



Llinell Gymorth Camdriniaeth yn y Cartref  
a Thrais Rhywiol Cymru Gyfan  
All Wales Domestic Abuse and Sexual  
Violence Helpline

0808 80 10 800



  
**Cymorth i Ferched Cymru  
Welsh Women's Aid**  
Rhoi Merched a Phlant yn Gyntaf  
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## *Welsh Women's Aid Briefing:* **Social Services and Well Being (Wales) Act 2014**

The Social Services and Well Being (Wales) Act 2014 ("the Act"), received Royal Assent on 1 May 2014 and is due to come into force from 6<sup>th</sup> April 2016<sup>1</sup>. The Act is said to provide a "legal framework for improving the well-being of people (adults and children) who need care and support, carers who need support, and for transforming social services in Wales". The Act is divided into 11 parts and replaces, brings together and modernises the existing legislation in this area for Wales. For the first time, Wales will have different social care legislation and framework from England (the relevant act for England is the Care Act 2014). The Act provides major reforms in regards to protecting children in need, and as such, parts of the Children's Act 2004. However, child protection concerns which result in a court case will be treated in the same way as in England.

The Act also links into other key pieces of legislation which have been passed by the Welsh Government recently, namely, the Wellbeing of Future Generations (Wales) Act 2015 and the Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015. All three pieces of legislation place legal duties on local authorities to be proactive rather than reactive to the wellbeing of the people in Wales. In addition, the indicators for each Act are likely to intertwine, although more cannot be said about this until indicators under each Act have been published.

The Welsh Government has also produced a guide to the essential elements of the Act, which can be found at: <http://gov.wales/docs/dhss/publications/160127socialservicesacten.pdf>

### **How will the Act affect the violence against women sector in Wales?**

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The Act is relevant for the violence against women sector in several ways. Domestic abuse and other forms of violence against women fit into the factors which a local authority should be taking into account when it undertakes a needs assessment to assess wellbeing. The definition of 'wellbeing' and more details about the needs assessment are outlined below. The Act makes provision for co-operation and partnership by public authorities with a view to improving the wellbeing of people who need care and support, as well as for carers who need support; including both adults and children. The Act requires that those with care and support needs (including carers) are involved to the maximum extent possible in making decisions about their lives. As such, safeguarding work carried out by authorities who have a responsibility under the Act should be person centred.

The Act introduces a number of key safeguards for adults including:

- ***a new duty to report to the local authority someone suspected to be an adult at risk of abuse or neglect.***
- a duty to protect the "wellbeing", (widely defined) of an "adult at risk"
- ***a new duty for the local authority to make enquires, in order to determine whether any action is required to safeguard vulnerable people.***

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<sup>1</sup> A full version of the Act can be accessed at:

[http://www.legislation.gov.uk/anaw/2014/4/pdfs/anaw\\_20140004\\_en.pdf](http://www.legislation.gov.uk/anaw/2014/4/pdfs/anaw_20140004_en.pdf)





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## Wellbeing

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"Wellbeing" is said to include:

- ***physical and mental health and emotional well-being***
- ***protection from abuse and neglect***
- education, training and recreation
- ***domestic, family and personal relationships***
- contribution made to society
- securing rights and entitlements
- social and economic well-being
- suitability of living accommodation.

"Abuse" is defined in the Act as:

*"Abuse" ("camdriniaeth", "cam-drin") means physical, sexual, psychological, emotional or financial abuse (and includes abuse taking place in any setting, whether in a private dwelling, an institution or any other place), and "financial abuse" ("camdriniaeth ariannol") includes—*

- (a) having money or other property stolen;*
- (b) being defrauded;*
- (c) being put under pressure in relation to money or other property;*
- (d) having money or other property misused."*

Those who have a well-being duty (local authorities) must take into account the following factors:

- determine and have regard to the individual's views and wishes
- promote and respect the person's dignity
- have regard to the person's characteristics, culture and beliefs (this included language)
- provide appropriate support to help the person to participate in decisions which affect him/her where appropriate to do so.

When engaging with an adult, these factors must be considered with the view that the adult is in the best position to make a judgement about his/her own wellbeing and to promote independence. When engaged with a child, these factors must be considered with the view that the upbringing of the child is best placed by the child's family and that this is consistent with the child's wellbeing. When the child is under 16, the views of those with parental responsibility should be considered, alongside those of the child.

## Needs assessments

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Where a local authority believes that an adult or child is in need of care or support, it must conduct a needs assessment, to determine if care and support are needed, and if so, what the need is. For children, the local authority must consider the developmental needs of the child, the child's wishes (with regards to age and understanding) in relation to the outcomes he/she would like to achieve, and the wishes of those with parental responsibility and what they would like to achieve in relation to the child. Needs assessments in relation to children can also consider whether care and support should be provided instead of the care and support from his/her family.

The needs assessment must determine whether the person requires access to ***preventative services, information, support etc.*** The individual (and legal guardian if applicable) should be involved when conducting the needs assessment.





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## Refusing a needs assessment

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An adult may refuse to consent to a needs assessment. If this happens there is no requirement for the needs assessment to be conducted. There are exceptions to this in a small number of cases. For example, where the adult has been deemed as lacking capacity to refuse an assessment.

