



Llywodraeth Cymru  
Welsh Government

# **The Social Services and Well-being (Wales) Act 2014 – Consolidation and Reform**

## **Training for local authority lawyers - February 2016**

**Welsh Government Legal Services**

# Outline

- Introduction – key drivers for the reform of social care law in Wales
- Reform – key changes made by the Act
- Consolidation – incorporation of existing law
- After-care services under section 117 of the Mental Health Act 1983
- Commencement and transitional arrangements

# Introduction (1)

- Law Commission report on Adult Social Care (2011)
- The Act gives effect to key recommendations of the Law Commission:
  - Broad power to provide “community care services”
  - National eligibility criteria
  - Simplification of the law relating to assessment of the needs of carers
  - Statutory principles
  - “General” and “enhanced” duties of co-operation

# Introduction (2)

- A PEOPLE APPROACH
  - Decision taken at an early stage to bring together the core functions of local authorities as regards both adults and children
- LEGAL POLICY CONSIDERATIONS
  - Consolidation
  - Welsh Language
  - Accessibility and clarity of law
- SUSTAINABLE SOCIAL SERVICES
  - Growing needs
  - Difficult financial climate
  - Need for emphasis on prevention and early intervention



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# The Parts of the Act

1. Introduction

2. General  
Functions

3. Assessing the  
Needs of  
Individuals

4. Meeting  
Needs

5. Charging and  
Financial  
Assessment

6. Looked After  
and  
Accommodated  
Children

7. Safeguarding

8. Social  
Services  
Functions

9. Co-operation  
and Partnership

10. Complaints  
and Advocacy

11.  
Miscellaneous  
and General

# Part 1: Introduction: Key terms - “well-being”

- “Well-being” in relation to a person, means well-being in relation to any of the “well-being outcomes” listed in section 2(2)
- In relation to a child, “well-being” also includes –
  - physical, intellectual, emotional, social and behavioural development;
  - “welfare” as that word is interpreted for the purposes of the Children Act 1989.
- In relation to an adult, “well-being” also includes –
  - control over day to day life;
  - participation in work.



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# Definition of well-being for adults





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# Definition of well-being for children





# **Part 1: Introduction: Key terms - “Care and Support”**

- Section 4: Any reference to care and support in this Act is to be construed as a reference to-
  - a) care;
  - b) support;
  - c) both care and support.

## Part 2: General functions

- Well-being duty
- Overarching duties
- Local needs assessments (population assessments)
- Preventative services
- Promoting social enterprises etc
- Provision of information, advice and assistance
- Registers

# Well-being and other overarching duties



*“The Act will transform the way social services are delivered, promoting people’s independence to give them a stronger voice and control.”*

You also need to follow the other overarching duties:

- Views, wishes, feelings
- Participation
- Dignity
- Culture

A person exercising functions under this Act **must** seek to promote the well-being of individuals.

