **Section 38 – Power to meet care and support needs of a child**

133. Section 38 confers a power on local authorities to meet the care and support needs of a child without necessarily having first completed a needs assessment or a financial assessment. This power is available, for example, where it is considered necessary to meet needs as a matter of urgency.
134. This power is also available in cases where an assessment has been carried out but the needs do not meet the eligibility criteria. In these circumstances, the local authority may nonetheless decide to meet the needs, even though they are not under a duty to do so.
135. If the local authority decides to exercise this power to meet the care and support needs of a child who is ordinarily resident in the area of another local authority, then it must notify that other authority that it is doing so.
136. This section does not apply if the child is looked after by a local authority in Wales. They are separately provided for in Part 6. Neither does the section apply to children looked after by a local authority in England or Scotland or by a Health and Social Care Trust in Northern Ireland.

### **Section 39 – Duty to maintain family contact**

137. Section 39 is a restatement of the provision in paragraph 10 of Schedule 2 to the Children Act 1989.
138. It places additional duties on a local authority in relation to a child in its area who it considers is in need of care and support and who is living apart from their family but are not being looked after by the local authority.
139. Whether or not it has determined such a child has eligible needs which must be met, the local authority must take steps to enable the child to live with their family or to promote contact between the child and their family, if it considers this is necessary to promote their well-being.

**Sections 40 and 41 – Duty to meet support needs of an adult carer**

140. Section 40 sets out the conditions that must be met for a local authority to be under a duty to meet the support needs of an adult carer who cares for another adult or for a disabled child.
141. The question of which local authority is responsible for meeting the support needs of a carer depends on the residence of the person cared for. This will be the local authority which would be responsible for meeting the cared for person's needs if they were eligible in their own right, either as an adult (see section 35) or a child (see section 37).
142. The adult carer's needs must meet the eligibility criteria which are to be set in regulations under section 32.
143. There is a link between the duty to meet the adult carer's needs for support and the financial resources of the adult carer. In so far as meeting the support needs of the carer involves the provision of support to the carer, section 40(4)(a) provides the local authority must meet the needs of a carer who is entitled to receive services without charge or whose means are such that they do not have to pay the full charge. The local authority does not have to provide support to an adult carer whose means are assessed as being above the financial limit such that they are liable to pay the full charge (often referred to as "self funders") unless the adult asks the authority to meet his or her needs.
144. Section 44(2) permits a local authority to meet some or all of a carer's needs for support by providing care and support to the person cared for (even if the authority would not otherwise be under a duty to provide that care and support). But if the local authority wishes to meet the carer's needs in this way, it can only do so if the relevant condition in section 40(4)(c) or (d) is met. Section 40(4)(b), (c) and (d) sets out different conditions depending on whether the person cared for is an adult, a disabled child aged 16 or 17 or a disabled child under the age of 16. In each case, there are different considerations depending on whether there is a financial charge for meeting the cared for person's needs.
145. The conditions in section 40(4)(b), (c) and (d) need to be considered in conjunction with the contents of section 41, which is supplementary to section 40. The key principle is that the cared for person must agree to the carer's needs being met by the provision of care and support to the cared for person. The local authority must be satisfied that an adult or a disabled child aged 16 or 17 has capacity to make their own decision, and in the case of a child under 16, the local authority must be satisfied that the child is able to make an informed decision about the carer's needs being met in this way.
146. Provision is made for what is to happen where the adult or disabled child aged 16 or 17 lacks capacity or where a child under the age of 16 does not have sufficient understanding to make their own decision.

147. Where an adult or a child aged 16 or 17 lacks capacity, consent can be given by an authorised person. Authorised person is defined in section 41(15) as a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide on behalf of the person cared for by the carer whether to have the needs in question met by the provision of care and support to that person.
148. Where an adult lacks capacity and there is no authorised person, the local authority can meet the carer's needs by providing care and support to the adult if this would be in the adult's best interests.
149. Where a disabled child aged 16 or 17 lacks capacity and there is no 'authorised person', the local authority is able to meet the carer's needs by providing care and support to the disabled child provided that no objection has been made by a person with parental responsibility for the child. The local authority is able to disregard any such objection if it thinks this would not be in the child's best interests.
150. In the case of a disabled child under the age of 16 who does not have sufficient understanding to make an informed decision about having the carer's needs met by the provision of care and support to them, the local authority is able to meet the carer's needs by providing care and support to the disabled child provided that no objection has been made by a person with parental responsibility for the child. The local authority is able to disregard any such objection if it thinks this would not be consistent with the child's well-being.
151. Where the cared for person is a disabled child and a charge would be imposed on an adult for meeting that child's needs for care and support, there is a further condition which requires the adult does not object to the provision of care and support.
152. In any case where it is not feasible for the local authority to meet some or all of the carer's needs by providing care and support to the person cared for, the local authority is under a duty to find some other way of meeting the carer's needs for support (see section 44).
153. Where the cared for adult's financial resources are above the financial limit or where an adult would be liable to pay the standard charge for the provision of care and support to a disabled child cared for by a carer, the local authority will be able to charge the adult a brokerage fee for putting in place the arrangements, in accordance with the provisions in section 59(3) (powers to impose charges).

### **Sections 42 and 43 – Duty to meet support needs of a child carer**

154. Section 42 sets out the conditions that must be met for a local authority to be under a duty to meet the support needs of a child carer who cares for an adult or for a disabled child.

155. The question of which local authority is responsible for meeting the support needs of a child carer will depend on the residence of the person cared for. This will be the local authority which would be responsible for meeting the cared for person's needs if they were eligible in their own right, either as an adult (see section 35) or a child (see section 37).
156. The child carer's needs must meet the eligibility criteria which are to be set in regulations made t under section 32.
157. Section 44(2) permits a local authority to meet some or all of a carer's needs for support by providing care and support to the person cared for (even if the authority would not otherwise be under a duty to provide that care and support). But if the local authority wishes to meet the child carer's needs in this way, it can only do so if 'Condition 3' as set out in in section 42(4) is met. Section 42(4)(a),(b) and (c) sets out different conditions depending on whether the person cared for is an adult, a disabled child aged 16 or 17 or a disabled child under the age of 16. In each case, there are different considerations depending on whether there is a charge for meeting the cared for person's needs.
158. The conditions in section 42(4)(a),(b) and (c) need to be considered in conjunction with the contents of section 43, which is supplementary to section 42. The key principle is that the cared for person must agree to the child carer's needs being met by the provision of care and support to the cared for person. The local authority must be satisfied that an adult or a disabled child aged 16 or 17 has capacity to make their own decision, and in the case of children under 16, the local authority must be satisfied that the child is able to make an informed decision about the carer's needs being met in this way.
159. Provision is made for what is to happen where the adult or disabled child aged 16 or 17 lacks capacity or where a child under the age of 16 does not have sufficient understanding to make their own decision. This is similar to the provision which is made in sections 40 and 41 in relation to the agreement of the person cared for by an adult carer.
160. Where an adult or a child aged 16 or 17 lacks capacity, consent can be given by an authorised person. Authorised person is defined in section 43(13) as a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide on behalf of the person cared for by the carer whether to have the needs in question met by the provision of care and support to that person.
161. Where an adult lacks capacity and there is no authorised person, the local authority can meet the carer's needs by providing care and support to the adult if this would be in the adult's best interests.
162. Where a disabled child aged 16 or 17 lacks capacity and there is no 'authorised person', the local authority is able to meet the carer's needs by providing care and support to the disabled child provided that no objection has been made by a person with parental responsibility for the child. The local authority is able to disregard any such objection if it thinks this would not be in the child's best interests.

163. In the case of a disabled child under the age of 16 who does not have sufficient understanding to make an informed decision about having the carer's needs met by the provision of care and support to them, the local authority is able to meet the carer's needs by providing care and support to the disabled child provided that no objection has been made by a person with parental responsibility for the child. The local authority is able to disregard any such objection if it thinks this would not be consistent with the child's well-being.
164. Further provision is made to deal with the situation where the cared for person is a disabled child and a charge would be imposed on an adult for meeting the child's needs for care and support. In this case, there is a further condition which requires that the adult does not object to the provision of care and support.
165. In any case where it is not feasible for the local authority to meet some or all of the carer's needs by providing care and support to the person cared for, the local authority is under a duty to find some other way of meeting the carer's needs for support (see section 44).
166. Where the cared for adult's financial resources are above the financial limit or where an adult would be liable to pay the standard charge for the provision of care and support to a disabled child cared for by a carer, the local authority will be able to charge the adult a brokerage fee for putting in place the arrangements, in accordance with the provisions in section 59(3) (powers to impose charges).

#### **Section 44 – Supplementary provision about the duties to meet carer's needs**

167. Section 44 provides supplementary provisions in relation to the duties in sections 40 and 42.
168. If it is feasible to do so, local authorities may meet a carer's needs for support by providing services to the person cared for, even if the cared for person would not be entitled to receive services in their own right (under sections 35 or 37).
169. If it is not feasible for the local authority to provide care and support to the person cared for, then the local authority must, as far as it is feasible, identify some other way in which to meet some or all of the carer's needs for support.

#### **Section 45 – Power to meet support needs of a carer**

170. Section 45 confers a power on local authorities to meet the support needs of a carer without necessarily having first completed a needs assessment or carrying out a financial assessment. This power is available, for example, where it is considered necessary to meet needs as a matter of urgency.

171. This power is also available in cases where an assessment has been carried out but the needs do not meet the eligibility criteria. In these circumstances, the local authority may nonetheless decide to meet the needs, even though they are not under a duty to do so.

### **Section 46- Exception for persons subject to immigration control**

172. Section 46 applies in relation to adults who are subject to immigration control within the meaning of section 115 of the Immigration and Asylum Act 1999. A local authority may not meet the care and support needs of such an adult which have arisen solely because the adult is destitute or because of the physical effects, anticipated or actual, of being destitute. It replaces existing exclusions set out in, for example, sections 21(1A) and (1B) of the National Assistance Act 1948 and section 45(4A) Health Services and Public Health Act 1968.

### **Section 47- Exception for provision of health services**

173. Section 47 sets out limitations on a local authority's powers to provide health services.
174. The starting point (subsection (1)) is that a local authority is not permitted to meet a person's needs for care and support by providing health care services which are required to be provided under a health enactment (defined in subsection (10)). This prohibition also applies in relation to a local authority's powers to provide preventative services under section 15.
175. However, this prohibition does not apply to the provision of health care services which are "incidental or ancillary" to something else that the local authority is doing to meet a person's needs under sections 35 to 45 or to the provision of other services under section 15. Local authorities can in certain circumstances allow staff with appropriate training, support and supervision to take on certain specified health related tasks whilst providing social care. An example of this is the provision of support with the administration of some medication.
176. Subsection (3) enables the Welsh Ministers to make regulations as to whether local authorities do, or do not have, powers to provide certain types of services or facilities and as to whether the provision of health care services is "incidental or ancillary".
177. Even where a local authority does have the power to provide health care services, they are still prohibited from meeting needs or providing preventative services by providing or arranging the provision of nursing care by a registered nurse. "Nursing care" is defined in subsection (10).
178. Subsection (6) makes clear the prohibition on a local authority providing nursing care does not prevent it from arranging for the provision of accommodation in a nursing home, provided consent has been obtained from the relevant NHS body (specified in regulations), or the case is an urgent one and consent is obtained as soon as possible after the arrangements are made. In these circumstances, the nursing care element will be funded by the NHS in accordance with arrangements for NHS funded nursing care.



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which received Royal Assent on 1 May 2014*

179. Subsection (8) enables regulations to be made requiring arrangements to be made in connection with the resolution of disputes between local authorities and NHS bodies.
180. Regulations under subsection (8) can also require local authorities to be involved in the process for assessing a person's needs for health care and deciding how those needs will be met. Regulations could be made under this subsection, for example, to require local authority involvement in the procedures for determining eligibility for Continuing Health Care.
181. Subsection (9) makes clear this section does not prohibit local authorities from doing anything that they, as local authorities, have the power to do under the National Health Service (Wales) Act 2006. This includes, in particular, entering into partnership arrangements with NHS bodies under section 33 of the 2006 Act.

#### **Section 48 – Exception for provision of housing etc**

182. Section 48 provides for other restrictions on how local authorities can meet an adult's needs for care and support or provide preventative services under section 15.
183. In particular they are prohibited from doing anything which a local authority would be required to do under the Housing Act 1996. This means, for example, that a local authority cannot meet needs for the purposes of this Act by providing accommodation if they are required (or another local authority is required) to provide accommodation under its duties towards homeless people under the 1996 Act. This does not prevent local authorities, under this Act, from providing more specific services (such as housing adaptations), or from working jointly with housing authorities.
184. The Welsh Ministers also have the power to make regulations specifying other enactments, so that local authorities would not be able to do anything (for the purposes of their functions under sections 15 or 35 to 45) which a local authority would be required to do under the specified enactments.

#### **Section 49 - Restrictions on provision of payments**

185. Section 34 (How to meet needs) provides that making payments is one of the ways that a local authority can meet an individual's needs for care and support and that this can include direct payments. Section 49 sets limits on the circumstances when payments can be made. Payments can be made under the scheme for direct payments as set out in sections 50 to 53. They can be made where, in the local authority's view, a person's needs are urgent and it would not be reasonably practicable to meet the needs in another way. Subsection (1)(c) allows a local authority to make payments in the course of contracting for the provision of services. Regulations may set out other circumstances when payments may be permitted.

186. Subsection (2) sets limits on the extent to which payments can be used in the discharge of a local authority's duties to provide preventative services under section 15.

### **Section 50 - Direct payments to meet an adult's needs**

187. Section 50 provides the Welsh Ministers with a power to make regulations that require or allow a local authority to make payments (direct payments) towards the costs associated with meeting an adult's needs for care and support so as to allow the adult to make his or her own arrangements to purchase the care required.
188. Subsections (3) and (4) set out the preconditions for any such payments to be made. A person with capacity must consent to receiving payments instead of services. Where a person does not have capacity then consent to the making of direct payments can be given in a number of ways. If there is a person authorised under the Mental Capacity Act 2005 (through an appropriately worded lasting power of attorney or through appointment as a deputy by the Court of Protection) then that person can consent, as the recipient of the payments, or can consent to the payments being made to another person who must also consent. If there is no-one authorised under the 2005 Act then a person willing to be the recipient of the payments can give consent so long as the other relevant conditions of this section are met.
189. In the case of an adult with capacity or without capacity, payments can be made if the recipient of the payment might not be able to manage the payment him or herself but is capable of doing so with support which is available. In both cases there is a need for a local authority to be satisfied that making the payments is an appropriate way of meeting the adult's care needs. Additionally, where the adult does not have capacity the local authority must be satisfied that the recipient of the payment will act in the adult's best interests.

### **Section 51 - Direct payments to meet a child's needs**

190. Section 51 provides the Welsh Ministers with a power to make regulations that require or allow a local authority to make payments (direct payments) towards the costs of meeting a child's needs for care and support. Payments can be made to a person with parental responsibility for a child who has needs for care and support, or to the child who has needs for care and support.
191. The person to whom the payments are to be made must consent to the making of the payments. Where the direct payments are being made to an adult or a child aged 16 or 17, the local authority must believe the person who is to receive the payments has the capacity to consent to the making of the payments. Where the person is a child under the age of 16, the local authority must be satisfied they have sufficient understanding to make an informed choice about receiving direct payments.
192. In all cases the local authority must be satisfied that making the payments is an appropriate way of meeting the child's needs, that the well-being of the child will be safeguarded and promoted by the making of the payments and that the person who is to receive the payments is capable of managing them by him or herself or with support.

### **Section 52 – Direct payments to meet a carer’s needs**

193. Section 52 provides the Welsh Ministers with a power to make regulations that require or allow a local authority to make payments (direct payments) towards the costs of meeting a carer’s needs for support.
194. The direct payments must be made to the carer himself or herself, who must consent to the making of the payments. Where the carer is an adult, or a child aged 16 or 17 the local authority must believe he or she has the capacity to consent to the making of the payments. Where the carer is a child aged under 16 the local authority must be satisfied that they have sufficient understanding to make an informed choice about receiving direct payments.
195. In all cases the local authority must be satisfied that making the payments is an appropriate way of meeting the carer’s needs and that the carer is capable of managing the payments, whether by him or herself, or with support.

### **Section 53- Direct payments: further provision**

196. Section 53 contains further provision about the power to make regulations in the previous three sections (sections 50 to 52) and sets out a wide range of related matters about which they can make provision.
197. Subsections (3) and (4) provide that the regulation-making powers may be exercised to make provision in relation to direct payments which corresponds to the provisions made in relation to charges under Part 5. By way of example, regulations could make provision for the amount a person must pay by way of reimbursement or contribution.
198. Subsection (5) provides that regulations made under sections 50 to 52 must require local authorities to take specified steps to ensure that ‘relevant persons’ (as defined in subsection (6)) are enabled to make informed choices about the use of direct payments.
199. Subsection (7) provides that regulations made under section 51 must not require direct payments made to meet a child’s care and support needs to be subject to a requirement to reimburse the local authority’s costs where the person is receiving a benefit within a specified category.
200. Subsections (9) and (10) provide that a recipient of direct payments can purchase services from any person, including the local authority itself and, where that is the case, the local authority may charge even though it is otherwise under a duty to meet the needs in question.

