

Explanatory Memorandum to the Code of Practice and guidance on the exercise of social services functions and partnership arrangements in relation to Part 2 (General Functions) of the Social Services and Well-being (Wales) Act 2014 (revised version).

This Explanatory Memorandum has been prepared by the Health and Social Services Group and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Part 2 Code of Practice (General Functions). I am satisfied that the benefits justify the likely costs.

Julie Morgan MS
Deputy Minister for Social Services

19 March 2024

PART 1

1. Description

- 1.1. This revised Part 2 Code of Practice (General Functions) sets out the requirements and guidelines which local authorities must act in accordance with when exercising their social services functions under Part 2 of the Social Services and Well-being (Wales) Act 2014 ('the Act'). It covers the well-being and overarching duties; population needs assessments; integrated preventative and early intervention services; promoting social enterprises, co-operatives, user-led services and the third sector; engagement, voice and co-production; information, advice and assistance; and registers of sight-impaired, hearing, hearing impaired and other disabled people.
- 1.2. Chapter 2b is statutory guidance to which local authorities and Local Health Boards must have regard when forming partnership arrangements for the purposes of undertaking population needs assessments.
- 1.3. This is a revised version of the Part 2 Code of Practice (General Functions) published in 2015 (ISBN 978-1-4734-5494-1 - [part-2-code-of-practice-general-functions.pdf \(gov.wales\)](https://gov.wales/part-2-code-of-practice-general-functions.pdf)). It will revoke the 2015 version.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1. None.

3. Legislative background

3.1. Section 145 of the Act gives the Welsh Ministers the power to issue, and from time to time revise, one or more codes on the exercise of social services functions. A code may impose requirements, and may include guidelines setting out aims, objectives and other matters. A local authority must, when exercising social services functions, act in accordance with any relevant requirements contained in a code, and have regard to any relevant guidelines contained in it.

3.2. Section 169 of the Act gives the Welsh Ministers the power to issue, and from time to time revise, guidance about partnership arrangements made under regulations under section 166 of the Act. The following bodies and individuals must have regard to this guidance in exercising functions conferred on them under or by virtue of sections 166 to 168 of the Act: a local authority, a Local Health Board, a team or person carrying out partnership arrangements in accordance with regulations made by virtue of section 166(4)(b), and a partnership board established under regulations under section 168.

3.3. This Code of Practice and guidance is being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

- 4.1. The purpose of the Part 2 Code of Practice is to set out requirements and guidelines for local authorities when exercising their social services functions under Part 2 of the Act.
- 4.2. The Code is being revised as part of the Welsh Government's Rebalancing Care and Support Programme, following consultation on a White Paper in January 2021. The elements of the programme were set out in a Written Statement on 29 October 2021:
<https://www.gov.wales/written-statement-rebalancing-care-and-support-white-paper-next-steps>
- 4.3. The revisions to the Part 2 Code focus mainly on two policy areas:
 - the promotion of social enterprises, co-operatives, user-led services and the third sector in the delivery of care and support and preventative services
 - citizen engagement, voice and co-production in the design and delivery of care and support and preventative services.
- 4.4. Both arise from the duty on local authorities in section 16 of the Act. Section 16(1)(a), (b) and (c) contain a duty to promote social enterprises, co-operatives and the third sector in the delivery of care and support. Section 16(1)(c) contains the duty to promote the involvement of service users (those receiving care and support or preventative services) in the design and delivery of those services. In the current Part 2 Code of Practice (the 2015 version) both policy areas are covered in Chapter 4 under the heading 'Promoting Social Enterprises, Co-operatives, User Led Services and the Third Sector'. A key element of the revision is to separate out these elements into distinct chapters, to give them greater focus and place them within the context of the Rebalancing Care and Support Programme.
- 4.5. The revised Part 2 Code will also include minor changes to Chapter 2, on undertaking population assessments; and to Chapter 3, on preventative services. These reflect changes to the policy context since the original Code was published in 2015, and developing good practice since the Act was implemented.

5. Consultation

- 5.1. A 12-week consultation ran from 22 May to 14 August 2023 on various elements of the Rebalancing Care and Support Programme, including a draft of the revised Part 2 Code of Practice.
- 5.2. The responses generally tended to support the proposed revision, particularly the decision to split the existing chapter on the section 16

duty into two, and to give a clearer focus on co-production. There were many comments about the challenges around implementation and what market rebalancing and co-production will look like in practice, especially in the current economic climate. Although relevant to implementation of the Code by local authorities, the Code itself focuses on the statutory requirements and guidelines rather than on identifying good practice or addressing wider issues around resourcing and delivery. Some post-consultation amendments have been made in response to some of the detailed comments on the Code.

- 5.3. The consultation documents and a summary of the responses are available at:

<https://www.gov.wales/rebalancing-care-and-support-programme>

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

6.1. We identified three options in relation to the Part 2 Code of Practice (General Functions):

- Option 1 – retain the current (2015) Part 2 Code.
- Option 2 – undertake a light-touch revision of the Part 2 Code to reflect the changing policy context and developing good practice (**preferred option**).
- Option 3 – undertake an extensive revision of the Part 2 Code.

