

Draft Regulations laid before the National Assembly for Wales under section 33 of the Social Services and Well-being (Wales) Act 2014 Act, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2015 No. (W.)

SOCIAL CARE, WALES

**The Care and Support (Eligibility)
(Wales) Regulations 2015**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the test which a local authority must apply to determine whether or not an individual with needs identified in an assessment under section 19, 21 or 24 of the Social Services and Well-being (Wales) Act 2014 (“the Act”) is entitled to have those needs met by a local authority. The Regulations set out the tests to be applied in relation to adults, to children and to carers.

Regulations 3, 4 and 5 set out the eligibility criteria for adults, for children and for carers respectively. In each case the criteria include a requirement about how the need in question arises, about whether it relates to one of the well-being-related factors, about whether or not the need can be met by the person alone or with assistance, and about whether or not a person is likely to achieve personal outcomes without provision of care and support by the local authority.

Regulation 6 provides that for the purposes of judging whether or not a person is able to meet one of their needs, whether with assistance or without it, the person should be regarded as unable to do so even if they can in fact meet the need but only by enduring significant pain, anxiety or distress, by endangering him or herself or another person, or by taking a significantly longer time than would normally be expected.

Where needs do meet these eligibility criteria, section 32 requires a local authority to consider what could be done to meet those needs and whether it should impose a charge in accordance with Part 5 of the Act.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained by contacting the Department for Health and Social Services, Welsh Government, Cathays Park, Cardiff CF10 3NQ.

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SOCIAL CARE, WALES

**The Care and Support (Eligibility)
(Wales) Regulations 2015**

Made

Coming into force

6 April 2016

The Welsh Ministers, in exercise of the powers conferred by section 32(3), (4) and (5) of the Social Services and Well-being (Wales) Act 2014⁽¹⁾, make the following Regulations.

A draft of these Regulations was laid before the National Assembly for Wales in accordance with section 33 of that Act and has been approved by a resolution of the National Assembly for Wales in accordance with section 196(6) of that Act .

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Care and Support (Eligibility) (Wales) Regulations 2015.

(2) These Regulations come into force on 6 April 2016 and apply in relation to Wales.

(3) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Social Services and Well-being (Wales) Act 2014;

“carer” (“*gofalwr*”) has the meaning given in section 3 of the Act;

“eligibility determination” (“*dyfarniad cymhwysra*”) means a determination under section 32(1)(a) of the Act;

(1) 2014 anaw 4.

“personal outcomes” (*“canlyniadau personol”*) means the outcomes which have been identified in relation to a person by an assessment under sections 19, 21, or 24 of the Act;

“self-care” (*“hunanofal”*) means tasks that a person carries out as part of daily life including—

- (i) eating and drinking;
- (ii) maintaining personal hygiene;
- (iii) getting up and getting dressed;
- (iv) moving around the home;
- (v) preparing meals;
- (vi) keeping the home clean, safe and hygienic.

Eligibility determinations

2.—(1) When the local authority is making an eligibility determination in relation to an adult who has been assessed under section 19 of the Act as having one or more needs for care and support, any one of those needs meets the eligibility criteria if it is of a description specified in regulation 3.

(2) When a local authority is making an eligibility determination in relation to a child who has been assessed under section 21 of the Act as having one or more needs for care and support, any one of those needs meets the eligibility criteria if it is of a description specified in regulation 4.

(3) When a local authority is making an eligibility determination in relation to a carer who has been assessed under section 24 of the Act as having one or more needs for support, any one of those needs meets the eligibility criteria if it is of a description specified in regulation 5.

Needs which meet the eligibility criteria – adults with needs for care and support

3. The need of an adult referred to in regulation 2(1) meets the eligibility criteria if—

- (a) the need arises from the adult’s physical or mental ill-health, age, disability, dependence on alcohol or drugs, or other similar circumstances;
- (b) the need relates to one or more of the following—
 - (i) ability to carry out self-care or domestic routines;
 - (ii) ability to communicate;
 - (iii) protection from abuse or neglect;
 - (iv) involvement in work, education, learning or in leisure activities;

- (v) maintenance or development of family or other significant personal relationships;
 - (vi) development and maintenance of social relationships and involvement in the community; or
 - (vii) fulfilment of caring responsibilities for a child;
- (c) the need is such that the adult is not able to meet that need, either—
 - (i) alone;
 - (ii) with the care and support⁽¹⁾ of others who are willing to provide that care and support; or
 - (iii) with the assistance of services in the community to which the adult has access; and
 - (d) the adult is unlikely to achieve one or more of the adult's personal outcomes unless—
 - (i) the local authority provides or arranges care and support to meet the need; or
 - (ii) the local authority enables the need to be met by making direct payments⁽²⁾.

