RCN Wales response to the National Assembly for Wales Consultation on the Social Services and Well-being (Wales) Bill

The Royal College of Nursing in Wales welcomes the opportunity to respond to the National Assembly for Wales consultation on the Social Services and Well-being (Wales) Bill.

Question 1

Is there a need for a Bill to provide for a single Act for Wales that brings together local authorities’ and partners’ duties and functions in relation to improving the well-being of people who need care and support and carers who need support? Please explain your answer.

The Bill’s aim to bring together duties and functions in relation to well-being of people who need care and support and carers who need support is a positive one. We support the idea of bringing legislation together and modernising it. The legislation should be clear, accessible and understandable for people who are affected by it.

There are some concerns. The Bill, as currently worded, places a duty on local authorities to maintain well being for people who need care and support and carers who need support. However, it remains unclear about whether this covers people with a need or an eligible need. This requires clarification and an explanation of how this would work in terms of preventative services or self-funders. This must be resolved in order for the Bill to meet its stated aims.

Repeals

There are positive intentions around well-being. However, without a clear list of repeals and more explicit reference to which legislation is being replaced it is unclear if this is achieved. The Bill clearly aims to move current legislation onto the Welsh statute books. However, as the list of repeals is as yet incomplete we are concerned about whether all appropriate statutes have been included.

For example, in current legislation the Chronically Sick & Disabled Persons Act 1970 (Section 2) requires local authorities to assess the needs of a disabled person (as defined by National Assistance Act 1948, Section 29). The Welsh Government has said it would like to simplify existing legislation into a single statute, so we expect the single duty to assess in the Social Services and Well-being Bill would replace the duty in the 1970 Act and the others that exist in other Acts. However, the assessment duty in the 1970 Act exists in legislation covering England and Wales.

It might be that this and other relevant parts of existing legislation would need to be revoked to make way for the Social Services & Well-being Bill.
Sustainable Development White Paper
We also note the White Paper for the Sustainable Development Bill aims to enhance: ‘economic, social and environmental wellbeing of people and communities’. However, this Bill contains no reference to the Social Services and Well-being (Wales) Bill (and vice versa), which is a cause for concern. We trust that there will be cross-government working to ensure these, and all, pieces of legislation complement each other and work together in practice.

Question 2
Do you think the Bill, as drafted, delivers the stated objectives as set out in Chapter 3 of the Explanatory Memorandum? Please explain your answer.

The positive objectives laid out in the Explanatory Memorandum are welcome. However, it is not evident that these aspirations are not realised within the current drafting of the Bill.

Voice and control
The principle of the person centred approach of voice and control for people using care and support services is a welcome one. However, important sections of the Bill will not achieve voice and control, as it is currently drafted. Parts the Bill still retain a service led model (matching people to available services) rather than focusing on individual outcomes and finding ways to meet those needs.

Assessment and care planning
It is essential that local authorities actively involve the person in the whole assessment and care planning process to jointly produce the care plans and outcomes, and to promote the options that are available for people to exercise voice and control. This applies across all local authority duties and is not restricted to individual methods, such as direct payments.

It is known there is limited take up of direct payments in Wales as individuals can access direct payments as the law stands now. There is a lack of awareness of the availability of direct payments. The Bill should therefore lead to the production of accessible information about direct payments, so that they can decide whether or not to use them.

Formal assessments are the best way to establish people’s care and support needs. We would be anxious to ensure, therefore, that access to assessments is not restricted in any way by the Bill. By not making carers’ assessments portable we believe the Bill will undermine the policy intention to extend the same entitlements to carers as the people for whom they care.

Partnership working (e.g. Local Health Boards)
The role of partners (such as Local Health Boards) requires further clarification. There needs to be further explanation of whether the Bill extends the role of partners beyond that which is already in place.

More detail around the Welsh Government’s intentions for charging would be particularly welcome.
Eligibility

It is essential that the proposed introduction of national eligibility criteria would not want lead to restrictions on care by local authorities. The eligibility framework is a key component of the practical application of the Bill because it will set the criteria used by local authorities to decide whether or not a person’s needs or desired outcomes will be met by local authority social care and support services. In the absence of an existing eligibility framework it is not possible to analyse how the Bill’s proposals will work in practice.

Without knowledge of the current numbers of people currently within each level of ‘need’ in the current system it is not possible to estimate the financial (and other) implications for individuals and local authorities of any proposed changes.

Well-being

The Bill needs to identify more clearly the steps envisaged to provide proportionate support to people. This links to the national eligibility criteria and assessment, and to the intention to promote self responsibility and voice and control.

Duties to meet needs in different ways

The Bill identifies the importance of providing advice, information and signposting to anyone who requests it. The Bill is clear that preventative services should be provided to prevent people developing needs for care and support or to reduce those needs but it lacks clarity about who would have access to preventative services; the difference between when a person ‘needs’ some targeted intervention to prevent them needing care and support and the point at which they are deemed to have ‘care and support’ needs. Once this is clear it will be possible to identify when eligibility and charging are applied and ensure there are no unintended consequences for this Bill.

Question 3

The Bill aims to enable local authorities, together with partners, to meet the challenges that face social services and to begin the process of change through a shared responsibility to promote the well-being of people. Do you feel that the Bill will enable the delivery of social services that are sustainable? Please explain your answer.

