

Explanatory Memorandum to the Partnership Arrangements (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 Partnership Arrangements (Wales) Regulations 2015 and I am satisfied that the benefits outweigh any costs.

Mark Drakeford
Minister for Health and Social Services

21 October 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. 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.

Sections 166 – 168 of the Act make provision for partnership arrangements between local authorities and Local Health Boards

Matters of special interest to the Constitutional and Legislative Affairs Committee

No matters of special interest to the Constitutional and Legislative Affairs Committee have been identified.

Legislative background

The powers enabling these Regulations to be made are contained in sections 166– 168 of the Act.

This statutory instrument is subject to the affirmative procedure. It is proposed that the regulations will come into force on 6 April 2016.

Current legislation

The current legislative framework is complex and the provision of social care is currently found within a broad range of Acts, which legislate separately for children and adults.

Legislation already exists to enable Local Authorities (LA) and Local Health Boards (LHB) to develop formal partnerships and delegate functions to each other. This legislation was originally introduced with the Health Act 1999 and the measures introduced were consolidated into the National Health Service (Wales) Act 2006. This is the only legislation that enables a local authority to delegate certain specified functions to a Local Health Board, or for the Local Health Board to delegate certain specified functions to the local authority. The legislation also allowed for the development of pooled budgets.

The Children Act 2004 also enabled the development of pooled budgets but these are different to the pooled budget arrangements in the NHS (Wales) Act 2006, as although they enable a wider range of 'relevant partners' to contribute to the pooled fund, this legislation does not allow for the delegation of functions between partners. The 2004 Act does not make provision for one partner to assume the functions of another, nor to deliver the services of another as opposed to their own. It instead provides an opportunity to agree joint objectives and contribute towards the cost of meeting these through whichever partner generally has responsibility for ensuring service delivery. Other relevant legislation includes The National Health Service Bodies and Local Authorities Partnership Arrangements (Wales) Regulations 2000, as amended from time to time. These regulations are treated as having been made under the NHS (Wales) Act 2006.

Proposed Legislation

The statutory framework will consist of three main elements, the Act itself, regulations made under the Act, and codes of practice and statutory guidance. These three elements work together to form the framework within which social services will operate from April 2016.

Purpose and intended effect of the legislation

These Regulations set out the requirements for each Local Health Board and the local authorities within the area of each Local Health Board to participate in partnership arrangements for the delivery of specified health and social services functions. The Regulations also make provision, amongst other things, for the operation and management of the partnership arrangements, the establishment of regional partnership boards and the establishment and maintenance of pooled funds.

The purpose and intended effect of the legislation in sections 166 to 168 of the Act (Partnership arrangements) is to achieve an appropriate balance between the level of direction required to drive progress and the level of discretion available to local partners to reach consensus and design the appropriate operational and organisational arrangements to deliver integrated services in their areas.

The purpose of the regulation making powers is therefore to ensure that Local Authorities and Local Health Boards work effectively together to plan and ensure the delivery of integrated services, care and support to best meet the needs of people in their local area. This will include the development of new models and shifting the focus towards preventative services and early intervention. The regulations are also required to replace existing provision in Part 3 of the Children and Families (Wales) Measure 2010 that will be repealed when the Act comes into effect in 2016.

Despite the availability of legal powers under the Health Act 1999 and the NHS (Wales) Act 2006 which provided a legal underpinning for formal partnerships and pooled budgets; together with the availability of resources through the Joint Working Grant, progress in developing formal partnerships has been limited and not at the scale necessary to ensure a step-change in the provision of services. The new Act therefore gives Welsh Ministers powers to direct partnership arrangements between one or more local authorities and one or more local health boards.

A number of sources reinforce the overall case for change. The “Better Support at Lower Cost” report identifies that the single biggest challenge facing many Welsh local authorities is how to change the prevailing culture within adult social care. The report recognises that there needs to be further culture shift towards a service which offers real opportunity to help people become more independent; both in the way they live their lives and how flexibly they can use services. The report, however, notes that there are examples where local authorities have already started to reshape their services for older people, with much evidence of a shift towards a reablement approach to care.

Intervention is often triggered at the point of crisis, rather than intervening early through preventative measures. The Act will encourage a renewed focus on prevention and early intervention. The 2011 Social Services Improvement Agency report echoes the support for early

intervention and prevention, and states that such services will help local authorities to meet their savings targets whilst improving outcomes for individuals.

