



# Social Services and Well-being (Wales) Act 2014

2014 anaw 4

## PART 11

### MISCELLANEOUS AND GENERAL

#### *General*

#### **196 Orders and regulations**

- (1) A power to make an order or regulations under this Act is to be exercised by statutory instrument.
- (2) A power to make an order or regulations under this Act includes power—
  - (a) to make different provision for different cases or classes of case, different areas or different purposes;
  - (b) to make different provision generally or subject to specified exemptions or exceptions or only in relation to specific cases or classes of case;
  - (c) to make incidental, supplementary, consequential, transitory, transitional or saving provision.
- (3) Subsections (1) and (2) do not apply to an order which may be made by a court or a justice of the peace.
- (4) A statutory instrument containing regulations made by the Welsh Ministers under this Act is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (5) Subsection (4) does not apply to regulations to which subsection (6) applies.
- (6) A statutory instrument containing the following regulations or orders (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales—

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- (a) regulations under section 3(6), 16(3), 18(3), 32, 37(1), 40(1), 42(1), 119, 127(9), 135(4), 166, 167(3), 168 or 181;
- (b) an order under section 140 or 143(2);
- (c) regulations under section 198 which amend or repeal any provision of an Act of Parliament or a Measure or Act of the National Assembly for Wales;

(see sections 33 and 141 for further requirements in relation to the making of regulations under section 32 and orders under section 140).

- (7) A statutory instrument containing regulations made by the Lord Chancellor under section 101 is subject to annulment in pursuance of a resolution of either House of Parliament.

## 197 General interpretation and index of defined expressions

(1) In this Act—

“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;

“adult” (“*oedolyn*”) has the meaning given by section 3;

“approved premises” (“*mangre a gymeradwywyd*”) is defined for the purposes of sections 185 to 187 by section 188(1);

“bail in criminal proceedings” (“*mechnïaeth mewn achos troseddol*”) is defined for the purposes of sections 185 to 187 by section 188(1);

“care and support” (“*gofal a chymorth*”) has the meaning given by section 4;

“care home” (“*cartref gofal*”) has the same meaning as in the Care Standards Act 2000;

“carer” (“*gofalwr*”) has the meaning given by section 3;

“child” (“*plentyn*”) has the meaning given by section 3;

“children’s home” (“*cartref plant*”) means, except in section 86, a children’s home within the meaning of the Care Standards Act 2000 in respect of which a person is registered under Part 2 of that Act;

“clinical commissioning group” (“*grŵp comisiynu clinigol*”) means a body established under section 14D of the National Health Service Act 2006;

“community home” (“*cartref cymunedol*”) and “controlled community home” (“*cartref cymunedol a reolir*”) have the meanings given by section 53 of the Children Act 1989;

“disabled” (“*anabl*”) has the meaning given by section 3;

“education functions” (“*swyddogaethau addysg*”) has the meaning given by section 579(1) of the Education Act 1996;

“eligibility criteria” (“*meini prawf cymhwysra*”) means criteria set under section 32;

“enactment” (“*deddfiad*”) means—

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- (a) except in sections 140(2)(b), 172(7) and 198(2)(b), a provision contained in any of the following (whenever enacted or made)—
- (i) an Act of Parliament;
  - (ii) an Act or Measure of the National Assembly for Wales;
  - (iii) an Act of the Scottish Parliament;
  - (iv) Northern Ireland legislation (within the meaning of the Interpretation Act 1978);
  - (v) subordinate legislation made under an enactment falling within sub-paragraphs (i) to (iv);
- (b) in sections 140(2)(b), 172(7) and 198(2)(b), a provision contained in any of the following (whenever enacted or made)—
- (i) an Act of Parliament;
  - (ii) an Act or Measure of the National Assembly for Wales;
  - (iii) subordinate legislation made under an enactment falling within sub-paragraph (i) or (ii);

“family” (“*teulu*”), in relation to a child, includes (but is not limited to) any person who has parental responsibility for the child and any other person with whom the child has been living;

“financial assessment” (“*asesiad ariannol*”) has the meaning given by section 63;

“financial limit” (“*terfyn ariannol*”) has the meaning given by section 66(5);

“function” (“*swyddogaeth*”) means power or duty;