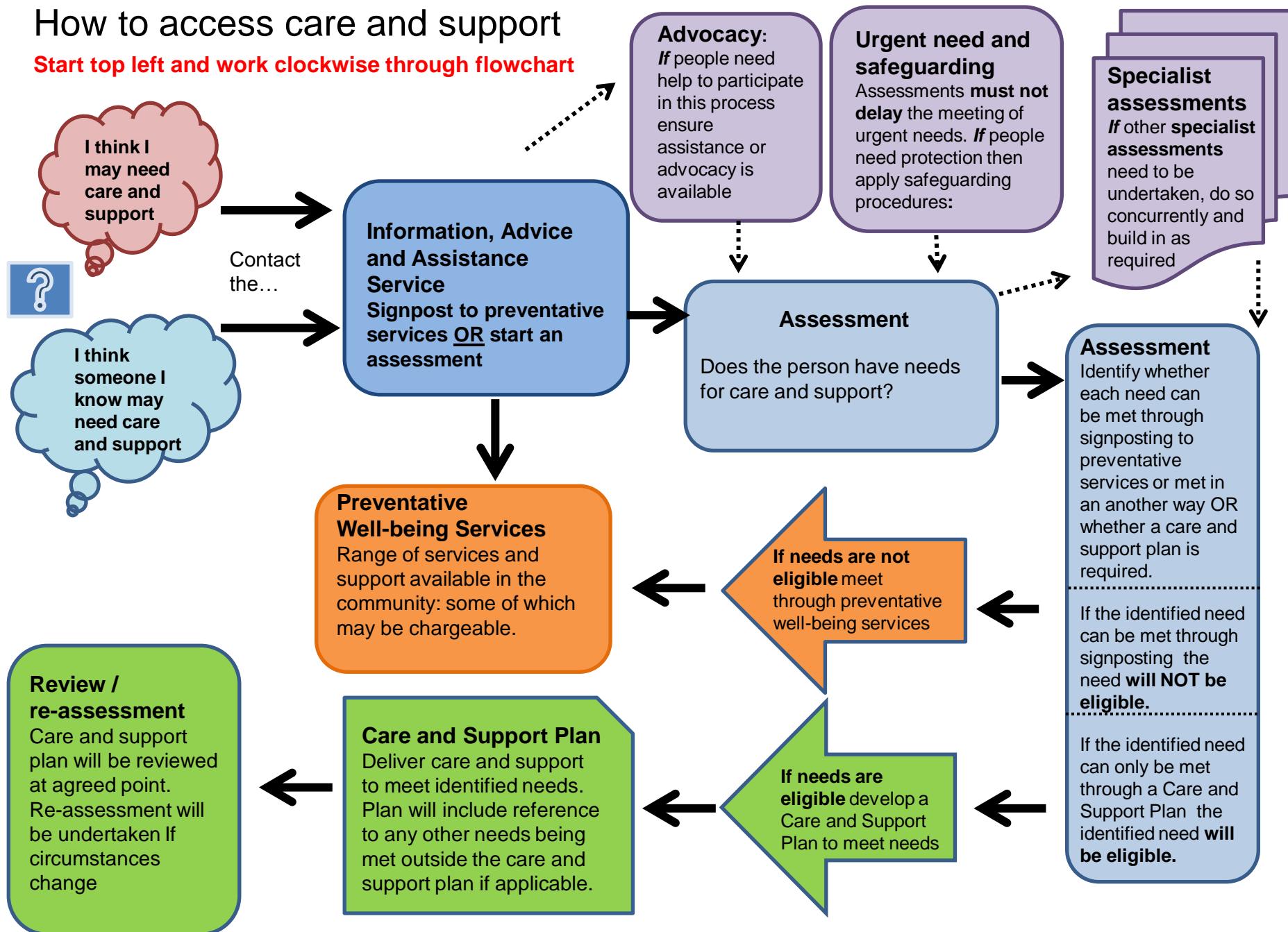
Human rights

# Overarching duties – section 7

- Duty to have due regard to the UN Principles for Older Persons (when exercising functions in relation to adults)
- Duty to have due regard to the UN Convention on the Rights of the Child (when exercising functions in relation to children)
- Code of Practice on Part 2 also requires local authorities exercising social services functions in relation to disabled people to have due regard to the UN Convention on the Rights of Persons with Disabilities

# How to access care and support

Start top left and work clockwise through flowchart





# Preventative services

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- Local authorities must ensure a range and level of preventative services which:
  - Help prevent, delay or reduce needs for care and support
  - Promote the upbringing of children by their family
  - Minimise the effect of people's disabilities
  - Help prevent abuse or neglect
  - Enable people to live as independently as possible
  - Reduce the need for: care or supervision orders; criminal proceeding against children; taking children into local authority care or secure accommodation
- Local health boards must also take a preventative approach that helps to achieve these aims

# Promoting Social Enterprises

- New general duty on local authorities to promote social enterprises, co-operatives, user-led services and the third sector
- See the code of practice on Part 2
- See also the regulations made under section 16 of the Act which provide further detail about the sorts of organisations or arrangements which are or are not to be treated as social enterprises or co-operatives.



# An information, advice and assistance service



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- A duty on local authorities – with support from their local health board – to ensure the provision of an information and advice service for **all** people in their area
- Assistance in accessing that care and support

