

Explanatory Memorandum to the Care and Support (Eligibility) (Wales) Regulations 2015

This Explanatory Memorandum has been prepared by the Department for Health and Social Services and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Care and Support (Eligibility) (Wales) Regulations 2015. I am satisfied that the benefits outweigh any costs.

Mark Drakeford

Minister for Health and Social Services

6 May 2015

Part 1 – OVERVIEW

1. Description

The Social Services and Well-being (Wales) Act 2014 provides a single Act that brings together local authorities' duties and functions in relation to improving the well-being of people who need care and support, and carers who need support. The Act provides the statutory framework to deliver the Welsh Government's commitment to integrate social services to support people of all ages, and support people as part of families and communities.

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 Act is entitled to have those needs met by a local authority. The regulations set out the test to be applied in relation to adults, to children and to carers.

This Explanatory Memorandum should be read in conjunction with the Explanatory Memorandum to the Care and Support (Assessment) (Wales) Regulations 2015.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

No specific matters identified.

3. Legislative background

The powers enabling these Regulations to be made are contained in sections 32(3) (4) and (5) of the Social Services and Well-being (Wales) Act 2014.

This instrument is subject to consideration by the National Assembly for Wales under a special procedure as set out in Section 33 of the Social Services and Well-being (Wales) Act 2014 (the super-affirmative procedure).

The Regulations will come into force in **April 2016**

Current legislation

The current legislative framework is complex and the provision of social care is currently found within a broad array of Acts, which legislate separately for children and adults.

Adults

Section 47 (1) (b) of the NHS and Community Care Act 1990 places a duty on local authorities to decide whether, following assessment, an adult's needs require a service to be provided. The basis for that decision is provided in Statutory Guidance only. In Wales, this was through *the Creating a Unified and Fair System for Assessing and*

*Managing Care*¹. This provides a standardised framework within which local authorities should decide local criteria about which needs should be met. This guidance sets out four bands of need; critical, substantial, moderate and low. Each band describes the extent of risk to independence if needs and issues are not addressed. Local authorities are entitled to set their eligibility threshold at any band within this framework.

The duty to meet eligible need is absolute, regardless of available resources within social services funds.

Children

There is no comparable determination of eligibility used in children's services. However under Section 17 (10) of the Children Act 1989, a child is a Child in Need if:

- He/she is unlikely to achieve or maintain, or have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him/her of services by a local authority;
- His/her health or development is likely to be significantly impaired, or further impaired, without the provision for him/her of such services; or
- He/she is a Disabled Child.

Carers

There are three Acts of Parliament and a Welsh Measure under the National Assembly for Wales, which are directly concerned with the needs of carers. These are:

- Carers (Recognition and Services) Act 1995
- Carers and Disabled Children Act 2000
- Carers (Equal Opportunities) Act 2004
- Carers Strategies (Wales) Measure 2010

In addition, Disabled Persons (Services, Consultation and Representation) Act 1986 Section 8 requires that during an assessment of a disabled person the views of Carers who 'provide a substantial amount of care on a regular basis' should be taken into account. There is no definition of "substantial amount of care on a regular basis".

Each of these pieces of legislation place duties on local authorities with respect to the right of carers to an assessment of their needs. However, there are no current statutory duties to provide services to carers, although there are powers to provide services which a) the local authority sees fit to provide and b) will in the local authority's view help the carer care for the person cared for (section 2 of the Carers and Disabled Children Act 2000) which cover all carers and disabled children aged 16-17 years. In exercising this power, local authorities can, but are not required to, apply an eligibility framework and criteria.

¹ Creating a Unified and Fair System for Assessing and Managing Care – Welsh Assembly Government - 2002

Local authorities have a duty to inform carers of their right to request an assessment, where the local authority believes there is an entitlement under either the Carers (Recognition and Services) Act 1995, the Carers Strategies (Wales) Measure 2010 or the Carers and Disabled Children Act 2000. Currently only carers providing a substantial amount of care on a regular basis are entitled to a carer's assessment (2000 Act) and a carer's assessment could only be undertaken if requested by a carer (1995 Act). There is no definition of 'a substantial amount of care on a regular basis' therefore the definition is open to determination by the local authority. There is also no legislative requirement on local authorities to take actions to meet those assessed needs.

Proposed legislation

The statutory framework will consist of three main elements, the Act itself, regulations made under the Act, and codes of practice/statutory guidance. These three elements work together to form the framework within which social services will operate from April 2016.

The new legislation will introduce greater consistency of practice across Wales by introducing changes to the current eligibility framework. Through the introduction of these Regulations, the new national eligibility criteria will remove, for adults, the traditional threshold for access to managed care and support, and replace it with a more responsive model that considers a bespoke response for each individual. Eligibility will flow from the assessment process.

The Social Services and Well-being (Wales) Act 2014 places a requirement on local authorities to apply national eligibility criteria to determine their duty to meet the care and support needs of children. This is in contrast to the approach under the Children Act 1989 which contains a definition of a child in need and requires local authorities to safeguard and promote the welfare of such children. The proposed Regulations and Codes of Practice place requirements on local authorities with respect to the criteria for, and process of, that determination. The proposed approach is parallel to that described for adults in that the determination of eligibility will flow from the process of assessment.

The Act 2014 sets a duty on local authorities to undertake a carer's assessment where it appears to the authority that the carer has needs for support. The person no longer needs to be providing 'a substantial amount of care on a regular basis' to be deemed to be a carer - it is sufficient only that the person provides, or intends to provide, care for an adult or disabled child. The Act also places a duty on a local authority to meet the support needs of a carer where those needs meet the national criteria for eligibility.

