

EXPLANATORY MEMORANDUM

The Community Health Councils (Establishment, Transfer of Functions and Abolition) (Wales) (Amendment) Order 2015

And

The Community Health Councils (Constitution, Membership and Procedures) (Wales) (Amendment) Regulations 2015

This Explanatory Memorandum has been prepared by the Health and Social Services Directorate and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Community Health Councils (Establishment, Transfer of Functions and Abolition) (Wales) (Amendment) Order 2015 ("the Order") and the Community Health Councils (Constitution, Membership and Procedures) (Wales) (Amendment) Regulations 2015 ("the Regulation"). I am satisfied that the benefits outweigh any costs.

Mark Drakeford AM
Minister for Health and Social Services
03 March 2015

1. Description

The Order provides for the dissolution of the two CHCs in Powys (Brecknock and Radnor CHC and Montgomeryshire CHC) and the creation of a single Powys CHC.

The Regulations make provision for the membership, proceedings and functions of CHCs and the CHC Board in Wales. The amendments to the Regulations will allow for:

- The CHC Board in Wales to set standards to which the seven CHCs must have regard;
- The appointment of the CHC Board Chair and two other CHC Board members through the public appointments process;
- The change of title for CHC Board Director;
- The CHC Board to monitor and manage the performance of CHCs and their members.
- The Welsh Ministers to be able to provide indemnity for CHCs and the CHC Board;
- Local authorities to have the option of appointing persons who are not their members to a CHC, provided that at least one appointment is from within its membership;
- The Welsh Ministers to appoint co-opted members with voting rights to a CHC, on the advice of the CHC Board;
- Each member and co-opted member of a CHC to give a written undertaking to observe a code of conduct;
- Persons to be employed as officers of more than one CHC;
- A change to the appointment term of CHC Chairs from two years to three years.

The Establishment Order and Regulations will come into force on 1 April 2015.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

No specific areas of interest have been identified.

3. Legislative background

The relevant legal powers are:

Section 182 of the National Health Service (Wales) Act 2006 (“the Act”) provides the Welsh Ministers with powers in relation to Community Health Councils, including the power, by order, to abolish a Community Health Council, or to establish a new Community Health Council.

Schedule 10 of the Act makes further provision about Community Health Councils and provides the Welsh Ministers with specific regulation making powers in relation to both the Councils and the Board of Community Health Councils.

Section 203 of the Act provides that any power under section 182 and schedule 10 to make an order or regulations is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of the National Assembly for Wales. Any power to make an order or regulations includes power to make such incidental, supplementary, consequential, saving or transitional provision as the Welsh Ministers consider expedient and to provide for a person to exercise discretion in dealing with any matter.

Section 204 of the Act provides that power to make an order includes power to vary or revoke that order by subsequent order.

4. Purpose and intended effect of the legislation

The changes to the Regulations and Order are being implemented principally as a result of recommendations made by Professor Marcus Longley in his 2012 report *Moving Towards World Class: A Review of Community Health Councils in Wales*. This report recommended a strengthened leadership role for the CHC Board in Wales. The revisions also reflect recommendations on the functions of CHCs made in various other reports received during 2014. Certain changes to CHCs recommended in some of these reports cannot be accomplished without amendment of the primary legislation, however, changes to the Regulations and Order will make many improvements possible within the existing framework.

Standards

In particular, the revised Regulations will give the CHC Board the ability to set standards in relation to:

- The provision of complaints advocacy services;
- the scrutiny of the operation of the health service, including the inspection of premises;
- the process of engagement with local populations, LHBs and NHS Trusts; and
- the production of reports which refer matters to the Welsh Ministers in connection with service changes.

Publically appointed Chair and two members for the CHC Board in Wales

The Chair and two members of the CHC Board will be appointed through the Public Appointments process rather than through the system of election from within the CHC membership which currently exists. The appointments will aim to bring independent views on issues of strategy, performance and resources including standards of conduct.