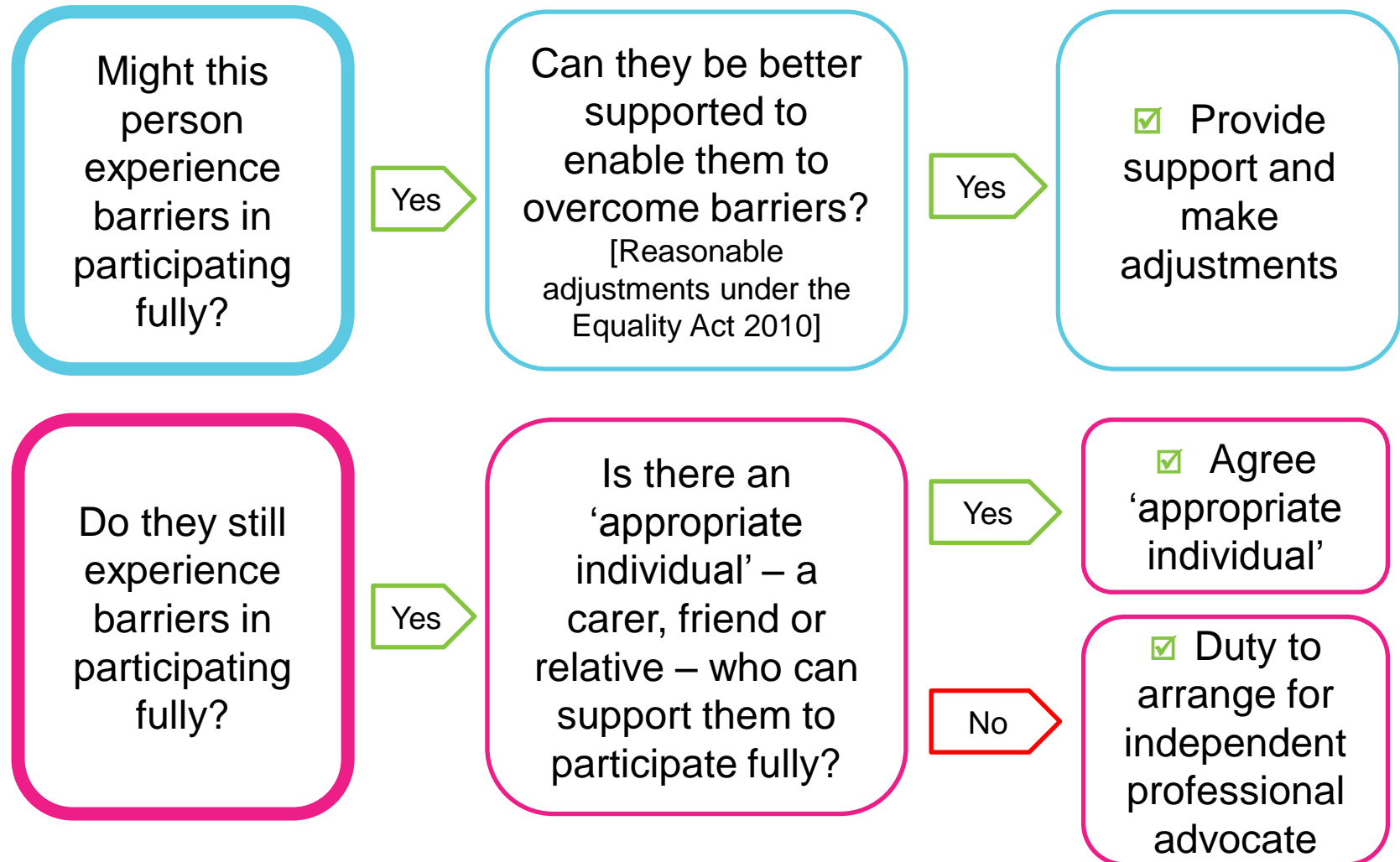






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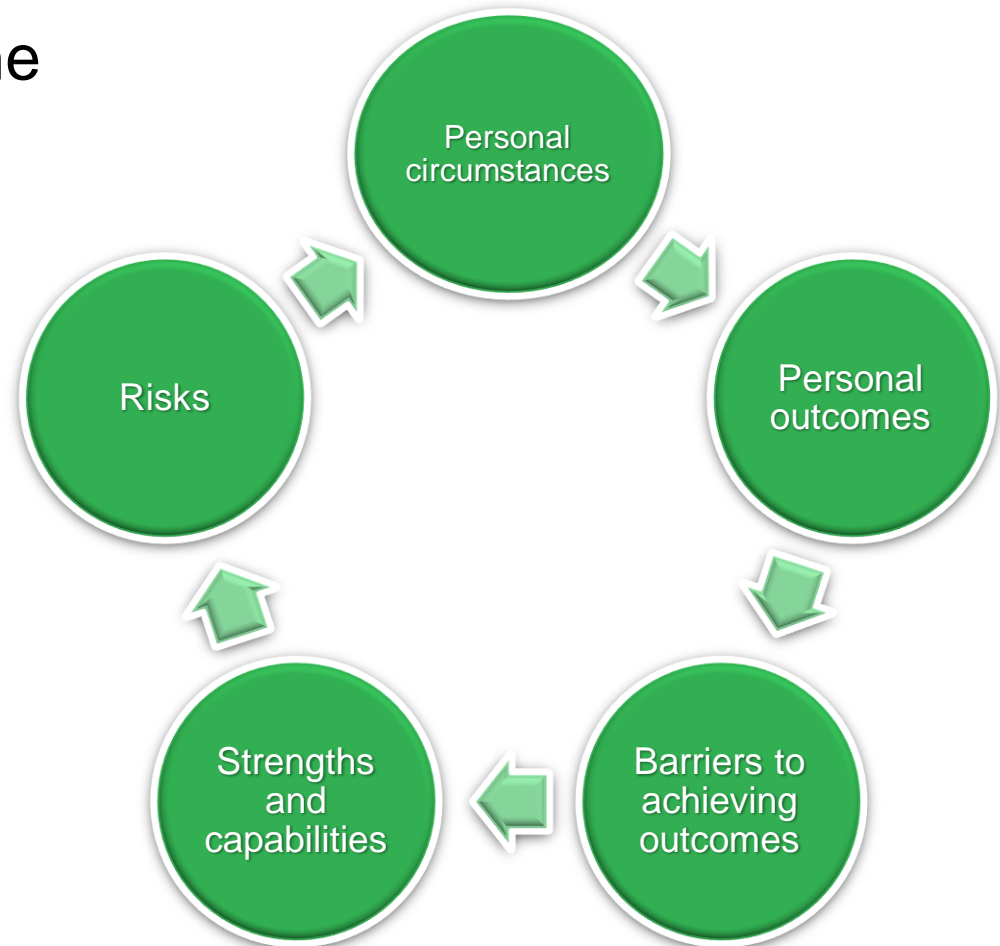
# Advocacy





# Assessing the needs of individuals

- The right to an assessment based on the appearance of need for care and support
- Regardless of the level of need or financial resources
- Aims to simplify assessments through a single process for children, adults and carers





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# Carer's assessment



