

Constitutional and Legislative Affairs Committee

CLA533 – The Care and Support (Assessment) (Wales) Regulations 2015

Procedure: Negative

The Social services and Well-being Act 2014 (“the Act”) imposes duties on local authorities to assess the needs of adults and children for care and support and carer’s (including child carers) needs for support.

These Regulations make provision about such assessments.

1. Technical Scrutiny

No points are identified for reporting under Standing Order 21.2.

2. Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3(ii) in respect of this instrument (namely that it is of political importance or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly).

- (i) The current assessment regime legislates separately for adults and children.
- (ii) Assessment for adults is covered by the NHS and Community Care Act 1990, the Carers and Disabled children Act 2000 and the Chronically Sick and Disabled Persons Act 1970.
- (iii) Schedule 2 to the Children Act 1989 provides for the assessment of children in need.
- (iv) Under the NHS and Community Care Act 1990 local authorities are under a duty to decide whether, following assessment, an adult’s needs require a service to be provided. Guidance issued in 2002 – ‘Creating a Unified and Fair System for Accessing and Managing Care’ – provided a standardised framework within which local authorities were to decide local criteria about which needs should be met. This guidance required

local authorities to use the Unified Assessment Process to evaluate an individual's presented needs and circumstances and how they constrain or support their capacity to live independently. In 2013 this guidance was superseded for adults aged over 65 years by the 'Integrated Assessment, Planning and Review Arrangements for Older people' issues to local authorities under section 7 of the social services Act 1970.

- (v) For children the principal guidance is the Framework for Assessment for Children in Need and their Families, issued under section 7 of the Social Services Act 1970.
- (vi) Carers' needs are currently dealt with under the Carers (Recognition and Services) Act 1995, the Carers and Disabled Children Act 2000, the Carers (Equal Opportunities) Act 2004 and the Carers Strategies (Wales) Measure 2010.
- (vii) The Act imposes on local authorities a duty to assess the needs of an adult for care and support where it appears that an adult may have needs for care and support. This duty is wider than that imposed on local authorities under the NHS and Community Care Act 1990 which requires a local authority to assess whether an individual is in need of local authority services. The Act requires a local authority to assess whether an individual has needs for care and support and what those needs are. It must also identify to what extent the provision of care and support, preventative services, information, advice and assistance or other matters could contribute to the outcomes the adult wishes to achieve in day to day life or otherwise meet those needs.
- (viii) The Act refers to children in need of care and support, not to a children in need. In practice there is little difference other than in the terminology used, although the Act imposes a broader duty to establish whether a child is in need of care and support.
- (ix) Under the Act, carers – defined as those providing or intending to provide care to an adult or disabled child – will have the same rights to assessment and support to meet their needs. The Act removes the

requirement that only carers providing a 'substantial amount of care on a regular basis' are entitled to a carer's assessment.

- (x) The Explanatory Memorandum accompanying the Regulations states that the current system is unsustainable and seeks to simplify and improve service efficiency and effectiveness by delivering improved integration, collaboration and by providing service users with a stronger voice and control over their service and well-being. A uniform assessment approach will make for simplification of the process which will be consistent with that now adopted in relation to mental health following the implementation of the Mental Health (Care Coordination and Care and Treatment Planning) (Wales) Regulations 2011.

3. Committee Consideration

The Committee considered the instrument at its meeting on 1 June 2015 and reports to the Assembly in line with the reporting points in section 2 above.