“harm” (“*niwed*”), in relation to a child, means abuse or the impairment of—

- (a) physical or mental health, or
- (b) physical, intellectual, emotional, social or behavioural development,

and where the question of whether harm is significant turns on the child’s health or development, the child’s health or development is to be compared with that which could reasonably be expected of a similar child;

“Health and Social Care trust” (“*ymddiriedolaeth Iechyd a Gofal Cymdeithasol*”) means a Health and Social Care trust established under the [Health and Personal Social Services \(Northern Ireland\) Order 1991 \(S.I. 1991/194 \(N.I. 1\)\)](#);

“hospital” (“*ysbyty*”) has the meaning given by section 206 of the National Health Service (Wales) Act 2006;

“independent hospital” (“*ysbyty annibynnol*”)—

- (a) in relation to Wales, has the meaning given by section 2 of the Care Standards Act 2000, and
- (b) in relation to England, means a hospital as defined by section 275 of the National Health Service Act 2006 that is not a health service hospital as defined by that section;

“local authority” (“*awdurdod lleol*”) means the council of a county or county borough in Wales;

“local authority foster parent” (“*rhiant maeth awdurdod lleol*”) means a person who is approved as a local authority foster parent in accordance with regulations made by virtue of section 93;

“local authority in England” (“*awdurdod lleol yn Lloegr*”) means—

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- (a) a county council in England,
- (b) a district council for an area in England for which there is no county council,
- (c) a London borough council, or
- (d) the Common Council of the City of London;

“local authority in Scotland” (“*awdurdod lleol yn yr Alban*”) means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;

“Local Health Board” (“*Bwrdd Iechyd Lleol*”) means a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006;

“National Board” (“*Bwrdd Cenedlaethol*”) is defined for the purposes of Part 7 by section 142;

“National Health Service Commissioning Board” (“*Bwrdd Comisiynu'r Gwasanaeth Iechyd Gwladol*”) means the body established under section 1H of the National Health Service Act 2006;

“needs assessment” (“*asesiad o anghenion*”) means an assessment under Part 3;

“neglect” (“*esgeulustod*”) means a failure to meet a person’s basic physical, emotional, social or psychological needs, which is likely to result in an impairment of the person’s well-being (for example, an impairment of the person’s health or, in the case of a child, an impairment of the child’s development);

“NHS Foundation Trust” (“*Ymddiriedolaeth Sefydledig GIG*”) has the meaning given by section 30 of the National Health Service Act 2006;

“NHS Trust” (“*Ymddiriedolaeth GIG*”) means a National Health Service trust established under section 18 of the National Health Service (Wales) Act 2006;

“parental responsibility” (“*cyfrifoldeb rhiant*”) has meaning given by section 3 of the Children Act 1989;

“prison” (“*carchar*”) is defined—

- (a) for the purposes of sections 185 to 187 by section 188(1),
- (b) for the purposes of section 134, by section 134(11), and
- (c) for the purposes of section 162, by section 162(11);

“private children’s home” (“*cartrefplant preifat*”) means a children’s home which is not—

- (a) a community home, or
- (b) a voluntary home (within the meaning given by section 60 of the Children Act 1989);

“regulations” (“*rheoliadau*”), other than in relation to section 101, means regulations made by the Welsh Ministers;

“relative” (“*perthynas*”), in relation to a child, means a step-parent, grandparent, brother, sister, uncle or aunt (including any person who is in that relationship by virtue of a marriage or civil partnership or an enduring family relationship);

“Safeguarding Board” (“*Bwrdd Diogelu*”) is defined for the purposes of Part 7 by section 142;

“Safeguarding Board area” (“*ardal Bwrdd Diogelu*”) is defined for the purposes of Part 7 by section 142;

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“Safeguarding Board partner” (“*partner Bwrdd Diogelu*”) is defined for the purposes of Part 7 by section 142;

“services” (“*gwasanaethau*”) includes facilities;

“special guardian” (“*gwarcheidwad arbennig*”) and “special guardianship order” (“*gorchymyn gwarcheidiaeth arbennig*”) have the meaning given by section 14A of the Children Act 1989;

“Special Health Authority” (“*Awdurdod Iechyd Arbennig*”) means a Special Health Authority established under section 22 of the National Health Service (Wales) Act 2006 or section 28 of the National Health Service Act 2006;

