

Government Response: Code of Practice on the exercise of social services functions in relation to Part 4 (direct payments and choice of accommodation) and Part 5 (charging and financial assessment) of the Social Services and Well-being (Wales) Act 2014

The Government thanks the Committee and acknowledges the reporting points raised. Although the majority of these are editorial points that do not change the operation or effect of the Code there are certain matters that require clarification and correction. For this reason, the Government will be withdrawing the draft revised Code of Practice to allow time for the relevant matters to be carefully considered and for a further corrected draft to be prepared for re-laying before the Senedd in September.

The following are responses to the scrutiny points raised:

Scrutiny point 1: Section 146(1) of the Social Services and Well-being (Wales) Act 2014 states - “Before issuing or revising a code under section 145, the Welsh Ministers must consult such persons as they think fit on a draft of the code (or revised code).”

Consideration has been given to this provision and the Welsh Ministers do not think fit to consult any persons on this occasion given the extent to which the proposal is seeking to revise the existing Code.

The main revision entails adding a recently introduced financial recognition scheme to the list of forms of capital that should be fully disregarded in the financial assessment for charging for all forms of care and support. The financial recognition scheme is a newly introduced scheme and given that the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2025, which amend the Care and Support (Financial Assessment) (Wales) Regulations 2015 to add the new scheme to the list of capital to be disregarded, came into force on 7 April 2025, the revision to the Code will reflect the law currently in force. Local authorities are thus in a neutral position. Beneficiaries of the financial recognition scheme are unlikely to object to the revision to the Code as evidently, they are benefiting from the capital being disregarded.

Given this reasoning, as well as seeking to avoid stakeholder consultation fatigue in such a circumstance as this, the Welsh Ministers do not think fit to consult any persons in this instance.

Scrutiny point 2: It is agreed that there is a lack of consistent use of defined terms as referred to in the report although the Welsh Government does not consider this to have legal significance to the operation of the Code. Prior to re-laying the draft revised Code, using the same numbering as set out in the report for ease of reference, the following changes will be made to the English text:

- i. In paragraphs 1.8 and 1.9, the Social Services and Well-being (Wales) Act 2014 will be referred to as “*the Act*” as defined.

- ii. In Annex D, in the English text, references to “*deferred payment agreement*” will be amended to “DPA” as defined at paragraph 9.2 of the draft revised Code.
- iii. Annex D is titled “*Deferred Payment Agreements*” and references to “*agreement*” are made in the context of information relating to Deferred Payment Agreements only. Nevertheless, prior to re-laying the draft revised Code, use of “*agreement*”, such as in paragraphs 8.1, 9.1, 9.3 and 9.5 of Annex D and in the headings above paragraphs 10.1 and 11.1 of Annex D, will be substituted with the defined term “DPA”.
- iv. Interchangeable use of “DPAs”, as the plural of the defined term “DPA” and “*deferred payment agreements*” does not, in the view of the Welsh Government, create ambiguity that affects the operation of the Code as both have the same meaning. Prior to re-laying the draft revised Code however, all references to “*deferred payment agreements*” will be substituted with “DPAs” for consistency.
- v. Prior to re-laying the Code, “2015” will be omitted from paragraph 5.1 of Annex F to the English text of the draft revised Code.

The equivalent changes will be made to the Welsh text of the draft revised Code as appropriate prior to re-laying.

Scrutiny point 3: The type of font used does not change the meaning of the word even where bold is used in certain places for emphasis. For consistency, prior to re-laying the draft revised Code, the Welsh Government will consider removing paragraph 1.5 and the bold font on words “*must*”, “*must not*”, “*may*” and “*should/should not*” and a consistent approach will be adopted for both the English and Welsh texts.

Scrutiny point 4: The numbering in the English text does not affect the operation of the Code. For correctness, prior to re-laying the English text of the draft revised Code, numbers 1.7 and 1.8 will be substituted with 1.10 and 1.11 respectively (or such numbering required in consideration of any subsequent changes to paragraphing).

Scrutiny point 5: In paragraph 3.4, in the opening words before the bullet points, the words “*the Act, the regulations and this Code...*” will be substituted with “*the Act, the regulations made under Parts 4 and 5 of the Act and this Code...*”. Likewise, consideration will be given to the references to regulations in paragraphs 4.1, 2.1 and 3.6 and wording will be provided to limit the scope of the reference to those regulations made under the relevant Parts of the Act as appropriate. In paragraph 5.6, the reference to “regulations” relates specifically to the Care and Support (Charging) (Wales) Regulations 2015 and therefore, the draft revised Code will be revised prior to re-laying to specify this.

The Welsh Government is of the view that most instances highlighted where reference to “regulations” is made in the draft revised Code are made in the context of introductory or high-level narratives where specifically naming regulations is not required. Further detail in relation to specific applicable regulations is provided where relevant elsewhere in the Code.

