

## SOCIAL SERVICES AND WELL-BEING (WALES) ACT 2014

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The Secure Estate: adults with care and support needs in prison, approved premises and bail accommodation, and children with care and support needs in youth detention accommodation, prison, approved premises or bail accommodation



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# Introduction

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**Implementation of the Social Services and Well-being (Wales) Act 2014 requires very significant changes to the way social services are planned, commissioned and delivered.**

From April 2016, local authorities in Wales will be responsible for assessing and meeting the care and support needs of:

- Adults in the secure estate in Wales
- Welsh children who are in the secure estate whether in England or Wales
- Some English children placed in the secure estate in Wales.

NB The secure estate refers to prisons, approved premises, bail accommodation and youth detention accommodation.

## WHAT'S IN THIS SECTION?

An outline of the contents of the Code of Practice in relation to local authority responsibilities for adults in prison, approved premises and bail accommodation, and young people in youth detention accommodation.

Further information and links to relevant learning resources.

A blend of different materials, including presentations, research and evaluation reports, briefings, videos and links to other useful websites.



# What do the codes of practice say about adults in prison, approved premises and bail accommodation, and young people in youth detention accommodation?

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## **The Code of Practice on the exercise of social services functions in relation to Part 11 (Miscellaneous and General) of the Social Services and Well-being (Wales) Act 2014 ('the Code').**

Chapter 1 of the Code sets out the local authority duties under the Act for:

- Adults with care and support needs in prison, approved premises and bail accommodation in Wales (including those over 18 in youth detention accommodation)
- Children with care and support needs in youth detention accommodation, prison, approved premises or bail accommodation in England and Wales.

The intention of the Act is to ensure greater continuity of care and support to individuals:

- Before they enter the secure estate
- While they are in custody
- To help them plan for resettlement
- To support them on release.

The secure estate includes prisons, approved premises, bail accommodation and youth detention accommodation.

This section outlines the contents of Chapter 1 of the Code and must be read in conjunction with the Code of Practice and the Act itself.



# Contents of Chapter 1

Chapter 1 of the Code covers:

- Interpretations and definitions.
- The duties of local authorities in relation to:
  - adults with care and support needs who are detained in the secure estate
  - children with care and support needs who are detained in the secure estate (table 1 of the Code sets out local authority responsibilities in relation to the ordinary residence of the child, their status and detention location).
- Transition to adulthood while in the secure estate.
- Welsh adults in the secure estate in England.
- Portability and cross-border arrangements.
- Exclusions under the Act for both children and adults while detained in the secure estate (i.e. in relation to formal status as a carer, entitlement to direct payments, preferences for accommodation and protection of property).
- Working in partnership, including the requirement for local authorities to work in partnership with their internal and external partners; multi-agency public protection arrangements; multi-agency risk assessment conferences; the requirement for local authorities with a secure establishment within their boundaries to establish a memorandum of understanding between themselves, National Offender Management Service (NOMS)/Youth Justice Board.
- Meeting care and support needs (including population assessments; preventative services; information, advice and assistance; advocacy; assessment; eligibility; care planning; and equipment and adaptations).
- Safeguarding (including the relationship between Safeguarding Boards and the secure estate, and requirements in relation to safeguarding adults and safeguarding children).
- Aspects of care (including end of life care and continuing NHS care).
- Information sharing; charging; complaints; co-operating with inspectorates and investigations; and transition arrangements post-2016.

Annex 1 of the Code includes an outline of other relevant guidance, codes of practice and additional information.

Supplementary guidance to support the Part 11 Code of Practice provides further information, and annexes to the guidance include the respective national pathways for adults and young people in the secure estate.

# Where can I find further information?

This section draws on resources identified in the Code of Practice (Annex 1) and other sources including those suggested by partner organisations within Wales.

It includes materials that may be helpful in developing population assessments, as well as in designing training programmes for those with responsibility for supporting individuals while they are in the secure estate and following their release.

The Information and Learning Hub includes resources to support those working in the secure estate including a section on **Assessing and Meeting Needs in the Secure Estate**. This includes:

- **Level A materials** – these provide an overview of Chapter 1, Part 11 of the Act (Adults and Children in the Secure Estate) and a summary of the key messages and changes
- **Level B materials** – these are for those who work with adults in the secure estate and are designed to help them implement the changes
- An **e-learning module**
- **Case studies**
- A **briefing document** on the responsibilities of local authorities without secure estate establishments in their area.

