

SOCIAL SERVICES AND WELL- BEING (WALES) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6 - Looked after and Accommodated Children

241. This Part replaces the majority of the powers and duties of local authorities in Wales to provide support for children and families set out in Part 3 of, and Schedule 2 to, the Children Act 1989 ('the 1989 Act'). Part 3 and Schedule 2 to the 1989 Act will continue to apply in relation to local authorities in England but will no longer apply in relation to Wales.
242. The rights and duties which contained in section 17 of the 1989 Act – provision of services for children in need, their families and others - are not replicated in this Part but are contained within the provision made in Parts 2, 3 and 4 of the Act, although the concept of a child “in need” is not replicated within this Act.
243. The concept of welfare as a basis upon which decisions are made in respect of children which runs through the 1989 Act is replaced in this Act with the requirement to promote the child’s “well-being”. Well-being is defined in section 2 of the Act and applies in relation to both children and adults for the purposes of the Act; it includes any of the eight matters set out in section 2(2) and in relation to a child will also include the child’s –
- (a) physical, intellectual, emotional, social and behavioural development; and
 - (b) “welfare” as that word is interpreted for the purposes of the Children Act 1989.

Section 74 - Child or young person looked after by a local authority

244. **Section 74** provides the interpretation of key terms used in this Part, in particular, the definition of “looked after” in relation to a child who is looked after by a local authority.

Section 75 - General duty of local authority to secure sufficient accommodation for looked after children

245. **Section 75** places a general duty on local authorities to provide children it looks after with accommodation within the local authority area that meets the child’s needs. (As to placements out of area, requirements may be imposed by the Welsh Ministers in regulations, made by virtue of sections 87 and 90. Those sections respectively provide Welsh Ministers with a regulation making power and set out examples of the way in which that power may be used to make provision about placement of looked after children outside the local authority’s area).
246. **Section 75(3)** requires a local authority to have regard to the benefits of having a range of accommodation available and sufficient numbers of foster parents or children’s homes.

Section 76 - Accommodation for children without parents or who are lost or abandoned etc

247. **Section 76** requires a local authority to provide accommodation for any child that appears to need it as a result of having no person with parental responsibility to look after them, or who is lost or abandoned, or the person with parental responsibility for them is prevented, for whatever reason, from providing the child with accommodation or care. It further provides that if a local authority is providing accommodation in an area which is not the local authority area where the child normally lives, then the local authority for that other area can take over the provision of accommodation.
248. The local authority must also provide accommodation to a child who has reached the age of 16, if failure to do so would seriously prejudice his or her well-being.
249. A local authority may not provide accommodation for a child if any person with parental responsibility for the child objects and is willing and able to provide accommodation or can arrange for it to be provided. A person with parental responsibility for a child can also remove the child at any time from the accommodation provided by the local authority. These powers of a person with parental responsibility for the child do not apply in the case of a child who is 16 or over and who agrees to being provided with accommodation under this section. Nor are they exercisable if any of the following agree to child being so accommodated: a person with a residence order in relation to the child; the child's special guardian (appointed in accordance with section 14A of the Children Act 1989); a person who has care of the child by virtue of a High Court Order.

Section 77 - Accommodation for children in police protection or detention or on remand etc

250. **Section 77** requires the local authority to provide accommodation for children:
- a. who are removed or kept away from home under Part 5 of the Children Act 1989;
 - b. subject to police protection under section 46(3)(f) of the Children Act 1989;
 - c. whom it is requested to receive under section 38(6) of the Police and Criminal Evidence Act 1984;
 - d. who are remanded by virtue of paragraph 4 of Schedule 1 or paragraph 6 of Schedule 8 to the Powers of Criminal Courts (Sentencing) Act 2000;
 - e. who are remanded by virtue of paragraph 21 of Schedule 2 to the Criminal Justice and Immigration Act 2008;
 - f. who are remanded by virtue of paragraph 10 of the Schedule to the Street Offences Act 1959; or subject to a youth rehabilitation order imposing a residence or fostering requirement.
251. Where costs are incurred by a local authority as a result of a child being removed under Part 5 of the Children Act 1989, being detained under section 38 of the Police and Criminal Evidence Act 1984, or where the child is not provided with accommodation by the local authority, or by a local health board or NHS Trust (or by equivalent bodies in England), those costs are recoverable from the local authority where the child is ordinarily resident.