The report of the Commission on Public Service Governance and Delivery¹ observed:

“We are very clear that public services in Wales face severe and prolonged challenges. The effects of recession and austerity on public-sector budgets will continue to be felt for many years. At the same time, our population is growing, becoming older, and public expectations on the providers of public services are higher than ever before. This creates severe pressures – demand for public services is growing while resources to provide them are falling”.

The report also commented:

“Urgent action is required to ensure that seamless, integrated and high quality health and social services are provided across Wales”.

And

“All local authorities and health boards must immediately prepare clear and robust plans for integrating their services to include, detailed proposals, milestones, targets and outcomes for improved and integrated delivery of relevant services”.

The pressures on local authority social services departments relate to many factors including, but not limited to:

- People are living longer. Projections show that by 2030 there will be twice the number of people aged over 85 there are currently. The associated costs to social care are explored further in the attached Regulatory Impact Assessment;
- Changing behaviours and expectations; and
- An increase in people with long standing and complex disabilities.

Demand on social services is increasing but there are pressures on budgets. Whilst there has been protection of budgets for a number of years, the current financial settlement for 2015/16 has been decreased by 3.4% compared to 2014/15, as a consequence of the large scale budget reductions by the UK Government.

Due to this increase in demand it is essential that the future delivery of social care is transformed. The current system is unsustainable. Specifically there is a need to simplify and improve service efficiency and effectiveness of the system. The system must be improved to deliver better integration, improved collaboration, a stronger workforce, and to provide people with a greater voice and control over their services and well-being.

We have the opportunity to make services more personalised for people through the development of a more integrated, flexible and skilled workforce. This will be provide a more flexible service with more skilled staff undertaking health tasks within an appropriate delegation and governance framework which are present only allowed to be undertaken by health staff. This will provide greater continuity of staff with less frequent and intrusive interventions required as with our current services. The individual in need of care and support will find themselves with more control over their lives rather than having to wait for support from different professionals. For the workforce this approach will provide opportunities for enhancing their knowledge and skills and improving their terms and conditions.

¹ Report of the Commission on Public Service and Delivery – January 2014 <http://gov.wales/topics/improving-services/public-service-governance-and-delivery/report/?lang=en>

The development of all formal partnership arrangements requires consultation, including with staff and their trade union representatives.

Intended effect of the Regulations

The overall effect of the regulations is to provide greater clarity, consistency and quality of care and support for individuals and carers. They will help health boards and local authorities to create an infrastructure through regional partnership boards to progress the integration of services where appropriate. The regulation making powers will ensure that local authorities and Local Health Boards work effectively together to plan and ensure the delivery of integrated services, care and support to best meet the needs of people in their local area. This will include the development of new models and shifting the focus towards preventative services and early intervention. The regulations are also required to replace existing regulations that will be repealed when the Act comes into effect in 2016.

While the focus of the regulations of the Act will be on improving outcomes and well-being, the intention of the regulations in part 9 is also to improve efficiency and effectiveness of service delivery. The starting point for this is through section 14 of the Act, which requires local authorities and Local Health Boards to jointly undertake an assessment of needs for care and support, support for carers and preventative services and the range and level of services required to meet these needs. The regulation making powers within section 166 to 168 of the Act (partnership arrangements) enable Welsh Ministers to ensure the appropriate structures (partnership arrangements and partnership boards) and resources (including staff and pooled budgets) are in place to enable the provision of integrated services to respond to the joint assessment.

Partnership boards will have a key role to play in relation to bringing together key partners to determine where the integrated provision of services, care and support will be most beneficial to people within their region. Partnership boards will also play a vital role in the oversight and governance of partnership arrangements. With the move towards pooled budgets and resources, it is essential that effective governance and accountability arrangements are in place.

Sections 166, section 167(3) and section 168 provide Welsh Ministers with the provision to make regulations requiring local authorities and Local Health Boards to enter into partnership arrangements and to establish partnership boards (including associated funding arrangements).

Section 166 allows for Welsh Ministers to specify through regulations the partnership arrangements to be made between two or more authorities, or between one or more local authorities and one or more Local Health Boards. This assumes partnership arrangements will be between local authorities and respective Local Health Boards in the area and that there will be no change to the existing Local Health Board footprints.

Partnership arrangements are arrangements for carrying out functions of a local authority specified in regulations which are social services functions or in the opinion of the Welsh Ministers, have an effect on, or are affected by, a local authority's social services functions, or functions specified in regulations of a local health board or an NHS trust. It is not the intention to expand the functions of either a local authority or a LHB which can be delegated beyond those allowed in existing legislation.