The section on **Working with People in the Secure Estate** includes:

- **Supplementary Guidance to Support the Part 11 Code of Practice – Meeting the Needs of those in the Secure Estate**, including: a profile of need – adults and young people; background to the management of the secure estate; provision for adults in the secure estate in Wales and England; provision of children and young people under 18 years of age in the secure estate in Wales or England; families of people in the secure estate; resettlement and transfer; partnerships; workforce implications; resources; and healthcare.
- **Adults in the secure estate** – includes flowcharts that illustrate the care and support pathway for adults in the secure estate; presentations by Welsh Government, Housing Policy Division and local authorities; the Community Rehabilitation Company on transforming rehabilitation; NOMS presentation on approved premises in Wales; and a link to the Social Care Institute for Excellence's guidance on cross-border placements.
- **Children and young people in the secure estate** – includes a Welsh Government presentation; the national care and support pathway for children and young people in the secure estate and related flowcharts; and a presentation by Barnardo's Cymru about the impact of parental imprisonment on children and young people.
- **Video resources** – including Reversible Writing, a film by Families Outside from the perspective of a young man whose father is in prison; and Invisible Walls, a production by G4S about an initiative that aims to strengthen family ties when a family member is imprisoned.

Local authorities have powers to detain a child against his or her will in certain circumstances, for their own safety or the safety of others. Secure accommodation for children is governed by Section 119 of the **Social Services and Well-being (Wales) Act 2014** and the **Children (Secure Accommodation) (Wales) Regulations 2015**. The relevant guidance is in the **Part 6 Code of Practice** on pages 142-151 (paragraphs 707-758).

It should be noted that some of the following resources pre-date implementation of the Social Services and Well-being (Wales) Act 2014 and highlight issues that the Act and relevant codes of practice aim to address.

A report by Age UK (2011) **Supporting Older People in Prison: Ideas for Practice** summarised the findings from a range of research and inspection reports available at the time and concluded there was evidence that older prisoners:

- Were accommodated in a regime designed for and largely inhabited by young and able-bodied people.
- Were “a largely compliant population”.
- Experienced poor levels of engagement between prisons and local agencies, especially local authority social services departments.
- Lacked any explicit policy or guidance that supports effective commissioning for their needs, resulting in confusion across the system as to who is responsible for what.
- Were supported by prison staff who are untrained in the needs of older people.
- Suffered high levels of chronic health problems that affect their ability to cope in prison and in the community, particularly mental health problems such as depression.

A report produced by the Prison Reform Trust, ADASS, the Centre for Mental Health and Revolving Doors Agency (2012) **Making the Difference: The Role of Adult Social Care Services in Supporting Vulnerable Offenders** found that:

- 39% of adult offenders under supervision in one probation area had a current mental illness, and 49% had a history of mental health problems (Brooker et al, 2011).
- 75% of adult prisoners have a dual diagnosis of mental health problems and substance misuse (Offender Health Research Network, 2009).
- 7% of adult prisoners have an IQ below 70 and a further 25% have an IQ in the range 70-79 (Mottram, 2007). The report suggests that it is generally acknowledged that between 5 and 10% of the offender population has a learning disability.
- 15% of newly sentenced prisoners reported being homeless before custody, 37% said they would need help finding somewhere to live when released, and 60% said that having a place to live would help them stop reoffending (Ministry of Justice, 2012).
- 40% of young people in custody have previously been homeless (Youth Justice Board, 2007).
- 43% of children and young people on community orders have emotional and mental health needs (Healthcare Commission, 2009).
- 25% of children and young people who offend have an IQ below 70 (Harrington & Bailey, 2005), and 60% have communication difficulties (Ryan, Freer and Furlong, 2007).

A **Prison Health Needs Assessment** undertaken by Public Health Wales (2013) suggests that of approximately 3,300 adult males currently held in prisons across Wales, **only 8% were estimated not to suffer** from any sort of mental health problem, including personality disorder (c.1,800), functional psychosis (c.200), neurotic disorder (c.1,200), alcohol problems (c.1,800) and drug use prior to entering prison (c.1,800). The report acknowledges that these estimates are not precise and do not take account of age or prison security category, etc.

A project undertaken by the Youth Justice Board, Cymru Division to profile **Young People who are Prolific Offenders in Wales** (2012) showed that significant numbers of young people involved with social services had no qualifications and had been referred to mental health services. Over a third were, or had been, placed on the child protection register, had experience of absconding or staying away from home, and were identified as having special educational needs.