Charging

It is a concern that there is a proposal that the Bill will allow local authorities to charge for information and advice. Information and advice is essential to meet the preventive aspirations of the Bill but there is increased likelihood that individuals will not be able to pay and therefore not have access to preventive resources. It would be helpful for there to be more information about this policy intention, i.e. what kind of information and advice services might be subject to charging.

Preventative services
We welcome the acknowledgement of preventative services in the Bill but believe the current drafting raises issues for implementation. Preventative services are important to both making social services financially sustainable and in promoting wellbeing and positive outcomes. It would be helpful if there is a definition of preventative services on the face of the Bill to ensure that local authorities provide both general, universal prevention and more targeted, person-level prevention.

We cannot see how the Bill will incentivise early intervention. Our concern is that prevention work will not bring benefits if the threshold for accessing them is set too high.

Resource implications

We have concerns about the Regulatory Impact Assessment. These are dealt with in responses to Question 5 and 7b.

Question 4
How will the Bill change existing social services provision and what impact will such changes have, if any?

Information and advocacy services

Information and advocacy services are vital to promote voice and control, so that people have the information and advocacy support they need to access services to raise their wellbeing.

Access to advocacy will be important to enable people to access new service models brought about by the Bill.

Promotion of co-operatives, social enterprises etc

If the Bill is to change practice and realise the policy intention, the current list in the Bill of examples of services should be expanded.

Question 5
What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?

The aspirations stated in the Explanatory Memorandum that the Bill is welcome. However, there are many potential barriers to implementation of the provisions of the Bill. There is a lack of clarity on costs of the Bill. The Explanatory Memorandum acknowledges the cost of staff training in social services but this seems limited and does not account for the wider social care workforce or implications on other budgets beyond social services.

There is no comparison with the costs of the current system. How is it possible to know what is a cost effective change?
Joint working
There is a lack of clarity about the explicit duties on health service providers. It would be useful to have a clearer explanation of how joint working will be practically applied.

Question 6
In your view does the Bill contain a reasonable balance between the powers on the face of the Bill and the powers conferred by Regulations? Please explain your answer.

There is not sufficient balance between the powers on the face of the Bill and details that will be left to regulation. It would be helpful to see additions, particularly relating to definitions (such as what is an assessment) on the face of the Bill.

Definitions and clarity
One of the themes of this response is a concern about lack of clarity. It is important that proposed new legislation is easy to understand. Some definitions in the Bill are either not as clearly defined as they could be or defined in a way that may have unwelcome consequences.

For example the following concepts are not defined:

- Assistance.
- Abuse and neglect.
- A care and support need.
- Disabled child.

Principles
On outcomes it’s important that the Bill needs to focus on the person and individual outcomes, not fitting people into existing services.

Regulations
There are concerns the Bill could be more prescriptive about what ‘must’ be detailed, rather than what ‘may’ be detailed in regulations.

There are many examples of this. One example exists in Section 115:

115 Funding of Safeguarding Boards

(3) Regulations may—

(a) require payments to be made by a Safeguarding Board partner towards expenditure incurred by, or for purposes connected with, the Safeguarding Board on which it is represented, and

(b) provide for how the amount of those payments is to be determined in respect of a specified period.
There is a clear case that regulations ‘must’ require partners to make requirements and provisions as listed in (a) and (b).

**Question 7 (a)**
What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?

In answering this question, you may wish to consider Chapter 5 of the Explanatory Memorandum, which contains a table summarising the powers delegated to Welsh Ministers in the Bill to make orders and regulations, etc.

Much of the detail of regulation is yet to be drafted. It is important that this detail is published before Assembly Members are required to vote on the Bill’s general principles at the end of Stage One.

There is concern about the level of subordinate legislation that is left to negative rather than affirmative procedure. An example of this is Section 48 in the table in the Explanatory Memorandum, Chapter. Regulations on “carrying out financial assessments” are a significant issue which should be subject to ‘affirmative’ procedure to ensure the regulations are given proper scrutiny. It may be minor in terms of the number of regulations but it will have a huge impact on individuals who need care and support and carers who need support.

This table needs to be reconsidered with the needs of those who use social care and support services taken into account.

7 (b)
What are your views on the financial implications of the Bill?

In answering this question you may wish to consider Chapter 8 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the Bill.

Concerns exist about the Regulatory Impact Assessment. As stated earlier the only cost listed to implementation of the Bill is cost of staff training in social services. This seems limited and does not account for the wider social care workforce or implications on other budgets beyond social services. There is no comparison with the costs of the current system. How is it possible to know what is a cost effective change? There will be additional costs that are not included such as for the establishment of new national safeguarding boards.

**Question 8**
Are there any other comments you wish to make about specific sections of the Bill?
Paying for care
There is no detail about paying for care in the Bill, i.e. the cost to individuals for paying for the care and support that they need. The Dilnot Commission report *Fairer Care Funding* was published in July 2011 and has been taken into account by UK Government announcements. The Welsh Government need to publish proposals for the cost of care as soon as possible as the Dilnot review suggests the current social care and support system is underfunded.

Cumulative Impacts of welfare reform
The Welsh Government recently published research on the cumulative impacts of welfare reform, commissioned from the Institute of Fiscal Studies, which indicates the proposed changes by the UK Government through the welfare reform agenda could increase spending on social care and support services.

These costs should be accounted for in the Regulatory Impact Assessment. They could also help the Welsh Government make the case for change and give a more realistic backdrop to the Bill.