

## **Explanatory Memorandum to the Care and Support (Partnership Arrangements for Population Assessments) (Wales) Regulations 2015**

This Explanatory Memorandum has been prepared by the Department for Health and Social Services 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 Care and Support (Partnership Arrangements for Population Assessments) (Wales) Regulations 2015 and I am satisfied that the benefits outweigh any costs.

### **Mark Drakeford AM**

Minister for Health and Social Services

5 June 2015

## **Part 1 – OVERVIEW**

### **Description**

The Social Services and Well-being (Wales) Act 2014 (the Act) brings together local authorities' duties and functions in relation to improving the well-being of people who need care and support and carers who need support in a single Act. The Act provides the statutory framework to deliver the Welsh Government's commitment to integrate social services to support people of all ages, and support people as part of families and communities.

Section 14 of the Act requires local authorities and Local Health Boards ('LHBs') to jointly assess:

- (a) the extent to which there are people in the local authority's area who need care and support;
- (b) the extent to which there are carers in the local authority's area who need support;
- (c) the extent to which there are people in the local authority's area whose needs for care and support (or, in the cases of carers, support) are not being met (by the authority, the Board or otherwise);
- (d) the range and level of services required to meet the care and support needs of people in the local authority's area (including the support needs of carers);
- (e) the range and level of services required to achieve the purposes in section 15(2)(preventative services) in the local authority's area; and
- (f) the actions required to provide the range and level of services identified in accordance with paragraphs (d) and (e) through the medium of Welsh

Section 14 also provides the Welsh Ministers with wide ranging regulation making powers to, for example, provide for the timing and review of assessments.

Section 166 of the Act enables the Welsh Ministers to make regulations requiring a combination of local authorities and Local Health Boards to enter into partnership arrangements for carrying out specified functions (including the requirements set out in section 14).

This Explanatory Memorandum should be read in conjunction with the Explanatory Memorandum for *The Care and Support (Population Assessments) (Wales) Regulations 2015*.

### **Matters of special interest to the Constitutional and Legislative Affairs Committee**

No specific matters identified.

### **Legislative background**

The powers enabling these Regulations to be made are contained in section 166 of the Act.

Section 166 of the Act states that:

- (1) Regulations may require specified partnership arrangements to be made by-
  - (a) two or more local authorities, or
  - (b) one or more local authorities and one or more Local Health Boards.
  
- (2) Partnership arrangements are arrangements for carrying out-
  - (a) functions of a local authority specified in regulations which-
    - (i) are social services functions, or
    - (ii) in the opinion of the Welsh Ministers, have an effect on, or are affected by, a local authority's social services functions, or
  
  - (b) functions specified in regulations of –
    - (i) a Local Health Board, or
    - (ii) an NHS Trust.

Section 14 of the Act requires local authorities and Local Health Boards (referred to in the regulations as “responsible bodies”) to jointly assess the matters specified in section 14(1)(a) to (f) of the Act.

This statutory instrument is subject to the affirmative procedure in pursuance of a resolution of the National Assembly for Wales.

The regulations will come into force on 6 April 2016.

### **Purpose and intended effect of the legislation**

The purpose of these Regulations is to support the requirement for local authorities and Local Health Boards to jointly carry out an assessment as set out in Section 14 (1) of the Act (the population assessment).

These Regulations will be laid simultaneously before the National Assembly with The Care and Support (Population Assessments) Regulations 2015. The purpose of the population assessment Regulations is to further prescribe how local authorities and Local Health Boards should jointly produce a clear and specific evidence base in relation to care and support needs and carers' needs (the population assessment report) to inform various planning and operational decisions. Currently the care and support needs of populations are not assessed in a joined-up or systematic way

The requirement for local authorities and Local Health Boards to undertake a population assessment will ensure that services are planned and developed to meet the needs of people in an efficient and effective way. The population assessment will also underpin resource and budget decisions in order to ensure services are sustainable.

The Care and Support (Partnership Arrangements for Population Assessments) (Wales) Regulations 2015 will provide for more effective population assessment reports by requiring partnership arrangements to be put in place to undertake the population assessment and allowing for the production of a combined population assessment report. A collaborative assessment of this type will provide for local authorities and Local Health Boards to identify how to meet need collaboratively, thus leading to

improved sustainability. This approach is in keeping with the general direction of the Welsh Government's commitment to public service reform.