6.2. The policy areas covered by the Part 2 Code fell within the remit of two of the Task and Finish Groups set up to support the Rebalancing Care and Support Programme: Rebalancing the Social Care Market and Engagement and Voice. Both groups were used as sounding boards to test out the extent to which the requirements and guidelines in the current Code of Practice needed updating. This helped us to determine our preferred option.

7. Costs and benefits

Option 1: Retain the current Part 2 Code

7.1. The key **benefit** of retaining the current (2015) Code is that this is an established code which has supported local authorities in implementing their general social services functions under Part 2 of the Act since it came into force on 6 April 2016. There have been no calls for its revision, and although the policy context is a bit dated in places, the principles and requirements in the Code are (as the 2023 consultation confirmed) widely accepted and understood. There is also scope to issue non-statutory supplementary guidance to support implementation and reflect the changing policy context, such as that issued to support local authorities and Local Health Boards in preparing the regional population needs assessments published in 2017 and 2022.

7.2. There are no **costs** associated with this option.

Option 2: Undertake a light-touch revision

7.3. The **benefits** of undertaking a light-touch revision of the Part 2 Code are that it would allow us to update the 2015 text to reflect the developing policy agenda around rebalancing, as well as incorporating established good practice which has been adopted and refined locally since the Act was implemented in 2016. It would also allow us to refocus some of the key messages, requirements and guidelines in the light of recent policy developments and changing priorities. In particular, it would give us an opportunity to make the following changes:

- **Re-focus the existing Chapter 4 (Promoting Social Enterprises, Co-operatives, User Led Services and the Third Sector) on delivery models**

In the current Part 2 Code, Chapter 4 covers all aspects of the section 16 duty – i.e. delivery models and the involvement of service users in the design and delivery of services. Amending the code would allow us to split this material into two new chapters, so that the new Chapter 4 focused exclusively on the promotion of social enterprises, co-operatives, user-led services and the third sector in delivering care and support and preventative services, within the wider context of our policy on rebalancing the social care market.

- **Clarify what is meant by social value**

The meaning and impact of ‘social value’ within social care has been a subject of much discussion with stakeholders in recent years. Since 2020 the Welsh Government has grant-funded Cwmpas (formerly Wales Co-operative Centre) to support the transformation of services within the social care sector, by pushing forward the development of social value models of delivery across Wales. This work has focused particularly on section 16 models of delivery¹. Social value has also been considered by the Task and Finish Group on Rebalancing the Social Care Market, and by the Technical Group helping to develop the new national framework for commissioned care and support. Revising the Part 2 Code (particularly Chapter 4) will enable us to reflect some of this evolving understanding of what social value means within the social care sector. This is reflected in paragraphs 227-230 of the revised Code.

- **Support work to revitalise the regional ‘social value forums’**

The 2015 Part 2 Code required local authorities to establish regional ‘social value forums’. The original intention was that these forums would

¹ See <https://cwmpas.coop/social-value-in-social-care/>

bring together social enterprises, co-operatives, user-led services and the third sector to support the delivery of social care through these types of organisation or models. However, because social value is a broad term, and all social care providers, including private sector providers, can (and indeed should) deliver social value, local authorities have taken differing approaches to these forums across Wales, with some interpreting the term 'social value providers' more broadly than others. Some forums have also been more successful than others. As part of its grant-funded activity, Cwmpas has been working with the regional partnerships to support and revitalise the forums, and develop a new toolkit. Revising the Part 2 Code would enable us to redraft the section on these forums, to clarify their role and function and also change their name so that they reflect more closely the relationship with the section 16 duty to promote. The revised code refers to them as 'section 16 forums'.

- **Create a new chapter on engagement, voice and co-production**

At present, the key messages, requirements and guidelines around citizen voice and co-production sit within Chapter 4 of the Part 2 Code, which also deals with social enterprise and other business models. Revising the Code would allow us to create a new chapter focusing exclusively on the involvement of service users and unpaid carers in the design and delivery of services, with an emphasis on adopting a co-production approach where possible. This would also allow for greater read across with the messages on co-production in the Part 9 Statutory Guidance on Partnership Arrangements, which is also being revised as part of the Rebalancing Programme.

- **Refer to market stability reports**

The new requirement on local authorities to produce market stability reports was introduced in 2021, when section 144B was inserted into the Act by means of section 56 of the Regulation and Inspection of Social Care (Wales) Act 2016. The requirements and guidelines around these reports are contained in a separate code of practice and statutory guidance document issued in March 2021². This explains how the regional market stability reports relate to population needs assessments and joint area plans, as part of the overarching planning and commissioning cycle. Revising the Part 2 Code allows us to also make these connections in Chapter 2, on population assessments.