The Youth Justice Board and the Royal College of Speech and Language Therapists have jointly published practice advice: **Speech, Language and Communication Needs (SLCN) in the Youth Justice System** (2015).

**The Harris Review (2015) *Changing Prisons, Saving Lives*** is a report of the independent review into self-inflicted deaths in custody among 18-24 year olds in England and Wales. The review focused on 87 young people who died between April 2007 and December 2014, and highlights a number of potential vulnerability factors including:

- **Individual development and maturity** – “Individuals mature at different rates, and many young adults in the criminal justice system exhibit developmental levels more characteristic of a far younger age group” (Criminal Justice Alliance, paragraph 4.8).
- **Life experiences** – “There is a wealth of evidence to indicate that the majority of children and young people in the youth justice system in England and Wales come from the most deprived and disadvantaged families and communities, and their lives are characterised by disruption, neglect and impoverished social landscapes. Many have experienced abuse and neglect and those who move through both the welfare and youth justice systems into custodial institutions tend to have particularly complex needs” (Office of the Children’s Commissioner (OCC) for England, paragraph 4.23).
- **Loss and bereavement** – The OCC also noted that “traumatic loss and separation figure highly among children and young people who offend” (paragraph 4.24) and the Prison Reform Trust submission referred to “evidence from studies... that children who take their own lives have often experienced the untimely death of close relatives”. The Howard League also highlighted “a surprising high number of young adults in custody (who) are grieving the loss of loved ones” (paragraph 4.24).
- Other submissions described concern about the numbers of young adults in custody who have **acquired brain injuries** and/or **neuro-disability** and histories of **substance misuse** (paragraph 4.26).
- **Young adult women** – INQUEST’s submission noted that “many young women enter the criminal justice system as a result of unmet welfare needs including neglect, abuse and poverty” and a submission from Women in Prison suggested that “women have higher rates of trauma, victimisation, substance abuse and mental health issues” (paragraph 4.28). Additional pressures for women may include separation from children and discrimination “caused by a criminal justice system designed for its majority male population” (paragraph 4.29). An analysis undertaken by the Ministry of Justice in 2013 on gender differences in substance misuse and mental health among prisoners found that female prisoners reported poorer mental health than both women in the general population and male prisoners. This was true in relation to self-harm, suicide attempts, psychoses, anxiety and depression<sup>1</sup>.
- **Black, Asian and minority ethnic groups** – 15 of the 87 (17%) young people who died had identified themselves as being from a BAME background. The HMIP (2014) review of the Zahid Mubarek recommendations found that black and minority ethnic groups were more likely to report feeling unsafe than their white counterparts<sup>2</sup>.
- **Care leavers** – The Harris Review suggests that lack of reliable data probably results in an underestimation of the number of care-experienced children and young people in custody, and that the corporate parenting role was rarely evident for young adult care leavers in custody. NOMS estimated that care leavers make up 27% of the adult prison population (paragraphs 4.45 to 4.57).

<sup>1</sup> Ministry of Justice (2013) Gender Differences in Substance Misuse and Mental Health Amongst Prisoners – Results from the Surveying Prisoner Crime Reduction (SPCR) Longitudinal Cohort Study of Prisoners. Ministry of Justice Analytical Series, Ministry of Justice.

<sup>2</sup> HM Inspectorate of Prisons (2014) Report of a Review of the Implementation of the Zahid Mubarek Inquiry Recommendations: A Thematic Report. London: HMIP.

- **Mental health and learning difficulties** – Along with early experience in state care “mental health issues, learning difficulties and disabilities are key factors underpinning vulnerability” (paragraphs 4.20 and 4.58-4.62).
- However, having considered the range of evidence, the review also emphasised that **“all young adults in custody are potentially vulnerable”** and need to be given particular care.