In relation to section 166, the regulations require partnership arrangements to be established on the following basis:

- Aneurin Bevan University Health Board and Monmouthshire, Newport, Caerphilly, Torfaen and Blaenau Gwent local authorities.
- Betsi Cadwaladr University Health Board and Flintshire, Wrexham, Anglesey, Gwynedd, Denbighshire and Conwy local authorities.
- Cardiff and Vale University Health Board and Cardiff and the Vale of Glamorgan local authorities.
- Abertawe Bro Morgannwg University Health Board and Swansea, Neath Port Talbot and Bridgend local authorities.
- Cwm Taf University Health Board and Rhondda Cynon Taf and Merthyr Tydfil local authorities.
- Hywel Dda University Health Board and Pembrokeshire, Carmarthenshire and Ceredigion local authorities.
- Powys teaching Health Board and Powys local authority.

Health boards and local authorities already have partnership arrangements in place. The Partnership Arrangement (Wales) regulations simply require health boards and their local authority partners to align their partnership arrangements in accordance with the requirements of the Act.

Regulations under section 166(3)(d) require the sharing of information between local authorities and Local Health Boards, between teams established under section 166(4)(b) and to support the Regional Strategic Partnership Board. This is vital to the work in assessing the needs of individuals and carers and developing appropriate care and support arrangements.

Regulations under section 166(4) (b) will be used to require the establishment of teams for Integrated Family Support Services. These teams already exist within the current structures and the regulations are required to replace legislation which will be repealed when the Social Services & Well-being (Wales) Act 2014 is implemented. The key purpose of Integrated Family Support services (IFSS) is to ensure families are provided with services and support in order to safeguard the welfare of their children and enable them to remain safely with their families. A key principle is that children are best looked after within their families, with their parents playing a full part in their lives – unless compulsory intervention is necessary. Working with families earlier, before children become at risk of entry into care, will enable local authorities and their partners to foster a social contract with families to gain their commitment and to ensure they receive the right support to overcome their difficulties. The IFSS will deliver family focused services to enable parents to achieve the necessary behavioural changes that will improve their parenting capacity, and will engage with the extended family in the process of that change. It will also seek to address the social, cultural and organisational factors which have an impact on the safe care of the child or young person and their parents. In order to achieve the best outcome for both children and adults and ensure that children are safeguarded, IFSS will seek to meet the needs of all family members. This approach requires a holistic approach to working with children and families.

At the heart of the IFSS will be an Integrated Family Services Support Team (IFST). In order to address and meet the needs of families with complex problems IFSS teams will be multi-agency and multi-disciplinary, consisting of professionals with skills and experience in working directly with children in need, their parents and adults with complex health and social care needs.

IFSS is a key component in the process of assessment, care planning, placement and review arrangements for children set out in the Children Act 1089. In addition IFSS is an integral part of the assessment, care management and review arrangements in health and social care for parents who misuse substances,.

Current regulations provide for services to only to families where parents have alcohol or substance misuse issues. Regulations under section 166(4)(c) will be used to extend this to include families where a parent of a child in that family (or a prospective parent) is a victim of domestic violence or abuse or has a history of violent or abusive behaviour or has a mental disorder.

Local authorities and their Local Health Board partners are required to identify families where it can be demonstrated that the provision of the IFSS will have a direct benefit of a child's health and welfare. Regional partnership boards will be required to establish procedures for the referral of families to the IFSS.

A number of evaluations of IFSS have been undertaken. The final year 3 report was published in 2014. Although there are still issues to work through for these relatively new services the evaluation reported that most families interviewed felt that the IFSS programme had been largely successful. In the majority of cases, families explained that a number of issues they had faced such as substance misuse, acute mental health problems, problems with parenting, housing, gaining employment, children's truancy and problematic / abusive relationships had either fully or partly resolved following their engagement with IFSS. Similarly, most families described IFSS as a considerable improvement on the support they had previously received. In addition to the reports of effective access to services, many parents talked about feeling significantly more confident in their ability to manage their own problems and challenges in the future, and now felt motivated to do so.

Section 167(1) and (2) allows a local authority and a Local Health Board to pay towards the expenditure incurred for the purpose of, or in connection with, partnership arrangements by making payments directly or by contributing to a pooled fund. It also allows a local authority and LHB to provide staff, goods, services, accommodation and other resources. Section 167(3) enables Welsh Ministers to make regulations requiring the establishment of a pooled fund and determining the amount of contributions to a pooled fund.