- **Reflect developing practice around population needs assessments, including a redefinition of the 'core themes'**

Chapter 2 of the Part 2 Code contains the requirements around population needs assessments. Chapter 2A applies to local authorities in

² <https://www.gov.wales/market-stability-reports-code-practice-html>

relation to their social services functions; and Chapter 2B is statutory guidance which applies to both local authorities and Local Health Boards. These assessments are undertaken every five years, and in 2016 and 2021 the Welsh Government published non-statutory supplementary guidance to support the regional partnerships in undertaking their first and second assessments (published in 2017 and 2022 respectively). This supplementary guidance enabled us to contextualise the assessments, particularly in relation to Welsh Government policy priorities and strategies, as well as draw out good practice (and, in 2021, lessons learned). Revising the Part 2 Code would allow us to amend Chapter 2 in the light of this experience. For example, it would allow us to replace the term 'core policy themes' with the more accurate 'priority population groups'; separate out learning disability and neuro-divergence (formerly referred to as 'autism'); include a specific reference to people with dementia; and add 'people experiencing homelessness'. More broadly, it would allow us to suggest that local authorities / Regional Partnership Boards may wish to consider combining the population needs assessments with the Public Service Boards' well-being assessments into one regional assessment report (as called for in many of the consultation responses); and include a reference to pan-cluster planning.

- **Update the chapter on preventative services**

Revising the Part 2 Code would also allow us to update Chapter 3 on preventative services, to allow for a boarder focus on the range of integrated preventative and early intervention services. Reference could be made to the new models of care being developed under the Regional Integration Fund (especially the 'Community-based care: prevention and community co-ordination' model); and to the new national framework on social prescribing.

7.4. There are no new costs associated with this option. There would be no new burdens placed upon local authorities, and the changes are not significant enough to bring with them any additional implementation costs. This is not to say that there are no costs for local authorities in fulfilling the requirements of the Act, including meeting the requirements in the Part 2 Code: as the consultation responses from local authorities and the Regional Partnership Boards made clear, there remain significant resourcing issues across social care, and additional resources of time, people and money will be needed if local authorities are to continue to deliver high-quality care and support in line with the principles of the Act. However, this light-touch revision of the Part 2 Code should not add to or exacerbate those ongoing resourcing pressures.

Option 3: Undertake an extensive revision / re-write the entire Part 2 Code

7.5. The potential **benefit** of undertaking an extensive revision of the Part 2 Code is that it might produce a code whose requirements more comprehensively reflect local authorities' experience of implementing the Act. This, however, presupposes that the Code, which only came into force in April

2016, is already very dated, or that it is somehow no longer fit for purpose. Consideration of this question by the Rebalancing Programme's Task and Finish Groups concluded that even in areas such as section 16 delivery models and co-production, where some updating would be beneficial, the requirements and guidelines in the Code were broadly felt to be appropriate, useful and still very relevant. Local authorities appear to be generally familiar with the requirements of the Code, and there are no presenting issues with interpretation. The responses to the 2023 public consultation gave the same message, and were broadly supportive of the light-touch revision we eventually undertook.

7.6. The potential **costs** to local authorities of getting to grips with and implementing a completely revised Part 2 Code have not been considered in any depth, as it became clear that only a light-touch revision was needed to bring the existing Code up-to-date.

7.7. Option 2 (a light-touch revision) is therefore our preferred option.

8. Post implementation review

8.1. There are various sources of intelligence which will help the Welsh Government to review whether the revisions to the Part 2 Code are supporting local authorities in fulfilling their general duties under the Act.

8.2. In relation to the **section 16 duty to promote** (Chapter 4), a community of practice is being set up for the regional forums (this will form one of the outputs of the grant-funded work by Cwmpas). Local authorities must also produce a regional report on the work of their forums every three years. Regional Partnership Boards will be required, under amendments proposed to the Partnership Arrangements (Wales) Regulations 2015, to include in their annual reports information on how the partnership bodies are promoting section 16 organisations and approaches, and how the Board is helping to ensure that these organisations are engaged with and able to shape its work.

8.3. The five yearly market stability reports produced by the regional partnerships will contain an assessment of the sufficiency and stability of the social care market, including the role of section 16 models and approaches in delivering care and support. More broadly, the new National Office for Care and Support will be developing an approach to market oversight across all sectors.

8.3. On **co-production** (Chapter 5), the Regional Partnership Boards will be required to include in their annual reports an account of how the Board has engaged with citizens (especially people who need care and support and unpaid carers, including children and young people) in their work, how the regional partnership has promoted co-production, and the difference this has made in terms of well-being outcomes for citizens. At the local authority level, information on approaches to engagement and co-production should be included in the Directors of Social Services' annual reports. There will also be information in the population needs assessment reports, market stability reports and joint area plans on how citizens have been engaged in their production.

8.4. Local authorities, working through the regional partnerships, will be undertaking a mid-point review of their **population needs assessments** in 2024-5, which will help inform any supplementary guidance the Welsh Government issues ahead of the next assessment round in 2027. The supplementary guidance will be an opportunity to review and, if necessary, supplement the current guidelines in Chapter 2 of the Code.

8.5. Communities of practice have been set up to help develop the six models of integrated care under the Regional Integration Fund. The community of practice around the of 'community-based care: prevention and community co-ordination' model will help assess progress with the requirements in Chapter 3 on **integrated preventative and early intervention services**.

8.6. In line with established good practice on secondary legislation, the Welsh Government will undertake a review of how the revised Part 2 Code is being implemented in three years' time (by June 2027).