The Harris Review also highlights elements of the prison experience that are particularly likely to adversely affect young people, for example:

- **Transitions** between prison establishments – including between the youth justice and adult secure estate – were highlighted as a particularly vulnerable time for young adults, for example “despite the fact maturity is a gradual process, the support that is offered young people who are under 18 virtually disappears overnight once they turn 18” (paragraph 4.78). Transitions can be particularly difficult especially where these involve a move further away from home or from friends in prison who had offered support.
- **Information sharing** – “An area of repeated failure relates to the transfer of information” especially in relation to medical information and risk assessments. This was highlighted as a particular issue in relation to vulnerable young people transferring from the youth estate (paragraph 4.84).
- **Early days in custody** can be a particularly vulnerable time both in terms of the initial experience of custody and the period immediately following transfer within the secure estate. The first days and weeks are particularly significant – 21% of recorded deaths happened within the first week and almost half (48%) happened within less than three months.
- **Enabling early contact with family and friends** was identified as a significant protective factor, and delays in contact were a particular source of stress and anxiety (paragraph 4.103).
- **Staff-prisoner relationships** – “There was strong agreement that staff capacity to form and sustain high quality staff-prisoner relationships supported SID (self-inflicted death) prevention” (paragraph 4.108).

The Association of Directors of Adult Social Services (ADASS) in England conducted a survey of **Social Care Activity in Prisons and Approved Premises – Quarter 1 2015-16** (the first three months following implementation of the Care Act 2014).

While the findings relate to England, they may be helpful in identifying potential learning in implementing Part 11 of the Act. Based on data from 79 of the 115 prisons in England, the key findings included:

- Local authorities received 10 referrals or fewer from 60 out of 79 prisons during the first three months and 41 out of 79 provided five or fewer. ADASS suggested that where there were low numbers of referrals, local authorities should consider meeting with prison staff to ensure they understood the role of local authorities and the value of social care, and that NOMS might consider exploring the reasons for the wide differences in referral rates.
- The survey identified particularly low referral rates for prisoners with learning disabilities and autistic spectrum conditions: almost 88% of referrals to social services from prisons concerned prisoners with physical disabilities, with only 4.3% for learning disabilities and 0.4% for autistic spectrum conditions. The report notes that research estimates for the percentage of the prison population with a learning disability or autistic spectrum condition varies from 7% to 30%: “the suggestion that there is an underestimation of such individuals would appear to have some validity... Local authorities, prisons and healthcare providers are advised to consider how effective local approaches are in respect of this population”.



- The report suggests that the low level of referrals for mental health (7.1% overall) and substance misuse (0.4%) **may** be a reflection of there being dedicated services for these conditions established within prisons, but emphasised the need to be confident that the social care needs of these prisoners are not being overlooked. Furthermore, the report notes that:  
 “In the community there is well established practice of health and social care professionals working together in an integrated way to respond to the needs of people with mental health issues, substance misuse, learning disabilities or autistic spectrum conditions but this is not the experience in prisons in recent years. Local authorities and prison health care commissioners and providers might wish to explore how a more integrated approach to meeting prisoners with these needs might be developed.”
- The report also highlighted some wider concerns about thresholds: while 74% of referrals led to a care and support assessment, this varied significantly between client group and between prisons. In this context, the report notes that local authorities have a responsibility to:  
 “Provide advice, information and guidance to citizens to enhance their well-being and provide preventive support to reduce either the timing or severity of social care needs developing later. Local authorities need to assure themselves that they understand what this means in the context of prisoners and are providing it and not setting so high a threshold for eligibility for a care and support assessment that it effectively denies prisoners access to this valuable entitlement.”
- The report also suggests that local authorities, prisons and health care providers might wish to review the provision of information for prisoners to allow them to self-refer for assessment and to provide information in accessible formats to enable them to do so.

In 2015, HMIP published a thematic report on **A Joint Inspection of the Treatment of Offenders with Learning Disabilities within the Criminal Justice System – Phase 2 in Custody and the Community**, which expressed serious concerns about the identification of prisoners with a learning disability or autistic spectrum condition, and the prisons’ abilities to respond to their specific needs, keep them safe and provide appropriate therapeutic support.

A survey published by the Local Government Association on **Social Care Needs in Prisons** (2014) in England undertaken prior to implementation of the Care Act 2014 found that:

- Less than 1% (0.9%) of the total prison population was reported to have one or more personal care needs.
- An estimated 5.5% of prisoners aged 50 years or over had one or more personal care needs, compared with 0.2% of prisoners aged under 50.
- The proportions of prisoners with personal care needs increased with age – 12.6% of 65-74 year olds and 22.7% of those aged 75 and over had personal care needs.
- Help with moving, bathing, eating and drinking, and washing were the personal care needs most commonly reported for prisoners aged 50 years or over.
- The most common form of staffing for meeting personal care needs was through the prison health care service but the **majority of hours of personal care provision came from other prisoners.**

The authors note that **limitations to the questionnaire responses mean the findings could only be considered indicative and caution should be taken in using these figures.**