The Partnership Arrangements Regulations require the establishment of pooled funds in relation to:

- The exercise of care home accommodation functions;
- The exercise of family support functions;
- Functions that will be exercised jointly as a result of an assessment carried out under section 14 of the Act or any plan prepared under section 14A.

These duties will take effect from 6 April 2016, with the exception of the duty to establish pooled funds in relation to the care home accommodation functions, which comes into force on 6 April 2018.

These requirements will require no additional expenditure as Health Boards and local authorities already have statutory responsibilities for the funding of residential care and nursing homes and Integrated Family Support Services. The regulations will require an integrated approach to the commissioning and provision of these services which will help both health and local authorities to exercise a greater influence over both the shape of the services and fees. They will be in a better

position to exercise their purchasing power responsibly to influence both the quality and cost of services.

The Welsh Government will expect to see an integrated approach to the development of early intervention and preventative services. There is a specific requirement for pooled funds in relation to the Integrated Family Support Services. Local authorities have been allocated funding as part of a local settlement to enable integrated family support services to be established and to cover the health and social care costs of the service. This will form the basis of a formal partnership with a pooled fund.

Local Health Boards and local authorities should also consider any funding from Welsh Government such as the intermediate care fund, to be considered as a form of pooled budget. Although this will not require a formal partnership agreement, the commitment of any expenditure under the intermediate care fund, or similar funding streams, should be the subject of a written agreement.

Whilst the requirement for pooled funds in relation to the care home accommodation functions is not until April 2018, Local Health Boards and local authorities will be expected to:

- Undertake a population needs assessment and market analysis to include the needs of self funders.
- Agree an appropriate integrated market position statement and commissioning strategy. These will specify the outcomes required of care homes, including the range of services required. There should also be an agreement on the methods of commissioning (for example, some services may require a block contract, step up, step down intermediate care services, respite care, etc).
- Agree a common contract and specification.
- Develop an integrated approach to agreeing fees with providers.
- Develop an integrated approach to quality assurance.
- Adopt a transparent use of resources. Budgets must be aligned with overall expenditure identified, together with the financial commitments of both agencies to the commissioning of care homes. These arrangements will need to be subject to a written agreement.

The purpose is to ensure that Local Health Boards and local authorities work together to maximise their influence to shape the future development of services. This includes ensuring there is sufficient capacity and an appropriate range of good quality services to respond to the needs of people in their region. This should encompass both local authority placements and NHS funded placements (funded nursing care and continuing NHS healthcare). It should also encompass short term interim placements to facilitate transfers of care from hospital and choice of accommodation; intermediate care beds (step up / step down), long term placements, respite care and other services that partners wish to commission from care homes. In developing their integrated approach to commissioning, the partners will need to take account of the needs of people funding their own care.

It is expected that the same approach be adopted with long term domiciliary care and reablement services.

Whilst formally the regulations do not require pooled funds in relation to the care home accommodation functions until April 2018, Local Health Boards and local authorities may use existing powers to develop formal partnerships with pooled funding arrangements. There is nothing to prevent these arrangements being introduced prior to April 2018.

Partners will retain statutory responsibility for their functions carried out under all pooled fund arrangements. This means that the partnership agreement should include the governance arrangements, including accountability, decision making and how the pooled budget arrangements will be managed. The general principles that should be considered include:

- Shared responsibility and accountability
- Fairness
- Transparency
- Consistency
- Value for money

Comprehensive monitoring arrangements must be put in place to provide relevant assurance to partners that their shared aims and objectives are being delivered.

Section 168 allows for Welsh Ministers to specify through regulations the establishment of partnership boards in respect of partnership arrangements made under section 166. In relation to section 168, regulations require a Regional Partnership Board to be established to secure strategic planning and partnership working between local authorities and Local Health Boards to ensure effective services, care and support are in place to best meet the needs of the respective population. The regulations require the establishment of seven regional partnership boards, namely Gwent regional partnership board, North Wales regional partnership board, Cardiff and Vale regional partnership board, Western Bay regional partnership board, Cwm Taf regional partnership board, West Wales regional partnership board and Powys regional partnership board.