### **Section 54 – Care and support plans and support plans**

201. Section 54 provides that a local authority must prepare and maintain a care and support plan or a support plan for a person whose needs it is required to meet. The plans must be kept under review. If the local authority believes that a person’s circumstances have changed, it must conduct a new assessment and revise the plan.

202. Regulations must make provision about how the plan is prepared, what it must contain as well as what the review and revision arrangements are. The regulations must set out who can request a review of the plan (on their own behalf or on behalf of others), when the local authority must comply with a request for a review of the plan, and when it may refuse such a request. The section also sets out who must be involved in the preparation, review and revision of plans.
203. The process of preparing, reviewing or revising a care and support plan may link in with the preparation, etc. of plans by other bodies for the person in question.

### **Section 55 – Regulations about care and support plans and support plans**

204. Section 55 sets out examples of the provision that may be made in the regulations made under section 54(5).

### **Section 56 – Portability of care and support**

205. Section 56 provides for what is to happen when a person who has needs for care and support that a local authority is required to meet moves from the area of one local authority to another.
206. The local authority (the ‘sending authority’) that is under a duty to meet the person’s needs, must, when notified that the person intends to move to the area of another local authority in Wales, notify that other authority (the ‘receiving authority’) of the person’s intention to move. It must also provide it with a copy of the person’s care and support plan.
207. The ‘sending authority’ must also provide any other information about the person, together with information on the person’s carer, if there is one (for example a copy of the carer’s support plan) that the ‘receiving authority’ requests.
208. When the receiving authority is satisfied that the person is moving to its area, it must notify the sending authority of this and provide the person (and their carer if there is one) with appropriate information. If the person is a child, it must also provide appropriate information to any person with parental responsibility for the child.
209. The ‘receiving authority’ must assess the person, paying particular regard to any change in the person’s care and support needs arising from the move. It must also have regard to the care and support plan forwarded by the sending authority.
210. On the day that the person moves to its area, if the receiving authority has not yet carried out an assessment, it must meet the care and support needs set out in the plan that was prepared by the ‘sending authority’. It must do so until it completes its own assessment along with any other steps that need to be taken.
211. Regulations may make further provision with regard to the steps to be taken, the matters to which the receiving authority must have regard and where the duties in this section may not apply.

**Section 57 – Cases where a person expresses preference for particular accommodation**

212. Section 57 provides that regulations may be made that require the local authority to provide or arrange the provision of accommodation that meets a person's preference.
213. The regulations may make provision requiring a person to meet some or all of the costs of meeting his or her preference, in so far as they exceed the costs that would usually be incurred in providing suitable accommodation.

**Section 58 – Protecting property of persons being cared for away from home**

214. Section 58 provides for the protection of a person's movable property if they are being cared for away from home. In these circumstances, a local authority has a duty to protect the person's movable property and for this purpose, it is able to enter the person's premises and take other steps in order to prevent or mitigate loss or damage. These powers cannot be exercised unless the necessary consent to the taking of the steps has been obtained.
215. Before exercising their duties under this section, the local authority must, in the case of an adult, a child aged 16 or 17 who has capacity or a child under 16 who has sufficient understanding, obtain their consent.
216. Where the person is an adult who lacks capacity, the local authority must obtain the consent of a person authorised under the Mental Health Act 2005 to give consent on the adult's behalf. Where there is no authorised person, the local authority must satisfy itself that taking action would be in the adult's best interests.
217. Where the person is a child aged 16 or 17 who lacks capacity, the local authority must obtain the consent of a person authorised under the Mental Health Act 2005 to give consent on the child's behalf. Where there is no authorised person, the local authority must obtain the consent of a person with parental responsibility for the child.
218. Where the person is a child aged 16 who does not have sufficient understanding, the local authority must obtain the consent of a person with parental responsibility for the child.
219. The local authority must take reasonable steps to obtain the necessary consent, but if it has not been able to do so, the duty to take reasonable steps to prevent or mitigate loss no longer applies.
220. An officer authorised to exercise powers under this section, must if requested to do so, produce his or her authorisation. It is an offence to obstruct the exercise of the power.
221. A local authority can recover reasonable expenses incurred but only from an adult in relation to the steps taken to protect the adult's property.

### **Section 59 – Power to impose charges**

222. Section 59 provides that a local authority may impose a charge for providing or arranging the provision of care and support or support. Such a charge can only be for costs the local authority incurs in meeting the needs for which the charge is made. Subsection (3) contains an exception to this proposition, which allows a local authority to charge an additional sum in the circumstances set out within the subsection. The local authority's power to impose a charge is subject to regulations made under sections 61 and 62 and to the duties in sections 63, 66 and 67.

### **Section 60 – Persons upon whom charges may be imposed**

223. Section 60 sets out the persons upon whom charges may be imposed for the provision of care and support (or, where relevant, support).

224. Where care and support is provided to an adult (whether to meet the adult's own needs or to meet the needs of the adult's carer), the charge may be imposed on that adult.

225. Where care and support is provided to a child (whether to meet the child's own needs or to meet the needs of the child's carer), the charge may be imposed on any adult with parental responsibility for the child. Where a child's needs are met by the provision of something to an adult, the charge may be imposed on that adult.

226. Where the charge is in respect of support provided to a carer, a charge can be imposed on an adult carer, or in the case of a child carer, on any adult with parental responsibility for the child.

### **Section 61 - Regulations about the exercise of a power to impose a charge**

227. Section 61 allows the Welsh Ministers to make regulations about the way that local authorities exercise their powers to charge for social care services. Subsections (2) and (3) contain examples of the provision that could be made in the regulations. For example, provision could be made to specify the maximum amounts that can be charged for the provision of services for a person, the circumstances in which a charge could be imposed or the use of any formula to determine the charge.

### **Section 62 – Regulations disapplying a power to impose a charge**

228. Section 62 provides the Welsh Ministers with a power to make regulations that disapply a local authority's power to impose a charge and which may instead require the local authority to provide care and support or support free of charge.

### **Section 63 – Duty to carry out a financial assessment**

229. Section 63 requires a local authority to carry out a financial assessment of a person's resources when it has concluded that it will meet their needs for care and support or support.

### **Section 64 – Regulations about financial assessments**

230. Section 64 requires the Welsh Ministers to make regulations about the way that financial assessments are to be undertaken by a local authority. The regulations must provide for the calculation of an eligible person's income and capital. They can also provide for the extent to which either is to be regarded or disregarded in the calculation of charges to be imposed, the circumstances in which a person will be deemed as having financial resources above a set threshold and circumstances in which a new financial assessment must or may be carried out.

### **Section 65 – Regulations disapplying the duty to carry out a financial assessment**

231. Section 65 provides the Welsh Ministers with power to make regulations that set out the circumstances in which the duty to carry out a financial assessment is disapplied.

### **Section 66– Determination as to a person's ability to pay a charge**

232. Section 66 requires a local authority to determine, in light of the financial assessment it has undertaken in accordance with the requirements of regulations made under section 64, whether it is reasonably practicable for a person to pay its standard charge for the service and, if not, how much it is reasonably practicable for the person to pay (if anything). Subsection (3) requires the Welsh Ministers to make regulations which make further provision regarding how to determine the ability to pay a charge for care and support or support.

### **Section 67 – Duty to give effect of determination as to ability to pay a charge**

233. Section 67 requires a local authority to give effect to the determination of a person's ability to pay a charge (as determined in accordance with the requirements of section 66 and any regulations made under that section). Subsection (2) allows the Welsh Ministers to make regulations which set out the circumstances in which this duty does not apply.

### **Section 68 – Deferred payment agreements**

234. Section 68 provides the Welsh Ministers with a power to make regulations about the circumstances in which a person whose needs are being met by a local authority, or whose needs are going to be met (in accordance with sections 35 to 45) may enter into arrangements with that local authority to defer any charges that will be imposed upon the person in respect of the provision of such services. An arrangement made under this section is known as a "deferred payment agreement". The regulations which may be made by the Welsh Ministers under this section may specify, for example, whether interest can be charged and the duration of the deferred payment agreement.

### **Section 69 – Charging for preventative services and assistance**

235. Section 69 provides the Welsh Ministers with power to make regulations about a local authority's ability to impose a charge for the provision of preventative services and assistance (provided in accordance with sections 15 and 17). Subsection (2) prevents such regulations from making provision which would require a person to pay a charge under this section if a charge has already been imposed in accordance with section 59, and prevents the charge from covering anything other than the cost of providing the services or the assistance to which the charge relates. Subsection (2) also prevents the imposition of a charge upon a child for services provided in accordance with sections 15 and 17.

### **Section 70 – Recovery of charges, interest etc**

236. Section 70 provides for the recovery of charges imposed by a local authority under this Part, together with any costs incurred while seeking to recover such charges. The local authority cannot recover charges if a deferred payment agreement could have been entered into, unless the authority has tried to enter one but the person owing money has refused to do so. Subsection (3) allows a local authority to seek recovery of monies owed to it via the magistrates courts (as well as in the civil courts). Regulations may be made by the Welsh Ministers in accordance with subsection (8) to make further provision, for example, in relation to due dates for repayment and charging interest.

### **Section 71 – Creation of a charge over an interest in land**

237. Section 71 allows a local authority, in appropriate circumstances, to create a charge over a person's interest in land if that person fails to pay a sum recoverable to a local authority under this Part, in order to secure payment of the sum due.

### **Section 72 – Transfer of assets to avoid charges**

238. Section 72 makes provision about the recovery of charges imposed in accordance with this Part where an individual has transferred assets to another person in order to avoid charges for services to meet a need for care and support or support. Where the transfer has been undertaken for the reasons or in the circumstances set out in subsection (1), the person to whom the assets have been transferred may become liable for making the payment to the local authority. Subsection (7) gives the Welsh Ministers power to make regulations which specify the cases in which liability for the charges will not be imposed upon the transferee.

### **Section 73 – Reviews relating to charging**

239. Section 73 requires the Welsh Ministers to make regulations about a local authority's obligation to undertake a review of a decision made about the charges imposed under section 59, a determination made in accordance with section 66 or decisions relating to liability under section 72.

240. Such regulations may also include provision to specify the procedure to be followed, as well as who can request the review and the time period in which a request for a review is to be made.

## **PART 6 - LOOKED AFTER AND ACCOMMODATED CHILDREN**

241. This Part replaces the majority of the powers and duties of local authorities in Wales to provide support for children and families set out in Part 3 of, and Schedule 2 to, the Children Act 1989 ('the 1989 Act'). Part 3 and Schedule 2 to the 1989 Act will continue to apply in relation to local authorities in England but will no longer apply in relation to Wales.

242. The rights and duties which contained in section 17 of the 1989 Act – provision of services for children in need, their families and others - are not replicated in this Part but are contained within the provision made in Parts 2, 3 and 4 of the Act, although the concept of a child "in need" is not replicated within this Act.



243. The concept of welfare as a basis upon which decisions are made in respect of children which runs through the 1989 Act is replaced in this Act with the requirement to promote the child's "well-being". Well-being is defined in section 2 of the Act and applies in relation to both children and adults for the purposes of the Act; it includes any of the eight matters set out in section 2(2) and in relation to a child will also include the child's -
- (a) physical, intellectual, emotional, social and behavioural development; and
  - (b) "welfare" as that word is interpreted for the purposes of the Children Act 1989.

#### **Section 74 - Child or young person looked after by a local authority**

244. Section 74 provides the interpretation of key terms used in this Part, in particular, the definition of "looked after" in relation to a child who is looked after by a local authority.

#### **Section 75 - General duty of local authority to secure sufficient accommodation for looked after children**

245. Section 75 places a general duty on local authorities to provide children it looks after with accommodation within the local authority area that meets the child's needs. (As to placements out of area, requirements may be imposed by the Welsh Ministers in regulations, made by virtue of sections 87 and 90. Those sections respectively provide Welsh Ministers with a regulation making power and set out examples of the way in which that power may be used to make provision about placement of looked after children outside the local authority's area).
246. Section 75(3) requires a local authority to have regard to the benefits of having a range of accommodation available and sufficient numbers of foster parents or children's homes.

#### **Section 76 - Accommodation for children without parents or who are lost or abandoned etc**

247. Section 76 requires a local authority to provide accommodation for any child that appears to need it as a result of having no person with parental responsibility to look after them, or who is lost or abandoned, or the person with parental responsibility for them is prevented, for whatever reason, from providing the child with accommodation or care. It further provides that if a local authority is providing accommodation in an area which is not the local authority area where the child normally lives, then the local authority for that other area can take over the provision of accommodation.
248. The local authority must also provide accommodation to a child who has reached the age of 16, if failure to do so would seriously prejudice his or her well-being.
249. A local authority may not provide accommodation for a child if any person with parental responsibility for the child objects and is willing and able to provide accommodation or can arrange for it to be provided. A person with parental responsibility for a child can also remove the child at any time from the accommodation provided by the local authority. These powers of a person with

parental responsibility for the child do not apply in the case of a child who is 16 or over and who agrees to being provided with accommodation under this section. Nor are they exercisable if any of the following agree to child being so accommodated: a person with a residence order in relation to the child; the child's special guardian (appointed in accordance with section 14A of the Children Act 1989); a person who has care of the child by virtue of a High Court Order.

### **Section 77 - Accommodation for children in police protection or detention or on remand etc**

250. Section 77 requires the local authority to provide accommodation for children:

- a. who are removed or kept away from home under Part 5 of the Children Act 1989;
- b. subject to police protection under section 46(3)(f) of the Children Act 1989;
- c. whom it is requested to receive under section 38(6) of the Police and Criminal Evidence Act 1984;
- d. who are remanded by virtue of paragraph 4 of Schedule 1 or paragraph 6 of Schedule 8 to the Powers of Criminal Courts (Sentencing) Act 2000;
- e. who are remanded by virtue of paragraph 21 of Schedule 2 to the Criminal Justice and Immigration Act 2008;
- f. who are remanded by virtue of paragraph 10 of the Schedule to the Street Offences Act 1959; or subject to a youth rehabilitation order imposing a residence or fostering requirement.

251. Where costs are incurred by a local authority as a result of a child being removed under Part 5 of the Children Act 1989, being detained under section 38 of the Police and Criminal Evidence Act 1984, or where the child is not provided with accommodation by the local authority, or by a local health board or NHS Trust (or by equivalent bodies in England), those costs are recoverable from the local authority where the child is ordinarily resident.

### **Section 78 - Principal duty of a local authority in relation to looked after children**

252. Section 78 requires a local authority looking after a child to safeguard and promote the child's well-being. A local authority also has obligations to make use of services for the benefit of a looked after child, that are available for children cared for by their own parents, where it is reasonable to do so.

253. Subsection (3) requires a local authority, before it makes any decision about a child whom it is or is proposing to look after, in addition to its duty to have regard to the considerations within sections 6 and 7 of the Act (which set out the overarching duties of a local authority when exercising functions under the Act), to have regard to the views, wishes and feelings of anyone the authority deems relevant and to take in to account the child's religion, race, culture and language.

254. A local authority may exercise its duties with respect to a child otherwise than in accordance with its duties under this section (or section 6) if it is necessary to do so for the purposes of protecting members of the public from serious injury.

### **Section 81 - Ways in which looked after children are to be accommodated and maintained**

255. Section 81 requires a local authority looking after a child to make arrangements for accommodating the child in a placement which is consistent with their well-being. Subsection (6) contains a definition of “placement”.
256. Subsections (2) and (3) describe the placements to which a local authority must give preference, unless such placements are not compatible with the child’s well-being or are not reasonably practicable. A local authority which is unable to place a child in accordance with subsections (2) and (3) must instead place the child in the “most appropriate placement” available.
257. Subsections (7), (8) and (9) contain matters to which the local authority must have regard when determining what an appropriate placement is.
258. If the local authority is satisfied that the child should be placed for adoption it must have regard to the requirements in subsections (10), (11) and (12) which enable the child, in appropriate circumstances, to be placed with their prospective adoptive parents.
259. Subsection (13) gives the local authority power to determine the terms of arrangements that it makes for the placement of a child under this section, including arrangements about payment.
260. Subsection (13) also gives power to the local authority to determine the terms upon which a child is placed with its prospective adoptive parent under this section; it may make payments to such persons. This power is subject to an order under section 49 of the Children Act 2004. Section 49 of the 2004 Act gives the Welsh Ministers power to make provision to set the level of payments to be made to foster parents.

### **Section 83 - Care and support plans**

261. Section 83 requires that any care and support plan (prepared under section 54) for a child looked after by a local authority must be reviewed and maintained under this section. The local authority must carry out a new assessment and revise the plan if it believes the circumstances of the child have changed in such a way as to affect the existing plan.
262. If the child does not have a care and support plan when he or she first becomes looked after, the authority must arrange for one to be prepared. The child to whom the plan relates, together with anyone with parental responsibility for that child, must be involved in the preparation, review or revision of a plan.

263. The Welsh Ministers must make regulations (in accordance with subsection (5)) about the preparation, content, review and revision of the plans; to set out the detail of those persons who may request a review of the plan and the circumstances in which a local authority may and may not, refuse such a request.
264. If other plans are being prepared for the child by other bodies, those plans may be included with the care and support plan. Subsection (9) allows any part of a care and support plan maintained under this section to be treated as a plan prepared under section 31A of the Children Act 1989 (care plans relating to applications for care orders) for the purposes of that Act.

### **Section 85 - Contributions towards maintenance of looked after children**

265. Section 85 introduces Schedule 1 which makes provision setting out the circumstances in which the local authority can seek contributions from adults towards the maintenance of a looked after child. The provision in Schedule 1 is, for the most part, a restatement of the provision in Part 3 of Schedule 2 to the Children Act 1989; however paragraph 1 of Schedule 1 prevents any contribution being sought from a person under the age of 18 (whether they are the child who is looked after or the parent or person with parental responsibility for such a child).

