

CARERS STRATEGIES (WALES) MEASURE 2010

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Carers Strategies (Wales) Measure 2010 which was passed by the National Assembly for Wales on 21 September 2010 and approved by Her Majesty in Council on 10 November 2010. They have been prepared by the Directorate General for Health and Social Services of the Welsh Assembly Government to assist the reader of the Measure. The Explanatory Notes should be read in conjunction with the Measure but are not part of it.

COMMENTARY ON SECTIONS

Section 1 – Carers

2. This section defines carer and the person cared for.
3. Subsection (1) defines carer as someone who provides (or intends to provide) a significant amount of care, on a regular basis, for a disabled child or for an individual aged 18 or over. For these purposes, the meaning of “disabled child” is taken to be the same as in Part 3 of the Children Act 1989.
4. Subsection (2) excludes from the definition of carer those who are employed as carers, or carry out their duties as a carer on a formal basis by way of a formal agreement with any other person. Those who are volunteer carers for any body, for example a charity are also excluded from the definition.
5. Subsection (3) defines the person being cared for as a person who is provided care by a carer, or it is intended that care will be given to that person by a carer.

Section 2 – Duty to produce strategy

6. This section provides for a duty to be placed on relevant authorities to produce a strategy in relation to carers.
7. Subsection (1) provides that the Welsh Ministers may by way of regulations require a relevant authority or two or more relevant authorities to prepare and publish a strategy setting out how the authority will work or the authorities will work together to provide information and advice which is appropriate to carers, and also how they will work together to ensure that carers are consulted before they decide what services are to be provided to a carer or the person being cared for.
8. In addition, the strategy must set out how the relevant authorities will ensure that before they make directions of a general nature regarding the provision of services to carers and the persons they care for, they will consult carers before making such decisions.
9. Subsection (2) provides that each relevant authority which has a duty under subsection (1) to prepare and publish a strategy must also implement the strategy.

10. Subsection (3) currently defines relevant authorities as –
 - (a) any Local Health Board established under section 11 of the National Health Service (Wales) Act 2006 (c. 42);
 - (b) any NHS trust established under section 18 of that Act;
 - (c) any Special Health Authority established under section 22 of that Act;
 - (d) any county council or county borough council.
11. Subsection (4) makes it clear that it does not matter whether the services are provided by a relevant authority or by another person (for example, under contracting-out arrangements).
12. Subsection (5) defines responsible authority.

Section 3 – Appropriate information and advice

13. Subsection (1) defines the term “appropriate information and advice” which is contained in section 2(1) (a) of this Measure.
14. Subsection (2) confers on the Welsh Ministers the power to make regulations further specifying what is meant by “appropriate information and advice” for the purposes of section 2(1)(a) of this Measure.

Section 4 – Consultation

15. This section confers on Welsh Ministers the power to make regulations specifying in further detail the steps which relevant authorities must or may take in satisfying their duty to consult carers which is contained in section 2(1) (b) and (c) of this Measure.

Section 5 – Further provision about strategies

16. Subsection (1) confers on Welsh Ministers the power to make regulations containing further provisions as to how the relevant authority is or relevant authorities are to prepare and publish their strategies under section 2 of the Measure.
17. Subsection (2) lists some examples of the further provisions the Welsh Ministers may make in regulations made under subsection (1) with respect to the preparation and publication of strategies.
18. Subsection (3) provides that, where there is more than one responsible authority for a strategy, the Welsh Ministers may designate one of them as being the lead authority for each strategy, the designation of lead authority being for the purposes of co-ordinating and overseeing the preparation, publication and any subsequent review of the strategy.

Section 6 – Submission of draft strategy to Ministers

19. This section details how a responsible authority or the lead authority, if there is more than one relevant authority (or, where there is no lead authority, the responsible authorities acting together) are to submit a draft strategy to the Welsh Ministers.

20. Subsection (1) provides a duty to submit the strategy in draft to the Welsh Ministers.
21. Subsection (2) details what the Welsh Ministers must do upon receipt of the draft strategy. They must either inform the responsible authority or authorities that they are satisfied that the draft strategy complies with the requirements imposed by this Measure, or if they are not satisfied, the Welsh Ministers will then give such directions as they think fit to the responsible authorities so that the responsible authorities will then be able to ensure that the strategy does comply with the requirements imposed by this Measure.
22. Subsection (3) provides that the responsible authority or authorities must not publish a strategy in its final form, until such time as they have sent a draft strategy to the Welsh Ministers, and the Welsh Ministers are satisfied that the draft strategy complies with the requirements of this Measure, or if the Welsh Ministers upon receipt of a draft strategy, have issued directions stating what the responsible authorities must do in order to ensure that the strategy does comply with the requirements of this Measure, that such directions have been complied with.
23. Subsection (4) confers on the Welsh Ministers the power to make regulations specifying in further detail how and when the provisions of this section 6 must be complied with.

Section 7 - Public access to strategy

24. This section provides for a copy of the strategy of each responsible authority to be made available for inspection, free of charge, at its principal office.

Section 8 - Power to add further relevant authorities

25. This section gives the Welsh Ministers a power, by order, to amend the list of “relevant authorities” set out in the definition at section 2(3) by adding further bodies or authorities or descriptions of body or authority.

Section 9 - Amendment to the Local Authority Social Services Act 1970

26. This section adds the Carers Strategies (Wales) Measure 2010 to the list of enactments at Schedule 1 of the Local Authority Social Services Act 1970. The 1970 Act makes provision concerning the exercise of social services functions, including a requirement that Welsh local authorities in exercising their social services functions comply with guidance and directions issued by the Welsh Ministers. The inclusion of the Measure at Schedule 1 of the Act ensures that local authority functions under the Measure are social services functions for the purposes of the Act.

Section 10 - Orders and regulations

27. This section contains general provision about subordinate legislation (orders and regulations) made under this Measure.
28. Subsection (1) provides that where the Welsh Ministers are empowered by the Measure to make orders or regulations, these are to be made by statutory instrument. This means that the provisions of the Statutory Instrument Act 1946 are to be applied to such orders and regulations, including requirements about publication.

29. Subsection (2) provides that orders or regulations made under this Measure may make different provision for different purposes and may include incidental, supplementary, consequential, transitory or transitional or saving provisions.
30. Subsection (3) provides that orders or regulations made under the Measure will be subject to the negative procedure whilst subsections (4) and (5) provide that subsection 3 does not apply in relation to an order made under section 8 of the Measure, or the first set of regulations made by the Welsh Ministers under each of sections 2(1), 3(2), 4, 5(1) and 6(4).

Section 11 – Commencement

31. The Measure will come into force by the Welsh Ministers making a Commencement Order.

Section 12 – Short title

32. This section establishes the Measure’s title as the Carers Strategies (Wales) Measure 2010.

RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES

The following table sets out the dates for each stage of the Measure’s passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Measure can be found on the National Assembly for Wales’ website at:

http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/bus_legislation_meas-cs.htm

Stage	Date
Introduced	25 January 2010
Stage 1 - Debate	8 June 2010
Stage 2 Scrutiny Committee – consideration of amendments	8 July 2010
Stage 3 Plenary – consideration of amendments	21 September 2010
Stage 4 Approved by the Assembly	21 September 2010
Royal Approval in Privy Council	10 November 2010