“specified” (“*penodedig*”, “*a bennir*”, “*a bennwyd*”) and related expressions, unless the context otherwise requires, means specified in regulations;

“standard charge” (“*ffi safonol*”) is defined for the purposes of Part 5 by section 63(3);

“upbringing” (“*magwraeth*”), in relation to a child, includes the care of the child but not the child’s maintenance;

“voluntary organisation” (“*sefydliad gwirfoddol*”) means a body (other than a public or private body) whose activities are not carried on for profit;

“well-being” (“*llesiant*”) has the meaning given by section 2;

“Welsh family proceedings officer” (“*swyddog achosion teuluol Cymru*”) has the meaning given by section 35 of the Children Act 2004;

“youth detention accommodation” (“*llety cadw ieuenctid*”) is defined for the purposes of sections 185 to 187 by section 188(1);

“youth offending team” (“*tîm troseddwyd ifanc*”) means a team established under section 39 of the Crime and Disorder Act 1998.

(2) In this Act—

- (a) a reference to a child looked after by a local authority has the meaning given by section 74;
  - (b) a reference to a child looked after by a local authority in England has the meaning given to a reference in the Children Act 1989 to a child who is looked after by a local authority for an area in England (see section 22 of that Act);
  - (c) a reference to a child looked after by a local authority in Scotland has the same meaning as a reference in Chapter 1 of Part 2 of the Children (Scotland) Act 1995 to a child who is “looked after” by a local authority (see section 17(6) of that Act);
  - (d) a reference to a child looked after by a Health and Social Care trust has the same meaning as a reference in the [Children \(Northern Ireland\) Order 1995 \(S.I. 1995/755 \(N.I. 2\)\)](#) to a child who is looked after by an authority (see article 25 of that Order).
- (3) A reference in this Act to a child who is in the care of a local authority is a reference to a child who is in its care by virtue of a care order (within the meaning given by the Children Act 1989).
- (4) A reference in this Act to accommodation provided by or on behalf of a local authority is a reference to accommodation so provided in the exercise of functions of that authority or any other local authority which are social services functions.

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- (5) A reference in this Act to a person having, or lacking, capacity in relation to a matter is to be interpreted as a reference to a person having, or lacking, capacity within the meaning of the Mental Capacity Act 2005 in relation to that matter.
- (6) A reference in this Act to being authorised under the Mental Capacity Act 2005 is a reference to being authorised as—
  - (a) a donee of a lasting power of attorney created under that Act, or
  - (b) a deputy appointed by the Court of Protection under section 16(2)(b) of that Act.
- (7) The Welsh Ministers may by regulations provide that the Council of the Isles of Scilly is to be treated as a local authority in England for the purposes of this Act, or for the purposes of specified provisions of this Act, with such modifications as may be specified.

### **198 Power to make consequential and transitional provision etc**

- (1) If the Welsh Ministers consider it necessary or expedient for the purposes of giving full effect to any provision of this Act, or in consequence of any such provision, they may by regulations make—
  - (a) any supplementary, incidental or consequential provision, and
  - (b) any transitional or saving provision.
- (2) Regulations under this section may (among other things)—
  - (a) provide for any provision of this Act which comes into force before another provision has come into force to have effect, until that other provision has come into force, with specified modifications;
  - (b) amend, repeal or revoke any enactment (including a provision of this Act) passed or made on or before the day on which this Act is passed.
- (3) Nothing in this section limits the power by virtue of section 196(2) to include transitional or saving provision in an order under section 199(2).

### **199 Commencement**

- (1) The following provisions come into force on the day after the day on which this Act receives Royal Assent—
  - Part 1;
  - section 196;
  - section 197;
  - section 198;
  - this section;
  - section 200.
- (2) The remaining provisions of this Act come into force on a day appointed by the Welsh Ministers by order.
- (3) An order made under subsection (2) may appoint different days for different purposes.
- (4) An order made under subsection (2) may not commence the provision in subsections (1) and (2) of section 32 before regulations made under subsections (3) and (4) of that section have come into force.

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**200 Short title**

The short title of this Act is the Social Services and Well-being (Wales) Act 2014.