### **Section 86 - Children's homes provided, equipped and maintained by the Welsh Ministers**

266. Section 86 provides the Welsh Ministers with a power to determine the terms upon which a local authority places a child it is looking after in a children's home that is provided, equipped and maintained by the Welsh Ministers (in accordance with powers under section 82(5) of the Children Act 1989).

### **Section 87 - Regulations about looked after children**

267. Section 87 provides the Welsh Ministers with a power to make regulations to make further provision about the way in which a local authority must exercise its duties in relation to children that it looks after.
268. Sections 88 to 94 contain examples of the sort of provision that such regulations may make.

### **Section 88 - Regulations about conditions under which a child in care is allowed to live with a parent etc**

269. Section 88 contains an example of the way in which the regulation making power in section 87 could be used to impose requirements on local authorities about the circumstances in which a looked after child may be placed with their parent or other person with parental responsibility. Such regulations may include requirements about a local authority's decision making processes; requirements about the supervision or medical examination of the child; or circumstances in which children can be removed from the place where the child is living.

**Section 89 - Regulations about placements of a kind mentioned in section 81(6)(d)**

270. Section 89 contains an example of the way in which the regulation making power in section 87 could be used to make provision about placements which are made in accordance with “other arrangements” that are permitted by virtue of section 81(6)(d). Such regulations may specify the persons to be notified of any proposed arrangements including any changes to those arrangements; those persons’ opportunities to make representations; record keeping and local authorities’ supervision arrangements.

**Section 90 - Regulations about placements out of area**

271. Section 90 contains an example of the way in which the regulation making power in section 87 could be used to impose requirements upon a local authority that must be followed before it places a looked after child outside the authority’s area and for ensuring the child’s well-being should such an out of area placement be made.

**Section 91 - Regulations about the avoidance of disruption in education**

272. Section 91 contains an example of the way in which the regulation making power in section 87 could be used to impose requirements upon a local authority when making any decision regarding a child’s placement when the child is in the fourth key stage of education as provided for under Part 7 of the Education Act 2002.

**Section 92 - Regulations about the placing of children with local authority foster parents and prospective adopters**

273. Section 92 contains an example of the way in which the regulation making power in section 87 could be used to make provision about the placement of looked after children in foster care or with prospective adopters. The regulations may contain provision to require arrangements to be made about the child’s health and education; or that any accommodation in which a child is placed is subject to inspection by the local authority.

**Section 93 - Regulations providing for approval of local authority foster parents**

274. Section 93 contains an example of the way in which the regulation making power in section 87 could be used to make provision about the approval of foster parents by the local authority. Such regulations may for example:

- a) contain provision which specifies that a child may not be placed with foster parents until the local authority has approved their appointment as foster parents;
- b) contain provision about the establishment of an independent procedure for reviewing the approval of foster parents including establishing a panel constituted by the Welsh Ministers;
- c) make provision regarding the duties and powers such a panel may have;
- d) make provision regarding the appointment of members to the panel and how they are paid and arrangements for the review of a determination of a panel and procedures for monitoring such reviews; and
- e) make provision which enables the Welsh Ministers to contract with another organisation to exercise an independent review of such determinations.

### **Section 94 - Regulations about agency arrangements**

275. Section 94 contains an example of the way in which the regulation making power in section 87 could be used to make provision about the circumstances in which a local authority may make arrangements with other organisations or persons to discharge the local authority's duties imposed by the regulations.

### **Section 95 - Promotion and maintenance of contact between child and family**

276. Section 95 requires a local authority to promote contact between a child whom it looks after and the child's parents, others with parental responsibility for the child, the child's relatives, friends and anyone else connected to the child, provided this is consistent with the child's well-being and it is reasonably practicable to do so. The authority must also ensure the child's parents and others with parental responsibility for the child are kept informed of where the child is accommodated. Similarly, those persons must ensure they keep the local authority informed of any changes to their address.
277. Subsection (6) makes it an offence for a parent or other person with parental responsibility for a looked after child to fail to keep the local authority informed of his or her address.
278. Section 95 further requires a local authority which is taking over the responsibility for providing accommodation to a child from another local authority, to inform the child's parents and anyone else who has parental responsibility for the child. A local authority however is not required to do so if that would prejudice the child's well-being unless that child is under 16 years of age and accommodated under voluntary arrangements made by virtue of section 76.

### **Section 96 - Family visits to or by children: expenses**

279. Section 96 gives a local authority power to make payment of travel, subsistence and other expenses. Such payments may be made to a parent or anyone connected with a child the local authority looks after when that person visits the child. The authority may also make payments to a child or to any person on a child's behalf, when a child visits their parents or anyone connected with the child. Payments can only be made if, without them, making the visit would cause undue financial hardship and if the circumstances warrant such payments.

### **Section 97 - Duty of local authority to ensure visits to, and contact with, looked after children and other children**

280. Section 97 imposes a duty upon a local authority to ensure visits to, and contact between, a representative of the authority and a child it looks after; a child it used to look after; or other categories of children specified in regulations which may be made under subsection (2). The local authority's representative must arrange for the provision of advice, support and assistance to the child. The regulations made under this section may also make provision about the frequency of visits; the circumstances in which visits can take place; and the functions of representatives.

281. Subsection (6) requires a local authority to ensure that its representative has the appropriate skills and experience to perform the functions.
282. This section largely restates provision made by section 23ZA of the Children Act 1989; however the regulation making power within subsection (1)(c) also permits the Welsh Ministers to specify in regulations additional categories of children to whom the duty provided for within this section would apply and subsection (2) requires such regulations to make provision about which local authority is responsible for discharging the duties in relation to such children.

### **Section 98 - Independent visitors for looked after children**

283. Section 98 requires a local authority to appoint an independent person to visit any child whom the authority looks after, if the child falls within a category specified in regulations made by the Welsh Ministers, or if it would be in the child's interests.
284. A person appointed as a visitor under this section must befriend and advise the child and may claim expenses from the authority that have been incurred in the exercise of their functions under this section.
285. The independent visitor's appointment comes to an end once the child ceases to be looked after by the authority; when he or she resigns; or if the local authority terminates the appointment. A visitor may not be appointed under this section if a child has sufficient understanding and objects to the making of such an appointment. If the child objects to having a particular visitor, the local authority is not required to appoint another person.
286. Regulations which may be made under subsection (9) may specify the circumstances in which a person is to be regarded as independent.

### **Section 99 - Appointment of independent reviewing officer**

287. Section 99 requires a local authority to appoint an independent reviewing officer (IRO) to review the case of each child it looks after. The IRO must be appointed before the child's case is first reviewed in accordance with section 102. Subsection (4) provides that an IRO must be a person who falls within a category set out in regulations made by the Welsh Ministers.

### **Section 100 - Functions of the independent reviewing officer**

288. Section 100 sets out the functions of IROs. Subsection (1)(d) allows the Welsh Ministers to make regulations which prescribe additional functions for IROs and subsection (4) requires a local authority to co-operate with an IRO in the event that he or she is not an officer of the authority.

### **Section 101 - Referred cases**

289. Section 101 is a power for the Lord Chancellor to make regulations to extend the functions of a “Welsh family proceedings officer” (defined in section 197 of the Act) in relation to cases which are referred under section 100(3). Regulations made under this section may also make provision about the way that a Welsh family proceedings officer exercises his or her functions. Regulations made under this section may only be made with the consent of the Welsh Ministers. This section restates provision made by section 25C of the Children Act 1989.

### **Section 102 - Review of cases and inquiries into representations**

290. Section 102 gives the Welsh Ministers power to make regulations which require the review of a case of a looked after child. Subsection (2) contains examples of matters which may be included in such regulations.

### **Section 103 - Befriending, advising and assisting looked after children**

291. Section 103 contains a duty which requires a local authority to befriend, advise and assist a child whom it has ceased looking after, with the intention of promoting the child’s well-being.

### **Section 104 - Young people entitled to support under sections 105 to 115**

292. Section 104 sets out the different categories of young people who are or who were being looked after by a local authority for the purposes of this Act. Each category is entitled to differing types or levels of support. Subsection (2) contains a description of the six different categories.
293. A category 1 young person is a child aged 16 or 17 who is being looked after by a local authority and who has been looked after by a local authority (in Wales or England) for a period (specified in regulations), which began after he or she reached an age specified in regulations and ended after the child had reached the age of 16. This definition restates the definition of an eligible child in paragraph 19B(2) of Schedule 2 to the Children Act 1989 .
294. A category 2 young person is a child aged 16 or 17, who is no longer looked after by a local authority (in Wales or England) but who used to be a category 1 young person. The definition of a category 2 young person replicates that of a relevant child in section 23A of the Children Act 1989.
295. A category 3 young person is a young person who is aged 18 or over, and who used to be a category 2 young person and would continue to be so if he or she were under the age of 18; or who was being looked after by a local authority when he or she reached the age of 18, and, immediately before ceasing to be looked after, was a category 1 young person. The definition of a category 3 young person restates that of a former relevant child in section 23C of the Children Act 1989.



296. A category 4 young person is a category 3 young person who is under 25 (or a lower age specified in regulations) and for whom the duties under sections 105, 106, 107(3) and (10) and 110 have ceased to apply, and who has also informed the local authority that he or she is pursuing or wishes to pursue education or training. The definition of a category 4 young person captures those young persons for whom provision is made within section 23CA of the Children Act 1989 (persons who qualify for further assistance to pursue education or training). Such young persons will be able to obtain advice and assistance by virtue of “reconnecting” with a local authority for the purposes of seeking to pursue education or training.
297. A category 5 young person is a young person who is 16 but not yet 21 in respect of whom a special guardianship order is in force (or if the person is 18 or over, an order was in force when he or she reached 18). A category 5 young person will be entitled to the same support from a local authority as that provided for a person qualifying for advice and assistance under section 24A of the Children Act 1989 (on the basis that he or she is a person who qualifies for advice and assistance by virtue of section 24(1A) of the Children Act 1989).
298. A category 6 young person is a young person who has not yet attained the age of 21; is residing in Wales; and who, whilst not currently being looked after, accommodated or fostered, has been looked after, accommodated or fostered for a period when they were between the ages of 16 and 18. This category does not include anyone capable of being captured by the definition of a category 5 young person. A category 6 young person will be entitled to the same support from a local authority as that provided to persons qualifying for advice and assistance under section 24A by virtue of section 24(1B) of the Children Act 1989.
299. Subsections (3) and (4) provide clarification of the terms “looked after”, “accommodated and “fostered” for the purposes of the definition of a category 6 young person.
300. Subsection (5) clarifies which local authority is the “responsible local authority” for the purposes of providing support to each of the categories of care leaver described in subsection (2).
301. Regulations may be made by the Welsh Ministers in accordance with the power in subsection (6) to specify additional categories of young person entitled to support under Part 6 or to modify existing categories, including those not to be treated as falling within a particular category and to provide for which local authority would be the responsible local authority for any additional young persons so specified.

### **Section 105 - Keeping in touch**

302. Section 105 requires a local authority to take reasonable steps to keep in touch with persons who fall within the definition of a category 2 or 3 young person, whether or not that person is still physically present in that local authority’s area. If the local authority loses contact with a category 2 or 3 young person, it must take reasonable steps to re-establish contact, and in the case of a category 2 young person, must continue to do so until it succeeds. Subsection (4) specifies the circumstances when the duties under this section to category 3 young persons cease.

303. Subsection (5) requires a local authority to take reasonable steps to re-establish contact with a category 6 young person (who was looked after by the local authority) if the local authority has lost touch with that person. This section restates provision made by sections 23B and 23C of the Children Act 1989 (in respect of category 2 and 3 young persons) and section 24 (in respect of category 6 young persons).

### **Section 106 - Personal advisers**

304. Section 106 requires a local authority to arrange for a young person who falls within the definition of a category 1, 2, 3 or 4 young person, to have a personal adviser. The functions of a personal adviser may be specified in regulations. This section restates provision made in paragraph 19C of Schedule 2 (in respect of category 1 young persons); sections 23B (in respect of category 2 young persons); 23C (in respect of category 3 young persons); and 23CA (in respect of category 4 young persons) of the Children Act 1989.

### **Section 107 - Pathway assessments and plans: general**

305. Section 107 requires a local authority to carry out an assessment to determine what advice and support is required by a category 1 young person both while he or she is being looked after and after he or she ceases to be looked after. This provision restates the duty contained in paragraph 19B(4) of Schedule 2 to the Children Act 1989.
306. Subsections (2), (3) and (4) apply to a young person who is a category 2 or 3 young person who does not already have a pathway plan in place, and to a category 4 young person. In such cases, the local authority must carry out an assessment to determine the advice and other support it would be appropriate for the local authority to provide to the young person. Following assessment, the local authority must prepare a pathway plan and keep it under review. This provision restates the obligations contained in sections 23B, 23C and 23CA of the Children Act 1989.
307. The purpose and required content of a pathway plan are specified in subsection (7) which also contains a regulation making power for the Welsh Ministers to add matters to be included in a pathway plan. This subsection restates provision made in section 23E, paragraph 19B(4) of Schedule 2, and sections 23C(3)(b) and 23CA(3)(a) of the Children Act 1989.
308. Regulations about assessments which may be made by the Welsh Ministers, in accordance with the power in subsection (8), may contain provision about matters such as who is to be consulted; the manner and timing of such assessments and record keeping. The local authority must regularly review a pathway plan, and subsection (11) provides that assessment(s) or review(s) carried out in accordance with this section can be carried out at the same time as any other assessment or review.

### **Section 108 - Pathway assessments and plans: post-18 living arrangements**

309. Section 108 requires a local authority, when it is undertaking an assessment, or preparing, maintaining or reviewing the pathway plan of a child it looks after in accordance with its obligations under section 107, to ascertain whether the looked after child and their foster parent(s) wish to make a post-18 living arrangement. A “post-18 living arrangement” is defined in subsection (3). Where such an arrangement is desired, the local authority must provide advice and support to facilitate such arrangements unless a post-18 living arrangement would not be consistent with the young person’s well-being.

### **Section 109 - Support for category 2 young people**

310. Section 109 requires the local authority that is responsible for a category 2 young person to safeguard and promote his or her well-being, and (to the extent that it is required) support the young person by maintaining him or her, providing suitable accommodation and any other support set out in regulations. Support may be provided in kind or in cash. Regulations which may be made by the Welsh Ministers in accordance with the regulation making power in subsection (1)(c) may also define “suitable accommodation”, and make provision about the suitability of landlords or other providers of accommodation that a local authority provides or secures by way of support under this section. This restates the provision in section 23B of the Children Act 1989.

### **Section 110 - Support for category 3 young people**

311. Section 110(1) requires a local authority to support a category 3 young person (to the extent that their well-being requires it) by contributing to expenses incurred by the young person to enable them to live near their place of work or where they will be seeking employment. In cases where a young person is or will be receiving education or training, the local authority must (to the extent that the young person’s well-being and education or training needs require it) contribute to expenses incurred in living near the place where they are, or will be, receiving education or training and make a grant to enable the young person to study or train. The local authority must also do anything else it considers appropriate to support a category 3 young person. Assistance may be provided in kind or in cash.
312. Subsection (2) requires a local authority to monitor any post-18 living arrangement that is in place and to provide advice and support to maintain that arrangement (including providing financial support to the former foster parent).
313. If the category 3 young person is pursuing full-time further or higher education then subsection (6) requires the local authority to pay “the relevant amount” to that young person in accordance with their pathway plan. A local authority must provide accommodation during the vacation for a category 3 young person who is pursuing full-time further or higher education when term-time accommodation is unavailable. Section 116 contains a regulation making power for the Welsh Ministers to make supplementary provision about support for young persons in further or higher education, including, for example, the power to specify the “relevant amount” and to define terms such as “vacation”, or “full-time”.

314. If accommodation is not provided then the local authority must provide the young person with enough money to secure the accommodation needed. This section restates, in part, provision made in section 23C of the Children Act 1989.

### **Section 111 - Cessation of duties in relation to category 3 young people**

315. Section 111 sets out when the responsible authority's duties towards a category 3 young person cease.

### **Section 112 - Support for category 4 young people**

316. Section 112 (1) requires a local authority to support a category 4 young person (to the extent that their educational or training needs require it) by contributing to expenses incurred by the young person to enable them to live near where he or she is, or will be, receiving education or training and by making a grant to enable the young person to meet expenses connected with their education or training.

317. Subsection (2) requires the local authority, where a category 4 young person is pursuing higher education, to pay the relevant amount to him or her in accordance with their pathway plan. Local authorities must provide accommodation during the vacation to a category 4 young person who is pursuing full-time further or higher education when their term-time accommodation is unavailable. If such accommodation is not provided then the local authority must provide the young person with enough money to secure the accommodation needed. Section 116 contains a regulation making power for the Welsh Minister to make supplementary provision about support for young persons in further or higher education, including, for example, the power to specify the "relevant amount" and to define terms such as "vacation", or "full-time".