Must assess whether the carer has needs for support



Duty to assess applies regardless of financial resources



Is the carer able and willing to provide care?



Personal outcomes

## Definition of a carer

*“A person who provides or intends to provide care for an adult or a disabled child”*

Professional carers who receive payment should not be regarded as carers for the purposes of the Act, nor should people who provide care as voluntary work.

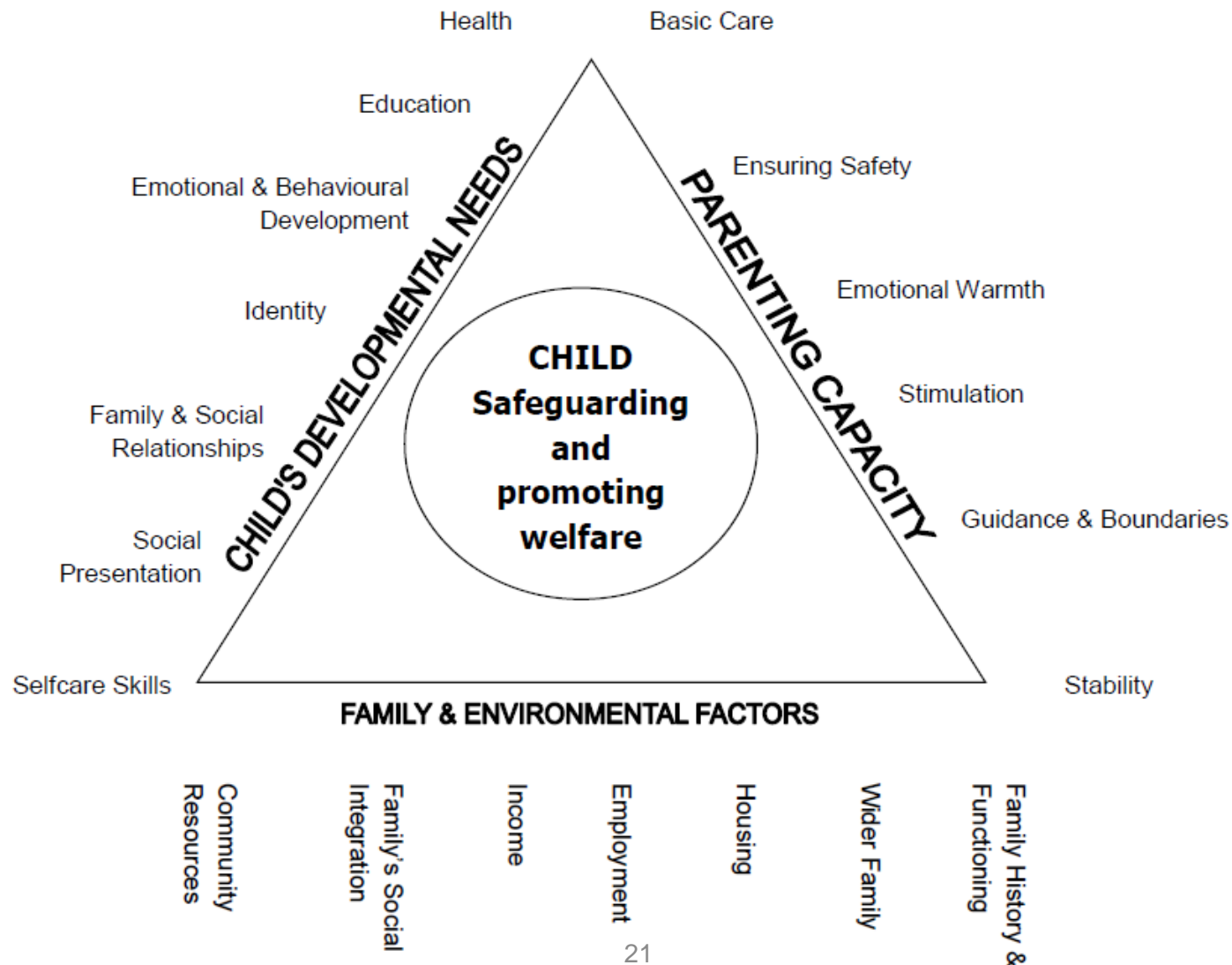
# Combining needs assessments and joint assessments