4. Purpose and intended effect of the legislation

- Option 1: No national criteria
- Option 2: Eligibility based on need
- Option 3: Eligibility based on a judgment that encompasses needs, outcomes, barriers, risks and resources

The Regulatory Impact Assessment (Part 2) and the evidence paper (Annex 1) will explore these options in more detail.

The case for change is further set out in the report *“Better Support at Lower Cost: Improving efficiency and effectiveness in services for older people in Wales²”*. The report identified that the single biggest challenge which many Welsh local authorities face is changing the prevailing culture within adult social care. The report recognised that a further culture shift was needed to create a service which offers real opportunity to help people become more independent, both in the way they live their lives, and how flexibly they can use services.

The current system can be confusing, with the main focus on the process instead of the outcome. The proposed new system will place greater focus on early intervention and prevention and build on people’s strengths to enable them to exercise voice and control over what matters to them, having regard to their needs and well-being outcomes. The new system will ensure that people are able to receive help to meet their care and support needs whether they are deemed eligible or not. Eligibility will mean that the individual requires a care and support plan to access and manage ways to meet their care and support needs; but those that are not eligible will still receive help and will be signposted to preventative well-being services in their community and encouraged to build on their own strengths and those within their network to meet their needs. This will mean that more people will be supported earlier through preventative measures irrespective of whether or not the eligibility criteria have been met. When this approach to determining eligibility is applied nationally it will provide a consistent response across Wales.

Currently, Intervention is often not triggered until the point of crisis, and there is little early intervention or prevention in place. The Act will encourage a renewed focus on prevention and early intervention. The Social Services Improvement Agency (SSIA) report emphasises the need for early intervention and prevention and states that such services will help local authorities to meet their savings targets whilst improving outcomes for individuals.

Increasing demands on social services have been evident throughout Wales. It is likely the demands will continue to increase in the future. The pressures on local authority social services departments relate to many factors including, but not limited to:

- People are living longer. Projections show that by 2030 there will be twice the number of people aged over 85 than there are currently. The associated costs to social care are explored further in the attached Regulatory Impact Assessment;
- Changing behaviours and expectations; and
- An increase in people with long standing and complex disabilities.

Although demands on social services are increasing, there is no commensurate increase in routine funding to support service delivery. The current financial settlement for 2015/16 has been decreased by 3.4% compared to 2014/15, as a consequence of the large scale budget reductions by the UK Government.

Due to this increase in demand it is essential that the future delivery of social care is transformed as the current system is unsustainable. Specifically there is a need to simplify and improve service efficiency and effectiveness of the system. The system

² Better Support at Lower Cost: Improving efficiency and effectiveness in services for older people in Wales - ADSS Cymru – April 2011

must be improved to deliver better integration, improved collaboration, a stronger workforce, and to provide people with a greater voice and control over their services and well-being.

Intended effect of the Regulations

The primary objective of the policy is to promote an individuals' independence and ensure they have a stronger voice and control over their care and support services. The proposed changes are crucial to enable current and future generations to live their lives independently, providing the correct level of support to maintain their independence and wellbeing. A 2011 report published by the Social Services Improvement Agency: *Better Support at Lower Cost: Improving efficiency and effectiveness in services for older people in Wales*³ notes that there are examples where local authorities have already started to reshape their services for older people, with evidence of a shift towards a re-ablement approach to care.

The proposed model of determining eligibility through assessment ensures a national framework that will be consistently applied across Wales. It will generate a uniform and consistent approach by which each local authority will identify those needs an individual has which must be met through the planning and delivery of a care and support plan. The individual's needs will become 'eligible' for social care and support if an assessment establishes that they need the local authority to develop and deliver a 'care and support plan' in order to overcome the barriers to achieving their outcomes.

The first part of the eligibility process is to assess if care and support intervention can address the need, risk or barrier, or enhance the resources that will enable the individual to achieve their personal well-being outcomes. The second part of the process is the determination that the individual's well-being outcomes cannot be met, or cannot be sufficiently met, solely through care and support co-ordinated by themselves, their family or carer, or others. If this is the case, the individual requires support through a care and support plan, to co-ordinate their care and support or to manage it completely.

The current approaches to eligibility and to assessment are different for children and adults, and there is inconsistency across Wales. The new model is designed to bring these processes under one framework.

The current framework for assessing and meeting the social care needs of adults is set out in the *Fairer Access to Care (FACS)*⁴ guidance that was published in 2002, and the current *Framework for the Assessment of Children in Need and their Families*,⁵ which was issued as guidance under the Children Act 1989, provides a systematic basis for collecting and analysing information to support professional judgements about how to help children and families in the best interests of the child.,

The new approach will reduce the number of people who require a care and support plan by introducing opportunities to help people retain independence, and access early intervention and prevention services without the need for a formal plan, whether these

3 http://www.ssiacymru.org.uk/home.php?page_id=7067

4 Creating a Unified and Fair System for Assessing and Managing Care – Welsh Assembly Government – April 2002

5 <https://www.wales.nhs.uk/sites3/docmetadata.cfm?orgid=441&id=76272>

are adults, children or carers. This approach is informed by the understanding that intervening in the right way, at the right time can lead to many older people being supported in the community outside the formal social care system, and families can be supported to stay together.

A recent report⁶ on access to care and well-being in Wales published by the Social Services Improvement Agency identified three key concerns with the current system which were identified consistently by participants from across children and adult services. The report identified:

1. That there is too little early intervention and prevention;
2. Too much time and too many skills and resources are going in to over-elaborate assessment activities which do not help individuals to address their concerns or achieve desired outcomes; and
3. Inconsistent approaches to eligibility applied across different groups of citizens within the population.