Section 78 - Principal duty of a local authority in relation to looked after children

252. **Section 78** requires a local authority looking after a child to safeguard and promote the child's well-being. A local authority also has obligations to make use of services for the benefit of a looked after child, that are available for children cared for by their own parents, where it is reasonable to do so.

253. Subsection (3) requires a local authority, before it makes any decision about a child whom it is or is proposing to look after, in addition to its duty to have regard to the considerations within sections 6 and 7 of the Act (which set out the overarching duties of a local authority when exercising functions under the Act), to have regard to the views, wishes and feelings of anyone the authority deems relevant and to take in to account the child's religion, race, culture and language.
254. A local authority may exercise its duties with respect to a child otherwise than in accordance with its duties under this section (or section 6) if it is necessary to do so for the purposes of protecting members of the public from serious injury.

Section 81 - Ways in which looked after children are to be accommodated and maintained

255. **Section 81** requires a local authority looking after a child to make arrangements for accommodating the child in a placement which is consistent with their well-being. Subsection (6) contains a definition of “placement”.
256. Subsections (2) and (3) describe the placements to which a local authority must give preference, unless such placements are not compatible with the child’s well-being or are not reasonably practicable. A local authority which is unable to place a child in accordance with subsections (2) and (3) must instead place the child in the “most appropriate placement” available.
257. Subsections (7), (8) and (9) contain matters to which the local authority must have regard when determining what an appropriate placement is.
258. If the local authority is satisfied that the child should be placed for adoption it must have regard to the requirements in subsections (10), (11) and (12) which enable the child, in appropriate circumstances, to be placed with their prospective adoptive parents.
259. Subsection (13) gives the local authority power to determine the terms of arrangements that it makes for the placement of a child under this section, including arrangements about payment.
260. Subsection (13) also gives power to the local authority to determine the terms upon which a child is placed with its prospective adoptive parent under this section; it may make payments to such persons. This power is subject to an order under section 49 of the Children Act 2004. Section 49 of the 2004 Act gives the Welsh Ministers power to make provision to set the level of payments to be made to foster parents.

Section 83 - Care and support plans

261. **Section 83** requires that any care and support plan (prepared under section 54) for a child looked after by a local authority must be reviewed and maintained under this section. The local authority must carry out a new assessment and revise the plan if it believes the circumstances of the child have changed in such a way as to affect the existing plan.
262. If the child does not have a care and support plan when he or she first becomes looked after, the authority must arrange for one to be prepared. The child to whom the plan relates, together with anyone with parental responsibility for that child, must be involved in the preparation, review or revision of a plan.
263. The Welsh Ministers must make regulations (in accordance with subsection (5)) about the preparation, content, review and revision of the plans; to set out the detail of those persons who may request a review of the plan and the circumstances in which a local authority may and may not, refuse such a request.
264. If other plans are being prepared for the child by other bodies, those plans may be included with the care and support plan. Subsection (9) allows any part of a care and support plan maintained under this section to be treated as a plan prepared under

section 31A of the Children Act 1989 (care plans relating to applications for care orders) for the purposes of that Act.

Section 85 - Contributions towards maintenance of looked after children

265. **Section 85** introduces Schedule 1 which makes provision setting out the circumstances in which the local authority can seek contributions from adults towards the maintenance of a looked after child. The provision in Schedule 1 is, for the most part, a restatement of the provision in Part 3 of Schedule 2 to the Children Act 1989; however paragraph 1 of Schedule 1 prevents any contribution being sought from a person under the age of 18 (whether they are the child who is looked after or the parent or person with parental responsibility for such a child).

Section 86 - Children's homes provided, equipped and maintained by the Welsh Ministers

266. **Section 86** provides the Welsh Ministers with a power to determine the terms upon which a local authority places a child it is looking after in a children's home that is provided, equipped and maintained by the Welsh Ministers (in accordance with powers under section 82(5) of the Children Act 1989).

Section 87 - Regulations about looked after children

267. **Section 87** provides the Welsh Ministers with a power to make regulations to make further provision about the way in which a local authority must exercise its duties in relation to children that it looks after.
268. **Sections 88 to 94** contain examples of the sort of provision that such regulations may make.

Section 88 - Regulations about conditions under which a child in care is allowed to live with a parent etc

269. **Section 88** contains an example of the way in which the regulation making power in section 87 could be used to impose requirements on local authorities about the circumstances in which a looked after child may be placed with their parent or other person with parental responsibility. Such regulations may include requirements about a local authority's decision making processes; requirements about the supervision or medical examination of the child; or circumstances in which children can be removed from the place where the child is living.