The objectives of the regional partnership boards are:

- (a) To ensure that the partnership boards work effectively together to:
 - (i) Respond to the population assessment carried out in accordance with section 14 of the Act and
 - (ii) Implement the plans for each of the local authority areas covered by the board which local authorities and local health boards are each required to prepare and publish under section 14A of the Act.
- (b) To ensure that the partnership bodies provide sufficient resources in accordance with their powers under section 167 of the Act.
- (c) To promote the establishment of pooled funds where appropriate.

These requirements will require regional partnership boards to identify opportunities from their assessments of the population and service requirements to identify opportunities for the integration of services where this will improve outcomes for people in need of care and support and their families and to make more effective use of resources. They will also identify opportunities to improve the health and wellbeing of citizens.

The membership of the boards will secure the engagement of both health boards and local authorities, together with representatives of the third and independent sectors and of people who use care and support services and carers. The regional partnership boards will also be able to co-opt other members as appropriate

These arrangements have been designed to build 'support and challenge' into the development and management of services with all sectors represented and users and carers. The representatives of users, carers, the third and independent sectors will serve to ensure that the contributions and views of these stakeholders are taken into account.

Regional partnership boards must prepare a report on the extent to which the board's objectives have been achieved. These reports will be used to evaluate progress and to ensure that

opportunities to improve outcomes, and make more effective use of resources, are being identified and taken forward. This is not an onerous requirement. It does not require a detailed plan or strategy simply a report on the extent to which the board's objectives have been achieved. It is expected that these requirements will be easily achievable through the regional partnership board's structures and resources.

To support local government and its partners in making the transition to the new arrangements of the Act, a Delivering Transformation Grant was made available to the six regional partnerships and selected national partners to enable local government and its partners to put in place the requirements of the new Act in 2013/14 and 2014/15. Welsh Government has doubled the funding available through this grant to £3m in 2015/16.

Consultation

A 12 week consultation on these regulations ran between 8/5/15 and 31/7/15. 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://gov.wales/consultations/healthsocialcare/part9/?status=closed&lang=en>

PART 2: REGULATORY IMPACT ASSESSMENT

Background and Context

The current model cannot deliver the Welsh Government's commitments to equality of provision set out in the Sustainable Social Services (SSS) framework. The current system provides different systems for children, adult and carers and does not provide an integrated service for all people, which is a requirement of the Sustainable Social Services framework. Ultimately, the current system is unlikely to cope with an increased number of people needing care and support, and the pressure on the system, in future years, will result in system failure and people failing to achieve their desired outcomes.

This Regulatory Impact Assessment has explored the options and costings. Further detail on key sections of the regulations can be found in the paper at annex 1.

Options

The options that have been considered are:

- Work with local authorities and local health boards and their partners to achieve a consensus on the partnership arrangements. (Preferred Option)
- Do nothing

The regulatory impact assessment explores the options, costs, benefits and risks associated with the regulations and guidance designed to improve cooperation and partnership.

The policy underpinning co-operation and partnership has been developed to provide a more coherent response to meeting the health and social care needs of individuals and families. In recognition that individuals often presently experience health and social care as fragmented, confusing and sometimes distressing.

The criteria to be used for integrating services include:

- Improving outcomes for individuals in need of care and support
- Improving outcomes for carers
- Making more effective use of resources
- Offering more personalised care
- Improving staff morale and improving access to the expertise of other professionals, so there are fewer obstacles to decisions for effective care and support arrangements.
- Strengthening governance arrangements for partnership working
- Introducing transparency between statutory partners in relation to aims, objectives, values and the use of resources across integrated and interdependent services

There has been progress with integration and this has been stimulated in the case of services for older people with funding provided through the Intermediate Care Fund. Progress in relation to the development of formal partnerships and pooled funds has been limited despite the legal frameworks in place. Advice notes and templates have previously been made available and in the past there have been regional workshops to raise awareness of the benefits of these measures, together with technical advice to support their implementation.

There are only two services where formal partnerships and pooled funds apply across Wales – Integrated Family Support Services, which were prescribed, and community equipment services where access to funding was restricted to formal partnerships. There are examples of other formal partnerships in Wales but these are isolated.

The evidence from the integration of community equipment is that we have made better use of resources through providing a single service for individuals and professionals by cutting out duplication and making better use of purchasing power at both regional and national levels to improve quality and reduce costs. Integration has also generated a more professional approach on the part of providers. This is a small relatively inexpensive service. There are considerable gains to be made by integrating larger services such as, for example, the provision of care home placements.