Specifically, these Regulations set out:

- That partnership arrangements are established between each Local Health Board and the local authorities within that Local Health Board area for carrying out the specified functions under section 14(1) of the Act (the population assessment).
- That the bodies which take part in each partnership arrangement ("the partnership bodies") must appoint one of the partnership bodies to act as the lead coordinator in undertaking the population assessment
- That the partnership bodies may share information with each other for the purposes of carrying out the population assessment.

### **Consultation**

A 12 week consultation on these Regulations ran between 6 November 2014 and 2 February 2015. Further details on the consultation process are set out in the Regulatory Impact Assessment in Part 2.

The Report and a list of respondents can be found at:

<http://wales.gov.uk/consultations/healthsocialcare/part2/?lang=en>

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

This Regulatory Impact Assessment should be read in conjunction with the Regulatory Impact Assessment prepared for The Care and Support (Population Assessments) (Wales) Regulations 2015.

### **Options**

The options considered by the Welsh Government in relation to implementing section 166 of the Act, enabling local authorities and LHBs to enter into partnership arrangements, in this instance for the purpose of carrying out population assessments are as follows:

#### Option 1: Do nothing

Under this option, partnership arrangements between local authorities in a Local Health Board's area and that Local Health Board would not be required. Each local authority would instead individually work with the Local Health Board responsible for their area to undertake population assessments as required by section 14 of the Act.

#### Option 2: Bring Regulations into force

Under this option, regulations would be introduced which would require Local Health Boards and the local authorities within each Local Health Board area to form a partnership arrangement to undertake the population assessment required by section 14 of the Act. This would allow for a combined population assessment report for each Local Health Board footprint area.

### **Costs and benefits**

#### COSTS

#### Option 1: Do nothing

Under this option the Welsh Government considers that there would be minimal recurring costs incurred by local authorities and Local Health Boards associated with fulfilling the statutory requirement in section 14(1) to **jointly** assess the populations within their areas. Local authorities and Local Health Boards would still be required to carry out a population assessment for each local authority area as required by the Care and Support (Population Assessments) Regulations 2015, however there would be no requirement for them to form partnership arrangements in order to do this. The costs of assessing the population for local authorities and Local Health Boards are set out in the RIA for The Care and Support (Population Assessments) (Wales) Regulations 2015.

#### Option 2: Bring Regulations into force

Under this option, the Welsh Government considers that there would be minimal additional costs that fall to:

- (i) Local authorities and Local Health Boards; and

(ii) the Welsh Government

These additional costs are discussed below.

#### Local authorities / Local Health Boards

Whilst there would be recurring costs for local authorities and Local Health Boards having to enter into a partnership arrangement to undertake the population assessment required by section 14 of the Act, these would likely not differ significantly from the costs that local authorities and Local Health Boards would incur by fulfilling the requirements of section 14 outside of a partnership arrangement. These potential costs are discussed in more detail in the RIA for The Care and Support (Population Assessments) (Wales) Regulations 2015.

A partnership arrangement should in fact reduce costs for local authorities and Local Health Boards for reasons of economies of scale. A combined population assessment report will also provide for the identification of how services can be delivered collaboratively, hence reducing costs. In addition, resources and expertise can be shared, and costs reduced, between local authorities and Local Health Boards in the exercise of undertaking the population assessment. Linked to this, the partnership arrangements will provide for the publication of seven combined assessment reports, rather than one population assessment report for each of the current 22 local authorities, further reducing costs.

#### Welsh Government

Initially, the Welsh Government intends to establish a series of workshops and prepare guidance for local authorities and Local Health Boards which will set out best practice in setting up the partnership arrangements. This will be a one-off cost to Welsh Government as the workshops will initially only be run prior to the first partnership arrangements being set up. The estimated cost of setting up these arrangements is minimal and will mainly be in terms of staff time. Quantifying precise costs for running these workshops is difficult; however some comparison can be made with equivalent workshops which were held in relation to the Social Services Complaints Procedure (Wales) Regulations 2014.