The proposed model of eligibility will address these concerns by introducing regulations that promote a much more consistent approach and equality of access to meeting the social care needs of the population. The regulations will provide individuals who have an assessed need for care and support with an enforceable right to care and support from the local authority where that cannot otherwise be provided. The local authority will have a corresponding legal duty to provide, or arrange that care and support (support in the case of carers).

Consultation

A 12 week consultation on these Regulations ran between 6 November 2014 and 2 February 2015. Further details on the consultation process are set out in the Regulatory Impact Assessment in Part 2.

⁶ Access to Care and Wellbeing in Wales Report - SSIA - 2013

PART 2 – REGULATORY IMPACT ASSESSMENT

This Regulatory Impact Assessment should be read in conjunction with the Regulatory Impact Assessment for the Care and Support (Assessment) (Wales) Regulations 2015.

The argument set out in this paper states that there is no correlation between the point at which local authorities set their eligibility thresholds, and the cost per head of providing adult social care.

The conclusion therefore is that the eligibility criterion is not the primary determinate of the cost per head of adult social care.

The two graphs below show how the local authority average spend per head is spread across the local authorities.

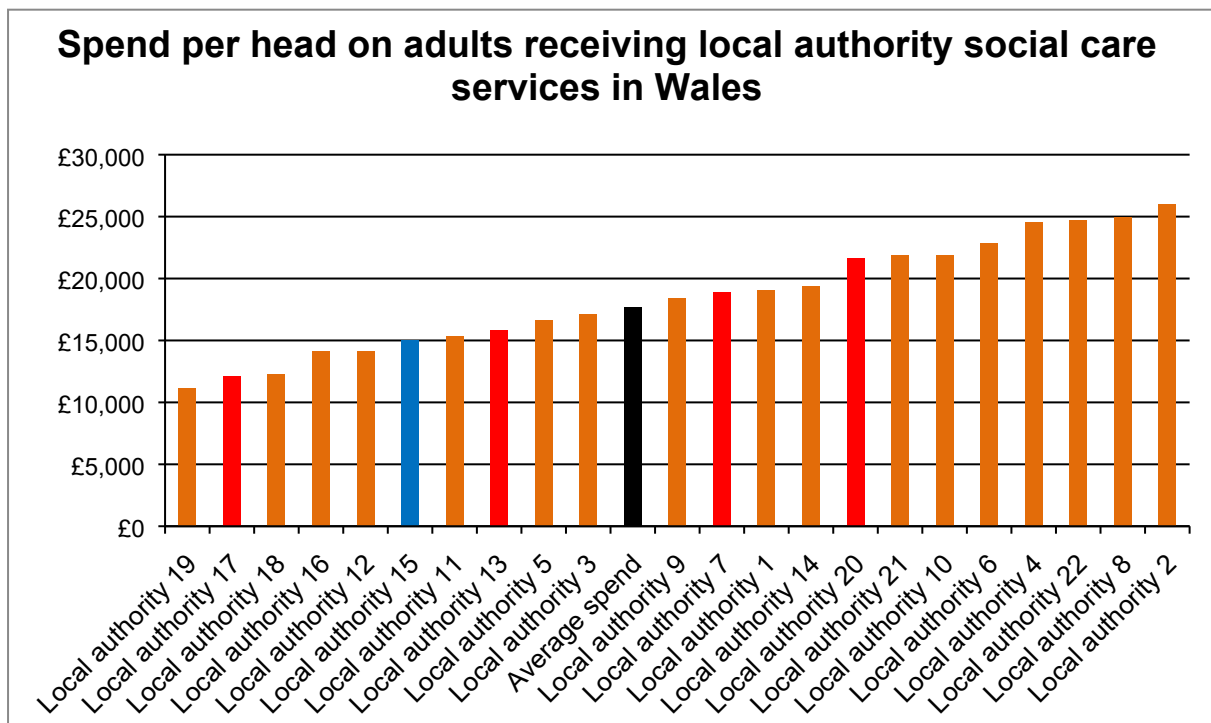
Graph 1 shows the spend per head on adults receiving local authority social care services in Wales; and

Graph 2 shows the spend per head of adult population on local authority social care in Wales.