The operation of the pooled fund will involve one partner managing resources on behalf of both the local authorities and health board, which should reduce costs. The introduction of one managing and procurement system as opposed to individual local authorities and health boards operating two systems will support the achievement of procurement efficiencies by eliminating duplication and reduce time and resources used on procurement which will reduce costs and will also rationalise transaction costs for providers. Details of this pooled fund system will be set out through a formal agreement at local level.

Preferred Option

The preferred option is to have a consensus on the partnership arrangements, together with the milestones and timescales involved, developed through work with local authorities and local health boards and their partners, which can then be given a statutory basis. We want partnerships based upon local ownership and commitment.. Local health boards, local authorities and their partners have had an opportunity to co-design appropriate partnership arrangements. Should progress prove disappointing, Welsh Ministers will still have an opportunity to amend or prescribe further formal partnerships.

The regulations in part 9 in relation to cooperation and partnership do not add to the statutory responsibilities of either health boards or local authorities. They are designed to facilitate an appropriate infrastructure to support cooperation and partnership and the integration of services where the criteria for integration are met. They build upon a range of informal partnership arrangements referred to below already in existence.

‘Do nothing’ option

Health boards and local authorities already have partnership arrangements in place. These are extensive and cover a wide range of groups involving planning for specific user groups and services. These will include, for example, planning activities for services in relation to mental health, learning disabilities, older people, community equipment, telecare, etc. We do not keep a record of the costs of these activities and we cannot justify the costs to local authorities and health boards of estimating such costs, which will vary in each health board region. We are simply requiring health boards and their local authority partners to align their partnership arrangements in accordance with the requirements of the Act. As a matter of principle we do not want to create additional mechanisms or tiers but rather to rationalise what is already in place.

It must be stressed that by formalising partnership arrangements and integrating the management and delivery of services we are not introducing an extra tier of management or a new planning system. The purpose of integration is to streamline and provide a more coherent approach to the planning, management and delivery of services. The successful integration of community equipment services, for example, cut out duplication and waste by introducing a single manager

and one approach to the procurement, delivery, servicing and maintenance, collection, decontamination and refurbishment of equipment. Previously these systems and processes operated as different systems between health and social services.

At present we have a fragmented approach to working with care home providers in terms of sharing information about needs, commissioning placements, setting fees and quality assurance arrangements.

The evidence to date suggests that health boards and local authorities are unlikely to advance at the pace required. This will reduce opportunities to improve outcomes for individuals and their families and to make more effective use of resources. Health boards and local authorities will continue to align their services which will not achieve the benefits of integration in terms of rationalising management structures, functions and processes.

It is necessary to work together to find appropriate ways of managing demand in a fair and equitable manner and we cannot afford to continue to either duplicate efforts or leave gaps in service provision.

Costs / Benefits

There are no immediate costs of the do nothing option. The costs that will be incurred will be the costs of not integrating services in terms of duplication of management structures, functions and processes. This is impossible to qualify at this stage. The advantage of developing formal partnerships and pooled funds is that these arrangements are transparent in terms of agreed aims, values and expenditure. At this stage, for example, we do not share a mutual understanding of the total expenditure on care homes between health and local authorities. Prior to the development of formal partnerships for community equipment services we had a limited understanding of demand or expenditure between health and social services for community equipment. All partnerships now have this understanding.

Partnerships have to have a purpose. If partners fail to achieve clarity in terms of the objectives and values of the partnership and the outcomes to be achieved, the risk of failure increases. Formal partnerships have clarity in terms of objectives and values and outcomes to be achieved. Partnerships can also build trust by developing good quality management reporting arrangements – regular monthly reports on activity, expenditure, outcomes achieved and broader performance measures. Good quality management reports give partners confidence that their statutory functions are being fulfilled even if for one partner they have been delegated. They also alert partners to problems early so that appropriate action can be taken. These reports are limited with the existing arrangements.

Consultation

Two consultation events were held as part of the consultation process. The purpose of these to:

- Promote engagement with the consultation
- Provide a base level of understanding to key stakeholder groups of areas we were consulting on.

Attendees were asked to participate in discussions on the implementation of the regulations, and also to share information from the events with their wider networks to provoke deeper engagement with the proposals and a wider span of consultation responses.

