**SOCIAL SERVICES AND WELL-BEING (WALES) ACT**

**SUMMARY**

**Assessing and Meeting the Needs of Individuals in the Secure Estate**

# Introduction

This is a summary of the Social Services and Well-Being (Wales) Act 2014 Part 11, Chapter 1. This summary forms part of the suite of learning materials that have been developed to support the implementation of the Act. It is intended for anyone who would like to know more about assessing and meeting the needs of adults and children (defined as those under the age of 18) in the secure estate i.e. in prison, youth detention accommodation, approved premises and bail accommodation.

# Context

The overall purpose of the Act is to reform and simplify the law: it repeals and supersedes many previous laws and guidance relating to care and support. The Act brings in new duties for local authorities, local health boards and other public bodies, and covers adults, children and carers. It is built on the following principles:

The Act aims to change the way people’s care and support needs are met – putting an individual, and their needs, at the centre of their care and support, giving them a voice in, and control over, reaching the personal outcome goals that matter to them

Central to the Act is the concept of **well-being** – helping people to maximise their own well-being

The Act attempts to rebalance the focus of care and support to **prevention** and earlier intervention – increasing preventative services to minimise the escalation of needs to a critical level

**Collaboration** – strong partnership working between organisations and
co-production with people needing care and support is a key focus of the Act

These principles apply equally to individuals with care and support needs in the secure estate as to those in the community.

There are new duties for local authorities in respect of adults with care and support needs who are in the secure estate in Wales and an extension of the duty of a local authority to visit a looked after child (LAC) or former LAC to all children in the secure estate and a change in how existing responsibilities for the care and support of children in the secure estate (whether detained in England or Wales) are fulfilled. Local authorities may commission or arrange for others to provide care and support services, or delegate the performance of the function to another party, but the responsibility for fulfilling the duty will remain that of the local authority.

Local authorities, secure estate establishments and partner criminal justice agencies must work together to implement the care and support pathways for those in the secure estate.

# Who is Responsible?

## Adults

A local authority with a secure estate establishment(s) within their boundary must meet the care and support responsibilities for adults detained in them **regardless** of the adult’s place of ordinary residence, in Wales or elsewhere, before their detention.

Adults ordinarily resident in Wales, but detained in England, will have their care and support needs met under the Care Act 2014 by the English local authority in which the provision is situated. If the adult is subsequently transferred to Wales, the Welsh local authority in whose area the provision is located will then have responsibility under the Social Services and Well-Being (Wales) Act 2014.

When a child in the secure estate reaches 18 they are legally regarded as an adult. The local authority where the provision is located to which that young adult is transferred takes responsibility for their care and support needs. In the majority of circumstances there is no continuing obligation upon the Welsh home local authority after the child reaches 18, unless the young adult is transferred to a provision within its boundaries. However, if a looked after child reaches 18 while in the secure estate, the home local authority retains its leaving care responsibilities, albeit that certain duties are suspended during the time the care leaver is detained. They are triggered again when the individual is released, for example the provision of accommodation, and support in respect of education and training.

## Children

Ordinary residence is a key concept in determining which local authority has a duty under the Act to assess and meet the care and support needs of a child:

If a migrant child or a child with no ordinary residency status is detained in Wales responsibility rests with the **Welsh** local authority where the child is detained

If a child with ordinary residency in **Wales** is detained in Wales**,** regardless of whether they had any previous involvement with social services, responsibility stays with their **Welsh** home local authority

If a child with ordinary residency in **Wales** was looked after under Section 20 or 31 of the Children’s Act 1989, they would remain the responsibility of their **Welsh** local authority, whether the child is detained in Wales or England

If a child with ordinary residency in **England** was looked after under Section 20 or 31 of the Children’s Act 1989, they would remain the responsibility of their **English** local authority, whether the child is detained in Wales or England

