

Observations on the Social Services and Well-being (Wales) Bill

's' denotes the section of the Bill throughout

- s4(4) this section fails to have regard for the views of the child aged 16-18 especially one that is "Gillick" competent
- s11(5) appears to give too much latitude to the local authority ("LA") to act unilaterally
- s12(6) ditto
- s12 the clear duty imposed on LAs to assess the needs of children and equating it to the duty to assess adults and carers is welcomed
- s18 it is essential that timescales for the completion of assessments are provided for in the Bill and set in the regulations.
- s19 it is essential that national eligibility criteria are set at a level that ensures that service users do receive at least an adequate level of support which actually delivers on the wellbeing principles and which will also prevent too much uncertainty about what level of need leads to service provision.
- s20(2) "adaptations" are not included in the list here. "Facilities" would not be adequate to cover this item. Also, the Bill has no reference to Disabled Facilities Grants and how these will operate under the new regime.
- s21 Neither of these sections clearly provides for action in urgent cases
- s22 (see also s104 et seq on safeguarding)
- s24 ditto in the case of a child
- s29 ditto for carers
- s37 there is no detail regarding the setting of the rates which is a crucial element here. A national rate with provision for increases would be welcomed.
- s38(4) timescales should be set for assessments. Delays in assessment impact on the outcome particularly because of subsequent delays in the delivery of care.
- s41(3)(b) there needs to be very clear provision for how the "usual cost" is calculated and there must be accommodation available at the "usual cost" relied upon because LAs have been known to charge top ups where in fact no accommodation was available at the "usual rate".
- s43(3) it should be clear that LAs cannot charge people for emergency support services. Some LAs have made charges for emergency support services even where the recipient has subsequently been found to be financially eligible for support without charge.
- s48 time limits should be considered here. There can be significant delays before the provision of services.

s50 there is no provision for how the main residence will be treated for capital purposes when a joint owner or dependant remains resident.

s53 there needs to be provision for someone acting on behalf of the services user to enter into such arrangement eg as attorney or Court of Protection deputy.

s97(6) references to the Legal Services Commission etc should be updated to reflect recent changes in legal aid provisions.

s104 et seq Safeguarding

There doesn't appear to be a specific power to act to address urgent concerns ie in place of the s47 National Assistance Act 1948 power to remove to a place of safety. The adult protection and support order merely gives access to assess the situation eg similar to a s135 Mental Health Act 1983 warrant. What powers do the LA then have to address urgent concerns? Are the emergency powers under s22 and s24 adequate? For someone who lacks capacity the Mental Capacity Act 2005 may assist although LAs may be reluctant to take a major step like removal to a place of safety without having a specific statutory power to do so. Why has s47 National Assistance Act 1948 been abolished? In certain very serious cases it remains a useful tool.

The Bill provides for safeguarding at a strategic level but it falls short in relation to empowering the LA to act where there are really serious concerns about actual abuse/safety.

s119 should the Chronically Sick and Disabled Persons Act 1969 and the National Assistance Act 1948 be included in the Schedule?

s147 the clear provision here for joint working is welcomed

s152 the effect of this is to lose the second stage of independent investigator report which has been a useful and relatively swift means of obtaining a positive outcome re complaints.

s164 It is not clear who will determine disputes as between Wales and England in future: will a body be responsible as now?

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