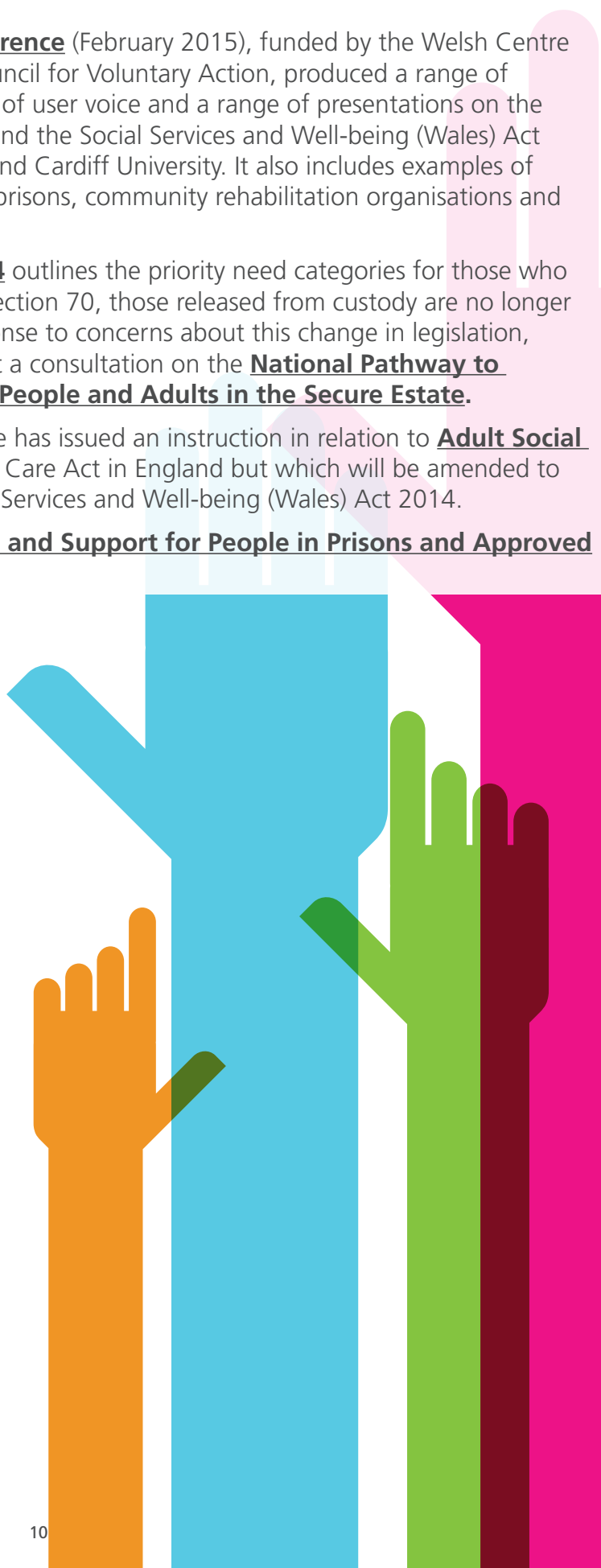
The findings from this survey in relation to levels of reported need should also be compared with the findings from the ADASS report (see page 8) in relation to the availability of information and advice, as well as knowledge and perceptions within prisons of the role of local authorities and the value of social care.

A **Prisoners' Housing and Social Care conference** (February 2015), funded by the Welsh Centre for Crime and Social Justice and the Wales Council for Voluntary Action, produced a range of useful materials including case studies, records of user voice and a range of presentations on the implications of the Housing (Wales) Act 2014 and the Social Services and Well-being (Wales) Act 2014 from Welsh Government, NOMS Wales and Cardiff University. It also includes examples of good practice from third sector organisations, prisons, community rehabilitation organisations and local authority housing departments.

**Section 70 of the Housing (Wales) Act 2014** outlines the priority need categories for those who require additional support and, as a result of Section 70, those released from custody are no longer automatically eligible for priority need. In response to concerns about this change in legislation, the Welsh Government has recently carried out a consultation on the **National Pathway to Homelessness Services to Children, Young People and Adults in the Secure Estate**.

The UK National Offender Management Service has issued an instruction in relation to **Adult Social Care and Safeguarding**, which applies to the Care Act in England but which will be amended to take account of the requirements of the Social Services and Well-being (Wales) Act 2014.