Section 89 - Regulations about placements of a kind mentioned in section 81(6)(d)

270. **Section 89** contains an example of the way in which the regulation making power in section 87 could be used to make provision about placements which are made in accordance with "other arrangements" that are permitted by virtue of section 81(6)(d). Such regulations may specify the persons to be notified of any proposed arrangements including any changes to those arrangements; those persons' opportunities to make representations; record keeping and local authorities' supervision arrangements.

Section 90 - Regulations about placements out of area

271. **Section 90** contains an example of the way in which the regulation making power in section 87 could be used to impose requirements upon a local authority that must be followed before it places a looked after child outside the authority's area and for ensuring the child's well-being should such an out of area placement be made.

Section 91 - Regulations about the avoidance of disruption in education

272. **Section 91** contains an example of the way in which the regulation making power in section 87 could be used to impose requirements upon a local authority when making any decision regarding a child's placement when the child is in the fourth key stage of education as provided for under Part 7 of the Education Act 2002.

Section 92 - Regulations about the placing of children with local authority foster parents and prospective adopters

273. **Section 92** contains an example of the way in which the regulation making power in section 87 could be used to make provision about the placement of looked after children in foster care or with prospective adopters. The regulations may contain provision to require arrangements to be made about the child's health and education; or that any accommodation in which a child is placed is subject to inspection by the local authority.

Section 93 - Regulations providing for approval of local authority foster parents

274. **Section 93** contains an example of the way in which the regulation making power in section 87 could be used to make provision about the approval of foster parents by the local authority. Such regulations may for example:
- a) contain provision which specifies that a child may not be placed with foster parents until the local authority has approved their appointment as foster parents;
 - b) contain provision about the establishment of an independent procedure for reviewing the approval of foster parents including establishing a panel constituted by the Welsh Ministers;
 - c) make provision regarding the duties and powers such a panel may have;
 - d) make provision regarding the appointment of members to the panel and how they are paid and arrangements for the review of a determination of a panel and procedures for monitoring such reviews; and
 - e) make provision which enables the Welsh Ministers to contract with another organisation to exercise an independent review of such determinations.

Section 94 - Regulations about agency arrangements

275. **Section 94** contains an example of the way in which the regulation making power in section 87 could be used to make provision about the circumstances in which a local authority may make arrangements with other organisations or persons to discharge the local authority's duties imposed by the regulations.

Section 95 - Promotion and maintenance of contact between child and family

276. **Section 95** requires a local authority to promote contact between a child whom it looks after and the child's parents, others with parental responsibility for the child, the child's relatives, friends and anyone else connected to the child, provided this is consistent with the child's well-being and it is reasonably practicable to do so. The authority must also ensure the child's parents and others with parental responsibility for the child are kept informed of where the child is accommodated. Similarly, those persons must ensure they keep the local authority informed of any changes to their address.
277. Subsection (6) makes it an offence for a parent or other person with parental responsibility for a looked after child to fail to keep the local authority informed of his or her address.
278. **Section 95** further requires a local authority which is taking over the responsibility for providing accommodation to a child from another local authority, to inform the child's parents and anyone else who has parental responsibility for the child. A local authority

however is not required to do so if that would prejudice the child's well-being unless that child is under 16 years of age and accommodated under voluntary arrangements made by virtue of section 76.

Section 96 - Family visits to or by children: expenses

279. **Section 96** gives a local authority power to make payment of travel, subsistence and other expenses. Such payments may be made to a parent or anyone connected with a child the local authority looks after when that person visits the child. The authority may also make payments to a child or to any person on a child's behalf, when a child visits their parents or anyone connected with the child. Payments can only be made if, without them, making the visit would cause undue financial hardship and if the circumstances warrant such payments.

Section 97 - Duty of local authority to ensure visits to, and contact with, looked after children and other children

280. **Section 97** imposes a duty upon a local authority to ensure visits to, and contact between, a representative of the authority and a child it looks after; a child it used to look after; or other categories of children specified in regulations which may be made under subsection (2). The local authority's representative must arrange for the provision of advice, support and assistance to the child. The regulations made under this section may also make provision about the frequency of visits; the circumstances in which visits can take place; and the functions of representatives.
281. Subsection (6) requires a local authority to ensure that its representative has the appropriate skills and experience to perform the functions.
282. This section largely restates provision made by section 23ZA of the Children Act 1989; however the regulation making power within subsection (1)(c) also permits the Welsh Ministers to specify in regulations additional categories of children to whom the duty provided for within this section would apply and subsection (2) requires such regulations to make provision about which local authority is responsible for discharging the duties in relation to such children.