Scrutiny point 6: Prior to re-laying the English text of the draft revised Code, in para 5.1, “*the Care and Support (Charging) and (Financial Assessment) (Miscellaneous Amendments) (Wales) Regulations 2022*” will be substituted with “*the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2022*”.

Scrutiny point 7: In the context that the words “*the Ministers*” are used at paragraph 7.2 of the English text of the draft revised Code, the Welsh Government does not think there can be any ambiguity as to which Ministers are being referred. Prior to re-laying, to be precise, “Welsh” will be added prior to “Ministers” and the equivalent wording will be used in the Welsh text.

Scrutiny point 8: The omission of the words “*of this Code*” in the Welsh text does not create ambiguity as to which Annexes are being referred to. The regulations identified at paragraph 9.1 of the draft revised Code do not contain Annexes. For consistency between the texts however, prior to re-laying the Welsh text of the draft revised Code, paragraph 9.1 will be amended to reflect the English text with the Welsh equivalent of “*of this Code*” being added as appropriate.

Scrutiny point 9: The numbering in the Welsh text does not affect the operation of the Code. For correctness, the provision currently numbered “(vx)” in paragraph 2.28(g) of Annex A to the Welsh text of the draft revised Code will be substituted with “(xv)”.

Scrutiny point 10: The Welsh Government is of the view that the risk of confusion being caused by use of the wording of the Care and Support (Financial Assessment) (Wales) Regulations 2015, i.e. referring to “A” as the person to whom a payment is made under the relevant financial recognition scheme, is negligible, particularly given the context in which it is used. To eliminate the nominal risk, prior to re-laying the draft revised Code, in Annex A, paragraph 2.28(g)(xxiv), the following words: “*Any payment made to A by the Ministry of Defence under the Lesbian, Gay, Bisexual and Transgender Financial Recognition Scheme*” will be substituted with “*The Ministry of Defence Lesbian, Gay, Bisexual and Transgender Financial Recognition Scheme*”.

Scrutiny point 11: In Annex A, paragraph 2.33(g) of the Welsh text of the draft revised Code, the intention was to express “*payment*” by using “*a delir*” (paid). The word used in the draft Welsh text contains a typographical error resulting in “*a ddelir*” being used. Prior to re-laying the Welsh text of the draft revised Code, “*a ddelir*” will be substituted with “*a delir*” so that the Welsh text is equivalent to the English text.

Scrutiny point 12: The Welsh Government notes that the report refers to a matter in Annex B of the draft revised Code, although it appears that this should refer to Annex A.

Prior to re-laying the English text of the draft revised Code, the words “*Grant made under a Housing Act which is to be used by the person to purchase a home or pay for repairs to make the home habitable*” at paragraph 3.12(g) of Annex A will be substituted with “*Grant made under section 129 of the Housing Act 1988 which is to*”

be used by the person to purchase a home or pay for repairs to make the home habitable". The equivalent change will be made to the Welsh text of the draft revised Code.

Scrutiny point 13: In Annex B, in paragraph 2.6(b), prior to re-laying the Welsh text of the draft revised Code, "*o bryd i'w gilydd*" will be substituted with "*cyfnodol*" as appropriate in the context of the text.

Scrutiny point 14: The numbering in the Welsh text does not affect the operation of the Code. For correctness, the provision currently numbered "*(b)*" in paragraph 2.6 of Annex B to the Welsh text of the draft revised Code will be substituted with "*(d)*".

Scrutiny point 15: The relevant conjunction will be added to the end of sub-paragraph 2.20(e) in the Welsh text of the draft revised Code prior to re-laying so that it is equivalent to the English text.

Scrutiny point 16: The Welsh Government is of the view that references to "local authority"/ "local authorities" and "authority"/ "authorities" interchangeably is unlikely to cause ambiguity in the contexts in which they are used in the draft revised Code. Prior to re-laying however, to eliminate any nominal risk of confusion, all references to "authority" and "authorities" will be changed to "local authority" and "local authorities" respectively in both texts.

Scrutiny point 17: In Annex C, in paragraph 6.1, prior to re-laying the draft revised Code, the Welsh text will be amended by adding "*a rhoi ei reswm/resymau dros hyn*" at the end of the relevant sentence to express the meaning "*and provide its reason(s) for this*" so that the Welsh text is equivalent to the English text.

Scrutiny point 18: In Annex C, in paragraph 10.1, prior to re-laying the draft revised Code, the Welsh text will be amended by adding the word "*ariannol*" after "*wybodaeth a chyngor*" to express the meaning of "*financial information and advice*" so that the Welsh text is equivalent to the English text.

