

# **SL(6)617 – Code of Practice on the exercise of social services functions in relation to Part 4 (direct payments and choice of accommodation) and Part 5 (charging and financial assessment) of the Social Services and Well-being (Wales) Act 2014**

## **Background and Purpose**

This Code of Practice (“the Code”) is issued under section 145 of the Social Services and Well-being (Wales) Act 2014 (“the Act”). Local authorities, when exercising their social services functions, must act in accordance with the requirements contained in the Code.

The Code has been revised to add a recently introduced financial recognition scheme to the list of forms of capital that should be fully disregarded in the financial assessment for charging for all forms of care and support.

The scheme was introduced in the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2025.

The financial recognition scheme to be added to the Code is the Lesbian, Gay, Bisexual and Transgender Financial Recognition Scheme.

Producing a revised Code also presents an opportunity to add reference to amending charging and financial assessment regulations that have come into effect since the previous revision. To this effect, the Care and Support (Charging) (Wales) (Amendment) Regulations 2024 and the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2025 have been referenced in the revised Code as appropriate. These revisions have been made to ensure clarity and completeness as the regulations amend principal regulations already referred to in the Code.

## **Procedure**

Draft negative

A draft of the code must be laid before the Senedd. If, within 40 days (excluding any time when the Senedd is dissolved or is in recess for more than 4 days) of the draft being laid, the Senedd resolves not to approve the draft code then the Welsh Ministers must not issue the code.

If no such resolution is made, the Welsh Ministers must issue the code (in the form of the draft) and the code comes into force on a day specified in an order made by the Welsh Ministers.



## Scrutiny under Standing Order 21.7

The following 30 points are identified for reporting under Standing Order 21.7 in respect of this code.

1. Section 146(1) of the Act states - "Before issuing or revising a code under section 145, the Welsh Ministers must consult such persons as they think fit on a draft of the code (or revised code)."

The following is noted at paragraphs 5.1 and 5.2 of the Explanatory Memorandum:

*As the revised Code includes a single additional disregard which is already implemented by regulation, the revision to the Code does not reflect a change in Welsh Government policy and a formal public consultation has not been undertaken in this instance.*

*Revisions to the Code are merely technical adjustments to ensure the Code accurately reflects the appropriate amending regulations and identifies the additional financial recognition scheme identified above.*

The Welsh Government is asked to explain how it considers that the decision not to undertake a consultation in relation to this revised Code is compliant with section 146(1) of the Act.

2. Defined terms are used inconsistently throughout the Code:
  - i. In paragraphs 1.8 and 1.9, the Social Services and Well-being (Wales) Act 2014 is referred to by its full title. But it has already been defined as "the Act" which has been used in the other paragraphs.
  - ii. In paragraph 9.2, in the English text, "deferred payment agreement" is defined as "DPA". In Annex D, in the English text, there is a varying between using the defined term "DPA" and "deferred payment agreement".
  - iii. In places, "agreement" is used when it appears to be referring to a "DPA", such as in paragraphs 8.1, 9.1, 9.3 and 9.5 of Annex D. Further, "agreement" is used in the headings above paragraphs 10.1 and 11.1 of Annex D.
  - iv. In Annex D, in paragraph 2.1, in the English text, the abbreviation "DPAs" is used as a plural noun of the defined term "DPA". However, in the Code there is a varying in the English text between using "DPAs" as the plural noun or repeating the words in full.
  - v. In Annex D, in paragraph 2.1, the Care and Support (Deferred Payment) (Wales) Regulations 2015 is defined as "the Deferred Payment Regulations". In Annex F, in paragraph 5.1, in the English text,



it refers to “the Deferred Payment Regulations 2015”. There is a difference between the English and Welsh text, as the Welsh text uses the defined term.

3. In paragraph 1.5, it states that a requirement is expressed as “**must**” or “**must not**” in bold in the Code, and guidance where the local authorities have discretion is expressed as “**may**” or “**should/should not**” in bold. In places, those words are used in relation to local authorities but are not formatted in bold, therefore, it is unclear whether this is deliberate and that the words are not intended to have the meaning noted in paragraph 1.5.

In other places, phrases such as “will need to” and “can” are used in relation to local authorities where it is unclear as to how they differ from “must” and “may”. For example, in paragraph 4.1 – “In line with the requirements of the Act, the regulations and this Code, authorities need to decide...” and in paragraph 5.3 – “However, a local authority can assess the income or capital of a couple but only where...”.