Section 98 - Independent visitors for looked after children

283. **Section 98** requires a local authority to appoint an independent person to visit any child whom the authority looks after, if the child falls within a category specified in regulations made by the Welsh Ministers, or if it would be in the child's interests.
284. A person appointed as a visitor under this section must befriend and advise the child and may claim expenses from the authority that have been incurred in the exercise of their functions under this section.
285. The independent visitor's appointment comes to an end once the child ceases to be looked after by the authority; when he or she resigns; or if the local authority terminates the appointment. A visitor may not be appointed under this section if a child has sufficient understanding and objects to the making of such an appointment. If the child objects to having a particular visitor, the local authority is not required to appoint another person.
286. Regulations which may be made under subsection (9) may specify the circumstances in which a person is to be regarded as independent.

Section 99 - Appointment of independent reviewing officer

287. **Section 99** requires a local authority to appoint an independent reviewing officer (IRO) to review the case of each child it looks after. The IRO must be appointed before the child's case is first reviewed in accordance with section 102. Subsection (4) provides

that an IRO must be a person who falls within a category set out in regulations made by the Welsh Ministers.

Section 100 - Functions of the independent reviewing officer

288. **Section 100** sets out the functions of IROs. Subsection (1)(d) allows the Welsh Ministers to make regulations which prescribe additional functions for IROs and subsection (4) requires a local authority to co-operate with an IRO in the event that he or she is not an officer of the authority.

Section 101 - Referred cases

289. **Section 101** is a power for the Lord Chancellor to make regulations to extend the functions of a “Welsh family proceedings officer” (defined in section 197 of the Act) in relation to cases which are referred under section 100(3). Regulations made under this section may also make provision about the way that a Welsh family proceedings officer exercises his or her functions. Regulations made under this section may only be made with the consent of the Welsh Ministers. This section restates provision made by section 25C of the Children Act 1989.

Section 102 - Review of cases and inquiries into representations

290. **Section 102** gives the Welsh Ministers power to make regulations which require the review of a case of a looked after child. Subsection (2) contains examples of matters which may be included in such regulations.

Section 103 - Befriending, advising and assisting looked after children

291. **Section 103** contains a duty which requires a local authority to befriend, advise and assist a child whom it has ceased looking after, with the intention of promoting the child’s well-being.

Section 104 - Young people entitled to support under sections 105 to 115

292. **Section 104** sets out the different categories of young people who are or who were being looked after by a local authority for the purposes of this Act. Each category is entitled to differing types or levels of support. Subsection (2) contains a description of the six different categories.
293. A category 1 young person is a child aged 16 or 17 who is being looked after by a local authority and who has been looked after by a local authority (in Wales or England) for a period (specified in regulations), which began after he or she reached an age specified in regulations and ended after the child had reached the age of 16. This definition restates the definition of an eligible child in paragraph 19B(2) of Schedule 2 to the Children Act 1989 .
294. A category 2 young person is a child aged 16 or 17, who is no longer looked after by a local authority (in Wales or England) but who used to be a category 1 young person. The definition of a category 2 young person replicates that of a relevant child in section 23A of the Children Act 1989.
295. A category 3 young person is a young person who is aged 18 or over, and who used to be a category 2 young person and would continue to be so if he or she were under the age of 18; or who was being looked after by a local authority when he or she reached the age of 18, and, immediately before ceasing to be looked after, was a category 1 young person. The definition of a category 3 young person restates that of a former relevant child in section 23C of the Children Act 1989.
296. A category 4 young person is a category 3 young person who is under 25 (or a lower age specified in regulations) and for whom the duties under sections 105, 106, 107(3) and (10) and 110 have ceased to apply, and who has also informed the local authority

that he or she is pursuing or wishes to pursue education or training. The definition of a category 4 young person captures those young persons for whom provision is made within section 23CA of the Children Act 1989 (persons who qualify for further assistance to pursue education or training). Such young persons will be able to obtain advice and assistance by virtue of “reconnecting” with a local authority for the purposes of seeking to pursue education or training.