- A local authority can combine a person's assessment of need for care and support with the assessment of his or her carer
- Combining person's assessment with carers assessment is subject to the consent provisions of section 28(2) to (7).
- A local authority can carry out assessments jointly or on behalf of another organisation (e.g. assessments under the Mental Health (Wales) Measure 2010)



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# Assessment of children





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# Review of assessments

*Most  
Significant  
Change*

If there is a significant change in identified outcomes, family needs or circumstances



Judgement on significant changes made with reference to the 5 elements of assessment



Transition from child to adult creates a right to re-assessment



An individual has the right to request a re-assessment of their needs



# Refusal of an assessment

	<p>Adult</p> <ul style="list-style-type: none"><li>• Adult lacks capacity and it would be in his or her best interest</li><li>• Experiencing or at risk from abuse or neglect</li></ul>
	<p>Children</p> <ul style="list-style-type: none"><li>• Child lacks capacity and it would be in his or her best interest</li><li>• Experiencing or at risk of abuse or neglect</li></ul>
	<p>Parents of a child under 16</p> <ul style="list-style-type: none"><li>• The child is at risk or experiencing abuse or neglect</li><li>• The parent lacks capacity</li><li>• Child can make an informed decision and disagrees with parental view</li></ul>

## Part 4: Meeting needs

- Determining eligibility
- How to meet needs
- Meeting needs – adults
- Meeting needs – children
- Meeting needs – carers
- Meeting needs – exceptions and restrictions
- Direct payments
- Plans
- Portability
- Preferred accommodation
- Protection of property





# National eligibility criteria

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- The determination of eligibility will flow from, and is a product of, the assessment process
- Following assessment a judgement must be made about whether the assessed need is eligible based on the national eligibility criteria for adults, children and carers
- In each case there are four separate conditions which must all be met for the assessed need(s) to be eligible
- Local authorities are automatically required to meet needs to protect a person from, or the risk of, abuse or neglect or (for children) harm
- Local authorities can also decide to meet needs that do not meet the eligibility criteria if they choose to do so



# Care and Support (Eligibility) (Wales) Regulations 2015 – adults



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The need arises from the adult's physical or mental ill-health, age, disability, dependence on alcohol or drugs or other similar circumstances



As a result the adult is not able to meet that need, either alone, or with support of willing others, or with assistance of services in the community

- Ability to carry out self-care or domestic routines
- Ability to communicate
- Protection from abuse or neglect
- Involvement in work, education, learning or in leisure activities
- Maintenance or development of family or other significant personal relationships
- Development and maintenance of social relationships and involvement in the community
- Fulfilment of caring responsibilities for a child

**As a consequence they are unlikely to achieve one or more personal outcomes unless the local authority provides or arranges care and support**



# Care and Support (Eligibility) (Wales) Regulations 2015 – children



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The need arises from the child's physical or mental ill-health, age, disability, dependence on alcohol or drugs or other similar circumstances, or if the need is unmet it is likely to have an adverse effect on the child's development