There are other examples which could potentially cause confusion; the use of “nor must” in paragraph 5.6, in the English text, with the “must” formatted in bold, - “...nor **must** authorities seek payment of a contribution or a reimbursement towards such costs...” and in Annex C, in paragraph 4.1, in the English text, where only the word “must” is formatted in bold as opposed to “must not” - “...a local authority **must** not set arbitrary amounts or ceilings for particular types of accommodation...”.

4. There is a difference between the numbering of the English and Welsh text after paragraph 1.9. In the English text, the subsequent paragraphs under the heading “Advocacy” are incorrectly numbered as paragraphs 1.7 and 1.8 but in the Welsh text they are correctly numbered as paragraphs 1.10 and 1.11.
5. In paragraph 3.4, in the opening words before the bullet points, it refers to “the Act, the regulations and this Code...”. However, the phrase “the regulations” has not been defined with a meaning. Therefore, it is unclear as to which regulations are being referred to. This occurs elsewhere in the Code, such as paragraphs 4.1 and 5.6. Further, paragraphs 2.1 and 3.6, refer to “this Code, and the regulations to which it refers...” which qualifies the meaning of “the regulations” in a different manner.
6. In paragraph 5.1, in the English text, the title of the SI is incorrect in the list of amending instruments where it refers to “the Care and Support (Charging) and (Financial Assessment) (Miscellaneous Amendments) (Wales) Regulations 2022”. If it is referring to SI 2022/99 (W. 35), the correct title is “the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2022”.
7. In paragraph 7.2, it notes “This requirement was introduced in 2011 by Ministers”. However, it appears that it should refer to “the Welsh Ministers”.



8. In paragraph 9.1, there is a difference between the English and Welsh text. In the English text, it refers to "Annexes A and B of this Code" but in the Welsh text the words "of this Code" are missing from the meaning of the reference.
9. In Annex A, in paragraph 2.28(g), there is a difference between the numbering of the English and Welsh text. In the English text, there is a paragraph "(xv)" but in the Welsh text the same provision is numbered as "(vx)".
10. In Annex A, in paragraph 2.28(g)(xxix), the new financial recognition scheme added to the Code is worded as follows:
 

*Any payment made to A by the Ministry of Defence under the Lesbian, Gay, Bisexual and Transgender Financial Recognition Scheme*

Although this wording appears in the Care and Support (Financial Assessment) (Wales) Regulations 2015, "A" is defined for the purposes of those regulations. Using "A" in the Code could cause confusion, because "A" is not defined in the Code.
11. In Annex A, in paragraph 2.33(g), there is a difference between the English and Welsh text. In the English text, it refers to "Any payment of arrears of contributions by a local authority..." but the meaning given by the Welsh text is "Any arrears of contributions held by a local authority...".
12. In Annex B, in paragraph 3.12(g) it reads "Grant made under a Housing Act which is to be used by the person to purchase a home or pay for repairs to make the home habitable.". The Welsh Government is asked to confirm whether it considers that "Housing Act" is sufficiently clear to identify the relevant legislation in order to establish whether a grant was made under a "Housing Act".
13. In Annex B, in paragraph 2.6(b), in the English text, it notes "any periodic sum" but in the Welsh text "periodic" has been expressed by using the phrase "o bryd i'w gilydd". It could be argued that "o bryd i'w gilydd" suggests "occasionally" or "from time to time" and that a word such as "cyfnodol" would be a more appropriate choice to express the meaning of "periodic" in Welsh.
14. In Annex B, in paragraph 2.6, there is a difference between the numbering of the English and Welsh text. In the English text, there is a paragraph (d) – "any holiday pay...", but in the Welsh text the same provision is numbered as "(b)".
15. In Annex B, in paragraph 2.20(e), there is a difference between the English and Welsh text. In the English text, there is a conjunction "and" at the end of that provision to show the relationship between sub-paragraphs (a) to (f) but there is no conjunction in the corresponding Welsh text.