297. A category 5 young person is a young person who is 16 but not yet 21 in respect of whom a special guardianship order is in force (or if the person is 18 or over, an order was in force when he or she reached 18). A category 5 young person will be entitled to the same support from a local authority as that provided for a person qualifying for advice and assistance under section 24A of the Children Act 1989 (on the basis that he or she is a person who qualifies for advice and assistance by virtue of section 24(1A) of the Children Act 1989).
298. A category 6 young person is a young person who has not yet attained the age of 21; is residing in Wales; and who, whilst not currently being looked after, accommodated or fostered, has been looked after, accommodated or fostered for a period when they were between the ages of 16 and 18. This category does not include anyone capable of being captured by the definition of a category 5 young person. A category 6 young person will be entitled to the same support from a local authority as that provided to persons qualifying for advice and assistance under section 24A by virtue of section 24(1B) of the Children Act 1989.
299. Subsections (3) and (4) provide clarification of the terms “looked after”, “accommodated and “fostered” for the purposes of the definition of a category 6 young person.
300. Subsection (5) clarifies which local authority is the “responsible local authority” for the purposes of providing support to each of the categories of care leaver described in subsection (2).
301. Regulations may be made by the Welsh Ministers in accordance with the power in subsection (6) to specify additional categories of young person entitled to support under Part 6 or to modify existing categories, including those not to be treated as falling within a particular category and to provide for which local authority would be the responsible local authority for any additional young persons so specified.

Section 105 - Keeping in touch

302. **Section 105** requires a local authority to take reasonable steps to keep in touch with persons who fall within the definition of a category 2 or 3 young person, whether or not that person is still physically present in that local authority’s area. If the local authority loses contact with a category 2 or 3 young person, it must take reasonable steps to re-establish contact, and in the case of a category 2 young person, must continue to do so until it succeeds. Subsection (4) specifies the circumstances when the duties under this section to category 3 young persons cease.
303. Subsection (5) requires a local authority to take reasonable steps to re-establish contact with a category 6 young person (who was looked after by the local authority) if the local authority has lost touch with that person. This section restates provision made by sections 23B and 23C of the Children Act 1989 (in respect of category 2 and 3 young persons) and section 24 (in respect of category 6 young persons).

Section 106 - Personal advisers

304. **Section 106** requires a local authority to arrange for a young person who falls within the definition of a category 1, 2, 3 or 4 young person, to have a personal adviser. The functions of a personal adviser may be specified in regulations. This section restates provision made in paragraph 19C of Schedule 2 (in respect of category 1 young

persons); sections 23B (in respect of category 2 young persons); 23C (in respect of category 3 young persons); and 23CA (in respect of category 4 young persons) of the Children Act 1989.

Section 107 - Pathway assessments and plans: general

305. **Section 107** requires a local authority to carry out an assessment to determine what advice and support is required by a category 1 young person both while he or she is being looked after and after he or she ceases to be looked after. This provision restates the duty contained in paragraph 19B(4) of Schedule 2 to the Children Act 1989.
306. Subsections (2), (3) and (4) apply to a young person who is a category 2 or 3 young person who does not already have a pathway plan in place, and to a category 4 young person. In such cases, the local authority must carry out an assessment to determine the advice and other support it would be appropriate for the local authority to provide to the young person. Following assessment, the local authority must prepare a pathway plan and keep it under review. This provision restates the obligations contained in sections 23B, 23C and 23CA of the Children Act 1989.
307. The purpose and required content of a pathway plan are specified in subsection (7) which also contains a regulation making power for the Welsh Ministers to add matters to be included in a pathway plan. This subsection restates provision made in section 23E, paragraph 19B(4) of Schedule 2, and sections 23C(3)(b) and 23CA(3)(a) of the Children Act 1989.
308. Regulations about assessments which may be made by the Welsh Ministers, in accordance with the power in subsection (8), may contain provision about matters such as who is to be consulted; the manner and timing of such assessments and record keeping. The local authority must regularly review a pathway plan, and subsection (11) provides that assessment(s) or review(s) carried out in accordance with this section can be carried out at the same time as any other assessment or review.

Section 108 - Pathway assessments and plans: post-18 living arrangements

309. **Section 108** requires a local authority, when it is undertaking an assessment, or preparing, maintaining or reviewing the pathway plan of a child it looks after in accordance with its obligations under section 107, to ascertain whether the looked after child and their foster parent(s) wish to make a post-18 living arrangement. A “post-18 living arrangement” is defined in subsection (3). Where such an arrangement is desired, the local authority must provide advice and support to facilitate such arrangements unless a post-18 living arrangement would not be consistent with the young person’s well-being.