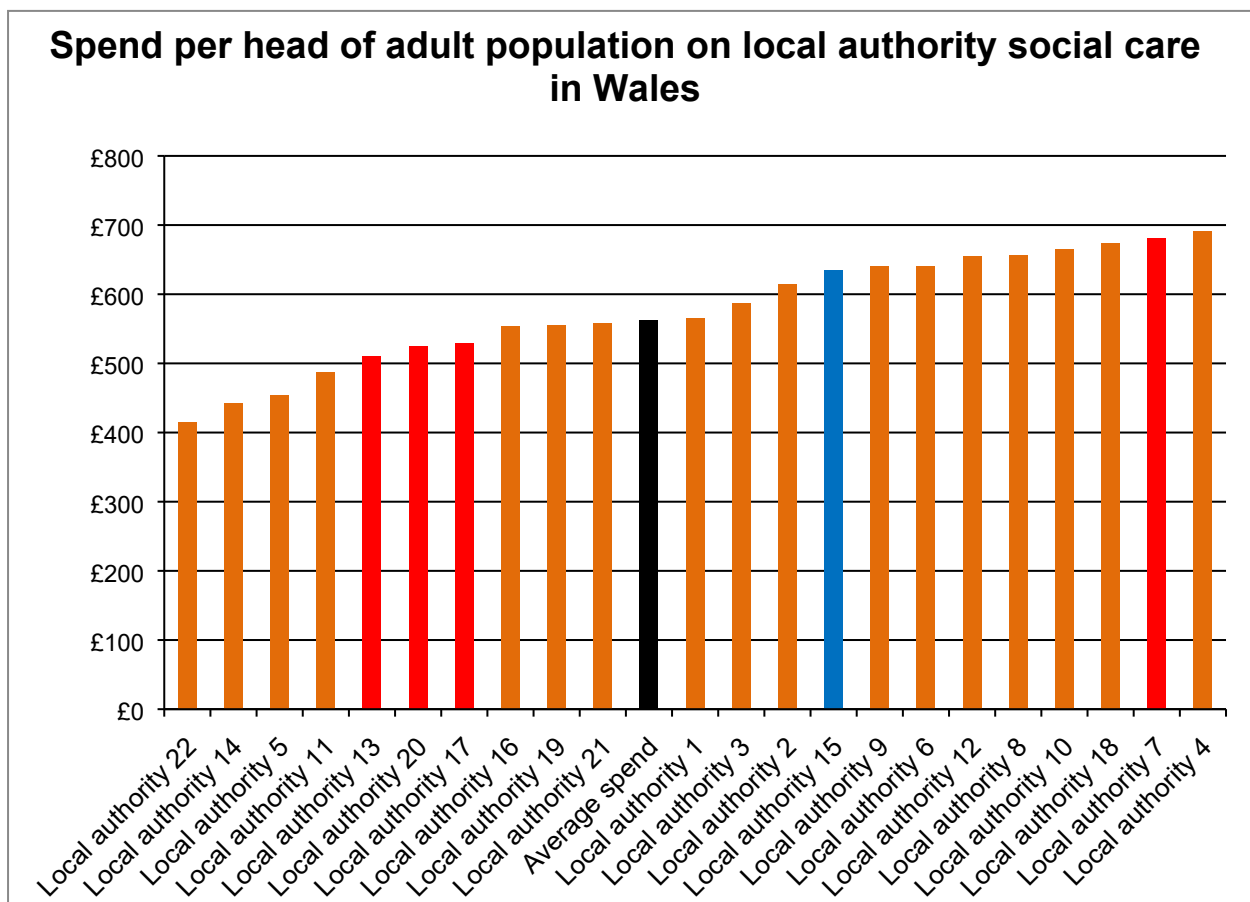
Each graph shows how the 22 local authorities in Wales set their eligibility criteria:

- The blue bar shows the authority that is currently working to a low threshold.
- The black bar shows the average spend per head across all authorities.
- The red bars show the four authorities who have set their threshold at moderate.
- The orange bars show the seventeen authorities who have set their threshold at substantial.

Graph 1. Spend per head on adults receiving local authority social care services in Wales



Graph 2: Spend per head of adult population on local authority social care in Wales



Overall both graphs show how the local authority average spend per head is spread across the local authorities.

Those four authorities (shown by the red bars) which are operating at 'moderate' on the threshold of eligibility for adult services show that costs for this group are spread across the chart. Both of the graphs show the four local authorities who have set their threshold at moderate, highlighted in red. In both cases three of these local authorities are providing social care at a lower than the estimated average spend per head, and one at a higher than the average spend per head. This further demonstrates that there is little correlation between the levels at which a local authority sets its threshold and the average cost per head of providing social care.

If the system remains the same the projected increase in the number of adults receiving social care in Wales is likely to rise by around 47,000 people between 2013 and 2030 (table 2 in annex 1).

As evidenced in table 8 of annex 1, if the average cost per head was spent on these additional adults the cost to the Welsh social care system is predicted to be an additional £600m by 2030. This is not sustainable, and this provides strong evidence of the need to change the system.

The strength of introducing the proposed new national eligibility criteria is that it removes the inconsistent application of setting local thresholds and creates national criteria for all local authorities to apply. At the same time, the proposed approach supports the delivery of early intervention and prevention, without the need for formal care and support plans in all cases, and this will enable more people to access and meet their wellbeing outcomes.

Options

This section of the Regulatory Impact Assessment presents three different options in relation to the policy objectives of the proposed Regulations. These options are consistent with those that were identified through the Eligibility Technical Group. The Technical Group was established by the former Deputy Minister for Social Services to advise the Welsh Government on producing Regulations and a Code of Practice. The Technical Group's report⁷, which outlines proposed options for the design of national eligibility criteria for Wales, can be found at document 1 of annex 1 (the evidence report).

All three of the options have been analysed in terms of how far they would achieve the Welsh Government's objectives, as set in the Sustainable social services for Wales framework⁸, along with the risks associated with each. All three options have been explored and the costs and benefits of each have been identified. However, it is recognised that there are limitations and challenges with projecting future demand for social care in Wales.

⁷ Options for the Eligibility Framework for Care & Support under Regulations stemming from the Social Services and Well-being (Wales) Act 2014 – Institute of Public Care – June 2014

⁸ Sustainable social services for Wales: a framework for action – Welsh Government - 2011

The options are as follows:

- Option 1: No national criteria specified
- Option 2: Create a national model setting the criterion at critical and substantial needs only
- Option 3: Create a consistent approach to meeting the social care needs of all of the population by setting an eligibility framework that will apply to all people.

As a basis for making projections on the future expenditure on social care under each option, the actual expenditure for 2010/11 (as reported on in the Community Care Statistics report⁹) and 2013/14 (most recent data collection) have been used to make estimates on the predicted expenditure for 2030. These estimates correspond with baseline projections by the House of Lords Committee on Public Service and Demographic Change.¹⁰ The data contained in the Regulatory Impact Assessment is based on current data and projections and provides indicative costings and scenarios.

This Regulatory Impact Assessment has explored the options and costings, and these are explored further in the evidence paper at annex 1.