The first event was held on 21 May in St George's Hotel, Llandudno. The second was held on 4 June in the Liberty Stadium, Swansea with 200 attendees overall, representing a range of organisations. The range of stakeholders included representation from:

- Age Alliance Wales
- British Deaf Association
- Care Council for Wales
- Children in Wales
- College of occupational therapists
- CSSIW
- Disability Wales
- Learning Disability Wales
- Local authorities
- Local Health Boards
- WLGA
- RNIB Cymru
- Public Health Wales
- Office of the Older People's Commissioner
- North Wales Social Services Improvement Collaborative.

Workshops were held at the events on each of the parts of the Act subject to consultation under Tranche 2. The content of these workshops was tailored to suit the subject matter but at the core of each was a presentation from officials and group discussions and activities.

The comments and outputs from these events were considered alongside the formal written responses in order to inform the final regulations, code(s) of practice and, in respect of Part 9 statutory guidance.

In addition to this public consultation process, the proposals were discussed with the stakeholder reference group as well as the following groups: North Wales Directors, National Commissioning Board, National Provider Forum, Learning Disability Advisory Group, Care Homes Steering Group, National Partnership Forum for Older People, Cymru Older People's Alliance South, Wales Carers Alliance and the National Citizens Panel.

A 12 week public consultation on these regulations and accompanying Code of Practice ran between 8/5/15 and 31/7/15. The Consultation Summary Report can be found at:

<http://gov.wales/consultations/healthsocialcare/part9/?status=closed&lang=en>

Competition Assessment

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 regulations 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/organisations?	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

The competition assessment filter test has been completed on the proposed regulations. The filter test shows that it is not likely that the regulations will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.

Post implementation review

The Social Services and Well-being (Wales) Act 2014 contains provisions to allow for Ministers to monitor functions of the Act carried out by local authorities and other bodies. Ministers may require these bodies to report on their duties in implementing these regulations.

Annex 1 to the Explanatory Memorandum to the Partnership Arrangements (Wales) Regulations 2015

This paper has been prepared to provide a more in depth background to some of the key sections of the Partnership Arrangements (Wales) Regulations 2015 and is intended to support the Explanatory Memorandum

Regulations 2-8

In 2010 the independent commission on social services in Wales published its report entitled From Vision to Action. It recommended that social services and social care for adults and children remained a local government responsibility. The Commission ruled out the idea of merger between health and social services seeing such a change as defining individuals only through their health status rather than to embrace their wider wellbeing. The Commission recommended that the new LHB footprint should be adopted across Wales as the basis for collaboration between local authorities and between local government and the NHS for the planning, commissioning and delivery of services. This recommendation was accepted and taken forward in the policy document 'Sustainable Social Services: A Framework for Action' 2011.

The proposed partnership arrangements are coterminous with the local health board footprint. The health boards have recently been established following the reorganisation of health services in Wales and the Commission on Public Service Governance & Delivery made no recommendations to change the boundaries or responsibilities of local health boards. It seems reasonable therefore to base our co-operation and partnership arrangements on the LHB footprint.

The structure of local authorities has been subject to consultation for some time and will not be finally determined until after the Assembly elections of 2016. The proposed partnership arrangements are based on the current structure of local authorities.

These arrangements also allow for planning at different levels. The population needs assessment, for example, can measure need within communities or localities within local authorities, and across the LHB. These assessments can also inform service development from local communities upwards.

The aim is to promote coterminous arrangements based on the LHB footprints and doing nothing may lead to different arrangements which may inhibit effective partnership working.

We have consulted on the regional partnership arrangements and there is wide agreement in supporting the Health Board footprint. Our original proposals include one regional partnership board for Mid & West Wales to encompass Powys. As a result of the consultation Powys will now have its own regional partnership board in recognition of the challenges unique to Powys in terms of patient flow with no acute hospital unit within the county.

There are no costs associated with these proposals. The benefits are that health boards and local authorities have clarity about the partnership arrangements. The partnership arrangements will replace existing arrangements.

Regulation 9 and schedule 1

These describe the functions of local authorities and local health boards which are to be carried out by the partnership arrangements.

The specified functions of local authorities and health boards are in line with the functions specified in the National Health Service Bodies and Local Authorities Partnership Arrangements (Wales) Regulations 2000

There are no costs associated with prescribing the functions which are to be carried out by the partnership arrangements. As the specified functions are in line with the functions specified in the 2000 regulations, there are benefits of continuity with existing arrangements.

Regulations 10 ,11 and 12.

These provide for the objectives of the regional partnership boards, together with the membership and reporting requirements.