Section 109 - Support for category 2 young people

310. **Section 109** requires the local authority that is responsible for a category 2 young person to safeguard and promote his or her well-being, and (to the extent that it is required) support the young person by maintaining him or her, providing suitable accommodation and any other support set out in regulations. Support may be provided in kind or in cash. Regulations which may be made by the Welsh Ministers in accordance with the regulation making power in subsection (1)(c) may also define “suitable accommodation”, and make provision about the suitability of landlords or other providers of accommodation that a local authority provides or secures by way of support under this section. This restates the provision in section 23B of the Children Act 1989.

Section 110 - Support for category 3 young people

311. **Section 110(1)** requires a local authority to support a category 3 young person (to the extent that their well-being requires it) by contributing to expenses incurred by the

young person to enable them to live near their place of work or where they will be seeking employment. In cases where a young person is or will be receiving education or training, the local authority must (to the extent that the young person's well-being and education or training needs require it) contribute to expenses incurred in living near the place where they are, or will be, receiving education or training and make a grant to enable the young person to study or train. The local authority must also do anything else it considers appropriate to support a category 3 young person. Assistance may be provided in kind or in cash.

312. Subsection (2) requires a local authority to monitor any post-18 living arrangement that is in place and to provide advice and support to maintain that arrangement (including providing financial support to the former foster parent).
313. If the category 3 young person is pursuing full-time further or higher education then subsection (6) requires the local authority to pay “the relevant amount” to that young person in accordance with their pathway plan. A local authority must provide accommodation during the vacation for a category 3 young person who is pursuing full-time further or higher education when term-time accommodation is unavailable. Section 116 contains a regulation making power for the Welsh Ministers to make supplementary provision about support for young persons in further or higher education, including, for example, the power to specify the “relevant amount” and to define terms such as “vacation”, or “full-time”.
314. If accommodation is not provided then the local authority must provide the young person with enough money to secure the accommodation needed. This section restates, in part, provision made in section 23C of the Children Act 1989.

Section 111 - Cessation of duties in relation to category 3 young people

315. **Section 111** sets out when the responsible authority’s duties towards a category 3 young person cease.

Section 112 - Support for category 4 young people

316. **Section 112 (1)** requires a local authority to support a category 4 young person (to the extent that their educational or training needs require it) by contributing to expenses incurred by the young person to enable them to live near where he or she is, or will be, receiving education or training and by making a grant to enable the young person to meet expenses connected with their education or training.
317. Subsection (2) requires the local authority, where a category 4 young person is pursuing higher education, to pay the relevant amount to him or her in accordance with their pathway plan. Local authorities must provide accommodation during the vacation to a category 4 young person who is pursuing full-time further or higher education when their term-time accommodation is unavailable. If such accommodation is not provided then the local authority must provide the young person with enough money to secure the accommodation needed. Section 116 contains a regulation making power for the Welsh Minister to make supplementary provision about support for young persons in further or higher education, including, for example, the power to specify the “relevant amount” and to define terms such as “vacation”, or “full-time”.
318. This section restates provision made by section 23CA of the Children Act 1989.

Section 113 - Cessation of duties in relation to category 4 young people

319. **Section 113** sets out when the responsible authority’s duties towards a category 4 young person cease.

Section 114 - Support for category 5 young people and former category 5 young people

320. **Section 114** requires a local authority to consider whether specified conditions are met by young persons who are category 5 or former category 5 young persons to determine the extent and nature of its obligations to provide support to such young persons. The conditions (specified in subsection (2)) are that the young person needs support, and that whoever was looking after the young person does not have the necessary facilities to advise or befriend them. If these conditions apply then the local authority must advise or befriend the young person and may provide support.
321. Subsection (4) sets out the type of support the responsible local authority may provide to a category 5 young person. Support may take the form of contributing to expenses incurred by the young person to enable them to live near their place of work or where they will be seeking employment, or where they are or will be receiving education or training. The local authority may make a grant to enable the young person to meet expenses connected with their education or training. Support may be provided in kind or in cash. Local authorities must provide accommodation during the vacation to a category 5 young person who is pursuing full-time further or higher education when term-time accommodation is unavailable. If accommodation is not provided then the local authority must provide the young person with enough money to secure the accommodation needed.
322. Subsection (6) gives a local authority power to disregard any interruption in the young person's programme of education if it is satisfied the young person will resume the programme as soon as reasonably practicable.
323. This section restates provision made in sections 24A and 24B of the Children Act 1989.