Scrutiny point 19: In Annex D of the English text, the heading of paragraph 2.1 will be changed to "*To whom DPAs are to be offered*". In paragraph 5.3 of Annex D to the draft revised Code where "*those eligible for a deferred payment...*" is provided, "*deferred payment...*" will be substituted with "*DPA...*" clarifying that reference is being made to deferred payment agreements. The equivalent changes will be made to the Welsh text.

Scrutiny point 20: In Annex D, in the bullet points below paragraph 4.3(e), the words "*where a spouse or dependent relative (as defined in the Financial Assessment Regulations)...*" and "*...becomes a dependent relative (as defined in the Financial Assessment Regulations)*" will be substituted with "*where a spouse or qualifying relative (as defined in the Financial Assessment Regulations)...*" and "*...becomes a qualifying relative (as defined in the Financial Assessment Regulations)*" respectively prior to re-laying the draft revised Code. The term

“qualifying relative” is defined in Schedule 2 to the Care and Support (Financial Assessment) (Wales) Regulations 2015. The equivalent changes will be made to the Welsh text of the draft revised Code.

Scrutiny point 21: The verb “advise” is used in paragraph 5.5 of Annex D to the draft revised Code in two different ways. The first use refers to an obligation that the local authority should give advice or guidance to people in relation to considering how they intend to use, maintain and insure their property, and the second use of the verb relates to the local authority giving official information, i.e. specifying if it intends to place any conditions on how the property is used etc. whilst it is the subject of any Deferred Payment Agreement. The Welsh Government is of the view that the vocabulary used in the Welsh text is therefore consistent with the different uses of the word “advise” in the English text.

Scrutiny point 22: Prior to re-laying the draft revised Code, in paragraph 6.1(b) of Annex D to the English text, “*lessor amount*” will be substituted with “*lesser amount*”.

Scrutiny point 23: Although paragraph 7.3 of Annex D to the Welsh text of the draft revised Code does not expressly include the equivalent of the words “*entirely at*” as used in the English text, the Welsh Government does not agree that this changes the meaning between both texts. There is a slight difference in emphasis between the texts and therefore, prior to re-laying the Welsh text of the draft revised Code, the words “*yn llwyr*” will be inserted after “*yw hwn*” to express the meaning of “*entirely [at]*”.

Scrutiny point 24: The Welsh text of the draft revised Code at paragraph 10.4(c) of Annex D has been summarised, and the Welsh Government submits that the meaning of the Welsh text is equivalent to the English text. Prior to re-laying however, the Welsh text will be revised for precision. The words “*gan gynnwys y broses o derfynu'r cytundeb a chanlyniadau hynny, a pha rybudd y dylid ei roi*” will be substituted with “*- dylai hyn esbonio'r broses o derfynu'r cytundeb a chanlyniadau hynny, a phennu pa rybudd y dylid ei roi*”.

Scrutiny point 25: Prior to re-laying, paragraph 2.1 of Annex E to the Welsh text of the draft revised Code will be amended to read “*Rheoliadau Adolygu*” where appropriate to correspond with the English text.

Scrutiny point 26: Prior to re-laying the draft revised Code, at paragraph 2.25 of Annex E to the Welsh text, the words “*yn yr awdurdod*” will be inserted after “*prïodol*” to express the meaning of “*of the authority*” so that the Welsh text is equivalent to the English text.

Scrutiny point 27: At paragraph 1.3 of Annex F, the addition of “*penderfyniad*” to the Welsh text of the draft revised Code is a matter of style to enable the sentence to flow. As the “*non-payment*” being referred to in the English text is “*deliberate*”, the Welsh Government proposes to change the English text to correspond to the Welsh text i.e. substitute “*non-payment*” with “*decision not to pay*”.

Scrutiny point 28: Prior to re-laying the draft revised Code, paragraph 3.1 of Annex F to the English text will be revised to clarify the example timeframe for debt accrual. The words:

“if an invoice was issued giving 30 days to pay, the payment becomes due on day 30 and a debt accrues if this is not met”

will be substituted with:

“if an invoice was issued where payment is due on or before 30 calendar days from date of invoice, payment of the invoice becomes overdue at 31 calendar days from date of invoice, and a debt will accrue from that day”.

The Welsh text will be revised to correspond to the English text. In addition, the word “*anfon*” will be replaced with “*dyrodd*” to correspond to “issue” in the English text.

Scrutiny point 29: Prior to re-laying, “*derivation*” in paragraph 9.2 in Annex F to the English text of the draft revised Code will be substituted with “*deprivation*” in line with the Welsh text.

Scrutiny point 30: Paragraph 16.1 of Annex F to the Welsh text of the draft revised Code will be revised prior to re-laying to correspond to the English text. The words “*...neu effeithio ar fuddiannau'r person hwnnw*” will be substituted with “*...neu effeithio ar fuddiannau rhywun sydd am hawlio yn erbyn y person hwnnw*”.

Formatting, typographical and stylistic corrections will also be addressed prior to re-laying the draft revised Code.