As a result neither the child, the child's parents or others caring for the child are able to meet that need, either alone, or with support of willing others, or with assistance of services in the community

- Ability to carry out self-care or domestic routines
- Ability to communicate
- Protection from abuse or neglect
- Involvement in work, education, learning or in leisure activities
- Maintenance or development of family or other significant personal relationships
- Development and maintenance of social relationships and involvement in the community
- Achieving developmental goals

**As a consequence they are unlikely to achieve one or more personal outcomes unless the local authority provides or arranges care and support**



# Care and Support (Eligibility) (Wales) Regulations 2015 – carers



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Their need is one that arises as a result of providing care for either a disabled child or an adult who has needs arising from physical or mental ill-health, age, disability, dependence on alcohol or drugs or other similar circumstances

As a result the carer cannot meet the need alone, or with support of willing others, or with assistance of services in the community

- Ability to carry out self-care or domestic routines
- Ability to communicate
- Protection from abuse or neglect
- Involvement in work, education, learning or in leisure activities
- Maintenance or development of family or other significant personal relationships
- Development and maintenance of social relationships and involvement in the community
- For an adult carer, fulfilment of caring responsibilities for a child
- For a child, achieving developmental goals

**As a consequence they are unlikely to achieve one or more personal outcomes unless the local authority provides or arranges support for the carer or care for the cared for person**

# Eligibility – the Part 4 code

- Para 32 “The eligibility criteria must not be used as a tool to require individuals to demonstrate they have exhausted every other possible avenue of support before becoming eligible for local authority assistance.”

## Part 4: How to meet needs

- Section 34 of the Act is the key to understanding the change in approach.
- The Act is not prescriptive about the ways in which needs can be met or what may be provided or arranged to meet needs.
- Local authorities are encouraged to develop innovative solutions to meeting needs.
- Section 34 gives examples of what may be provided or arranged to meet needs, e.g. “care home accommodation” or “care and support at home or in the community”.



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# Care and support planning



Local authorities must provide, and keep under review a care and / or support plan for individuals with eligible needs



A named individual to co-ordinate the preparation, completion, review, delivery and revision of the plan



Restriction of Adoption Reports Regulations 2005



Services provided to deafblind people are appropriate



Individuals must be clear when a financial contribution is required as part of the care and support plan



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# Format and content of plans

	<b>Principles</b>	<ul style="list-style-type: none"><li>• Well-being, person-centred and outcome-based</li><li>• Clear and concise</li><li>• Safeguarding</li><li>• Integrated</li></ul>
	<b>Format of plans</b>	<ul style="list-style-type: none"><li>• Based on NMDS</li><li>• Agreed by the local authority and health</li><li>• Welsh language built in</li></ul>
	<b>Content of plans</b>	<ul style="list-style-type: none"><li>• Outcomes</li><li>• Need for support and resources</li><li>• Actions and how monitored</li><li>• Direct payments</li></ul>



# Portability of plans

- When an individual with a care and support plan moves from one authority to another in Wales the plan moves with them until a new assessment is completed
- This does not apply to plans provided under discretionary powers
- “Principles of cross-border continuity” will apply when a person moves across national boundaries to minimise disruption of the care and support provided to that person: Part 4 Code of Practice - Annex 1



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# Review of plans



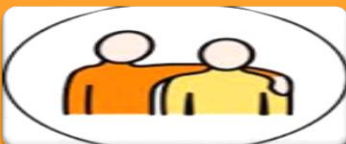
Encourages the individual to continue to maintain control over their support



If the plan is not meeting the assessed needs then it must be reviewed irrespective of a review date



Review must ensure that the person and / or their carer, family members or advocate is an active participant



Authorised persons involved in the review for those who lack capacity



In the case of a child the person(s) with parental responsibility and other professionals involved

## Part 4: Exceptions

- Consolidation of existing law
- Exception for provision of health services (section 47) reflects the limits on local authority's powers to provide health services as decided in existing case law (*Coughlan*)
- Section 47 also incorporates the current prohibition on local authorities providing “nursing care” (section 49 Health and Social Care Act 2001)
- Local authorities may not arrange for nursing home care unless they have obtained the consent of the relevant health body (depending on the location of the placement) (see the Provision of Health Services regulations)

## **Part 4: Preferred Accommodation**

- Consolidation of existing law in the Choice Direction and the Additional Payments Regulations under section 55 of the Health and Social Care Act 2001
- New regulations under section 57 of the Act

## Part 4: Protection of property

- Section 58 consolidates existing law contained in section 48 and 55 of the National Assistance Act 1948
- Extended to protection of property of children (in accordance with “people model”)
- Additional consent requirements in subsection (4) to ensure that provision is compatible with Convention rights.