Section 115 - Support for category 6 young people and former category 6 young people

324. **Section 115** requires a local authority to consider whether specified conditions are met by young persons who are category 6 young persons or certain former category 6 young persons, to determine the extent and nature of its obligations to provide support to such young persons. The conditions (specified in subsection (2)) are that the young person needs support; and for those who fall within the definition of a category 6 young person by virtue of section 104(3)(b) to (e), that whoever was looking after the young person does not have the necessary facilities to advise or befriend them. If these conditions apply then the local authority must advise or befriend the young person and may provide support.
325. Subsection (5) sets out the type of support that may be provided by a local authority. Support can take the form of contributing to expenses incurred by the category 6 young person to enable them to live near their place of work or where they will be seeking employment or where they are or will be receiving education or training. The local authority may also make a grant to enable the young person to meet expenses connected with their education or training; or by providing accommodation in other circumstances. Support may be in kind or in cash.
326. Subsection (7) gives a local authority power to disregard any interruption in the young person's programme of education if it is satisfied that the young person will resume the programme as soon as reasonably practicable.
327. Subsection (8) requires the local authority to provide accommodation during the vacation for a category 6 young person who is pursuing full-time further or higher education when their term-time accommodation is unavailable. If accommodation is not provided then the local authority must provide the young person with enough money to secure the accommodation needed.
328. This section restates provision made in sections 24A and 24B of the Children Act 1989.

Section 116 - Supplementary provision about support for young persons in further or higher education

329. **Section 116** contains a power for the Welsh Ministers to make regulations to make further provision about the support a local authority must or may provide for young persons who leave care and pursue higher or further education.

Section 117 - Charging for provision under sections 109 to 115

330. **Section 117** contains a power for a local authority to impose a charge for support (other than the provision of advice) which it provides in accordance with sections 109 to 115 of the Act. Such a charge may only be imposed on the young person receiving the support if he or she is over 18, or on a person with parental responsibility for a young person receiving the support where that young person is under the age of 18. Subsection (3) provides that an adult is not liable to pay such a charge if they are in receipt of such benefit(s) as may be specified in regulations (which may be made by the Welsh Ministers in accordance with powers contained in subsection (3)).
331. Subsections (5) and (6) provide that the power to make regulations contained in Part 5 of the Act (in sections 61 or 62) applies to charges under this section, and that regulations may also apply any provision made in or under sections 63 to 68 and sections 70 to 73 (with or without modification) to a charge imposed under this section.

Section 118 - Information

332. **Section 118 (1)** requires a local authority that has duties towards a young person by virtue of sections 105, 114 or 115 to inform another local authority (in Wales or England) if the young person intends to live, or is living in, that other local authority's area.
333. Subsection (2) contains further obligations requiring notification of the movements of a child who is accommodated in Wales in specified types of accommodation, for example in accommodation provided by or on behalf of a health body.

Section 119 - Use of accommodation for restricting liberty

334. **Section 119 (1)** provides that a child looked after by a local authority (in Wales or England) may not be placed, and if placed may not be kept, in secure accommodation in Wales unless it appears that the child has a history of absconding and is likely to suffer significant harm or that the child is likely to injure himself or others if kept in any other form of accommodation.
335. Subsection (2) gives the Welsh Ministers power to make regulations to set out the maximum period in which a child can be held in secure accommodation without the court's authority, and also a maximum period for which the court may authorise a child to be kept in secure accommodation in Wales. The section also provides for determinations and orders by the court relating to the use of secure accommodation.
336. Subsection (7) contains a power for the Welsh Ministers to make regulations as to the application and modification of this section to a child of a description specified in the regulations, and as to determinations relating to the placing and keeping of children of specified descriptions in secure accommodation.
337. Subsection (10) provides this section is subject to section 76(5), which is concerned with the right of a person with parental responsibility for a child to remove the child from accommodation provided by or on behalf of a local authority.
338. This section is based on provision made in section 25 of the Children Act 1989.