If a child with ordinary residency in **England** – who was either not previously known to social services, or had been assessed as being a child in need under Section 17 of the Children Act 1989 – is detained in Wales, responsibility rests with the **Welsh** local authority where the child is detained

If a child with ordinary residency in **Wales** is detained in **England**, and was not previously known to social services, there is **dual responsibility** on their Welsh home local authority and the English local authority where the child is detained

## Exclusions

Local authorities have the same duties to fulfil in respect of assessing and meeting the need for care and support of people in the secure estate just as they would with individuals living in the community, with the exception of the following provisions which are disapplied for both children and adults in custody. A person cannot:

Be a **carer** within the terms of the Act if they are detained in prison, approved premises or youth detention accommodation;

Receive **direct payments** towards meeting the cost of their care and support;

Express **preference for accommodation** while they are in custody although they would be able to do so if they were expressing a preference for accommodation they would occupy on their release; or

Have their **property protected** while they are in prison, youth detention or residing in approved premises.

# New Responsibilities

## Population Assessment

The Care and Support (Population Assessments) (Wales) Regulations 2015 require local authorities and local health boards to jointly assess the care and support needs in their area, which should include an assessment of the extent to which these needs are currently met or not met, and the range of services needed to meet these needs. For those areas with a secure establishment within their boundary the population assessment will need to take account of the care and support needs of individuals (adults and children) within the secure estate. Those areas without establishments will need to take account of the needs of people from their area who are detained elsewhere, especially children, for whom they will normally retain the main responsibility for meeting care and support needs.

## Information, Advice and Assistance

Local authorities will need to consider how information, advice and assistance is accessible by individuals within the secure estate who need it. Partnership working with criminal justice agencies will be key to this, and local authorities and secure establishments will need to work together on the most appropriate mechanisms for delivery of information, advice and assistance in their particular settings.

## Prevention

Local authorities mustprovide or arrange services that prevent or delay the development of people’s needs for care and support, and mustconsider, in partnership with others, how they will deliver preventive services needed by those in the secure estate. In many cases those in secure settings, whether adults or children, may not have eligible needs, but will benefit from preventative or harm reduction interventions. Here again collaboration is crucial as relevant experience and a range of provision is often already in place within secure settings through the criminal justice system. This means that in both planning services and in considering options with the individual, awareness of the full range of provision is important.

## Assessing and Meeting Needs

Local authorities need to take a holistic approach while individuals are detained and when planning for their release, mindful of the fact that release may be at short notice particularly in respect of remands and very short sentences. In meeting the care and support needs of an individual the local authority must undertake a proportionate assessment of the individual’s needs, determine eligibility and if their needs are eligible, develop a care and support plan that will promote the personal outcomes identified by the individual.

Assessments are the key mechanism for determining whether an individual has eligible needs. The assessment must record information in line with the national minimum core data set and analyse the five elements of assessment:

Assess and have regard to the **person’s circumstances**;

Have regard to their **personal outcomes**;

Assess and have regard to any **barriers** to achieving those outcomes;

Assess and have regard to any **risks** to the person if the outcomes are not achieved; and

Assess and have regard to the person’s **strengths and capabilities**.

The individual has an eligible need for care and support if an assessment establishes that overcoming barriers to achieving their personal outcomes requires the local authority to prepare and ensure the delivery of a care and support plan. This is the same assessment process and eligibility criteria for anyone living in the community.

The fluctuating needs of individuals can mean that they may require an assessment or review at various times such as upon entry into custody, during a sentence, or when transferring between establishments. If people entering a secure setting already have a care and support plan in place then admission should trigger a
re-assessment or review. Subsequent reviews should be conducted in accordance with the minimum requirements, which would include preparation and planning for transfer or release (resettlement).

While advocacy may be available through an appropriate individual (such as
family members) this will not always be accessible or appropriate and access to independent professional advocacy must be available, if required, for the individual to be able to fully participate in the care and support planning processes.