Option 1: No national criteria specified

Option 1, as detailed in the report of the Eligibility Technical Group, is one where no national criteria would be specified. There would be no national criteria upon which to draw when making a judgement about whether an individual, and/or their family or carer, should receive social care and support to secure the solutions they need, this would be left to professional discretion and local criteria.

This is not a viable option as the Social Services and Well-being (Wales) Act 2014 requires Welsh Ministers to make regulations on how local authorities must determine whether needs meet an eligibility criteria. With no eligibility criteria set, Welsh Ministers would not be able to meet their duties under the Act.

Cost

The current estimated average cost of providing adult social care is estimated at £1,436m at 2013. This is predicted to rise to £2,043m by 2030, an increase of £607m over this period (table 9 in annex 1).

The main reason for this predicted rise in the cost of providing social care is the estimated rise of 44% between 2013 and 2030 in the number of those aged 85 years and over who are expected to receive a local authority service.

9 Community Care Statistics, Social Services Activity, England - 2013-14

¹⁰ <http://www.parliament.uk/business/committees/committees-a-z/lords-select/public-services-committee/report-ready-for-ageing/overview/>

Annex 1 shows that 11.1% of gross expenditure on adult social care is spent on assessment and care management (table 5). In Wales, this equates to £153m annually. However, given the projected increase in the population of those aged 85 years and over, it is likely, if the system remains the same that more funding will be required to keep pace with the demands for social care.

Annex 1 shows that the current system for determining eligibility for children is unlikely to alter significantly, and that this will not therefore impact on the costs of providing social care to children and young people.

The conclusion is that the projected rise in numbers of those needing to receive social care, particularly attributable to the rise in the population of those 85 years and over, and with the budgetary constraints in future years, is likely to cause local authorities to tighten their thresholds, and possibly screen more individuals out of the social care system. For children the level of provision may remain the same but overall the increases in demand are likely to result in resources being focused on people whose needs are substantial or critical to the detriment of those with low to moderate needs. This will mean that many people will not have their wellbeing outcomes met until they reach a substantial or critical level of need. Annex 1 (table 8) shows that providing social care at the critical and substantial level is far more expensive than at the moderate and low level.

Benefits

There are no extensive benefits under Option 1, other than if local authorities are not required to operate to a regulated framework for eligibility, they would be free to maintain their current eligibility systems and the processes associated with the assessment of needs. Staff will have experience of operating the system and there will be no immediate costs related to the re-training – although the prevalence of different systems will continue to mean added costs to local authorities with respect to re-training staff who have transferred in from elsewhere.

Risks

Option 1 was not recommended by the Eligibility Technical Group.

Without a more nationally consistent model of analysing eligibility in Wales, the future projections suggest that costs will be intensified and local authorities are likely to raise their thresholds as financial demands increase. This will mean an increase in the numbers of people who are not eligible for care until they reach a substantial /critical level. In turn this will introduce additional demands on the social care system.

Under Option 1 local authorities will continue to have the ability to adjust their local eligibility criteria, and they could operate at critical only if they chose to do so. However,

there will be no requirement for any criteria to be consistently applied by all authorities and there is no evidence that the thresholds applied will effectively ration the services effectively.

The Care and Social Services Inspectorate (CSSIW)¹¹ reported this trend in a review of access and eligibility criteria in adult social care. The CSSIW reported that the current system is a potential barrier to individuals receiving services and screened individuals out of eligibility.

This approach does not fit with existing requirements about having clear eligibility criteria for access to social care and support set out in the regulations.

11 National Review of Commissioning for Social Services in Wales - CSSIW - 2014

Option 2: Create a National model setting the criterion at critical and substantial needs only

Option 2, as detailed in the report of the Eligibility Technical Group, is one where a national eligibility criterion would operate at substantial and critical only.

Option 2 is similar to the current system in operation in Wales because the majority of local authorities in Wales operate at critical and substantial. Annex 1 shows that 17 local authorities are currently working to this model, 4 local authorities are working at critical, substantial and moderate and only 1 local authority is applying their criteria at all 4 levels (annex 1, table 6).

The Social Services and Well-being (Wales) Act 2014 requires Welsh Ministers to make regulations on how local authorities must determine whether needs meet eligibility criteria. Option 2 could, therefore, be a practical option to introduce.

Costs

As 17 out of 22 local authorities are already operating this model, there are unlikely to be any additional costing associated with the adoption of this approach. However, the same projections in growth of the population, particularly those aged 85 years and over, do impact on the feasibility of this model in the longer-term (as set out in Option 1 above).

Many of the costs associated with Option 1 also apply. The current cost of providing adult social care is estimated at £1,436m at 2013. This is predicted to rise to £2,043m by 2030, an increase of £607m over this period (table 7 in annex 1).

The main reason for this predicted rise in the cost of providing social care is the estimated rise in the number of those aged 85 years and over who are expected to receive a local authority service.

Annex 1 shows that 11.1% of gross expenditure on adult social care is spent on assessment and care management (table 5). In Wales this equates to £153m annually. However, given the projected increase in the population of those aged 85 years and over, it is likely, if the system remains the same that more funding will be required to keep pace with the demands for social care.

Annex 1 shows that the current system for determining eligibility for children is unlikely to alter significantly and that this will not impact on the costs of providing social care to children and young people.

The conclusion is that the projected rise in numbers of those needing to receive social care, particularly attributable to the rise in the population of those 85 years and over, will result in higher demand for local authority social care services. Under Option 2 local authorities must provide care at both substantial and critical level. . Applying Option 2 is likely to have little impact on those that have low to moderate needs and they are likely to continue to have unmet needs until they reach these or the stated threshold level and

the Graphs in annex 1 demonstrate that there is little correlation between the level at which the local authority sets its eligibility threshold, and the average unit cost per adult receiving local authority social care services or the average cost of local authority social care per head of the adult population

Benefits

Some 17 of the 22 local authorities are already operating this model and therefore this will require little or moderate change to implement. Staff will already be familiar with the approach and will not have to learn new arrangements.