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# Direct payments



# Part 5: Charging and financial assessment



Discretion to charge for adults –  
no charge for children



Charging integral to duty to meet needs  
for adults and carers



Flat rate charge for preventative services  
for adults – no charge for children



Flat rate charges avoid the need for  
assessment

# Part 5: Enforcement of debts and review of charging decisions

- Consolidation of existing provisions
- Recovery of charges, interest etc
- Creation of a charge over an interest in land
  - No longer extends to land in Scotland
- Transfer of assets to avoid charges
- Review of decisions now for
  - Decisions on charging under s.59
  - Determinations of means under s.66 and
  - Decisions about liability in relation to deprivation of assets under s.72



## **Part 6: Looked after and accommodated children**

- Very largely based on Part 3 and Schedule 2 of Children Act 1989
- The consolidated version incorporates amendments which were made by the Children and Young Persons Act 2008 but which had not yet been brought into force in Wales
- A table of destinations is available and will be sent to delegates
- Look out for The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) and Care Planning, Placement and Case Review (Miscellaneous Amendments) (Wales) Regulations 2016 regulations

# Part 6 – Looked after children – the changes

- Foster to adopt
  - S.81 (10) to (13)
  - Paragraphs 173 – 177 Part 6 Code
  - Regulations 28 of the CPPCR Regulations
- Care and support plan –s.83
  - A section 54 care and support plan should be maintained and reviewed within the s.83 framework and the CPPCR Regulations
- Temporary approval of a relative, friend, or other connected person
  - Regulation 26 CPPCR Regulations – temporary approval can last 16 weeks

## **Part 6 - Looked after children - When I'm ready**

- Section 108 Pathway assessments and post-18 living arrangements
- Links to reg 5 Care Leavers (Wales) Regulations 2015 (SI 2180)
- Regulation 50 of the CPPCR Regulations – duty to promote post-18 living arrangements by providing information about them.

## **Part 6 – Looked after children – the changes – care leavers**

- Category 1 – eligible child
- Category 2 – relevant child
- Category 3 – former relevant child
- Category 4 – “re-connector”
- Category 5 – formerly looked after but then subject to special guardianship
- Category 6 – broader category of looked after and accommodated children

**Rights and entitlements have not changed**

**See page 80 of Code for Part 6**

# **Part 6 – looked after children – secure accommodation**

- Section 119 and section 25 Children Act 1989 are now “territorial”.
- The Children (Secure Accommodation) (Wales) Regulations 2015
- New procedural requirement in relation to placement of children for 72 hours - see regulation 3
- No disapplication of s.119 in relation to 16 and 17 year olds who are accommodated
- 2015 regulations also made
  - under s.87 SSWA so they impose obligations on Welsh LAs in relation to placements whether in England or Wales AND
  - They are made under s.22 Care Standards Act 2000 so impose obligations on provider of secure children’s home in Wales regardless of whether placement Welsh LA or English LA

# Part 7: Safeguarding (1) – Duties to Investigate and to report

- Duty to investigate s.126 – reasonable cause to suspect that a person within its area is an adult at risk – make enquiries necessary to enable it to decide whether any action should be taken
- Duty to report adult at risk – s.128
  - Duty applies to local authorities “relevant partners”  
– see s.162
  - Link to LA duty to investigate (s.126) “adult at risk”  
note definition (person who is unable to protect him/herself as a result of needs for care and support)
- Duty to report child at risk – s.130
  - Duty applies to local authorities’ relevant partners
  - Link to LA duty to investigate s.47 Children Act 1989

# **Part 7: Safeguarding (2) – Adult protection and support orders s.127**

- Application to justice of the peace
- Purpose to enable officer
  - to speak with the person in private
  - to ascertain whether person making decisions freely
  - to assess whether person adult at risk and decide on what if any action to take
- Grounds
  - Reasonable cause to suspect person is adult at risk
  - Necessary for authorised officer to gain access to assess whether adult at risk and make decision on action
  - Making order necessary to fulfil the purpose
  - Exercising power of entry will not result in person being at greater risk of abuse or neglect