Change of title for lead officer at CHC Board

The title “Director” is no longer sufficient to describe the various strategic challenges inherent in this position, and has been changed to “Chief Executive”. The role will undergo a re-evaluation and will be advertised.

Performance management and Code of Conduct

Linked to the strengthening of the CHC Board’s leadership of CHCs in Wales, an amendment has been made for the CHC Board to monitor and manage the performance of CHCs and their members. This provides a stronger role for the Board in ensuring consistency of performance of CHCs and their members and would allow for actions, such as performance improvement plans, to be put in place.

All members will be required to undertake to observe a Code of Conduct on appointment and reappointment. Conduct as well as competence will be taken into account in relation to appointments to CHCs and only those candidates who are able to meet the requisite standards are to be appointed or reappointed.

The CHC Board will also have a new duty to advise Welsh Ministers of inadequate performance of CHCs or poor conduct of members. This ability to refer matters of concern to the Minister would provide the Board with additional strength to hold whole CHCs to account if it is felt that the overall culture and approach at a local CHC is of concern.

If an issue is referred, the Welsh Ministers could decide to take a number of actions, from issuing letters of warning up to and including, if felt necessary, appointing external co-opted members to sit on a CHC. If external co-opted members are brought in, then this would be only on the advice of the CHC Board and for a maximum of two years and they would have the same voting rights as full members. The existing members would remain in place during the period and would retain their voting rights.

The Minister may terminate the appointment of a CHC member before the end of their term of office, if there are good reasons for doing so. The Minister will only accept a recommendation from the CHC Board as to the termination of a member’s appointment before the end of their term of office. The CHC Board should, before making such a recommendation to the Minister, consult the appointing authority if it is a local authority or voluntary sector organisation.

Indemnity

A new regulation has been inserted to provide a power for the Welsh Ministers to provide CHCs and the CHC Board with an indemnity. It is the intention that Welsh Ministers will provide indemnity, so long as the CHCs’ or CHC Board’s decisions have been properly taken and their functions reasonably and rationally exercised.

Local authority appointments to CHCs

A change has been made to the arrangements for local authority appointments to CHCs. The Regulations now revert to the earlier arrangements whereby at least one of the people appointed by the local authority should be a member of that authority and the others can be persons of the local authority's choosing. Local authorities (as well as voluntary sector bodies) will make their appointments in accordance with their own procedures, constitutions, governance arrangements and the legislation applicable to them. This will reduce the burden on serving councillors.

Membership terms

An amendment makes it clear that the maximum term of eight years which can be served by any CHC member does not include any period spent as a co-opted member.

In order to ensure a better turnover of co-opted members, and a spur to increasing the diversity of those members, the maximum term for a co-opted member will be two years, after which time they cannot be reappointed in that role. They would not, however, be prevented from seeking full CHC membership.

Staffing arrangements

The ability for one Chief Officer to manage more than one CHC or for staff to work across more than one CHC will give managerial flexibility in terms of looking across boundaries which is important in terms of looking at NHS plans.

New Powys CHC

The Establishment Order abolishes the existing Brecknock and Radnor CHC and Montgomeryshire CHC and creates a new CHC for the county council area of Powys, to be known as Powys Community Health Council.

5. Consultation

There has been a significant amount of engagement with stakeholders both in the period before the Regulations were drafted, and in a formal consultation exercise. The details of consultation are included in the RIA below.

6. Regulatory Impact Assessment (RIA)

Please see Part 2 of this document.

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

The following options are available:

- Option 1:** Do nothing and leave the current legislation in place.
- Option 2:** Introduce the proposed arrangements by way of Order and Regulations.
- Option 3:** Make more far reaching changes by way of primary legislation

Option 1 – Do nothing

In April 2012, the previous Health and Social Services Minister invited Professor Marcus Longley of the Welsh Institute for Health and Social Care to undertake a review of the functions, role and operations of Community Health Councils. The overarching theme from the review was the need to strengthen the Board of CHCs in Wales and many of the proposed changes seek to support this.