There is anecdotal evidence that the structure of the Unified Assessment Process (UAP) framework has raised the standard of social care assessments, so keeping the approach would be beneficial. However, there is no identified objective measurement and the evidence suggests there is no consistent approach to decision making. For example, a recent survey of Fair Access to Care Services (FACS) in England (Fernandez & Snell 2012)¹², found significant variability between care managers in the assignment of people's needs to the four categories: low, moderate, substantial and critical; with the inference that the current system is not fair and consistently applied.

Slasberg¹³ argues that what happens in practice derives from the over riding imperative to ensure that spend matches budget. Once the budget is set, spend is matched to it by the definition of an 'eligible' need expanding or contracting according to budget availability. The eligibility threshold is used as little more than a crude signal as to relative generosity or tightness of the allocation of resources. One of the benefits of adopting Option 2 is that this is likely to result in local authorities' spend matching their budget in any given year but this is not necessarily the same as being able to address the needs of their population.

The Graphs in Annex 1 have been produced following a survey of local authority eligibility thresholds in Wales. The graphs show that there is no correlation between the threshold set for eligibility and the average cost per adult receiving care services. There is also no correlation between that threshold and the spend per head of the local authority population. The figures cast severe doubt on the viability of a needs-based eligibility threshold as a mechanism for managing demand for local authority social care services.

Just as with Option 1, there are no extensive benefits under Option 2, apart from if system remains the same local authorities will not be required to make any amendments to their current eligibility systems nor with the processes associated with the assessment of needs. There will be no costs related to the re-training of staff already working in the social care system.

12 Fernandez & Snell: Survey of Fair Access to Care Services (FACS) Assessment criteria among local authorities in England (ESHCRU) <http://eprints.lse.ac.uk/44404/>

13 Colin Slasberg: Toward a new eligibility framework that serves the interests of both service users and councils. Journal of Research, Policy and Planning Vol. 29 No. 1 © Social Services Research Group 2011/12

Risks

Option 2 was not recommended by the Eligibility Technical Group.

The eligibility threshold is a framework enabling local authorities to prioritise the use of adult social care resources, such that social care can be provided to those with the highest need i.e. substantial and critical, often to the exclusion of those with low to moderate needs. However, if low level needs are not met in a timely manner they are likely to escalate into higher level needs which in turn are more expensive to address. If these low level social care needs are not met, then there is a likelihood that the impact on the NHS in Wales is likely to increase, particular in respect of older people.¹⁴

Although Option 2 offers a set criterion of just substantial and critical, these would still not necessarily be applied consistently across Wales. The future projections on demographic changes suggest that costs will be intensified and local authorities are likely to raise their thresholds as financial demands increase. Just with Option 1, this is likely to mean that more people will not be eligible for care until they reach a substantial /critical level. In turn this will introduce additional demands on the social care system.

Under Option 2 local authorities will not have the ability to adjust their local eligibility criteria, and they must operate at both substantial and critical levels. However, without any way of ensuring this is consistently applied across all Welsh authorities this is unlikely to see any major change.

While this approach does meet the existing commitments about having clear eligibility criteria for access to social care and support set out in the regulations, it is likely that those with low to moderate needs are likely to continue to go unmet.

Any needs-based approach can only focus on a very limited proportion of the full range of factors which might have an impact on the final judgement about the kind of support which might be right for a specific individual and/or their family or carer – they centre on inability or deficits and the risks this poses. There is no mention of the strengths and capacity which a person might bring to bear to their situation, nor the outcomes they look to achieve – this does not fit for example with the Disability Wales Toolkit “Transforming Social Services; Towards and Enabling Wales” which was developed with the Welsh Government to inform policy makers, and others, as they develop guidance to underpin the Act.

¹⁴ Integrated Assessment, planning and review Arrangements for Older People, Dec 2013.

Option 3: Create a consistent approach to meeting the social care needs of all of the population by setting an eligibility framework that will apply to all people.

Option 3, as detailed in the report of the Eligibility Technical Group, is one where new national eligibility criteria would operate.

Of the three proposed options, Option 3 represents the greatest change and therefore the greatest risk. However, this is considered to be the only sustainable option that will deliver the commitments as set out in the White Paper: *'Sustainable Social Services for Wales: A Framework for Action'*¹⁵

Option 3 is very different from the current system in operation in Wales because it provides an opportunity to create a consistent approach to meeting the social care needs of all people and supports the concept of early intervention and prevention as being beneficial.

Under this option the traditional threshold for access to managed care and support will be replaced by a more responsive model. The process for establishing an individual's eligibility will be simplified, and will be based on the needs of the individual. The changes will bring clarity, transparency and consistency for those who deliver care, those who receive it, their carers and families.

In the report to the Welsh Local Government Association and NHS Confederation on the transitional and longer-term implications of the Social Services and Well-being (Wales) Bill 2013 it was observed that: "There has long been a call for eligibility to be aligned with the service user's needs, rather than as a tool to ration resources, and critics would argue that this has been how eligibility criteria have often been used in practice".

The proposed new system will ensure that people are able to receive help to meet their care and support needs whether they are deemed eligible or not – eligibility will mean that the individual requires a care and support plan to access and manage ways to meet their care and support needs; but those that are not eligible will still receive help and will be signposted to preventative well-being services in their community and encouraged to build on their own strengths, and those their network, to meet their needs. This will mean that more people will be supported earlier through preventative measures irrespective of whether or not the eligibility criteria has been met, and applied nationally. It will provide a consistent response across Wales. This option will create eligibility criteria based on a comprehensive set of five inter-related elements to ensure that local authorities consider a person's circumstances in the round.