Needs which meet the eligibility criteria – children with needs for care and support

4.—(1) The need of a child referred to in regulation 2(2) meets the eligibility criteria if—

- (a) either—
 - (i) the need arises from the child's physical or mental ill-health, age, disability, dependence on alcohol or drugs, or other similar circumstances; or
 - (ii) the need is one that if unmet is likely to have an adverse effect on the child's development;
- (b) the need relates to one or more of the following—
 - (i) ability to carry out self-care or domestic routines;
 - (ii) ability to communicate;
 - (iii) protection from abuse or neglect;
 - (iv) involvement in work, education, learning or in leisure activities;

(1) "Care and support" is partially defined in section 4 of the Act.
 (2) Regulations under sections 50 to 53 of the Act may require or allow a local authority to make payments to a person towards the cost of meeting their needs. Such payments are referred to in the Act as "direct payments".

- (v) maintenance or development of family or other significant personal relationships;
- (vi) development and maintenance of social relationships and involvement in the community; or
- (vii) achieving developmental goals;
- (c) the need is one that neither the child, the child's parents nor other persons in a parental role are able to meet, either—
 - (i) alone or together,
 - (ii) with the care and support of others who are willing to provide that care and support, or
 - (iii) with the assistance of services in the community to which the child, the parents or other persons in a parental role have access; and
- (d) the child is unlikely to achieve one or more of the child's personal outcomes unless—
 - (i) the local authority provides or arranges care and support to meet the need; or
 - (ii) the local authority enables the need to be met by making direct payments.
- (2) In this regulation—
 - (i) references to a child's development include the physical, intellectual, emotional, social and behavioural development of that child;
 - (ii) "other persons in a parental role" ("*personau eraill mewn rôl rhiant*") includes persons with parental responsibility⁽¹⁾ or relatives who play a role in looking after the child;
 - (iii) "relative" ("*perthynas*") has the meaning given in section 197 of the Act.

Needs which meet the eligibility criteria - carers with needs for support

5. The need of a carer referred to in regulation 2(3) meets the eligibility criteria if—

- (a) the need arises as a result of providing care for either—
 - (i) an adult who has needs which fall within Regulation 3 (a) and (b), or
 - (ii) a disabled child;
- (b) the need relates to one or more of the following—

(1) "Parental responsibility" is defined in section 3 of the Children Act 1989 (c. 41).

- (i) ability to carry out self-care or domestic routines;
 - (ii) ability to communicate;
 - (iii) protection from abuse or neglect;
 - (iv) involvement in work, education, learning or in leisure activities;
 - (v) maintenance or development of family or other significant personal relationships;
 - (vi) development and maintenance of social relationships and involvement in the community; or
 - (vii) in the case of an adult carer, fulfilment of caring responsibilities for a child;
 - (viii) in the case of a child carer, achieving developmental goals;
- (c) the carer cannot meet the need whether—
- (i) alone;
 - (ii) with the support of others who are willing to provide that support; or
 - (iii) with the assistance of services in the community to which the carer has access; and
- (d) the carer is unlikely to achieve one or more of their personal outcomes unless—
- (i) the local authority provides or arranges support to the carer to meet the carer's need;
 - (ii) the local authority provides or arranges care and support to the person for whom the carer provides care, in order to meet the carer's need; or
 - (iii) the local authority enables the need to be met by making direct payments.

Ability to meet need

6. For the purposes of regulations 3(c), 4(1)(c) and 5(c), a person who is able to meet the need, alone or with the assistance of others is to be regarded as unable to meet the need if doing so—

- (a) causes significant pain, anxiety or distress to that person;
- (b) endangers or is likely to endanger the health or safety of that person or another person;
- (c) takes that person significantly longer than would normally be expected.

Minister for Health and Social Services, one of the Welsh Ministers

Date