16. In Annex C, in paragraph 2.1, in the second bullet point, there is a difference between the English and Welsh text. In the English text, it notes "cost the local authority more..." but the meaning given by the Welsh text is "cost the authority more".
17. In Annex C, in paragraph 6.1, there is a difference between the English and Welsh text. In the English text, it notes that a local authority must "set out in writing that it is unable to meet that choice and provide its reason(s) for this." But the meaning given by the Welsh text is that a local authority must "set out in writing that it is unable to meet that choice".
18. In Annex C, in paragraph 10.1, there is a difference between the English and Welsh text. In the English text, it notes that local authorities should also have a role in facilitating access "to financial information and advice...", but the meaning given by the Welsh text is "to information and advice...".
19. In Annex D, the heading of paragraph 2.1 reads "Who to offer deferred payments to" and paragraph 5.3 of the same Annex states "those eligible for a deferred payment...", the Welsh Government is asked to confirm whether they are referring to deferred payment agreements, and if the text should be amended to be clearer.
20. In Annex D, in the bullet points below paragraph 4.3(e), it states - "where a spouse or dependent relative (as defined in the Financial Assessment Regulations)..." and "...becomes a dependent relative (as defined in the Financial Assessment Regulations)". However, "dependent relative" is not defined in the Care and Support (Financial Assessment) (Wales) Regulations 2015, therefore it is unclear what "dependent relative" means.
21. In Annex D, in paragraph 5.5, in the final sentence, there is a difference between the English and Welsh text. In the English text, it notes "The local authority should advise..." but the meaning given by the Welsh text is that "The local authority should note...". Earlier in that paragraph the word "cynghori" rather than "nodi" has been used to express the meaning of "advise", so it means that the Welsh text is also inconsistent.
22. In Annex D, in paragraph 6.1(b), there is a difference between the English and Welsh text. In the English text, it notes "lessor amount" when it appears to mean a "lesser amount" which is the meaning given by the Welsh text.
23. In Annex D, in paragraph 7.3, there is a difference between the English and Welsh text. In the English text, it notes "this **must** be entirely at the decision of the person..." but there is no corresponding phrase to express the meaning of "entirely at" in the



Welsh text. It does lead to a slight difference in meaning and emphasis between both language texts.

24. In Annex D, in paragraph 10.4(c), there is a difference between the English and Welsh text. In the English text, it notes "and specify what notice should be given" but there is no phrase in the Welsh text to convey the meaning of "specify".
25. In Annex E, in paragraph 2.1, there is a difference between the English and Welsh text. In the English text, it refers to regulation 3 of "the Review Regulations" but the meaning given by the Welsh text is regulation 3 of "the Regulations".
26. In Annex E, in paragraph 2.25, there is a difference between the English and Welsh text. In the English text, it notes "Local authorities **must** designate appropriate officers of the authority..." but the meaning given by the Welsh text is "Local authorities **must** designate appropriate officers...".
27. In Annex F, in paragraph 1.3, there is a difference between the English and Welsh text. In the English text, it refers to "a person's deliberate non-payment" but the meaning given by the Welsh text is "a person's deliberate decision not to pay". Therefore, there is slight difference in meaning and emphasis between the language texts.
28. In Annex F, in paragraph 3.1, it states that, "if an invoice was issued giving 30 days to pay, the payment becomes due on day 30...". Does the Welsh Government consider that this drafting is sufficiently clear as to how the period of time is calculated in order to correctly identify "day 30"? In addition, in the Welsh text, the meaning of "issued" in those words has been expressed by using a word meaning "sent" which could lead to a difference in interpretation as to when the period of time begins.
29. In Annex F, in paragraph 9.2, in the English text, it states that "Where a local authority believes that derivation may have occurred...", it appears the word "derivation" should read "deprivation", as that is the meaning given by the Welsh text.
30. In Annex F, in paragraph 16.1, there is a difference between the English and Welsh text. In the English text, it notes "or prejudicing the interests of" where those words appear to refer to "someone who may wish to bring a claim against that person". However, the meaning given by the Welsh text is "or prejudicing the interests of that person". Therefore, the meaning of the Welsh text is "or prejudicing the interest of" the person who has transferred or sold their assets, rather than the "someone who may wish to bring a claim" against that person.



## Government response

A Welsh Government response is required.

## Committee Consideration

The Committee considered the instrument at its meeting on 16 June 2025 and reports to the Senedd in line with the reporting points above.



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

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Welsh Parliament

**Legislation, Justice and Constitution Committee**