# Part 8: Social Services Functions

- Social services functions – meaning
  - See Schedule 2
- Directors of social services
  - Competencies are contained in a code issued under section 145
- Codes
  - Code can contain requirements and guidelines
  - Code can provide that local authorities are not permitted to depart from the requirements in a code, even if the authority considers there is good reason for it not to comply with a requirement
- Intervention by central government – consolidation of existing provisions in section 7D LASSA 1970 and section 50A Children Act 2004



## Part 9: Co-operation

- **Cooperation – general**
- Modelled on section 25 Children Act 2004
- Section 163 amends section 25 to reflect the language of the Act, including the meaning of “well-being
- **Cooperation – specific**
- Modelled on section 27 Children Act 1989, which will no longer apply to Wales
- Consequential Amendments regulations will add new section 164A of the Act which will preserve the current cross border cooperation duties in section 27



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# Population assessment

Who	<ul style="list-style-type: none"><li>• Local authorities</li><li>• Local health boards</li></ul>
What	<ul style="list-style-type: none"><li>• Assess the needs of the local population for care and support, and the support needs of carers</li></ul>
How	<ul style="list-style-type: none"><li>• Are needs being met, or not?</li><li>• Range and level of services required – preventative services?</li><li>• How delivered in Welsh?</li></ul>

## Part 9: Partnership Arrangements

- Regulations under section 166 have been made which require partnership arrangements to be made between the Local Health Board and the local authorities within its area, under the direction of a Regional Partnership Board
- The current arrangements for Integrated Family Support Services will now be made in accordance with these regulations but will be extended to include referrals in relation to other cases
- Regulations can require partnership bodies to establish pooled funds. Pooled funds in relation to the commissioning of care home accommodation will be required from April 2018.

# **Part 10: complaints and representations**

- **Complaints about social services**
  - Consolidation of existing law
  - Existing regulations will continue to apply and treated as if made under Part 10.
- **Complaints about private social care and palliative care**
  - New provision in force from 1 November 2014

# Part 11: miscellaneous and general (1)

- **Research**
  - Consolidation of existing law
- **Provider failure**
  - New temporary duty on local authorities in Wales to meet needs of people who are receiving services commissioned by other local authorities in Wales, in the event of provider failure.
  - See section 50 of the Care Act for equivalent duty to meet needs of people who are receiving services commissioned by authorities in England, Scotland and Northern Ireland
- **Recovery of costs**
  - Consolidation of existing law, including cross border recovery of costs in relation to children



# Adults and children in the secure estate



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**New duties** for local authorities where adults are in the secure estate



Duties for the 'home' local authority of children in the secure estate



Some exclusions: being a carer, direct payments, choice of accommodation, property protected

# Part 11: Miscellaneous and General (2)

- **Ordinary residence**
  - Consolidation of existing law
  - Schedule 1 to the Care Act 2014 makes similar provision in relation to cross border placements. Supported by guidance
  - Regulations under section 194 provide that “deeming” principle only applies to people living in care home accommodation
- **Disputes about ordinary residence and portability**
  - Only applies to “intra-Wales” disputes
  - Disputes with a cross border element will be considered in accordance with Schedule 1 of the Care Act or section 30(2C) of the Children Act 1989.

# After-Care services under section 117

## Mental Health Act 1983

- The duty to provide mental health after-care services is a joint local authority and LHB duty
- Duty is triggered if conditions in section 117 are met, e.g. previously detained under section 3 of 1983 Act
- Section 117 has been amended by section 75 of the Care Act 2014:
  - Definition of “after-care services”
  - Local authority responsibility determined by the ordinary residence of person before they were detained
  - Disputes between Welsh LAs about where a person was ordinarily resident to be determined in accordance with regulations under section 194



# Commencement

- Certain parts of the Act have commenced already (1 November 2014):
  - Joint Adoption service (section 170, inserting section 3A Adoption and Children Act 2002)
  - New powers of Public Service Ombudsman for Wales (Part 10, Chapter 2, inserting new Parts 2A and 2B in PSOW Act 2005)
- Bulk of the Act to be commenced on 6 April 2016.
- Regulations under the Act will also come into force on 6 April 2016

# Transitional Arrangements

- Transitional arrangements will apply to people who are already in receipt of services on the date of commencement.
  - Existing legislation will apply until such time as a review has been carried out
  - Review must be carried out within 12 months (adults) or 6 months (children)
- Transitional arrangements will also apply to people who have entered into deferred payment agreements before the Act is in force. Existing agreements will secure charges due both before and after the Act is in force.
- Other transitional arrangements in relation to:
  - Looked after and accommodated children
  - Sight registers
  - Appointment of directors of social services
  - Ordinary residence