The report of the Independent Commission on Social Services in Wales¹⁶ highlighted children in need and carers as particular areas where more timely, flexible responses are needed.

The Eligibility Technical Group recommended the eligibility framework that these regulations introduce as one that recognises the differences in the basis for care and support required by people at different stages of their life, and is sensitive to the

¹⁵ Sustainable Social Services for Wales: A Framework for Action – Welsh Government -2011

¹⁶ The report of the independent commission on social services in Wales – November 2010

differing needs, context and outcomes for children, adults and carers. Carers groups have told us that carers want to be recognised for their contribution, and to be able to access timely advice and support to help them care and to support their own well-being.

The second report of Professor Eileen Munro's¹⁷ review of Child protection, considered the child's journey through the child protection system – from needing to receiving help – to show how the system could be improved. It concluded that instead of “doing things right” (i.e. following procedures) the system needed to be focused on doing the right thing (i.e. checking whether children and young people are being helped). Professor Munro argued that: “Services have become so standardised that they do not provide the required range of responses to the variety of need that is presented. This review recommends a radical reduction in the amount of central prescription to help professionals move from a compliance culture to a learning culture, where they have more freedom to use their expertise in assessing need and providing the right help.”¹⁸

The rate of ‘Looked After’ Children per 10,000 under 18 years has risen steadily in Wales in the last ten years and is around 50% higher than the rate in England. Looked After status is not the best pathway for children to achieve the best developmental outcomes and a better assessment process linked to a different understanding of eligibility has the potential to reduce these numbers

The Munro review recommended that Government place a duty on local authorities and their statutory partners to secure the sufficient provision of local early help services for children, young people and families. This should lead to the identification of the early help that is needed by a particular child and their family, and to the provision of an offer of help where their needs do not match the criteria for receiving children's social care services.

The approach to eligibility set out in Option 3 is consistent with that analysis in that determining eligibility is not about giving a right to any one service, it is about guaranteeing access to care and support where without it well-being outcomes could not be met.

The Social Services and Well-being (Wales) Act 2014 requires Welsh Ministers to make regulations on how local authorities must determine whether needs meet an eligibility criteria. Option 3 could be a practical option to introduce.

Costs

Cost savings will be inherited from the assessment process. These are laid out in the Regulatory Impact Assessment for the Care and Support (Assessment) (Wales) Regulations 2015.

Welsh Government does not foresee any significant cost implications in removing the current eligibility threshold. The proposed approach to determining eligibility will

17 The Munro Review of Child Protection Interim Report: The Child's Journey Professor Eileen Munro –Department of Education - 2011

18 The Munro Review of Child Protection: Final Report A child-centred system Professor Eileen Munro – Department of Education - 2011

encourage local authorities to assist individuals to access local services themselves or support people to develop the skills and confidence they need.

Annex 1 demonstrates the cost savings that could be reached if local authorities reduced the expenditure on assessment and care management to 8% to match some local authorities in England (table 5). If these efficiencies can be met, they could represent savings amounting to £43m (based on 2013/14 figures) and these costs could be reallocated to be used for service delivery.

Annex 1 also shows there is little correlation between the level at which the local authority sets its threshold and the average cost per head of providing social care (both with regard to spend per head of the adult population and the spend per head of all adults receiving local authority social care services in Wales). Although there are four authorities in Wales that are operating at moderate level, their average unit cost per adult are very different.

There is one authority in Wales which is operating closely to the way on which the new proposed model would work (blue bar, Graphs 1 & 2). These graphs show that the average cost per head in this authority is below many of those currently operating at critical and substantial only. This is also borne out in Annex 1 (table 6) which shows that the average costs of meeting low needs could be significantly lower (almost a third) than the cost of meeting critical needs.

The conclusion is that if the eligibility thresholds are removed, and replaced with a more flexible interpretation of individuals' needs, this does not mean that costs will rise.

Benefits

This option was recommended by the Eligibility Technical Group as the sustainable option for the delivery of social care and support over the long term.

As noted above, there is little correlation between the level at which a local authority sets its eligibility threshold, and the average cost per head of providing social care. The model of eligibility proposed through Option 3 will establish a national framework for eligibility for social services that enables more proportionate responses. This will help an individual to meet their personal well-being outcomes at a much earlier stage, and will deliver more effective and citizen-directed care and support through a system that is less complex and more cost efficient.

The projections on demographic changes state that by 2030 the numbers of those aged 85 years and over, receiving social care will rise significantly. Annex 1 (table 2) shows the population projections based on age groups in Wales, 48% of those aged 85 years and over are estimated to receive local authority social care services; the highest proportion of any age group. So the overall rise in the number of those aged 85 years and over by 2030 is likely to place a significant demand on the social care system in Wales. It is estimated that, compared to 2015, by 2030 the social care system is going to have to address the needs of an additional 32,000 people in that age group (table 2). Option 3 will enable local authorities to meet this increased level of demand with a more flexible and responsive approach.

In September 2010 the Care and Social Services Inspectorate Wales (CSSIW) undertook a review of access and eligibility in adult social care¹⁹. The report concluded that the current system has become focused on screening people out of eligibility and is acting as a barrier that is stopping individuals from accessing services. As result, there is a growing section of the population with unmet need.

The strength of introducing the proposed new national eligibility criteria is that it removes the inconsistent application of setting local thresholds and creates national criteria for all local authorities to apply. At the same time, the proposed approach supports the delivery of early intervention and prevention, without the need for formal care and support plans in all cases, to enable more people to access and meet their wellbeing outcomes.