Like these workshops, the workshops held under this option will likely take place at existing Welsh Government venues if possible which will incur no additional cost (bar the opportunity cost of occupying the venues for a day each). The opportunity cost of the Welsh Government staff time required to organise and then run the workshops is likely to be no more than £2,000<sup>1</sup>. There may also be some minor costs incurred for travel and subsistence.

There will also be a limited recurring cost to the Welsh Government in terms of the monitoring and enforcement of these regulations as well as an ongoing cost in terms of monitoring the effectiveness of the partnership arrangements themselves. The Welsh Government will seek to continue to engage with local authorities and Local Health

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<sup>1</sup> One Grade 7 member of staff (3 days in total, including attendance plus preparation), One Higher Executive Officer (3 days in total, including attendance plus preparation) and one Team Support member of staff (5 days in total, including 2 days attendance, 1 day preparation and 2 days organisation).

Boards as they undertake this work and could provide further advice and support as necessary.

As detailed in the 'Post implementation review' section of this RIA, the proposed Regulations under this option enable the lead co-ordinating body in each partnership arrangement to submit to the Welsh Ministers a copy of the population assessment report which has been produced for its area. This will provide an opportunity for the Welsh Government to give consideration to the effectiveness of the partnership arrangements. There will be a minimal recurring cost to Welsh Government in order to undertake this work; again this will be limited and will mainly be in terms of staff time.

## BENEFITS

### Option 1: Do nothing

No significant benefits have been identified under this option. Local authorities and Local Health Boards will still have to discharge their duties in relation to section 14 of the Act. However, were there no requirement for local authorities and Local Health Boards to enter into formal partnership arrangements, there will be a minimal reduced administrative burden on local authorities and Local Health Boards brought about by not setting up formal partnership arrangements and identifying a lead co-ordinating body.

### Option 2: Bring Regulations into force

The primary focus of the Act is to establish a revised and coherent framework for social services that can achieve the changes needed to enable sustainability for the future. The Regulations developed under Section 14 will ensure effective implementation of the requirement in the Act for local authorities and Local Health Boards to produce a clear and specific evidence base in relation to care and support needs and the support needs of carers to inform various planning and operation decisions.

As a compliment to those regulations, the partnership arrangements required to undertake these population assessments by the Care and Support (Partnership Arrangements for Population Assessments) (Wales) Regulations 2015 will provide for more effective collaboration between local authorities as well as further integration between local authorities and Local Health Boards in the way services to meet the needs identified are planned and delivered.

This partnership approach is also in line with the findings of a Welsh Local Government Association and NHS Confederation commissioned report from the Institute of Public Care on the implications of the Social Services and Well-being (Wales) Bill. Their 2013 report, *Transitional and longer-term implications of the Social Services and Well-being (Wales) Bill 2013*, highlighted the importance of the Welsh Government's role in ensuring that developments stemming from the legislation across the country are co-ordinated, that local areas learn from each other, and that resources are not wasted by being developed in parallel in different places unnecessarily.

## RISKS

### Option 1: Do nothing

Not introducing a statutory requirement for local authorities and Local Health Boards to enter into formal partnership arrangements could risk making it more challenging for local authorities and Local Health Boards to adequately identify how care and support needs could be met collaboratively.

#### Option 2: Bring Regulations into force

Proceeding with Regulations could lead to an initial delay in beginning the process of undertaking a population assessment as arrangements are made to first establish a partnership arrangement. However, this risk will be mitigated through the Welsh Government's Code of Practice and other tools which will advise on the setting up and operation of partnership arrangements.

#### **Consultation**

A 12 week public consultation on these Regulations and accompanying Code of Practice ran between 6 November 2014 and 2 February 2015. The documents can be found at:

<http://wales.gov.uk/consultations/healthsocialcare/part2/?lang=en>

#### **Competition Assessment**

The competition assessment filter test has been completed on the proposed regulation. It has been determined that this regulation will have no detrimental effect on competition. None of the competition filter test criteria apply.

#### **Post implementation review**

Regulation 7 of the Care and Support (Partnership Arrangements for Population Assessments) (Wales) Regulations 2015 enables the lead co-ordinating body in each partnership arrangement to submit to the Welsh Ministers a copy of the population assessment report which has been produced for its area. This will provide an opportunity for the Welsh Government to consider population assessment reports in terms of level of detail, presentation format and content. Consideration will also be given to the effectiveness of the partnership arrangements at this point.