By leaving the current arrangements and legislation untouched, Professor Longley's recommendations would not be taken forward and the arrangements around the performance and operation of CHCs in Wales would lack any improvement. Therefore this option is discounted.

Option 2 – Introduce the proposed arrangements by way of Order and Regulations

The Welsh Government accepted the majority of Professor Longley's recommendations and indicated that many could be achieved through better ways of working within CHCs whilst others would require changes to the legislation. A debate on findings and recommendations was held in Plenary on 19 March 2013. It was agreed that some of the recommendations would require changes to (or a rewrite of) the CHC Regulations and CHC Order 2010. Some changes, for example, giving the CHC Board the power of direction over CHCs in Wales (a recommendation in the Longley Review), or extending CHCs' advocacy remit to cover both health and social care (a recommendation of the Commission on Public Services Governance and Delivery) require changes to the primary legislation.

Option 2 is the preferred option since it provides the opportunity to make a number of important changes and to set a direction of travel for CHCs which will improve their performance in the shorter term and ultimately the way in which patients are represented.

Option 3 – Wait for a suitable primary legislative opportunity to make changes

A number of further reports, including the review of Healthcare Inspectorate Wales undertaken by Ruth Marks and the Lessons Learned Review of Service Change carried out by Ann Lloyd raise issues impacting on CHC functions which may be addressed in future legislation. This will be set out in more detail in a forthcoming Green Paper. However we do not consider it necessary to wait for this before making the changes which these Regulations bring about.

Costs & benefits

Option 1 – Do nothing

Benefits: Maintaining the status quo is the option which will require the least administrative effort.

Costs: There would be no additional financial costs attached to this option however at present there is no impetus for CHCs to work differently and to seek financial savings to be directed towards priorities. The changes, in particular on standard setting, will require CHCs to work differently.

Option 2 – Introduce the proposed arrangements by way of Order and Regulations

Benefits: The changes to the Regulations and Order are being implemented principally as a result of recommendations made by Professor Marcus Longley in his 2012 report *Moving Towards World Class?: A Review of Community Health Councils in Wales*. However, they also reflect recommendations on the functions of CHCs made in other reports received during 2014.

These changes will:

- Strengthen the leadership role of the CHC Board
- Make the appointment of the Chair of the CHC Board subject to the principles laid down by the Commissioner for Public Appointments.
- Create two new publicly appointed member roles for the CHC Board
- Promote more consistency and effectiveness in the way CHCs carry out their work
- Provide a clearer framework for the performance of CHCs and their members
- Provide more flexibility for the administrative arrangements and management of CHCs.

Costs: There are some costs identified as part of the implementation of the Regulations and Order:

- *Establishment of a new Powys CHC* – The costs of appointing new members will be modest and will be met from within a centrally held budget within the Department for Health and Social Services and supported by funding held by the Public Appointments Unit. There is likely to be a small impact on the third sector organisation and local authority that will be required to appoint six new members to the CHC. In order to streamline the process and minimise costs, the Welsh Government has provided recruitment packs and made the process of application more straightforward. In terms of staffing, it is anticipated that existing staff will be largely slotted into similar roles in line with the NHS Organisational Change Policy and that there will be no further costs. There may be estates issues to address in relation to having a physical presence in the north and south of Powys. These costs are estimated to be around £20,000 but will in the first instance need to be met by the existing budget allocated to CHCs, through other identified savings.
- *Public Appointments to the CHC Board* – The cost of appointing new members will be modest and will be met from within a centrally held budget within the Department for Health and Social Services and supporting by funding held by the Public Appointments Unit. Whilst the posts will not be remunerated, the CHC Board may incur additional costs for loss of earnings, depending on the individuals' circumstances. These costs are estimated to be around £20,000 but will in the first instance need to be met by the existing budget allocated to CHCs, through other identified savings.
- *Chief Executive* – This post is undergoing a job re-evaluation and there are likely to be increased salary costs as a result. These costs will need to be met from within the existing CHC budget.
- *Standard Setting Power* – The process of standards setting will require engagement with stakeholders which is likely to incur costs. There is also likely to be a need for a review of the central team structure in order to develop the skills and capacity required to support the standard setting process. This may largely be achieved through the increased involvement of senior CHC staff (Chief Officers) in the process and by building on the skills and experience of existing Board staff. However there may be a requirement for additional staff or skills and the CHC Board will need to identify how this can be achieved without incurring additional costs, for example through inward secondment, etc.
- *Indemnity* – Work will be carried out to set out the terms of the indemnity CHCs will be provided. There are unlikely to be any immediate costs involved in setting up the arrangements (i.e. no premiums to pay)