If low level needs are not met in a timely manner they are likely to escalate into higher level needs which in turn are more expensive to address. If, these low level social care needs are met before they escalate the cost of meeting these needs is substantially lower than meeting higher level needs (annex 1, table 6). In addition, the intention is that this approach will reduce the impact on the NHS in Wales, in particular in respect of older people, keeping individuals living independently in the community.²⁰

This framework for eligibility supports and encourages the cultural change to a different way of working that is introduced through the Act. It prioritises early intervention and prevention, and supports a shift in from a 'service-led' to 'citizen-directed' approach, which implies a shift away from the 'cliff-face' response to eligibility that FACS promotes.

The proposed system will provide clarity and consistency for a holistic approach, bringing together assessment and eligibility.

The proposed model has been subjected to a substantial design process through a programme of stakeholder engagement which will need to be followed by a comprehensive training and awareness raising exercise.

Risks

Of the three, Option 3 represents the greatest change and therefore the greatest risk. However, this is considered to be the only sustainable option that will deliver the commitments as set out in the 'Sustainable Social Services for Wales: A Framework for Action'²¹

This was the preferred option of the Eligibility Technical Group, which advised Welsh Government on producing Regulations and a Code of Practice on the determination of eligibility for care and support services under the Act.

19 National Review of Access and Eligibility Criteria in Adult Social Care – Care and Social Services Inspectorate for Wales - September 2010.

20 Integrated Assessment, planning and review Arrangements for Older People, Dec 2013.

21 Sustainable Social Services for Wales: A Framework for Action – Welsh Government -2011

The evidence, as set out in annex 1, is based on data that has not been fully tested. There is no precedent for the proposed new model. The draft regulations and code of practice have not been delivered before in the UK. However the likely demand on the social care system as a result of the population projections, against a backdrop of limited financial resources means that the current system is unsustainable. Therefore a new model is required.

Unless the workforce and population is adequately supported in making a smooth transition from the existing to the new system, Option 3 is not likely to meet its full potential. To militate against the risk Welsh Government has commissioned the Care Council for Wales to lead on the development and implementation of a national learning and development strategy.

This strategy is critical to the implementation of the Act and will need sustained, deliberate and high-profile leadership, which can reach out across a wide range of organisations and partners beyond the boundaries of the traditional social care sector.

The Care Council has developed this work with key stakeholders to ensure they have a strategy which covers all of those involved in the provision of social care, together with their key partners, and that it is delivered jointly and in collaboration with those partners.

The strategy includes a training deployment plan and a one-stop-shop resource hub, playing a key supporting role for the sector in ensuring its own readiness for the changes the Act and its regulations will bring into force. The Care Council for Wales will also update, publish on line and promote basic awareness raising material as a common tool for use across partners and support, encourage and monitor delivery. The resources and material developed by the Care Council will be made available free of charge to all organisations.

This work has been supported by £1m in 2015/16 from the Social Care Workforce Development Programme (SCWDP). A further £7.1m from the programme, together with the local authority match funding, making a total of some £11m will support the development and implementation of cross-sector regional training plans, which align with both the national strategy and regional implementation plans.

There will need to be a change in the structures and processes administered by local authorities to ensure that Option 3 is implemented effectively to support this change. A Delivering Transformation Grant was made available to the six regional partnerships in 2013/14 and 2014/15. Funding has doubled to £3m in 2015/16. This is in addition to the £20m already announced this year to carry on the work of projects funded through the Intermediate Care Fund and the £10m increase in the Revenue Support Grant for Social Services purposes. To ensure that the proposed new system continues to be embedded post April 2016 a further £3m in grant funding will be made available in 2016/17, subject to budgetary decisions.

Consultation

Welsh Government officials undertook a 12 week consultation on the regulations between 6 November 2014 and 2 February 2015. The consultation on parts 3 and 4 covered assessing the Needs of individuals, eligibility, direct payments and care planning.

There were 103 responses received from a variety of stakeholders, including the Welsh Local Government Association (WLGA), The Childrens Commissioner, The Older People's Commissioner, Social Services Improvement Agency (SSIA), Local Government representatives and Third Sector Organisations

There was general support for the proposed system change to an outcomes-based approach with a simplified assessment and care planning process and greater integration of services.

The responses flagged some potential changes to regulations and also outlined some areas of broader concern. These have been addressed through re-drafting of the codes of practice and amendments to regulations.

The priority from many responders is to reallocate resources to staff training and workforce development. The Care Council for Wales, as the lead body for workforce development, has been commissioned to lead on the development and implementation of a national learning and development strategy. The strategy is critical to the implementation of the Act and will need sustained, deliberate and high-profile leadership, which can reach out across a wide range of organisations and partners beyond the boundaries of the traditional social care sector.

Further detail on the consultation process can be found in the document at annex 2.

A detailed consultation response report has been published on the Welsh Government's website.

Competition Assessment

Competition Filter Test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulations do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisations?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

The filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.

Post implementation review

The Social Services and Well-being (Wales) Act 2014 contains provisions to allow for Ministers to monitor functions of the Act carried out by local authorities and other bodies. Ministers may require these bodies to report on their duties in implementing these regulations.

As set out under option 3 there is a considerable amount of work required both in the run up to and post implementation should the regulation be agreed.

The Welsh Government intends to commission an evaluation to enable the impact of the new national model of assessment and eligibility to be considered.

Additionally, officials will continue to monitor the impact of the regulation on areas such as the welsh language, the United Nations Convention on the Rights of the Child (UNCRC), The United Nations Principles for Older Persons and Equality.