Section 120 - Assessment of children accommodated by health authorities and education authorities

339. **Section 120** requires an “accommodating authority” (that is a local health board, an NHS Trust or a local authority in the exercise of education functions) that accommodates a child in Wales for a consecutive period of 3 months or more, or intends to do so, to notify an appropriate officer of the Welsh or English local authority where the child was ordinarily resident. If the child has no settled place of residence, an appropriate officer of the Welsh or English local authority where the accommodation in which the child is placed, must be notified instead. A similar duty arises when the accommodating authority ceases to accommodate the child. “appropriate officer” is defined in subsection (4).
340. The appropriate officer of a local authority so notified then has a duty to assess whether the child has needs for care and support (in accordance with section 21) and must also consider whether the local authority should exercise any other functions under this Act or the Children Act 1989.
341. Subsection (6) disapples the obligation to undertake an assessment of children who are children looked after by a local authority in Wales, Scotland or England or (in relation to Northern Ireland) by a Health and Social Care Trust. Any needs of such children for care and support will be met by the local authority or Health and Social Care Trust that is responsible for them.
342. This section is based on provision made in section 85 of the Children Act 1989.

Section 121 - Assessment of children accommodated in care homes or independent hospitals

343. **Section 121** requires a person who carries on a care home or hospital in Wales where a child is accommodated for a period of at least 3 months (or where is intended that the child be so accommodated), to notify the appropriate officer (as defined in section 120(4)) of the local authority in which the care home or independent hospital is located, and again notify the appropriate officer when it ceases to accommodate the child. The appropriate officer then has a duty to assess the child (in accordance with section 21) to determine if the local authority should exercise any of its functions under this Act or the Children Act 1989.
344. Subsection (4) disapples the obligation to undertake an assessment of children who are children looked after by a local authority in Wales, Scotland or England or (in relation to Northern Ireland) a Health and Social Care Trust. Any needs of such children for care and support will be met by the local authority or Health and Social Care Trust that is responsible for them.
345. Subsection (5) makes it an offence if the person responsible for notifying the appropriate officer under this section fails to do so (without reasonable excuse).
346. Subsection (6) gives a person authorised by a local authority the power to enter a care home or independent hospital to establish whether obligations contained in this section have been complied with. It is an offence to obstruct such a person in the exercise of their power of entry.
347. This section is based on provision made in section 86 of the Children Act 1989.

Section 122 - Visitors for children notified to local authority under section 120 or 121

348. **Section 122** requires the appropriate officer (as defined in section 120(4)) to make arrangements, in accordance with regulations, for a child who is being accommodated under sections 120 and 121 (and in respect of whose accommodation the officer has been notified) to be visited by a representative of the local authority. The regulations

*These notes refer to the Social Services and Well-being (Wales)
Act 2014 (c.4) which received Royal Assent on 1 May 2014*

may make provision about, for example, the frequency of visits and the circumstances in which visits can be made.

349. Subsection (5) requires a local authority to ensure the representative who visits a child who is being accommodated as described in sections 120 and 121, has the necessary skills to do the job.

350. This section is based on provision made in section 86A of the Children Act 1989.

Section 123 - Services for children notified to a local authority under section 120 or 121

351. Section 123 requires a local authority to provide services for children in respect of whom they have been notified under section 120 or 121. The services must be provided with a view to promoting contact between the child and their family. Such duties are in addition to any duty to maintain family contact that the local authority for the area in which the child is accommodated may have under section 39 (duty to maintain family contact).

Section 124 - Arrangements to assist children to live outside England and Wales

352. Section 124 provides that a local authority may only arrange for a child in its care to live outside England or Wales with the approval of the court.

353. Subsection (3) makes provision about the considerations which a court should have in mind before making a determination under subsection (1).

354. Subsections (4) and (5) contain provision to deal with situations where a court may dispense with consent required under subsection (3), such as where it is satisfied that a child does not have sufficient understanding to give or withhold their consent.

355. Section 124 also makes provision as to the effect of the court's approval during an appeal period and disapplying the section to circumstances in which a local authority is placing a child for adoption with his or her prospective adopters.

356. This section is based on provision made in paragraph 19 of Schedule 2 to the Children Act 1989.

Section 125 - Death of children being looked after by local authorities

357. Section 125 sets out the action that a local authority must take in the event of the death of a child that it is looking after.

358. This section also contains power for a local authority to arrange for the burial or cremation of a child who has died whilst being looked after (provided that the conditions set out in subsections (1)(c) and (3) are fulfilled).

359. The local authority may make such payments as are permitted by provision made in subsection (1)(d) (provided that the conditions set out in subsection (2) are fulfilled).

360. The local authority may also seek to recover any costs incurred under this section from a person with parental responsibility for a child under the age of 16 who has died (subsections (4) and (5)).

361. This section is based on provision made in paragraph 20 of Schedule 2 to the Children Act 1989.