however costs would inevitably be incurred in the event of the indemnity being invoked. It has not yet been determined whether these costs would be met by centrally held budgets from within the Department for Health and Social Services or from within NHS Wales resources.

Option 3 - Wait for a suitable primary legislative opportunity to make changes

Benefits: Through primary legislation, we could implement the far more reaching recommendations made by Professor Marcus Longley in his 2012 report *Moving Towards World Class: A Review of Community Health Councils in Wales*.

Costs: It is not possible to cost out primary legislative options at this stage.

Impact on other sectors

Business Sector: We do not consider that the Order and Regulations will have an impact on small business.

Local Government/ Voluntary Sector: As outlined above, there is likely to be a small impact on the third sector organisation and local authority that will be required to appoint six new members to the Powys CHC. In order to streamline the process and minimise costs, the Welsh Government has provided recruitment packs and made the process of application more straightforward.

Duties

Equality. The appointment of members to the new CHCs will have regard to the need to draw members from across all sectors of the community. This is addressed in the advertisements and application pack. The same will be for the appointment of the Chair and two members of the CHC Board.

Rurality. Comments have been raised regarding maintaining the physical presence of Powys CHC in the North and South of the county, given the rural nature of the area. This is not something to be dealt with in the Regulations but an administrative matter for the CHC and the CHC Board to address. However, we understand the intention is to retain offices in both areas along the lines of the arrangements already in place for the CHCs in North and West Wales.

Consultation

There was an eight week consultation with stakeholders which ran from 10 November 2014 until 9 January 2015. A shorter consultation period was considered appropriate since there had been a previous full consultation in 2012 following the publication of the Longley report.

The main consultees were those stakeholders with the closest interest in the proposals:

- Assembly Members (via Ministerial Written Statement)
- CHC Board
- CHCs in Wales (staff and members)
- Local Authorities
- County Voluntary Councils
- Healthcare Inspectorate Wales
- Local Health Boards and NHS Trusts in Wales
- Welsh Language Commissioner

We received 30 responses to the consultation, 3 of which we received shortly after the closing date and so these have been taken into account. The breakdown of responses was as follows:

Individuals	8
NHS organisations	9
Other organisations (e.g. CHC Board, Welsh Language Commissioner, Local Authority, RCN etc.)	8
Third sector	5
Total	30

A detailed consultation report is available on the Welsh Government website [insert link]

Various changes/amendments were made to the legislation as a result of the consultation. These were:

- Removal of the title “Non-Executive Director” from the Regulations and instead refer to all CHC Board members as “members”
- Reversion to the title “Chief Officer” instead of “Executive Director” as suggested in the original draft.
- Amendment of the Regulations further to provide that the Welsh Ministers will only be able to appoint co-opted members to an underperforming CHC on the advice of the CHC Board
- A change to the appointment term of CHC Chairs from two years to three years.

Competition Assessment

We do not consider it necessary to undertake a competition assessment for these Regulations since they will not affect the business sector in any significant way. The filter questions are shown at Annex 1.

Post implementation review

The Regulations and Order provide for the CHC Board to monitor and manage the performance of CHCs and their members with the ability to refer matters of concern to the Welsh Ministers. This will allow for reflection on how the Amendment Regulations and Order have been implemented.

The Longley report also highlighted some areas which would have required changes to primary legislation. Similarly, some of the consultation responses raised issues which could only be tackled through primary legislation. These points will be kept under consideration for future legislation.

APPENDIX A

The Competition Assessment

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No