A child aged 16 or 17 can refuse consent to a needs assessment in the same way an adult can. If this individual lacks capacity, then the person with parental responsibility can also refuse a needs assessment, however, there are exceptions to this:

- If the person with parental responsibility lacks capacity to decide,
- If the person with parental responsibility has refused, but the child (who has sufficient understanding) would like an assessment
- Local authority believes that not having a needs assessment would be inconsistent with the child's wellbeing
- Local authority suspects that the child is experiencing or at risk of experiencing abuse, neglect or harm of another kind.

In all of these cases, the local authority must conduct a needs assessment, regardless of whether or not there is consent to do so.

In addition, and importantly, ***if the local authority suspects that the child is experiencing or at risk of experiencing abuse, neglect or harm of another kind, then there is still a duty to conduct a needs assessment, regardless of consent.***

Those who initially refuse an assessment can request one at a later date, at which point the local authority duty becomes active again. A change in circumstance may also lead to the duty to arise again.

## Meeting need(s)

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After a needs assessment has been conducted and the local authority is satisfied that there is a need for care and support, it must then deem whether this need meets the eligibility criteria (see below). If the need(s) do not meet this eligibility criteria, it still may be necessary to meet the need in order to protect the person (or a child who is not the main person) from abuse or neglect (or a risk of either).

Meeting a need can include:

- accommodation
- services
- information and advice
- counselling/advocacy
- social work.

This is not an exhaustive list and the Act itself has outlined more examples, which may further be added to as the Act is applied.

For children, there is an additional duty for the local authority to promote the well-being of a child, by enabling the child to live with his/her own family, or promote contact between them.

Local Authorities are able to discharge this duty to other services which exist in this area which are capable of fulfilling the need.





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The local authority may also be able to charge the individual for meeting a need, however this is subject to a financial means assessment. This charge can only be 'the cost that the local authority incurs in meeting the needs'. Further details of these charges will be provided in the regulations.

### **Eligibility criteria**

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National eligibility criteria will be detailed in regulations attached to the Act. The regulations and code of practice are expected to be issued for consultation in Autumn 2016. The eligibility criteria will help to determine when an individual has the right to receive support from the local authority to meet his/her needs. This will be a legal right, where the local authority will be under a duty to provide (or arrange for the provision) of care and support as determined by a needs assessment.

### **Care and support plans**

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Where a local authority is meeting the needs of a person, they must prepare and maintain a care and support plan in relation to that person. The plan must be kept under review. If circumstances of the person change, the authority must carry out assessments as it deems appropriate and revise the plan accordingly.

### **Safeguarding: adults at risk**

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An *adult at risk* is defined as someone who is experiencing or at risk of experiencing abuse or neglect, has a need for care and support, and are unable to protect themselves against the abuse or neglect. Local authorities must make enquires as to whether there is need for action to be taken for anyone who comes to their attention who can be considered as an "adult at risk".

If the local authority suspect that there is an *adult at risk* in its area, it must make enquires about whether action needs to be taken, and if so, what action needs to be taken, by whom and by when.

### **Adult Support and Protection Order**

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The duty to safeguard adults at risk is supplemented by *a power to apply to the courts for an Adult Support and Protection Order*. The Order will enable an authorised officer with the requisite skills and experience to secure entry to premises in order to speak in private with the adult suspected of being at risk, to determine whether they are making decisions freely; whether they are at risk and what care and support needs they may have.

The use of an Adult Protection and Support Order should be considered where it is believed that a person may not be able to make decisions freely.

Before making an Order, the courts must be satisfied that there is reasonable cause to suspect that the adult is at risk; that it is necessary to gain access to assess the risks; and that exercising the power of entry will not result in the adult being put at greater risk of abuse or neglect.

***There is a legal duty for local authorities (and their partners) to report to the appropriate authority, if they believe that a person may be at risk of neglect or abuse.***





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## Local Assessments

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The local authority and Local Health Board must jointly assess the amount of people in the area who need care and support, how many people have care and support needs which are not being met and the range and level of services needed to meet the care and support needs of the area.

*These assessments will also be utilised under the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 when the local authority prepares their local strategy for violence against women, domestic abuse and sexual violence.*

## Preventative services

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Linked to local assessments, local authorities are also required to provide or arrange for the provision of preventative services in order to, for example:

- Help prevent or delay the development of people's needs which require care and support;
- Reduce the needs for care and support for those who have these needs;
- Promote the upbringing of children by their families, when it is consistent with the wellbeing of the child;
- **Prevent people from suffering abuse or neglect;**
- Enable people to live as independently as possible;
- Reduce the need for,
  - Care of supervision orders under the Children Act 1989
  - Criminal proceedings against children
  - Proceedings which may lead to children being placed into local authority care.

In order to do the above, the local authority must pay attention to existing services and which make the best use of resources available.

The local authority has the duty to promote the third sector in the provisions of their areas of care.

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*Welsh Women's Aid will continue to monitor the impact of this new legislation on survivors, children and young people, families and specialist services in Wales. If you have any feedback for us about this legislation and its affects, or if you have any comments or questions about this briefing, please don't hesitate to get in touch with:*

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