318. This section restates provision made by section 23CA of the Children Act 1989.

### **Section 113 - Cessation of duties in relation to category 4 young people**

319. Section 113 sets out when the responsible authority's duties towards a category 4 young person cease.

### **Section 114 - Support for category 5 young people and former category 5 young people**

320. Section 114 requires a local authority to consider whether specified conditions are met by young persons who are category 5 or former category 5 young persons to determine the extent and nature of its obligations to provide support to such young persons. The conditions (specified in subsection (2)) are that the young person needs support, and that whoever was looking after the young person does not have the necessary facilities to advise or befriend them. If these conditions apply then the local authority must advise or befriend the young person and may provide support.

321. Subsection (4) sets out the type of support the responsible local authority may provide to a category 5 young person. Support may take the form of contributing to expenses incurred by the young person to enable them to live near their place of work or where they will be seeking employment, or where they are or will be receiving education or training. The local authority may make a grant to enable the young person to meet expenses connected with their education or training. Support may be provided in kind or in cash. Local authorities must provide accommodation

during the vacation to a category 5 young person who is pursuing full-time further or higher education when term-time accommodation is unavailable. If accommodation is not provided then the local authority must provide the young person with enough money to secure the accommodation needed.

322. Subsection (6) gives a local authority power to disregard any interruption in the young person's programme of education if it is satisfied the young person will resume the programme as soon as reasonably practicable.
323. This section restates provision made in sections 24A and 24B of the Children Act 1989.

### **Section 115 - Support for category 6 young people and former category 6 young people**

324. Section 115 requires a local authority to consider whether specified conditions are met by young persons who are category 6 young persons or certain former category 6 young persons, to determine the extent and nature of its obligations to provide support to such young persons. The conditions (specified in subsection (2)) are that the young person needs support; and for those who fall within the definition of a category 6 young person by virtue of section 104(3)(b) to (e), that whoever was looking after the young person does not have the necessary facilities to advise or befriend them. If these conditions apply then the local authority must advise or befriend the young person and may provide support.
325. Subsection (5) sets out the type of support that may be provided by a local authority. Support can take the form of contributing to expenses incurred by the category 6 young person to enable them to live near their place of work or where they will be seeking employment or where they are or will be receiving education or training. The local authority may also make a grant to enable the young person to meet expenses connected with their education or training; or by providing accommodation in other circumstances. Support may be in kind or in cash.
326. Subsection (7) gives a local authority power to disregard any interruption in the young person's programme of education if it is satisfied that the young person will resume the programme as soon as reasonably practicable.
327. Subsection (8) requires the local authority to provide accommodation during the vacation for a category 6 young person who is pursuing full-time further or higher education when their term-time accommodation is unavailable. If accommodation is not provided then the local authority must provide the young person with enough money to secure the accommodation needed.
328. This section restates provision made in sections 24A and 24B of the Children Act 1989.

### **Section 116 - Supplementary provision about support for young persons in further or higher education**

329. Section 116 contains a power for the Welsh Ministers to make regulations to make further provision about the support a local authority must or may provide for young persons who leave care and pursue higher or further education.

### **Section 117 - Charging for provision under sections 109 to 115**

330. Section 117 contains a power for a local authority to impose a charge for support (other than the provision of advice) which it provides in accordance with sections 109 to 115 of the Act. Such a charge may only be imposed on the young person receiving the support if he or she is over 18, or on a person with parental responsibility for a young person receiving the support where that young person is under the age of 18. Subsection (3) provides that an adult is not liable to pay such a charge if they are in receipt of such benefit(s) as may be specified in regulations (which may be made by the Welsh Ministers in accordance with powers contained in subsection (3)).
331. Subsections (5) and (6) provide that the power to make regulations contained in Part 5 of the Act (in sections 61 or 62) applies to charges under this section, and that regulations may also apply any provision made in or under sections 63 to 68 and sections 70 to 73 (with or without modification) to a charge imposed under this section.

### **Section 118 - Information**

332. Section 118 (1) requires a local authority that has duties towards a young person by virtue of sections 105, 114 or 115 to inform another local authority (in Wales or England) if the young person intends to live, or is living in, that other local authority's area.
333. Subsection (2) contains further obligations requiring notification of the movements of a child who is accommodated in Wales in specified types of accommodation, for example in accommodation provided by or on behalf of a health body.

### **Section 119 - Use of accommodation for restricting liberty**

334. Section 119 (1) provides that a child looked after by a local authority (in Wales or England) may not be placed, and if placed may not be kept, in secure accommodation in Wales unless it appears that the child has a history of absconding and is likely to suffer significant harm or that the child is likely to injure himself or others if kept in any other form of accommodation.
335. Subsection (2) gives the Welsh Ministers power to make regulations to set out the maximum period in which a child can be held in secure accommodation without the court's authority, and also a maximum period for which the court may authorise a child to be kept in secure accommodation in Wales. The section also provides for determinations and orders by the court relating to the use of secure accommodation.

336. Subsection (7) contains a power for the Welsh Ministers to make regulations as to the application and modification of this section to a child of a description specified in the regulations, and as to determinations relating to the placing and keeping of children of specified descriptions in secure accommodation.
337. Subsection (10) provides this section is subject to section 76(5), which is concerned with the right of a person with parental responsibility for a child to remove the child from accommodation provided by or on behalf of a local authority.
338. This section is based on provision made in section 25 of the Children Act 1989.

### **Section 120 - Assessment of children accommodated by health authorities and education authorities**

339. Section 120 requires an “accommodating authority” (that is a local health board, an NHS Trust or a local authority in the exercise of education functions) that accommodates a child in Wales for a consecutive period of 3 months or more, or intends to do so, to notify an appropriate officer of the Welsh or English local authority where the child was ordinarily resident. If the child has no settled place of residence, an appropriate officer of the Welsh or English local authority where the accommodation in which the child is placed, must be notified instead. A similar duty arises when the accommodating authority ceases to accommodate the child. “appropriate officer” is defined in subsection (4).
340. The appropriate officer of a local authority so notified then has a duty to assess whether the child has needs for care and support (in accordance with section 21) and must also consider whether the local authority should exercise any other functions under this Act or the Children Act 1989.
341. Subsection (6) disapplies the obligation to undertake an assessment of children who are children looked after by a local authority in Wales, Scotland or England or (in relation to Northern Ireland) by a Health and Social Care Trust. Any needs of such children for care and support will be met by the local authority or Health and Social Care Trust that is responsible for them.
342. This section is based on provision made in section 85 of the Children Act 1989.

### **Section 121 - Assessment of children accommodated in care homes or independent hospitals**

343. Section 121 requires a person who carries on a care home or hospital in Wales where a child is accommodated for a period of at least 3 months (or where is intended that the child be so accommodated), to notify the appropriate officer (as defined in section 120(4)) of the local authority in which the care home or independent hospital is located, and again notify the appropriate officer when it ceases to accommodate the child. The appropriate officer then has a duty to assess the child (in accordance with section 21) to determine if the local authority should exercise any of its functions under this Act or the Children Act 1989.

344. Subsection (4) disapplies the obligation to undertake an assessment of children who are children looked after by a local authority in Wales, Scotland or England or (in relation to Northern Ireland) a Health and Social Care Trust. Any needs of such children for care and support will be met by the local authority or Health and Social Care Trust that is responsible for them.
345. Subsection (5) makes it an offence if the person responsible for notifying the appropriate officer under this section fails to do so (without reasonable excuse).
346. Subsection (6) gives a person authorised by a local authority the power to enter a care home or independent hospital to establish whether obligations contained in this section have been complied with. It is an offence to obstruct such a person in the exercise of their power of entry.
347. This section is based on provision made in section 86 of the Children Act 1989.

### **Section 122 - Visitors for children notified to local authority under section 120 or 121**

348. Section 122 requires the appropriate officer (as defined in section 120(4)) to make arrangements, in accordance with regulations, for a child who is being accommodated under sections 120 and 121 (and in respect of whose accommodation the officer has been notified) to be visited by a representative of the local authority. The regulations may make provision about, for example, the frequency of visits and the circumstances in which visits can be made.
349. Subsection (5) requires a local authority to ensure the representative who visits a child who is being accommodated as described in sections 120 and 121, has the necessary skills to do the job.
350. This section is based on provision made in section 86A of the Children Act 1989.

### **Section 123 - Services for children notified to a local authority under section 120 or 121**

351. Section 123 requires a local authority to provide services for children in respect of whom they have been notified under section 120 or 121. The services must be provided with a view to promoting contact between the child and their family. Such duties are in addition to any duty to maintain family contact that the local authority for the area in which the child is accommodated may have under section 39 (duty to maintain family contact).

### **Section 124 - Arrangements to assist children to live outside England and Wales**

352. Section 124 provides that a local authority may only arrange for a child in its care to live outside England or Wales with the approval of the court.
353. Subsection (3) makes provision about the considerations which a court should have in mind before making a determination under subsection (1).



*These notes refer to the Social Services and Well-being (Wales) Act 2014 (anaw 4)  
which received Royal Assent on 1 May 2014*

- 354. Subsections (4) and (5) contain provision to deal with situations where a court may dispense with consent required under subsection (3), such as where it is satisfied that a child does not have sufficient understanding to give or withhold their consent.
- 355. Section 124 also makes provision as to the effect of the court's approval during an appeal period and disapplying the section to circumstances in which a local authority is placing a child for adoption with his or her prospective adopters.
- 356. This section is based on provision made in paragraph 19 of Schedule 2 to the Children Act 1989.

### **Section 125 - Death of children being looked after by local authorities**

- 357. Section 125 sets out the action that a local authority must take in the event of the death of a child that it is looking after.
- 358. This section also contains power for a local authority to arrange for the burial or cremation of a child who has died whilst being looked after (provided that the conditions set out in subsections (1)(c) and (3) are fulfilled).
- 359. The local authority may make such payments as are permitted by provision made in subsection (1)(d) (provided that the conditions set out in subsection (2) are fulfilled).
- 360. The local authority may also seek to recover any costs incurred under this section from a person with parental responsibility for a child under the age of 16 who has died (subsections (4) and (5)).
- 361. This section is based on provision made in paragraph 20 of Schedule 2 to the Children Act 1989.

### **Section 126 - Adults at risk**

- 362. Section 126 places a duty on a local authority to carry out an investigation where it suspects that a person is an "adult at risk".
- 363. An adult at risk is one who is experiencing or at risk of abuse or neglect, has needs for care and support and is unable to protect himself or herself against the abuse or neglect (or the risk of abuse or neglect) as a result of those needs. "Abuse" and "neglect" are defined in section 197(1) (interpretation), and for the meaning of "care and support" see section 4.
- 364. The local authority must make whatever enquiries it thinks necessary to help it decide whether action should be taken. Such action could include the provision of care and support under this Act or taking steps to protect the adult under other legislation, such as the Mental Health Act 1983 or the Mental Capacity Act 2005. The principles in sections 6 and 7 will apply to the way the local authority exercises its functions under this section. This means that it must, for example, have regard to the adult's views, wishes and feelings as far as reasonably practicable.

365. If the local authority decides that action should be taken, it is expected that it will ensure that an action plan is drawn up. Subsection (3) provides that regulations made under section 54 (care and support plans) must provide for the conclusions of the local authority's enquiries (for example, its decision to take the action recorded in the action plan) to be recorded as part of the adult's care and support plan.

### **Section 127 - Adult protection and support orders**

366. Section 127 enables applications to be made to magistrates' courts for adult protection and support orders. The purpose of such orders is to enable an authorised officer to speak in private to a person suspected of being an adult at risk to establish whether he or she can make decisions freely, to assess whether the person is an adult at risk and to establish whether any action should be taken, and if so, what action.
367. Applications for such orders may be made by an authorised officer who is an individual authorised by the local authority to perform functions under this section. Regulations can place restrictions on who may be authorised under this section, for example, by requiring particular qualifications or experience.
368. When an adult protection and support order is in force the authorised officer, a police constable (if considered necessary) and any other person specified in the order has the power to enter the premises where the suspected adult at risk is living, for the purposes set out in subsection (2). Subsection (7) provides that the constable may use reasonable force (for example, to gain access to the premises where the adult at risk lives) if such force is necessary to enable the purposes of the order to be fulfilled.
369. Subsection (4) sets out the grounds on which an order may be granted. Subsection (5) sets out what must be specified in every adult protection and support order. Justices of the peace may also attach other conditions to orders.

### **Section 128 - Duty to report adults at risk**

370. Section 128 requires a 'relevant partner' of a local authority (as defined in section 162) to inform the authority if they suspect a person in its area is an adult at risk (or if the person is in the area of another local authority, to inform that other authority). It also requires a local authority to inform another local authority (in Wales or in England) if an adult they suspect to be at risk is living or moving to the area of that other authority.

### **Section 129 - Abolition of local authority's power to remove persons in need of care and attention**

371. Section 129 disapplies in relation to Wales section 47 of the National Assistance Act 1948 which gives local authorities the power to remove a person in need of care from their home.

### **Section 130 – Duty to report children at risk**

372. Section 130 requires a ‘relevant partner’ of a local authority (a youth offending team or a relevant partner as defined in section 162) to inform the authority if they suspect that a child in its area is a child at risk (or if the child is in the area of another local authority, to inform that other authority).
373. A child at risk is one who is experiencing or is at risk of abuse, neglect or other kinds of harm, and has care and support needs. “Abuse”, “harm” and “neglect” are defined in section 197(1) (interpretation), and for the meaning of “care and support” see section 4. Section 130 also requires a local authority to inform another local authority (in Wales or in England) if a child they suspect to be at risk is living or moving to the area of that other authority.
374. This is, in part, a restatement of the duty in paragraph 4 of Schedule 2 to the Children Act 1989.

### **Section 131 – Guidance about adults at risk and children at risk**

375. Section 131 provides the Welsh Ministers with a power to publish guidance governing arrangements covered in sections 126, 127, 128 and 130 of the Act. The Secretary of State must be consulted before such guidance is issued.

### **Section 132 – The National Independent Safeguarding Board**

376. Section 132 (1) provides for the establishment of a National Independent Safeguarding Board. The Board is referred to within the Act as the National Board. The National Board’s general duties are to provide support and advice to Safeguarding Boards (established under section 134) to ensure their effectiveness, report on the adequacy and effectiveness of safeguarding arrangements for children and adults in Wales and to make recommendations to the Welsh Ministers regarding how to improve safeguarding arrangements. The National Board must report to the Welsh Ministers about safeguarding arrangements in Wales.

### **Section 133 – Regulations about the National Board**

377. Section 133 provides that regulations may be made regarding the National Board and provides examples of the matters that may be addressed in the regulations.

### **Section 134 - Safeguarding Children Boards and Safeguarding Adults Boards**

378. Section 134 provides that regulations must be made specifying the areas in Wales where there are to be Safeguarding Children Boards and Safeguarding Adults Boards (“Safeguarding Board areas”). These Boards (collectively referred to as “Safeguarding Boards”) will have those partners set out in subsection (2), all of whom have an interest in safeguarding children and adults.

379. After consulting with these partners, the Welsh Ministers must specify in regulations who will be the lead partner for a Safeguarding Adults Board and who will be the lead partner for a Safeguarding Children Board. The lead partners must then establish Safeguarding Boards in the Safeguarding Board area which are to include representative of its partners (both those mentioned in subsection (2) or specified in regulations made under subsection (6)(b)).
380. It is also possible for a Safeguarding Board to include representatives of other persons or bodies that the Board considers should be represented and who are involved in activities or have functions relating to children or adults in the Safeguarding Board area in question.

### **Section 135 – Functions and procedures of Safeguarding Boards**

381. Subsection (1) sets out the objectives of a Safeguarding Children Board. These are to protect children in its area who are experiencing or are at risk of abuse, neglect or other harm and to prevent children in its area from becoming at risk of abuse, neglect or other harm. “Abuse”, “harm” and “neglect” are defined in section 197(1).
382. Subsection (2) sets out the objectives of a Safeguarding Adults Board. These are to protect adults in its area who have needs for care and support and who are experiencing, or are at risk of, abuse or neglect, and also to prevent adults with needs for care and support from becoming at risk of abuse or neglect.
383. A Safeguarding Board is under a duty to achieve its objectives by coordinating and ensuring the effectiveness of the contributions made by each partner. Regulations must make further provision regarding the functions of the Safeguarding Boards including how children or adults can be involved in its work. A Safeguarding Board may co-operate with another Safeguarding Board and may act jointly with other Safeguarding Boards. A Safeguarding Children Board and a Safeguarding Adults Board may form a joint Board.

### **Section 136 – Safeguarding Boards: annual plans and reports**

384. Section 136 provides that a Safeguarding Board must, before the start of a new financial year (which ends on 31 March each year), publish an annual plan setting out its programme of work for the year ahead. Before 31 July each year, a Safeguarding Board must publish a report on how it has exercised its functions in the preceding financial year which must include an assessment of the extent to which it has implemented proposals that were set out in its annual plan. The Welsh Ministers may make regulations making further provision about the form and content of plans and reports under this section.

### **Section 137 – Supply of information requested by Safeguarding Boards**

385. Section 137 provides that a Safeguarding Board may ask a person or a body to provide information to it or another person or body that it specifies. The information request must be made to a “qualifying person or body” and must be for the purpose of assisting the Safeguarding Board in the exercise of its functions. A “qualifying person or body” is defined in subsection (7) and means a person or body whose activities or functions are considered by the Safeguarding Board to be such that the person or body is likely to have information relevant to the exercise of a function of the Safeguarding Board.

