

# **Statement setting out the amendments made to the Draft Care and Support (Eligibility) (Wales) Regulations following consultation**

## **A copy of the consultation draft is annexed to this statement**

### **Preamble**

1. The preamble is amended to recite compliance with the requirement in section 33(2) and (3) for the regulations to be the subject of consultation. Reference to section 196(6) is added as the source of the requirement that the regulations be approved by a resolution of the National Assembly for Wales.

### **Section 1**

2. The coming into force date has been added.

3. The definition of “specified outcomes” has been removed. This phrase is not used in the regulations. Feedback from the consultation was that it was confusing to include reference to both “personal outcomes” and “specified outcomes”.

4. A definition of “self-care” is added. This was in regulation 6 which was removed. The word “basic” which was used to qualify self-care is removed to avoid an inference that a person with care and support needs would only have a need recognised at that level. This is a change in response to consultation feedback.

### **Section 2**

5. Footnotes have been added in relation to the meanings of “child” and “care and support” to assist the reader. In each of the paragraphs of the regulation wording has been added to make reference to the section of the Act under which an adult, a child and a carer are assessed. This is a drafting improvement for greater accuracy.

### **Section 3**

6. The introductory phrase of the regulations is amended to make clear that the provision of this regulation refers to adults who have been the subject of assessment under section 19 of the Act. This is a drafting improvement.

7. Reference to “specified outcomes” is removed from paragraph (b). Instead the factors which were listed in regulation 6 are listed in regulation 3 itself. There is one addition to the list – (ii) ability to communicate. This is included in response to consultation feedback and views that it was of sufficient significance in this context to be included expressly.

8. In paragraph (c), the word “care” is added so that care provided by a carer is also taken into account as a factor in determining whether a person’s need is eligible for the purposes

of the regulations. This is an amendment linked to the removal of regulation 7 of the consultation draft.

9. In paragraph (d) “their” is replaced by “the adult’s” to be more grammatically correct. Reference to “the specified outcomes” is removed. This makes the drafting simpler and removes a duplication because the outcomes are already built in to regulation 3 at an earlier point through the requirement in paragraph (b).

#### **Section 4**

10. The introductory phrase of the regulations is amended to make clear that the provision of this regulation refers to children who have been the subject of assessment under section 21 of the Act. This is a drafting improvement.

11. Reference to “specified outcomes” is removed from paragraph (b). Instead the factors which were listed in regulation 6 are listed in regulation 4 itself. There is one addition to the list – (ii) ability to communicate. This is included in response to consultation feedback and views that it was of sufficient significance in this context to be included expressly.

12. In paragraph (c), the word “care” is added so that care provided by a carer is also taken into account as a factor in determining whether a person’s need is eligible for the purposes of the regulations. This is an amendment linked to the removal of regulation 7 of the consultation draft.

13. In sub-paragraph (c)(iii), the word “child “ is added to reflect the fact that in many cases children, particularly older children, will have an independent ability to access services available in the community.

14. In the same sub-paragraph, the phrase “other persons caring for the child” is replaced by the phrase “other persons in a parental role”. The purpose of this is to avoid confusion with the concept of “carers”. Under the Act a person is a carer for a child who is disabled. A parent caring for a child who is not disabled is not a carer for the purposes of the Act.

15. The wording in the definition of “relative” is amended to reflect the fact that the definition is not a complete definition but is limited to what the word means in relation to a child.

16. In paragraph (d) Reference to “the specified outcomes” is removed. This makes the drafting simpler and removes a duplication because the outcomes are already built in to regulation 4 at an earlier point through the requirement in paragraph (b).

#### **Section 5**

17. The introductory phrase of the regulations is amended to make clear that the provision of this regulation refers to carers who have been the subject of assessment under section 24 of the Act. This is a drafting improvement.

18. Subparagraph (a)(i) is amended to clarify that the person for whom a carer provides care must have needs which relate to the factors set out in paragraph (b) of regulation 3.

19. A footnote is added in relation to the definition of “disabled” to assist the reader.

20. Reference to “specified outcomes” is removed from paragraph (b). Instead the factors which were listed in regulation 6 are listed in regulation 5 itself. There is one addition to the list – (ii) ability to communicate. This is included in response to consultation feedback and views that it was of sufficient significance in this context to be included expressly.

21. In paragraph (d) reference to “the specified outcomes” is removed. This makes the drafting simpler and removes a duplication because the outcomes are already built in to regulation 3 at an earlier point through the requirement in paragraph (b).

## **Regulation 6**

22. This is a new regulation added in response to consultation feedback. In regulations 3, 4 and 5, eligibility is dependent on a person being unable to meet needs. This regulation provides that a person will be regarded as unable to do something even when they can but only with a greater level of difficulty than would normally be expected.

## **Removal of Regulation 6 of consultation draft**

23. This regulation has been removed in response to consultation feedback that the concept of “specified outcomes” alongside “personal outcomes” was confusing. The different sorts of outcomes are instead inserted into each of regulation 3, 4 and 5.

## **Removal of Regulation 7 of consultation draft**

24. Regulation 7 of the consultation draft was included to tie in with section 35(6) and section 37(5) of the Act. The purpose of these provisions was that a local authority would not have a duty to meet need so long as a carer was meeting the need in question but that, in the event that a carer declined to continue in a caring role, the local authority would instantly be under a duty to provide care and support itself. The intention of regulation 7 was to ensure that the effect of regulations 3(c), 4(c) and 5(c) did not obstruct the effect of that provision.

25. Consultation feedback was that the provision was complicated and difficult to understand. The conclusion reached is that it is unnecessary in any event. Where a carer declines to continue in a caring role, the effect of the test in regulations 3(c), 4(c) and 5(c) will be different in any event. A need which was not eligible because it was being met by a carer would become eligible if the carer no longer wished to provide that care. The effect of sections 35(6) and 37(5) will therefore be kept intact. The regulation has therefore been removed.