Skills for Care has published a briefing on **Care and Support for People in Prisons and Approved Premises** under the Care Act 2014 in England.



## Other relevant legislation, guidance, codes of practice and additional information

In response to the **Law Commission Report** (recommendation 69, page 197, section 11.133), Welsh Government, along with UK Government, agreed to make it explicit to include prisoners in their respective legislations: the Social Services and Well-being (Wales) Act 2014 and the Care Act 2014.

**Care Act 2014 and the associated supplementary guidance** provide useful context for prisoners who are returning to Wales from English prisons and other secure estate facilities.

**Care Act 2014 – Section 76 Prisoners and persons in approved premises, etc** sets out provisions within the Care Act that provide care and support for adult prisoners in the secure estate in England (this includes adults in approved premises and other bail accommodation, as well as people aged over 18 in young offender institutions, secure children's homes and secure training centres).

**Housing (Wales) Act 2014** provides details of the new duties on local authorities in respect of providing prevention focused homelessness services, new registration and licensing requirements for private sector landlords, powers for local authorities to increase council tax charges on second homes, and requirements to meet the accommodation needs of gypsies and travellers. The Act came into effect in April 2015.

**Mental Health (Wales) Measure 2010** sets out arrangements to help people with mental health problems by:

- improving access to primary mental health support services
- improving care and treatment planning for people using secondary mental health services

**Policy Implementation Guidance for Mental Health Services for Prisoners 2014** sets out a vision for mental health services for prisoners and identifies some issues that will need to be addressed to get there.

**Legal Aid, Sentencing and Punishment of Offenders Act 2012** sets out provision about legal aid; provision about bail and remand otherwise than on bail; to make provision about the employment, payment and transfer of persons detained in prisons and other institutions; to make provision about penalty notices for disorderly behaviour and cautions; and to, among other duties, amend Section 76 of the Criminal Justice and Immigration Act 2008 (self-defence). Section 104 designates that a child who is remanded to youth detention accommodation is to be treated as a child who is looked after by the designated authority.

**Criminal Justice and Immigration Act 2008** sets out further provision about criminal justice (including provision about the police) and dealing with offenders and defaulters; to make further provision about the management of offenders; to amend the criminal law; and among other duties, makes further provision for combatting crime and disorder.

The **Offender Rehabilitation Act 2014** extends statutory supervision in England and Wales to around 50,000 offenders with sentences of less than 12 months. These offenders will serve their whole sentence in a resettlement prison.

**Access to Justice.** A multi-agency guidebook supporting the responsive and appropriate management of adults with a learning disability in the criminal justice system in Wales published in 2013. It is intended to support commissioners, planners and practitioners across health, social care and criminal justice services in Wales in improving service provision.

The **Wales Reducing Reoffending Strategy: 2014-2016** provides a vehicle through which collaborative working can be enhanced, thereby ensuring resources can be targeted to their maximum effect. A key objective within the strategy is to put in place measures to ensure all offenders have access to health and social care services appropriate to their needs.

The **Policing and Crime Act 2009** extends the mandate to formulate and implement a strategy to reduce reoffending to local authorities as a responsible authority within Community Safety Partnerships (CSPs). This duty requires local areas to fully understand offender profiles, the ways in which services can address the needs of offenders and critically, where resources should be targeted to achieve a reduction in reoffending.

**Youth Justice Board for England and Wales Order 2000.** In April 2000, the Youth Justice Board for England and Wales (YJB) took responsibility for commissioning places in the secure estate for children and young people in England and Wales, and for placing them after they had been remanded or sentenced by the courts.

**Children and Young People First.** The Welsh Government and Youth Justice Board's joint strategy to improve services for young offenders or those at risk of offending.

**Crime and Disorder Act 1998.** The precise requirements of the Act are that youth offending teams shall include at least one of each of the following: (a) an officer of a local probation board or an officer of a provider of probation services; (b) a social worker of a local authority; (c) a police officer; (d) a person nominated by a local health board, any part of whose area lies within the local authority's area; (e) a person nominated by the chief education officer appointed by the local authority.

**Youth to Adult Transition Principles and Guidance for Wales.** Improving the way youth offending teams and the National Probation Service work together.

**Joint Guidance on Mental Health in the Youth Justice System.** Policy implementation guidance to address the mental health problems of children and young people in the youth justice system.

**National Standards for Youth Justice Services.** Standards for youth justice services, for youth offending teams and other professionals working with young people in the justice system.

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