386. This section provides a statutory gateway to enable persons to lawfully provide information to Safeguarding Boards when requested. The processing of personal data in compliance with a legal obligation to which the data controller is subject, other than an obligation imposed by contract, can provide a lawful basis for processing data under the Data Protection Act 1998 (see Schedule 1 (paragraph (a) of the first data protection principle) and Schedule 2, paragraph 3 of that Act).
387. The qualifying person or body is under a duty to comply with a request for information made by a Safeguarding Board under this section, unless the qualifying person or body considers that doing so would be incompatible with their own duties or have an adverse effect on the exercise of their powers or duties. A qualifying person or body who decides not to comply with the request must provide the Safeguarding Board which made the request with written reasons for their decision.

### **Section 138 – Funding of Safeguarding Boards**

388. Section 138 provides that a Safeguarding Board partner may make payments towards expenditure incurred by the Safeguarding Board. It may also provide staff, goods, services, accommodation or other resources. The Secretary of State must be consulted before regulations are made under subsection (3) insofar as the regulations require payments to be made by the police or probation services in their capacity as Safeguarding Board partners.

### **Section 139 – Safeguarding Boards: supplementary**

389. A Safeguarding Board must co-operate with the National Board and provide information to it, if requested by the National Board. Regulations may make further provision about the functions of Safeguarding Board partners relating to the Safeguarding Boards on which they are represented. A Safeguarding Board partner is under a duty to have regard to any guidance given by the Welsh Ministers and each partner is also under a duty to take all reasonable steps to ensure the Safeguarding Board on which it is represented operates efficiently.

### **Section 140 – Combined Safeguarding Boards**

390. Section 140 provides that the Welsh Ministers may, by order, require a Safeguarding Children Board and a Safeguarding Adults Board to combine, creating a single Board. The Welsh Ministers must consult Safeguarding Board partners to which the proposals relate, the Secretary of State and other persons they consider appropriate before making an order (see section 141).

### **Section 142 – Interpretation of Part 7**

391. Section 142 provides definitions of key terms for the purpose of this Part.

### **Section 143 – Social services functions of local authorities**

392. Section 143 introduces Schedule 2, which contains a list of enactments in which the social services functions of local authorities are set out and described. The section also makes provision for the Welsh Ministers to amend the Schedule by adding, removing or amending entries by way of secondary legislation.

### **Section 144 – Directors of social services**

393. Section 144 requires every local authority to appoint a director of social services and provides that two or more local authorities may appoint a director for both or all of those authorities if appropriate. The local authority must ensure the adequate provision of staff to assist the director in delivering his or her functions and the Welsh Ministers must specify the competencies which a potential director must possess in order to be appointed to the post, either by means of a code or in regulations made under the Act. Currently, the competencies a director must possess are contained in guidance issued under section 7A of the Local Authority Social Services Act 1970.

### **Section 145 – Power to issue codes**

394. Section 145 gives the Welsh Ministers power to issue and publish one or more codes of practice on the exercise of social services functions under the Act. A code may include guidelines about aims and objectives, as well as imposing requirements with which local authorities must comply. The Welsh Ministers must publish each code and must make available any versions of the code which have been revoked or replaced.

### **Section 146 – Issue, approval and revocation of codes**

395. Section 146 requires the Welsh Ministers to consult on a draft of any code or revised code and stipulates that, if the Welsh Ministers wish to proceed with the draft code following the consultation, it must be laid before the National Assembly for Wales for 40 days. If the National Assembly resolves not to approve the draft code, it cannot be issued. In the absence of such a resolution, the code is published in the same form in which it was laid. The Welsh Ministers may revoke a code in a subsequent code made in accordance with this section or by direction; if a code is revoked by direction then the direction must also be laid before the National Assembly.

### **Section 147 – Departure from requirements in codes**

396. Section 147 enables a local authority to exercise its social services functions in a way that does not adhere to the requirements set out in a code, provided that it considers it has good reason to do so, it has an alternative policy in place, and that policy is set out in a policy statement issued under this section.

### **Section 148 – Policy statements: requirements and ancillary powers**

397. Section 148 requires a policy statement issued under section 147 to explain how the local authority's policy differs from the requirement in the code, why it is proposing to do things differently, and when the policy covered in the statement comes in to effect. The section also stipulates that the statements must be published and that copies must be sent to the Welsh Ministers.

### **Section 149 – Directions to require compliance with codes of practice**

398. Section 149 allows the Welsh Ministers to direct a local authority to comply with the code if they consider that the authority's alternative policy statement will not adequately deliver its social services functions. As set out elsewhere in this Part, the direction must be given in writing and may be revoked by a later direction and the local authority must comply with it.

### **Section 150 – Grounds for intervention**

399. Section 150 sets out the grounds on which the Welsh Ministers may intervene in a local authority's exercise of its social services functions. The section contains three grounds, namely that the local authority:

- a) has failed or is likely to fail in the exercise of a duty that is a social services function;
- b) has acted or is proposing to act unreasonably in the exercise of a social services function; or
- c) is failing or is likely to fail to perform a social services function to an adequate standard.

400. This section is derived, in part, from section 7D of the Local Authority Social Services Act 1970 (which applies in relation to a local authority's exercise of its adult social services functions). However, the grounds for intervention are wider than those that are currently available in respect of a local authority's exercise of its social services functions in relation to adults. They reflect, instead, the broader grounds for intervention that currently apply in relation to a local authority's exercise of its social services functions in respect of children (under sections 496 to 497B of the Education Act 1996 and section 50 of the Children Act 2004). These broader grounds for intervention will now apply in relation to a local authority's exercise of all its social services functions, irrespective of whether those functions are to be exercised in relation to adults or to children.

### **Section 151 – Warning notice**

401. Section 151 permits the Welsh Ministers to give a warning notice to a local authority if they are satisfied any of the grounds in section 150 exist. Subsection (2) requires the notice to specify the grounds for intervention, the reasons why the Welsh Ministers consider the grounds to exist, the action the local authority must take to deal with the grounds, the period within which the action must be taken and the action the Welsh Ministers will be minded to take if the local authority does not take the required action. Subsection (3) contains requirements for the Welsh Ministers to notify the National Assembly for Wales of the actions they have taken under this provision.

### **Section 152 – Power of Welsh Ministers to intervene**

402. Section 152 provide the Welsh Ministers with a power to intervene in a local authority's exercise of its social services functions if a warning notice has been given and the authority has not taken the required action (subsection (2)).
403. Subsection (3) provides the Welsh Ministers with a power to intervene in the exercise of a local authority's social services functions without serving a warning notice in accordance with section 151 where the Welsh Ministers are satisfied that one or more of the grounds set out in section 150 exist and have reason to believe that there are health and safety grounds that require urgent intervention or that the local authority is unlikely to be able to comply or secure compliance with the warning notice.
404. Subsection (5) requires the Welsh Ministers to keep under review the circumstances which have given them the power to intervene.
405. Subsection (4) and (8) contain requirements for the Welsh Ministers to advise the National Assembly for Wales of the actions they have taken in relation to the exercise of their power under this section and to keep the Assembly apprised of those matters.

### **Section 153 – Power to require a local authority to obtain advisory services**

406. Section 153 provides that where the Welsh Ministers have the power to intervene under section 152 they may direct the local authority (in respect of whose exercise of its social services functions they are intervening) to enter in to a contract with a specified person or body (or a person or body falling within a specified class) to provide specified services of an advisory nature. The direction may require the contract with that person or body to contain specified terms and conditions (subsections (3) and (4)).

### **Section 154 – Power to require performance of functions by other persons on behalf of authority**

407. Section 154 provides that where the Welsh Ministers have the power to intervene under section 152, they can direct the local authority to ensure the functions in respect of which they deem intervention to be necessary are to be delivered by another person. The direction may require the contract with that other person to contain specified terms and conditions (subsection (3)).

### **Section 155 – Power to require performance of functions by Welsh Ministers or nominee**

408. Section 155 provides that where the Welsh Ministers have the power to intervene under section 152 they can direct the functions in respect of which they deem intervention to be necessary are delivered by themselves or by a person nominated by them. Subsection (3) clarifies that the local authority must comply with any instructions given by the Welsh Ministers or their nominee.



### **Section 156 – Power to direct exercise of other social services functions**

409. Section 156 enables a direction issued under section 154 or 155 to relate to other social services functions in addition to those to which the grounds for intervention relate, where the Welsh Ministers have determined that it is expedient to do so. Subsection (2) contains an example of the matters to which the Welsh Ministers may have regard in deciding whether a direction should apply to additional social services functions.

### **Section 157 – General power to give directions and take steps**

410. Section 157 provides that where the Welsh Ministers have the power to intervene under section 152, they have a general power to give directions or take any other steps in order to deal with the grounds for intervention.

### **Section 158 – Intervention: duty to report**

411. Section 158 requires the Welsh Ministers to lay before the National Assembly for Wales any direction they make under section 153, 154, 155, or 157 and to keep the National Assembly apprised of the steps taken by the local authority to comply with the direction.

### **Section 159 – Directions**

412. Section 159 contains general provision about directions and instructions under Part 6. It requires a local authority, or an officer of an authority, that is subject to such a direction or instruction to comply with it and sets out the manner in which a direction may be enforced.

### **Section 160 – Duty to co-operate**

413. Section 160 requires a local authority to co-operate and give assistance to the Welsh Ministers (and or to any person listed in subsection (2)) when they are exercising functions in accordance with this Part of the Act.

### **Section 161 – Powers of entry and inspection**

414. Section 161 gives the persons specified in subsection (2) a power to enter local authority premises and to inspect and take copies of any records or other documents kept by the local authority, and any other documents containing information relating to the authority which the person considers relevant to the exercise of his or her functions under Part 8 of the Act.
415. This power includes a power to inspect and copy documents containing information about private individuals. The power is subject to the following limitations:
- a) it can only be exercised in a local authority premises;
  - b) it applies only to records and documents kept by the local authority (and does not apply to records or documents kept by private individuals); and

- c) it is exercisable only if the person exercising the power considers the information is relevant to the exercise of his or her functions under Part 8 of the Act.

416. The power provided by this section is not intended to be exercised in order to obtain access to documents held by private individuals (in the unlikely event they hold documents which fulfil the criteria).

### **Section 162 – Arrangements to promote co-operation: adults with needs for care and support and carers**

417. Section 162 provides that a local authority must make arrangements to promote cooperation between the local authority, each of the authority's 'relevant partners' and other bodies who are engaged in activities relevant to adults in need of care and support and carers in need of support. The local authority must also make arrangements to promote co-operation between the officers of the authority. The arrangements are to be made with a view to improving the well-being of adults with needs for care and support and carers. Arrangements also need to focus on improving the quality of care and support and protecting adults who are experiencing or at risk of abuse or neglect.
418. All relevant partners may provide staff, goods, services, accommodation, establish and maintain a pooled fund and share information with one another. A 'pooled fund' is made up of contributions from the authority and the relevant partners out of which payments can be made in the discharge of functions. The local authority and its relevant partners must also have regard to any guidance given by the Welsh Ministers.
419. This provision for adults and carers mirrors the existing provisions of the Children Act 2004 in relation to children. Section 25 of the 2004 Act enables relevant partners as defined in that Act to establish and maintain a pooled fund or provide staff, goods and support to another partner for the purposes of the cooperation arrangements under that section.
420. An example where a pooled fund may be used to benefit adults could include the funding of additional health support workers to support people recovering from substance misuse or the development of an information and support service for carers.

### **Section 163 – Arrangements to promote co-operation: children**

421. Section 163 makes amendments to section 25 of the Children Act 2004 (co-operation to improve well-being: Wales). These amendments are made to ensure the existing duty in the 2004 Act to make arrangements to promote co-operation to improve the well-being of children is aligned with the new duty in section 162 of this Act (Arrangements to promote cooperation: adults with needs for care and support and carers). In particular, the definition of "well-being" in section 2 of this Act is imported into section 25 of the 2004 Act in place of the current definition, together with a new definition of "care and support".

### **Section 164 – Duty to co-operate and provide information in the exercise of social services functions**

422. Section 164 provides that if the local authority requests the cooperation of, or information from, a relevant partner in exercising its social services functions, the relevant partner must do so unless it is incompatible with its own duties or would otherwise have an adverse effect on its own functions. The relevant partner refusing to co-operate or provide information must give written reasons to the local authority explaining its decision to refuse. The section also requires local authorities and relevant partners to have regard to any guidance issued by the Welsh Ministers.

### **Section 165 – Promoting integration of care and support with health services etc**

423. Section 165 provides that a local authority must exercise its social services functions with a view to integrating care and support provision with health provision and health-related provision where this would promote, in its area, the well-being of children, adults with needs for care and support and carers with needs for support and contribute to the prevention or delay of care and support needs and support needs or improve the quality of care and support and support including the outcomes to be achieved.
424. “Care and support provision”, “health provision” and “health-related provision” are defined in subsections (2), (3) and (4) respectively.

### **Section 166 – Partnership arrangements**

425. Section 166 enables the Welsh Ministers to make regulations which specify partnership arrangements to be made between local authorities or between local authorities and Local Health Boards. The partnership arrangements are for carrying out social services functions or LHB or NHS Trust functions. The regulations must specify the form of the partnership arrangement and must make provision for the operation and management of the arrangement and for sharing information.
426. Local authorities and LHBs can establish formal partnerships with or without pooled budgets under existing legislation. Section 33 of the National Health Service (Wales) Act 2006 allows NHS bodies and local authorities to develop formal partnerships and enables the partners to delegate functions from one to another with certain restrictions. The powers in this section will enable the Welsh Ministers to direct partnership arrangements at local, regional and national level in Wales. There are some services, for example, which need to be commissioned and provided at the regional or national level because the numbers of people who would benefit from such services are small and their needs very complex.

### **Section 167 – Resources for partnership arrangements**

427. Section 167 provides that a local authority and a LHB may pay towards the establishment and operation of partnership arrangements by making payments directly or in to a 'pooled fund'. They may also provide staff, goods, services, accommodation and other resources for the partnership or in connection with it. Regulations may make further provision about the funding of partnership arrangements.

### **Section 168 – Partnership boards**

428. Section 168 provides that regulations may be made that require a Partnership Board to be established in respect of partnership arrangements made under regulations under section 166. The regulations may provide for the membership of the Board; payment of remuneration; Board objectives and functions; procedures; and reporting arrangements.

### **Section 169 – Guidance about partnership arrangements**

429. Section 169 provides the Welsh Ministers must issue guidance about partnership arrangements and that Partnership Board members and others entering into partnership arrangements must have regard to any such guidance and to the statement of well-being outcomes issued by the Welsh Ministers under section 5.

### **Section 170 – Adoption service: joint arrangements**

430. Section 170 provides for joint working arrangements to be made in relation to adoption services. An adoption service is defined in section 2(1) of the Adoption and Children Act 2002 by references to the services maintained by a local authority under section 3(1) of that Act. Section 170 inserts a new section 3A in to the Adoption and Children Act 2002. The effect is to allow the Welsh Ministers to direct two or more local authorities to work together to provide specified aspects of their adoption service. Such joint arrangements may direct the establishment of a pooled fund, specify staffing and accommodation arrangements, direct the establishment of an adoption panel and the processes to follow for resolving disputes and complaints.

### **Section 171 – Complaints about social services**

431. Section 171 gives regulation making powers to the Welsh Ministers to establish procedures for making complaints about social services. These will replace the current provisions about complaints procedures for Welsh local authority social services under sections 114 and 115 of the Health and Social Care (Community Health and Standards) Act 2003, which are disapplied in so far as they relate to Wales.

432. Subsection (1) gives the Welsh Ministers the power to make regulations about the consideration of complaints relating to local authority social services. It sets out the types of complaints for which the regulations may make provision. These include complaints about the provision of services by a local authority or other person under a partnership arrangement made by the authority under section 33 of the National Health Service (Wales) Act 2006, or section 75 of the National Health Service Act 2006 in relation to the functions of an NHS body, so far as exercisable in relation to Wales. The intention is that a person receiving both health and social services from a local authority under such an arrangement will be able to complain to that local authority even if the complaint is about health services which it provides.

433. Subsection (2) allows the regulations to make provision about the person or body who will consider a complaint. It is envisaged that this role will be given to the local authority concerned, and that the first stage of the process will be for the authority to attempt to resolve the matter informally. If this attempt is unsuccessful, this may be followed by a formal investigation.
434. Subsection (3) provides for complaints, or any matter raised by a complaint, to be referred elsewhere. It makes specific provision enabling the Welsh Ministers to provide in regulations that matters may be referred to the Public Services Ombudsman for Wales (“the Ombudsman”) to consider under the Public Services Ombudsman (Wales) Act 2005. This is intended to raise awareness amongst complainants of their right to complain to the Ombudsman. The regulations may also provide that the complaint or matter raised by the complaint may be referred to any other body so that it can decide whether to take any action.
435. Subsection (4) prevents the regulations from making provision about the consideration of complaints and representations which are capable of being made under sections 174 or 176 of this Act. A separate procedure is being maintained under section 174 for complaints and other representations relating to specified groups of children and young people. (This reflects a distinction that currently exists between the complaints which may be considered under the Health and Social Care (Community Health and Standards) Act 2003 and the representations which may be considered under Part III of the Children Act 1989, those provisions being largely re-stated in this Act).

### **Section 172 – Complaints about social services: supplementary**

436. Section 172 sets out further examples of the kind of provision that may be made in regulations under section 171. Subsection (2) provides that the regulations may specify such matters as who may make a complaint and to whom it may be made, the kinds of complaints which may or may not be made, and the procedure for making and considering a complaint. The regulations may require the making of a payment in relation to the consideration of a complaint (subsection (3)). Subsection (4) provides that the regulations may make provision requiring persons or bodies handling complaints to make information available to the public about the procedures to be followed under the regulations. The regulations may authorise the production or disclosure of information or documents (subsection (5)). Where it would not be possible, owing to common law duties of confidentiality, to disclose relevant information about a complaint to the body which is to consider it under the regulations, or to the body to which a complaint is to be referred for consideration under other provisions, the regulations may make the disclosure lawful. This will not override the specific protections of the Data Protection Act 1998, which prohibit the disclosure of information relating to an individual without the consent of that individual unless the disclosure is necessary for one or more of the reasons specified in the Data Protection Act.

437. Subsection (6) provides that regulations made under section 171 may make provision for situations in which a complaint raises matters which fall to be considered both under the regulations and also under another complaints procedure. The regulations may, for example, allow the complaint to be made under the regulations and provide that those aspects of the complaint which raise matters considered under the other complaints procedure are to be treated as having been raised in a complaint made under that procedure (e.g. the regulations may provide that a complaint may be made under section 171 about both NHS and local authority social services, and that those elements of the complaint that relate to NHS services are to be treated as having been raised in a complaint made under the NHS complaints procedure). In this way, the complainant will be able to make his or her complaint to a single body, instead of having to make two separate complaints, and a single complaint will be able to trigger two separate complaints procedures. It is envisaged that the two procedures will then operate in parallel, as far as possible, so they appear to the complainant to be a single procedure.

### **Section 173 – Assistance for complainants**

438. Section 173 provides that regulations may be made that require local authorities to assist people making a complaint under regulations made under section 171. The regulations may require local authorities to provide advocacy services to enable people to make complaints and may specify different groups or types of persons who should be provided with such assistance. The purpose of this provision is to enable the Welsh Ministers to target the assistance at groups who are identified as having the greatest need for advocacy and other support. The regulations may also include provision about publicising any arrangements for the provision of such assistance.

### **Section 174 – Representations relating to certain children etc**

439. Section 174 requires a local authority to establish a procedure for considering representations that relate to certain children and young people and those who look after them. It replicates to a large extent the provisions of section 26(3) to (3C) of the Children Act 1989 which are to be disapplied in relation to Wales. The representations that may be considered under this procedure fall into three categories:

- a) Representations about the following local authority functions relating either to children looked after by the local authority or to children who are not looked after but who may have needs for care and support:
  - i. functions exercisable under Parts 3 to 6 of this Act (other than functions which are exercisable in relation to a child as a carer);
  - ii. functions exercisable in relation to a child under Part 7 of this Act, and;
  - iii. functions under Part 4 or 5 of the Children Act 1989 but specified in regulations.

Such representations may be made by the persons listed in subsection (3).

*These notes refer to the Social Services and Well-being (Wales) Act 2014 (anaw 4)  
which received Royal Assent on 1 May 2014*

- b) Representations about local authority functions under section 14F of the Children Act 1989 which have been specified in regulations. Section 14F provides that local authorities must make arrangements for the provision within their area of special guardianship support services (such as counselling, advice and information). Such representations may be made by the persons listed in subsection (4).
- c) Representations about local authority functions under the Adoption and Children Act 2002 which have been specified in regulations and that are made by persons specified in subsection (5).

440. Subsection (6) requires the local authority to ensure that the procedure it establishes under this section guarantees that representations will be considered by at least one person who is not a member or officer of the local authority concerned and that one or more such persons will also participate in any subsequent discussions about the action to be taken. This is to ensure there is a sufficient degree of independence built into the process to ensure that the views of potentially vulnerable children and young people are given adequate weight. The regulations can disapply this requirement in situations where representations are being considered or discussed for the purposes of trying to resolve matters informally (see subsection (8)). Subsection (9) requires a local authority to publicise the procedure it establishes under this section.

### **Section 175 – Representations relating to certain children etc: further provision**

- 441. Section 175 requires a local authority, in considering representations, to comply with the requirements imposed on it under sections 174(6) to (8) (procedural requirements and the requirement for representations to include consideration by a person who is not a member or officer of the local authority concerned). The Welsh Ministers may, by regulations, require the local authority to monitor the steps it has taken to ensure compliance.
- 442. A local authority must have regard to the findings of the person who considered the representations considered under section 174, and must notify the person who made the representation, the person to whom the representation relates (if different), and any other person who appears to the authority to be likely to be affected, about the local authority's decision and its reasons for that decision. Where the representation relates to, or appears to directly affect a child they must be notified about the local authority's decision and proposed actions if they have sufficient understanding.

### **Section 176 – Representations relating to former looked after children etc**

- 443. Section 176 requires a local authority to establish a procedure for considering representations by certain categories of children and young persons about the discharge of its functions under Parts 3 to 7 of the Act, in relation to those children and young persons. It replicates, to a large extent, the provision currently contained in section 24D of the Children Act 1989, which is to be disapplied in relation to Wales.

444. The children and young persons whose representations may be considered under this procedure are those who are described in the Act as category 2, 3, 4, 5 or 6 young persons (see notes to section 104 of the Act). They are essentially older children (aged 16 or 17) who are looked after or were formerly looked after by a local authority and young people (aged 18 or older) who are generally care leavers. A child looked after by a local authority is defined in section 74 of the Act as a child who is in the local authority's care or who is provided with accommodation by the authority in the exercise of specified social services functions.
445. The Welsh Ministers have the power to make regulations which may impose requirements about the procedure that must be established by the local authority under this section and specify time limits for the making of representations. A local authority is under a duty to give publicity to the procedure which it establishes under this section and must comply with any procedural requirements set out in the regulations.

### **Section 177 – Further consideration of representations**

446. Section 177 provides that regulations may be made about the further consideration of representations (including complaints) which have been considered by a local authority under section 174 or 176. This replicates the provision contained in section 26ZB of the Children Act 1989.
447. Subsections (2) and (3) provide examples of the kind of provision which may be contained in these regulations.
448. Subsection (4) provides that the regulations may allow a representation, or any matter raised by a representation, to be referred elsewhere. The regulations may allow a representation or matter to be referred to the Ombudsman so that he or she can consider whether to investigate it under the Public Services Ombudsman (Wales) Act 2005. The regulations may also allow a representation to be referred to any other body so that it can decide whether to take any action.

### **Section 178 – Assistance for persons making representations**

449. Section 178 provides that a local authority is under a duty to make arrangements to provide assistance to children who make representations under sections 174 and 176 respectively. The local authority must give publicity to these assistance arrangements. This provision replicates the provision in section 26A of the Children Act 1989 (which is to be disapplied in relation to Wales). The assistance provided under this section must include assistance by way of representation and will therefore provide for advocacy support in the making of representations. This is in order to assist vulnerable children and young persons to make their representations. Regulations must be made about these arrangements for assistance. The regulations must require local authorities ensure that certain people or categories of people are prevented from providing the assistance. The regulations may also impose other requirements, such as a duty on the local authority to monitor the steps it takes to comply with the requirements imposed by or under section 178.



### **Section 179 – Investigation of complaints about privately arranged or funded social care and palliative care**

450. Section 179 gives effect to Schedule 3 of this Act. This inserts a new Part 2A, Part 2B and Schedule 3A in to the Public Services Ombudsman (Wales) Act 2005 which gives the Ombudsman powers to investigate complaints about certain kinds of social care and palliative care.

### **Section 180 – Independent advocacy services for complaints about privately arranged or funded palliative care**

451. Section 180 amends section 187 of the National Health Service (Wales) Act 2006 (the 2006 Act). Section 187 of the 2006 Act places a duty on the Welsh Ministers to arrange the provision of independent advocacy services (that is, services providing assistance to individuals making or intending to make complaints) in relation to complaints about certain specified health services. The amendments to section 187 of the 2006 Act require independent advocacy services to be arranged, in addition, for (i) complaints made under procedures operated by independent palliative care providers, and (ii) complaints made to the Public Services Ombudsman for Wales under the Public Services Ombudsman (Wales) Act 2005 (the 2005 Act) in relation to independent palliative care providers. The meaning of the term “independent palliative care provider” is set out in the 2005 Act (as amended by Schedule 3 to this Act).

### **Section 181 – Provision of advocacy services**

452. Advocacy services may be provided by a local authority in a range of different contexts and under different provisions of the Act. They may be provided by a local authority in accordance with its duty under section 178 of the Act (Assistance for persons making representations) or in accordance with regulations made under section 173 (Assistance for complainants). Advocacy services may also be provided as a means of meeting a person’s needs for care and support (see section 34(2)(e)). Advocacy services may, in addition, be arranged by a local authority as a means of fulfilling its duties under section 15 (Preventative services) and section 17 (Provision of information, advice and assistance).
453. Section 181 enables the Welsh Ministers to make regulations which impose an additional duty on local authorities to provide advocacy services to people who need care and support. The regulations can set out the people to whom such services should be offered and detail the specific circumstances in which those services are to be made available. Regulations made under this section will be used to target persons with needs for care and support in circumstances where the provision of an advocate will assist a person to articulate their views and their needs. It could be exercised, for example, to require local authorities to provide advocacy services to a person who is being asked to consider moving into residential care or to otherwise change accommodation, perhaps because of a home closure or other financial decision taken by the local authority.

454. The regulations may also place a duty on local authorities to publicise their arrangements for making advocacy services available, so as to make sure that uptake is not hindered by a lack of clarity or understanding of what is available. This provision supplements the duties placed on local authorities under section 17 to establish an information, advice and assistance service to provide people with information and advice relating to care and support, along with assistance in accessing it.

### **Section 182 - Provision of advocacy services: restrictions**

455. Section 182 places restrictions on the purposes for which regulations under section 181 may require advocacy services to be provided. These restrictions prevent regulations under section 181 from imposing a duty on local authorities to provide advocacy services where there is already a requirement to provide advocacy services for that purpose, whether under this Act or in current legislation. The aim is to avoid multiple advocates being assigned to an individual for the same purpose, and to avoid duplication in the provision of advocacy services. Subsection (2) provides that where advocacy services are being provided under sections 15, 17, 35, 36, 37 or 38 of this Act any obligation imposed by regulations under section 181 to provide advocacy services in respect of the same matters will not apply. Where advocacy services are to be provided under more than one provision of the Act it will usually be best practice for these services to be provided by a single advocate. This approach will also be less burdensome on local authorities.

### **Section 183 - Publicising advocacy services in care homes**

456. Access to an advocate is considered to be particularly important for people who fund their own care in a care home, as they may not be supported by a social worker or have contact with other services provided by a local authority. Section 183 amends section 22 of the Care Standards Act 2000 to provide suitable safeguards in this regard. This is done by providing the Welsh Ministers with powers to place an obligation by way of regulations on registered providers and managers of care homes in Wales to make arrangements for persons accommodated within such establishments to be made aware of any advocacy services that may be available to them under section 181 of this Act.

### **Section 184 - Research and provision of information**

457. Section 184 sets out the powers of the Welsh Ministers, local authorities and Local Health Boards to conduct, commission or assist in the conduct of research into specified matters. Additionally it places requirements on local authorities, LHBs and voluntary organisations to provide information to the Welsh Ministers within certain defined parameters.
458. This section to a large extent mirrors the approach in section 83 of the Children Act 1989 and, in relation to children, is a partial re-statement of that provision.

459. This section enables the Welsh Ministers to require local authorities, LHBs and the lead partner of a Safeguarding Board (prescribed by regulations under section 134) to provide them with information. The Welsh Ministers can also require voluntary organisations to provide information about adults that they accommodate. The equivalent power of the Welsh Ministers in the case of children accommodated by voluntary organisations is in section 83 of the Children Act 1989.
460. The Welsh Ministers can request information from local authorities that identifies individual children (see subsection (9)). However, this is only if the information is needed to inform the review and development of policy and practice relating to the well-being of children, or for the conduct of research about the well-being of children. Identifying information may be needed so that the Welsh Ministers can match data received from a number of sources, and can then assess the data more meaningfully. For example, children's educational attainment data may sometimes include identifying information such as pupil reference numbers. The Welsh Ministers, in the context of developing policy and practice relating to the well-being of children, may wish to consider the educational attainment of certain cohorts of children, such as looked after children. Information about children may also be used to inform the Wales Children in Need Census. Details of individual children are not included in such reports and their data is processed securely by the Welsh Ministers in accordance with the Data Protection Act 1998.
461. The Welsh Ministers must lay a summary of the information provided to them under this section in an annual report to the National Assembly for Wales, but that summary must not contain any information that identifies a child or that allows a child to be identified.

### **Section 185 - Adults in prison, youth detention accommodation or bail accommodation etc**

462. Section 185 makes provision as to the ordinary residence, for the purposes of this Act, of adults detained in prison or in youth detention accommodation or who are required to reside at "approved premises" or at other premises as a result of a condition of bail in criminal proceedings. These adults are to be treated for the purposes of this Act as ordinarily resident in the local authority area in which they are detained or required to reside.
463. This means that it is the local authority in whose area the prison, youth detention accommodation, approved premises or other premises are located that will be responsible for undertaking assessments and for providing care and support to meet eligible needs for the adults detained or required to reside there. An adult's previous ordinary residence will not be a consideration.
464. If, therefore, it appears to a local authority that an adult in prison, in youth detention accommodation or resident in approved premises or other premises in its area may have needs for care and support, the duty to undertake an assessment in accordance with section 19 will apply. Where such an adult has needs which satisfy the eligibility criteria, there may be a duty to meet those needs.

465. This section and section 187 disapply certain provisions of this Act in relation to an adult who is detained in prison or in youth detention accommodation or who is required to live in approved premises. If a provision is not disapplied or modified, it will apply in the same way as to any other adult resident in the local authority's area. For example, charging arrangements for care and support for adults who are detained will be the same as for other adults resident in the area.
466. Subsections (4), (5) and (6) set out the sections which are disapplied in relation to adults who are detained in prison or youth detention accommodation or who are residing in approved premises.
467. Subsection (7) contains a signpost to section 187 which contains further modifications of the provisions of this Act to both children and adults who are detained or residing in approved premises.
468. The terms "approved premises", "bail in criminal proceedings", "prison" and "youth detention accommodation" are defined in section 188.

### **Section 186 - Children in youth detention accommodation, prison or bail accommodation etc**

469. This section makes provision in relation to children who are detained in youth detention accommodation or in prison, or who are required to reside at "approved premises" or at other premises as a result of a condition of bail in criminal proceedings. Such children will often have an established relationship with their local authority, so in order to ensure continuity of care, that local authority will generally be responsible for carrying out any assessments, meeting any needs, etc. required under this Act (unlike the position for adults who are detained in youth detention accommodation or in prison, or who are required to reside at approved premises or at other premises as a result of a condition of bail in criminal proceedings).
470. A child may be looked after by a local authority in accordance with an order made under the Children Act 1989 (section 31) or immediately before being convicted may have been receiving services from a local authority under Part 4 of this Act. The provision made by this section recognises the continuing responsibilities of the local authority in which such a child is ordinarily resident (whether under this Act, or under the Children Act 1989).

471. However, in the case of a child who is detained in youth detention accommodation or in prison in Wales, or who is required to reside at approved premises or at other premises as a result of a condition of bail in criminal proceedings in Wales, and:
- a) who is not ordinarily resident in Wales, and
  - b) for whom no specific provision is made within these provisions (or within sections 21, 37 and 38),
- it is the local authority in whose area the child is detained or required to reside that is under a duty to carry out any assessment required by this Act, to meet any needs etc.
472. A child detained in youth detention accommodation or in prison or required to reside in approved premises or other premises is defined as a “relevant child” by subsection (1).
473. Subsection (2) makes it clear that if a relevant child has been receiving services from their home local authority under Part 4 of this Act, or is a looked after child or is ordinarily resident in a local authority in Wales, then he or she will be treated as though they are within the area of their home local authority. It is that home local authority that will be responsible for undertaking any assessment of needs under this Act, for meeting needs etc.
474. Subsections (3) and (4) disapply certain provisions of this Act in respect of a child detained in youth detention accommodation or in prison or required to reside in approved premises. This is necessary to ensure the balance of responsibilities for such a child is adjusted to take account of their detention or the residence requirement. For example, section 81 (Ways in which looked after children are to be accommodated and maintained), is disapplied because a relevant child will be provided with accommodation.
475. Subsection (5) disapplies section 119 (Use of accommodation for restricting liberty) in relation to children who have been convicted of an offence and detained in youth detention accommodation or prison or required to reside in approved premises, or who are remanded to youth detention accommodation in accordance with section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
476. Subsections (6) and (7) contain provision about children who are detained in youth detention accommodation or in prison or who are required to reside in approved premises and who were, immediately before conviction, provided with accommodation by a local authority in England in accordance with section 20 of the Children Act 1989. The local authority in England which provided the child with such accommodation will retain responsibility for the child in accordance with section 23ZA of the Children Act 1989 and with the regulations made under that section. Accordingly, if such a child requires care and support whilst detained in youth detention accommodation or in prison or required to reside in approved premises, it will be their “home” local authority who will be responsible for the provision of such care.

477. Subsection (8) contains a signpost to section 187 which contains further modifications of the provisions of this Act to both children and adults who are detained or residing in approved premises.
478. The terms “approved premises”, “bail in criminal proceedings”, “prison” and “youth detention accommodation” are all defined in section 188.
479. A child who, immediately before conviction and detention or being required to reside in approved premises in Wales, was being looked after by a local authority in England (in accordance with section 31 of the Children Act 1989) will remain the responsibility of the local authority that last looked after them. Their looked after status continues and the local authority in England, which is the responsible local authority for the purposes of the Children Act 1989, will continue to be responsible for any care and support the child requires whilst detained in youth detention accommodation or in prison or required to reside in approved premises in Wales.
480. The responsibilities of such a child’s “home” local authority are set out in the Children Act 1989 (applying the judgement in the case of *R. (on the application of the Howard League for Penal Reform) v the Secretary of State for the Home Department and the Department of Health (CO/1806/2002)* (the “Munby judgement”).
481. The obligations and powers of the local authority in Wales in whose area the prison, youth detention accommodation or approved premises are located, to undertake an assessment of needs, or to provide care and support, to such children are disapplied by sections 21(8), 37(6) and 38(4) of this Act.

### **Section 187 - Persons in prison, youth detention accommodation or bail accommodation**

482. Section 187 disapplies certain provisions of the Act to persons detained in prison, youth detention accommodation or who are, having been convicted of an offence, required to reside in “approved premises”. The provisions which are disapplied by this section are disapplied in relation to both children and adults.
483. Subsection (1) prevents such a person being a carer for the purposes of this Act.
484. Subsection (2) prevents such a person receiving a direct payment in accordance with regulations made under sections 50 and 51 towards the costs of meeting that person’s eligible needs for care and support.
485. Subsection (3) makes clear that such persons may not express a preference for particular accommodation (in accordance with section 57) except where such a person is being released.

486. Subsection (4) makes clear that a local authority's duty to protect a person's property (in accordance with section 58) does not apply to people in prison, youth detention accommodation or resident in approved premises.

### **Section 188 – Interpretation of sections 185 to 187**

487. Section 188 is an interpretation section which defines relevant terms used in sections 185 to 187.
488. Subsection (2) provides that if a person is temporarily absent from prison, youth detention accommodation, approved premises or other premises they are deemed to be detained or subject to a residence requirement for this period of time. This means, for example, that if a person is temporarily away from their place of detention in order to receive treatment at a hospital in another local authority area, the local authority which is responsible for the provision of their care and support will not be affected.

### **Section 189 – Provider failure: temporary duty on local authority**

489. Section 189 imposes a new duty on a local authority in Wales to take action in the event that a person registered under the Care Standards Act 2000 (a "registered person") becomes unable to provide the accommodation or services that it normally provides within the area of the local authority as a result of business failure.
490. In such circumstances, the local authority has a temporary duty to meet the needs of the adults for whom the registered person was providing accommodation or services. The duty to provide such services lasts only for as long as the local authority considers it necessary.
491. Subsections (4) to (7) contain provision about the authority's ability to charge or recover costs from another local authority for the provision of services provided as a result of the temporary duty imposed by subsection (2).
492. Subsection (8) makes provision about how disputes regarding application of this section should be resolved. The procedure referred to in this subsection applies only where the local authorities involved in the dispute are within Wales. Any dispute which involves a local authority or Health and Social Care Trust from outside Wales will be dealt with in accordance with the requirements set out in Part 1 of and Schedule 1 to the Care Act 2014.
493. Part 1 of the Care Act 2014 also places a temporary duty on a local authority in Wales to take action to meet adults' needs for care and support (or support) in the event that a registered person becomes unable to provide accommodation or other services as a result of business failure, where those adults have been placed in the area of a Welsh local authority by:
- a) a local authority in England;
  - b) a local authority in Scotland;
  - c) a Health and Social Care Trust in Northern Ireland.

494. Accordingly, local authorities in Wales will be placed under the same temporary duty in respect of persons within their area who are in accommodation or receiving services arranged by (or as a result of a direct payment provided by) local authorities in England or Scotland or by a Health and Social Care Trust in Northern Ireland.
495. The Care Act 2014 also contains provisions to deal with disputes about such cross-border placements.
496. The temporary duties imposed in the event of a business failure by this Act (and by the Care Act 2014) only apply in relation to services or accommodation provided for adults. A number of statutory safeguards are already in existence in the event of the failure of a provider which is meeting a child's needs for care and support (or support) by providing services or accommodation (for example provision is made under the Children Act 1989 and in secondary legislation which sets out the requirements for continuity in the provision of care and care settings).

### **Section 190 – Provider failure: exception to temporary duty**

497. Section 190 sets out the exceptions to the temporary duty imposed by section 189. The Welsh Government is working with other UK administrations to establish a coherent approach to safeguarding vulnerable people in the event of business failure. Section 190 makes it clear that a local authority is not required to meet needs as outlined in section 189 prior to business failure being established.

### **Section 191 – Provider failure: supplementary**

498. Section 191 provides for additional matters in relation to the new duty at section 189. In particular, subsection (7) requires the Welsh Ministers to make regulations for the purposes of this section and section 189 to specify what is meant by “business failure” and “being unable to do something because of business failure”.

### **Section 192 – Amendment of the National Assistance Act 1948**

499. Section 192 provides for an amendment to section 49 of the National Assistance Act 1948. Section 49 of the 1948 Act applies where an officer of the local authority is appointed by the Court of Protection as a deputy. It provides a specific power for the local authority to pay the expenses incurred by the officer in connection with the exercise of their functions as a deputy. The effect of the amendment will be that this specific power will not apply to a local authority in Wales. Local authorities in Wales who wish to pay the expenses of a Court appointed deputy will be able to rely on their general powers under section 2 of the Local Government Act 2000.

### **Section 193 – Recovery of costs between local authorities**

500. Section 193 brings together the arrangements for the recovery of costs between local authorities which are currently found in section 32 of the National Assistance Act 1948 (in relation to adults) and section 29 of the Children Act 1989 (in relation to children).
501. It sets out the circumstances in which a local authority providing care and support to a person who is not ordinarily resident in its area is able to recover the costs of doing so from the local authority in which the person is ordinarily resident.



502. The section sets out the circumstances in which a local authority can recover expenses incurred in complying with a request for its cooperation or for information made under section 164.
503. The section also sets out the circumstances in which a local authority which is providing accommodation for a child who is ordinarily resident in the area of another local authority is entitled to recover the costs from that other local authority.

### **Section 194 – Ordinary residence**

504. Subsection (1) sets out where an adult is to be treated as ordinarily resident, if the local authority which is responsible for meeting their needs for care and support makes arrangements for the adult to live in accommodation of a particular type. As a consequence of these arrangements, the adult may move to another area. In this situation, the effect of this provision is that the adult will be treated, for the purposes of this Act, as being ordinarily resident in the area of the local authority which made the arrangements (and not in the area to which they move).
505. Where arrangements are made for the adult to be accommodated in England, Scotland or Northern Ireland, the provisions in Schedule 1 to the Care Act 2014 will apply, if those provisions are commenced before this section. If not, section 24 of the National Assistance Act 1948 will continue to apply in relation to placements in England only, the effect of which is that a local authority in Wales will retain responsibility for adults who are placed in a care home in England.
506. Regulations may specify the types of accommodation to which subsection (1) applies and may make provision about whether an adult has a need for a particular type of accommodation. For example, provision could be made in regulations for the provisions in subsection (1) to apply only where the adult is accommodated in a care home.
507. Subsection (4) applies to both adults and children. If a person is admitted to hospital or any other accommodation provided under a health enactment in Wales, England, Scotland or Northern Ireland, that person is to be treated for the purposes of this Act as ordinarily resident in the area in which he or she was ordinarily resident before admission. This means that the local authority for that area will continue to be responsible for meeting the person's needs for care and support. Provision is also made for what happens if the person was of no settled residence before the accommodation was provided.
508. Subsection (6) makes provision in relation to a child's ordinary residence. The effect of this provision is that the child's ordinary residence is determined without having regard to any periods in which the child was living in certain types of places, including schools and local authority accommodation. For example, where a local authority makes arrangements for a child to be accommodated outside its area, this will have no effect on the child's ordinary residence status.
509. The provision made by this section is based on provision which is made in section 24 of the National Assistance Act 1948 and section 105 of the Children Act 1989.

### **Section 195 - Disputes about ordinary residence and portability of care and support**

510. Section 195 provides for the Welsh Ministers or a person appointed by them to settle disputes about where a person is ordinarily resident in Wales and about the application of section 56 (Portability of care and support) to a person. Regulations may make further provision, for example, to ensure that care and support needs are met while the dispute is being resolved, and to set out the procedure for referring the dispute to the Welsh Ministers or appointed person (including the steps the local authorities are required to take before a referral is made). This section derives from provision which is made in section 32 of the National Assistance Act 1948 and section 30 of the Children Act 1989.

### **Section 196 - Orders and regulations**

511. Section 196 makes further provision in relation to the making of orders and regulations under this Act, including the National Assembly for Wales procedure for their making.

### **Section 197 - General interpretation and index of defined expressions**

512. This section contains definitions of terms used in the Act and an index of terms defined in other provisions of the Act.

### **Section 198 - Power to make consequential and transitional provision etc**

513. Section 198 enables the Welsh Ministers to make regulations which make supplementary, incidental or consequential provision or which make transitional or savings provision, in order to give full effect to a provision of the Act or as a consequence of a provision of the Act.
514. This power can be used, for example, to repeal provisions about social services in Wales that are being replaced by provision in this Act, and to make any consequential amendments arising from such repeal.

### **Schedule 1 - Contributions towards maintenance of looked after children**

515. Schedule 1 (which is introduced by section 85) sets out the circumstances in which a local authority may recover contributions towards the cost of maintaining a looked after child from an adult with parental responsibility for that child. An adult who may otherwise be liable to make a contribution is not liable to contribute if he or she is in receipt of any benefit, allowance or other payment (descriptions of such benefits, allowances or payment may be specified in regulations made by the Welsh Ministers).
516. There is also no liability to contribute to the maintenance of a looked after child where the child is living with a parent (having been placed there in accordance with arrangements made under section 81).

517. Any contributions sought from an adult in accordance with this Schedule must be set out in a written notice, which must be served on the relevant individual. The notice must specify the amount of the weekly contribution which is being sought and the arrangements for payment. The weekly contribution may not exceed the amount the local authority would normally pay local authority foster parents to accommodate a similar child or the amount the local authority considers that it would be reasonably practicable for the adult to contribute.
518. Service of notices may be undertaken by way of personal delivery to the relevant adult or by registered or recorded delivery post. A relevant adult may serve notice on the local authority to withdraw his or her agreement to contribute towards the cost of maintaining the child. In such cases, the local authority may apply to the courts for a contribution order. Such orders may not specify a weekly contribution greater than that which is set out in the contribution notice and must have regard to the relevant adult's means.
519. Regulations which may be made by the Welsh Ministers (in accordance with the power in paragraph 5 of the Schedule) may provide for the considerations which a local authority must take into account when deciding whether to seek to recover contributions and what the arrangements for payment should be, and for the procedures to be followed in reaching agreements with the relevant adult or other local authorities.
520. The Schedule makes further provision for the revocation, variation and enforcement of contribution orders.
521. A contribution order made by a magistrates' court is currently enforceable as a magistrates' court maintenance order (in accordance with provision made by section 150(1) of the Magistrates' Court Act 1980) (see paragraph 4(1) of the Schedule). Upon the commencement of section 17 and Schedules 10 and 11 to the ("the 2013 Act"), the jurisdiction of the county and magistrates' courts in relation to family proceedings will be transferred to the new family court. Paragraph 4(2) confirms that upon the commencement of the relevant provisions of the 2013 Act, sub-paragraph (1) of the Schedule will cease to apply.
522. As a result of legislative changes made by the 2013 Act to establish the new family court, a contribution order made under this Schedule will continue to be enforceable in accordance with the Family Proceedings Rules 2010 but will, upon the commencement of the provisions effecting the transfer of jurisdiction, be enforceable within the new family court (see paragraph 91 of Schedule 10 to the 2013 Act, which amends the Courts Act 2003).

## **Schedule 2 – Social services functions**

523. Schedule 2 lists, and gives a general description of, those functions of a local authority which are social services functions for the purposes of this Act. The Schedule is introduced by section 143 of the Act, which also gives the Welsh Ministers the power to amend entries in this Schedule and to add or remove entries by way of an Order.

### **Schedule 3 – Investigation of complaints about privately arranged or funded social care and palliative care**

524. Paragraphs 1 and 2 insert a new Part 2A and 2B into the Public Services Ombudsman (Wales) Act 2005 (“the 2005 Act”).
525. New section 34A sets out the three matters to which Part 2A applies: (1) action taken by a care home provider in connection with the provision of accommodation, nursing or personal care in a care home in Wales; (2) action taken by a domiciliary care provider in connection with the provision of domiciliary care in Wales; and (3) action taken by an independent palliative care provider in connection with the provision of a palliative care service in Wales. Part 2A does not apply to complaints which may be dealt with under Part 2 of 2005 Act or to matters described in new Schedule 3A to the 2005 Act. The Welsh Ministers may by order amend Schedule 3A (matters excluded from the Ombudsman’s consideration) but must consult the Ombudsman before doing so. Such an order must be laid before and approved by a resolution of the National Assembly for Wales. The terms used in this section are defined in sections 34R to 34T.
526. Section 34B mirrors the general approach taken in section 2 of the 2005 Act. By virtue of section 34B(1) the Ombudsman may only investigate a complaint relating to a matter to which Part 2A of the 2005 Act applies if:
- a) the complaint has been duly made or referred to him/her; and
  - b) prior to the Ombudsman considering the complaint, the matter must have been brought to the attention of the provider to whom the complaint relates. The provider must also have been given a reasonable opportunity to consider the matter and to respond.
527. In the case of complaints about independent palliative care providers there is an additional condition that the independent palliative care provider must have received public funding within three years preceding the date of the action to which the complaint relates. “Public funding” is defined in subsection (3) and means funding from the Welsh Ministers, a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006, an NHS Trust or a county council or county borough council in Wales. This could, for example, cover grant funding provided by the Welsh Ministers to the independent palliative care service.
528. Sections 34B(4) and 34E set out the circumstances in which a complaint is duly made to the Ombudsman. Section 34B(5) and section 34F set out the circumstances in which a complaint is duly referred to the Ombudsman by a provider to whom it relates. Section 34B(7) enables the Ombudsman to investigate a complaint even if the specific requirements as to the way a complaint is to be made or referred have not been fulfilled if the Ombudsman considers it reasonable to do so. Sections 34B(8) and (9) provide the Ombudsman with a wide discretion as to whether to begin, continue or discontinue an investigation. Section 34B(10) makes clear that the Ombudsman may begin or continue an investigation even if the complaint has been withdrawn. This may be appropriate, for example, where a ‘lead’ complainant has made a complaint about a provider’s action which has also affected other persons, but has subsequently withdrawn his or her ‘lead’ complaint. In such cases, the Ombudsman may consider it appropriate to begin or to continue an investigation,

despite the withdrawal of the 'lead' complaint, so as to protect the interests of the other persons.

529. Section 34C mirrors section 3 of the 2005 Act and provides the Ombudsman with a wide power to take steps to resolve complaints made under Part 2A of the 2005 Act without proceeding to formal investigation. The power is available to the Ombudsman to use instead of, or in addition to, the power to investigate under this Part.
530. Section 34D is based on section 4 of the 2005 Act. It lists the persons who may make a complaint to the Ombudsman under Part 2A of the 2005 Act. A person may make a complaint if he or she is a member of the public ("the person aggrieved") who claims to have sustained injustice or hardship as a result of maladministration or service failure (as the case may be), or if he or she has been authorised to act on such a person's behalf, or otherwise appears to the Ombudsman to be appropriate to act on such a person's behalf. However, it is not only individuals who can complain to the Ombudsman: companies and organisations can also complain to the Ombudsman about injustice or hardship suffered by members of the public, provided that the conditions in subsection (1) are satisfied. The Ombudsman has the power to decide whether the requirements of section 34D have been met in a particular case.
531. Section 34E requires complaints to the Ombudsman to be made in writing (which includes by electronic means). However, under section 34B(7), the Ombudsman may decide to accept a complaint made otherwise than in writing if he or she thinks it reasonable to do so. For example, if the person aggrieved has a disability which makes it difficult for that person to make his or her complaint in writing, the Ombudsman has discretion to accept an oral complaint instead.
532. Section 34E(2) provides that the time-limit ("the permitted period") for making a complaint to the Ombudsman is:
- a) where the person aggrieved has notice of the matter before the date on which section 34B comes into force, the period of 12 months beginning with the date on which the section comes into force; and
  - b) in any other case, the period of 12 months beginning with the day on which the person aggrieved first had notice of the matter.
533. Again, under section 34B(7), the Ombudsman has discretion to consider a complaint made outside that time limit if he/she considers that in the circumstances of the case it is reasonable to do so. The Welsh Ministers also have a power to make regulations modifying the application of the 2005 Act to former care home providers in Wales, former domiciliary care providers in Wales and former independent palliative care providers in Wales (see the amendments made to section 42 of the 2005 Act by paragraph 29 of Schedule 3 to this Act). It is anticipated this power may be used to vary, for example, the time-limit in respect of which complaints about the actions of such persons must be made to Ombudsman.

534. Subject to the particular express requirements in the 2005 Act, it is for the Ombudsman to decide his or her own procedures and, in particular, section 34E(3) provides that it is for the Ombudsman to decide whether the requirements of section 34E have been met in a particular case.
535. Under section 34F a provider can refer to the Ombudsman a complaint which has been made to the provider. However, the provider may do so only if the complaint has been made to the provider by a person who would have been entitled to make that complaint directly to the Ombudsman. The complaint must also have been made to the provider before the end of the “permitted period” referred to in section 34E(2). Where a provider refers a complaint to the Ombudsman, the referral must be in writing and must occur before the end of one year beginning on the day on which the complaint was made to the provider. Under section 34B(7) the Ombudsman may, for the purposes of accepting a referred complaint, disregard either (or both) of those time-limits if he/she considers that it is reasonable to do so.
536. Section 34G provides that the Ombudsman must prepare a statement of reasons in relation to any decision by him/her not to begin, or to discontinue, an investigation. Such a decision may be made, for example, where the Ombudsman has resolved a complaint through alternative means under section 34C and therefore decided not to undertake a formal investigation.
537. Under section 34G(2), the Ombudsman must send a copy of that statement to:
- a) the person who made the complaint to him/her; and
  - b) the provider to whom the complaint relates.
538. Under section 34G(3) the Ombudsman may also send a copy of the statement to any other person.
539. The Ombudsman may publish such a statement if the requirements of section 34G(4) are met. The Ombudsman may only publish such a statement if he/she considers that it is in the public interest to do so. In reaching his/her view, the Ombudsman must take account of the interests of the person aggrieved and any other persons he/she thinks appropriate.
540. Sections 34G(7) and (8) prohibits the Ombudsman from sending out or publishing a statement that:
- a) names any person (other than the provider to whom the complaint relates); or
  - b) includes information which, in the opinion of the Ombudsman, is likely to identify such a person and which, in the opinion of the Ombudsman, can be omitted from the statement without impairing its effectiveness,

unless the Ombudsman considers that it is in the public interest to include such a name or identifying particulars. This prohibition does not apply in relation to the version of the statement sent to the complainant.

541. Section 34H(3) provides that subject to the requirements in subsections (1) and (2) of that section, it is for the Ombudsman to decide the procedure for conducting an investigation. The Ombudsman could, for example, establish different procedures for different types of complaints and he/she could, in any particular case, depart from any such established procedures if he/she considered it appropriate.
542. Section 34H(4)(a) makes it clear that the Ombudsman may make such inquiries as he/she thinks appropriate. Section 34H(4)(b) provides that it is for the Ombudsman to decide whether a person may be legally represented or be represented in some other way (for example by an independent advocate).
543. Section 34H(6) empowers the Ombudsman to make payments towards the expenses of persons assisting him/her in an investigation, provided they are properly incurred, and to pay certain allowances. It is for the Ombudsman to determine whether it is appropriate to make such payments or to impose any conditions on such payments.
544. Section 34I confers wide powers on the Ombudsman to require the production of information or documents in relation to an investigation (section 34I(2) and (3)) and to require certain persons to provide him/her with any facilities he/she may reasonably require (section 34I(4)). The latter provision may be needed, for example, if the Ombudsman requires the use of certain computer hardware or software to view documents or information provided.
545. The Ombudsman has the same powers as the High Court in relation to the taking of evidence from witnesses (section 34I(3)).
546. Section 34I(5) provides protection for those from whom the Ombudsman may require evidence or the production of information or documents. Such a person cannot be required by the Ombudsman to give any evidence or produce any documents which that person could not be compelled to give or produce before the High Court.
547. Section 34I(6) prevents information from being withheld by the Crown on the ground that it is subject to an obligation to keep it secret or a restriction on its disclosure.
548. The effect of section 34I(7) is that, in relation to the Ombudsman's power to require evidence or the production of information or documents, the Crown cannot rely on either its special privileges or immunities to defeat the Ombudsman's right of access to such information under section 34I(5).

549. Sections 34J(1) and (2) enable the Ombudsman to certify to the High Court that, in his/her opinion, a person has without lawful excuse obstructed the Ombudsman (or a member of his/her staff ) in the discharge of his/her functions under Part 2A or that the person has acted in a way that, if the act was done in relation to High Court proceedings, would amount to a contempt of court.
550. If the Ombudsman issues such a certificate then the High Court may inquire into the matter and if the High Court finds that the person concerned has obstructed the Ombudsman, the High Court may deal with the person as if he/she had committed contempt in relation to the High Court (section 34J(4)).
551. Section 34K(2) provides that after conducting an investigation the Ombudsman must, unless he/she decides to report under the alternative procedure set out under section 34N, prepare a report on his/her findings and send a copy of that report to the persons specified in section 34K(3). The Ombudsman may also send a copy of the report to any other persons he or she thinks appropriate.
552. The Ombudsman may publish his/her report if the requirements of section 34K(5) are met. The Ombudsman may only publish such a report if he/she considers that it is in the public interest to do so. In reaching his/her view, the Ombudsman must have regard to the interests of the person aggrieved and any other persons he/she thinks appropriate.
553. Sections 34K(8) and (9) prohibit the Ombudsman from sending out or publishing a report that:
- a) names any person (other than the provider to whom the complaint relates); or
  - b) includes information which, in the opinion of the Ombudsman, is likely to identify any person and which, in the opinion of the Ombudsman, can be omitted from the report without impairing its effectiveness,
- unless the Ombudsman considers that it is in the public interest to include such a name or identifying particulars. This prohibition does not apply in relation to the versions to the report that are sent to the complainant or the Welsh Ministers. In reaching his or her view as to whether it would be in the public interest to include this information in the other versions of the report, the Ombudsman must have regard to the interests of the person aggrieved and any other persons he/she thinks appropriate.
554. Section 34L provides the Ombudsman may publish a notice about an investigation report in a newspaper or other broadcast/electronic media. Any decision to publish such a notice must take account of the public interest, the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate (see section 34L(4)). The notice may (amongst other things) include the matters specified in section 34L(2). The provider to whom the report relates must reimburse the Ombudsman for the reasonable costs of arranging the publication of the notice, if requested to do so by the Ombudsman.



555. Section 34M provides that if, following an investigation, the Ombudsman reports (under section 34K) that the person aggrieved has sustained injustice or hardship as a consequence of the action investigated, the provider concerned must consider the Ombudsman's report and notify him/her of the action that the provider has taken or proposes to take in response and also of the time within which such action will be taken. The provider concerned must make the notification within one month starting on the day the provider receives the report or such longer period as the Ombudsman in his/her discretion specifies.
556. Section 34N provides that the full reporting procedure under sections 34K to 34M does not apply if the Ombudsman decides to report under the alternative procedure set out in this section. If, after an investigation, the Ombudsman concludes that the person aggrieved:
- a) has not sustained injustice or hardship as a consequence of the action investigated; or
  - b) has sustained such injustice or hardship and the provider to whom the complaint relates agrees within the permitted period (as defined in section 34N(3)) to implement the Ombudsman's recommendations,

then the Ombudsman may decide to report under the alternative procedure under section 34N. However, the Ombudsman may do so only if he/she is satisfied that the public interest does not require him/her to report under the full reporting procedure set out in sections 34K to 34M.

557. A report under the alternative procedure in this section is subject to similar restrictions with respect to naming or identifying individuals to those which apply to a report under section 34K (section 34N(9) and (10)).
558. Under section 34O, the Ombudsman may issue a special report in three cases:
- I. The Ombudsman has concluded in an investigation report that the person has sustained injustice or hardship as a result of the matter investigated but:
    - i. the Ombudsman has not been notified by the provider, in accordance with section 34M (Action following receipt of investigation reports), about the action that the provider has taken/proposes to take, or about the period within which when any proposed action is to be taken, or
    - ii. the Ombudsman, having been notified about such matters in accordance with section 34M, is not satisfied with the action/proposed action or the period within which it is to be taken, or is not satisfied that the action has been taken before the end of the permitted period.

- II. The Ombudsman has prepared a report under section 34N(2) (Alternative procedure) and is not satisfied that the provider has implemented his or her recommendations within the permitted period; and
  - III. The Ombudsman has concluded, in resolving a complaint under section 34C (alternative resolution of complaints), that the person aggrieved has sustained injustice or hardship, the provider has agreed to take particular action and the Ombudsman is not satisfied that the provider has taken that action before the end of the permitted period.
559. Section 34P(1) requires the Ombudsman to set out, in a special report, the facts that entitle him/her to prepare the report and to make whatever recommendations that he or she thinks appropriate, with respect to the action he/she thinks should be taken to remedy the injustice or hardship suffered by the person aggrieved, and to prevent similar injustice or hardship being caused again. Sections 34P(2) and (3) set out the persons to whom the special report must be sent. The requirements that apply where the Ombudsman previously considered the matter in a full report under section 34K differ from those that apply where he/she previously considered the matter under the alternative procedure under section 34N or by means of an alternative resolution process under section 34C.
560. Sections 34P(4) to (10) makes further provision with regard to special reports. In particular, a special report is subject to similar restrictions with respect of naming or identifying individuals to those which apply to a report under section 34K.
561. Section 34Q provides the Ombudsman with the power to publish a notice about a special report in a newspaper or by means of broadcast and electronic media. In determining whether to publish, the Ombudsman must take into account the public interest, the interests of the person aggrieved and the interests of any other person the Ombudsman considers appropriate. A provider to whom a report relates must, if requested to do so by the Ombudsman, reimburse the Ombudsman for the reasonable costs of arranging publication. If a provider fails to do so, the Ombudsman may recover these costs as a civil debt.
562. Section 34R provides definitions of “care home” and “care home provider” by reference to the Care Standards Act 2000 (see sections 3 and 121(9) of that Act for the definition of a care home). It also provides that a care home provider’s actions include actions taken by the provider’s staff and others acting on the provider’s behalf.
563. Section 34S provides definitions of “domiciliary care” and “domiciliary care provider”. It also provides that a domiciliary care provider’s actions include actions taken by the provider’s staff and others acting on the provider’s behalf.

564. Section 34T provides definitions of “palliative care service” and “independent palliative care provider”. The term “palliative care” is not defined. However, it is generally used to describe the alleviation of pain of those with terminal conditions, the relief of pain without dealing with the cause of the condition and the general improvement in the quality of life of persons with life limiting conditions. Life limiting conditions are normally described as those in which a person’s life expectancy is likely to be shortened as a result of a condition or illness.
565. In deciding whether a particular form of care amounts to palliative care or not, it is anticipated that the Ombudsman will give some weight to the definition of “palliative care” that is used by the World Health Organisation. This definition provides that *“palliative care is an approach that improves the quality of life of patients and their families facing the problem associated with life-threatening illness, through the prevention and relief of suffering by means of early identification and impeccable assessment and treatment of pain and other problems, physical, psychosocial and spiritual”*. Weight is also likely to be given to the National Institute for Clinical Excellence (NICE) definition, which provides that *“palliative care is the active holistic care of patients with advanced progressive illness. Management of pain and other symptoms and provision of psychological, social and spiritual support is paramount. The goal of palliative care is achievement of the best quality of life for patients and their families. Many aspects of palliative care are also applicable earlier in the course of the illness in conjunction with other treatments”*.
566. A palliative care service is a service the main purpose of which is to provide palliative care. The term is therefore not intended to cover services that provide a degree of palliative care but where such care is incidental to the main service being provided. It is intended, however, to capture a wide range of palliative care services ranging from community based services to palliative care hospitals. Section 34T provides that an independent palliative care provider’s actions include actions taken by the provider’s staff and others acting on the provider’s behalf.
567. Part 2B applies to complaints made under Part 2 of the 2005 Act (complaints relating to listed authorities), as well as to complaints made under Part 2A of that Act (complaints relating to other persons about social care and palliative care). Part 2B restates, with minor modifications, the provision formerly contained in sections 25 to 27 and 32 of the 2005 Act.
568. Section 34U(1) and (2) requires the Ombudsman to consult another specified ombudsman whenever he/she thinks that a complaint is about a matter that could be the subject of investigation by that other ombudsman. The other ombudsmen that the Ombudsman is required to consult are specified in section 34U(7). There is power for the Welsh Ministers, by order, to amend this list of specified ombudsmen.

569. Where the Ombudsman is required to consult with another ombudsman on a matter, he/she may also co-operate with that other ombudsman on that matter (section 34U(3)). The consultation and co-operation may extend to anything relating to the matter. Examples of matters on which there may be consultation and co-operation are set out in section 34U(4), namely:
- a) how an investigation into the complaint should be conducted; and
  - b) the form, content and publication of a report following an investigation.
570. Sections 34U(5) and (6) provides that, where such consultation takes place, the Ombudsman and any of the specified ombudsmen (other than the Scottish Public Services Ombudsman) can conduct joint investigations and publish joint reports.
571. In cases of consultation on a complaint, the Ombudsman will be able to use his/her supplementary powers in paragraph 21 of Schedule 1 to the 2005 Act to forward a copy of the complaint to the other ombudsman. Furthermore, the Ombudsman will be able to use those supplementary powers to inform the person who has made the complaint how he or she can make a complaint to the other ombudsman.
572. Section 34V deals with situations where the Ombudsman, when dealing with a complaint, identifies matters which could be subject to examination by the Commissioner for Older People in Wales or the Welsh Language Commissioner. It requires the Ombudsman to inform and consult the Commissioner for Older People in Wales about the matter and allows the Ombudsman to inform and consult the Welsh Language Commissioner similarly. The Ombudsman and the relevant Commissioner may then co-operate, and conduct a joint investigation, and prepare a joint report about the matter.
573. Section 34W contains further provision about collaborative working between the Ombudsman and , the Commissioner for Older People in Wales and the Welsh Language Commissioner where complaints raise matters (referred to as “connected matters”) that could be dealt with by the Ombudsman or by the respective Commissioners.
574. Section 34X provides that information obtained from other ombudsmen or commissioners in relation to, or in connection with, complaints is to be kept confidential except in limited circumstances. Section 34X(2) sets out the circumstances in which such information may be disclosed.
575. Section 34X(6) provides that neither the Ombudsman nor a member of his/her staff or other person acting on his/her behalf or assisting him/her can be required to give evidence in any proceedings (except proceedings specified in section 34X(2)) about:
- a) information obtained to assist the Ombudsman in deciding whether to investigate a complaint, during the investigation of a complaint or in resolving a complaint; or
  - b) information obtained from another ombudsman in consulting and co-operating with that Ombudsman.

576. Section 34Y(1) provides that a Minister of the Crown may give notice to the Ombudsman that disclosure of any document or information or class of document or information specified in the notice would, in the opinion of the Minister, be prejudicial to the safety of the United Kingdom or otherwise contrary to the public interest. Where such a notice is given, this Act neither authorises nor requires the Ombudsman, a member of his/her staff or any other person acting on his/her behalf or assisting him/her, to disclose such specified information.
577. Where the Ombudsman or a member of his/her staff etc. is obliged by virtue of some other legal requirement to disclose the information then nothing in this section prevents that person from complying with that obligation.
578. Section 34Z provides that the following are absolutely privileged for the purposes of defamation, namely:
- a) the publication (which will bear its usual meaning within the law relating to defamation) of any matter by the Ombudsman, a member of his/her staff or another person acting on his/her behalf or assisting him/her in the discharge of his/her functions under the 2005 Act;
  - b) the publication of any matter in any report published by a person in the discharge of its functions under section 17 of the 2005 Act (Requirement on listed authorities to publish the Ombudsman's report of an investigation); and
  - c) the publication of a matter in connection with a complaint made or referred to the Ombudsman under the 2005 Act, where that matter is published in one of the following communications:
    - i. communications between a listed authority as specified in section 28 and Schedule 3 of the 2005 Act (including a member or co-opted member, officer or member of staff or another person acting on behalf of or assisting in the discharge of the functions of that authority) and the Ombudsman (or his/her staff or persons acting on his/her behalf or assisting him/her in the discharge of his/her functions);
    - ii. communications between a care home provider, domiciliary care provider or independent palliative care provider, (including an officer or member of staff or another person acting on behalf of or assisting in the discharge of the functions of that provider) and the Ombudsman (or his/her staff or persons acting on his/her behalf or assisting him/her in the discharge of his/her functions);
    - iii. communications between the person aggrieved or the person making the complaint on behalf of the person aggrieved and an elected member of the National Assembly for Wales; and
    - iv. communications between the person aggrieved or the person making the complaint on behalf of the person aggrieved and the Ombudsman (or his staff, persons acting on his behalf or assisting him in the discharge of his functions).

*These notes refer to the Social Services and Well-being (Wales) Act 2014 (anaw 4)  
which received Royal Assent on 1 May 2014*

579. This provision generally replicates similar protection under the legislation relating to other ombudsmen.
580. Paragraph 3 of the Schedule to this Act makes transitional provision so that the provisions of section 34V and 34W of the 2005 Act do not apply in relation to the Welsh Language Commissioner before the Commissioner's functions under Part 5 of Welsh Language (Wales) Measure 2011 are in force.
581. Paragraph 4 of the Schedule inserts a new Schedule into the 2005 Act. This new Schedule (Schedule 3A) sets out matters which the Ombudsman is prohibited from investigating under Part 2A of the 2005 Act.
582. Paragraphs 5 to 36 of the Schedule make consequential changes to the 2005 Act and related legislation.

## **RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES**

583. The following table sets out the dates for each stage of the Act's passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales' website at: <http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?IID=566>  
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<b>Stage</b>	<b>Date</b>
Introduced	28 January 2013
Stage 1 - Debate	8 October 2013
Stage 2 Scrutiny Committee - consideration of amendments	13 November 2013 27 November 2013 5 December 2013 11 December 2013
Stage 3 Plenary - consideration of amendments	4 February 2014 11 February 2014
Report Stage	18 March 2014
Stage 4 Approved by the Assembly	18 March 2014
Royal Assent	1 May 2014