The objectives proposed require the partnership boards to ensure that the partnership bodies respond to the assessment of the needs of the population and service provision with a view to informing service provision. This will be required whatever partnership arrangements are proposed. The programmes of each partnership have to be based upon an assessment of need.

The partnership boards are required to ensure that the partnership bodies implement their plans and provide sufficient resources for the partnership arrangements. Health boards and their partner local authorities already have partnership arrangements in place. Some, for example, have planning arrangements for people with learning disabilities. These are not formal partnerships. They may require some restructuring. The partnerships are required to identify opportunities where pooled funds may be more effective in facilitating effective service delivery. The plans required replace existing plans.

The proposals concerning the membership of boards encompass representation from health boards, local authorities (including elected members board members and senior managers), third sector, care providers, carers and service users and are designed to represent all key stakeholders.

The Regional partnership board must prepare a report on the extent to which the board's objectives have been achieved.

Partnership bodies can incur costs in relation to contributing to partnership arrangements. Some may require training to enable them to contribute effectively. There are informal partnership arrangements in place.

The benefits will derive from a broad range of professionals and organisations contributing to the development of effective organisations. This will facilitate a more comprehensive identification of need and of solutions to respond to that need.

Regulation 13

This provides for the sharing of information between partnership bodies, integrated family support teams and regional partnership boards

The purpose of this measure is to protect the individual and carer and safeguard and promote their wellbeing. The measure ensures that partnership bodies share relevant information to inform

assessments of the individual's need and preferred outcomes and where appropriate inform the development of a care and support plan. This may involve sharing of information in relation to safeguarding issues or identification of risks, strengths of the individual and their family and neighbourhood support networks, involvement of key professionals and agencies. This applies to children and young people, adults and carers.

No other options have been considered. The safe sharing of confidential information within appropriate frameworks to protect confidentiality is essential to protect the wellbeing of people in need of care and support.

The benefits of effective information sharing are reduced risk for individuals and carers, more accurate assessments which include the outcomes important to the individual and carers and more accurate targeting of support to meet those outcomes. This measure is essential to promoting the productivity of health and social services, which has to date been seriously undermined by the technical inability to share information electronically.

There are already protocols for sharing information in place. The real costs relate to the development of technical solutions to enable the sharing of confidential information electronically between agencies. Work on this project is planned irrespective of this legislation.

The risks of not implementing these measures is that individuals, carers or staff may be put at risk due to incomplete information being available to inform assessments and, where appropriate, the development of care and support plans. There is also a serious risk of scarce resources being wasted through inaccurate assessments and inappropriate services being allocated.

Regulation 14

Regulation 13 enables each partnership body to delegate functions to another partnership body for the purposes of the partnership arrangements. This regulation overlaps with the provisions made under the National Health Service (Wales) Act 2006 , enabling the delegation of functions between health boards and local authorities and from local authorities to health boards but goes further to the extent that it also enables local authorities to delegate functions to other local authorities. The functions that can be delegated have not been changed from those specified in regulations under the 2006 Act and the original Health Act 1999.

One of the differences between the NHS Wales Act 2006 and the Social Services and Wellbeing (Wales) Act 2014 is that the 2014 Act gives Welsh Ministers powers to direct formal partnerships, specifying who the partners shall be and requiring the establishment of pooled budgets.

The rationale for this regulation is that it provides the legal underpinning for partnership working and the delegation of functions.

The new Act gives Welsh Ministers powers to direct partnership arrangements if required. In making regulations requiring partnership arrangements, the Welsh Ministers have to prescribe functions to be delegated.

Other than the development of appropriate agreements there are no additional costs directly associated with the delegation of functions. The medium-term goal is to make more effective use of resources through the partnership.

The main risks to these arrangements concern any lack of clarity on the purpose of the partnerships. There are no requirements for partnership bodies to delegate specific functions for the purposes of the partnership arrangements, although the requirements for pooled funds to be established in relation to two services – Integrated Family Support Services and Care Homes – is likely to involve the delegation of functions. Integrated Family Support services are already up and running and have received a positive evaluation. In relation to care homes, the rationale for this measure is described below.

A wide range of guidance is already available on the development of formal partnerships and pooled budgets together with templates and technical support available to support local partnerships to develop these arrangements. This will mitigate any risks.

We will be working with local partnerships to develop a consensus on the development of partnership arrangements and to ensure they are clear about their objectives, the outcomes they want to achieve and the resources required.

Health Boards and local authorities will also be free to use the powers to delegate functions under the NHS (Wales) Act 2006.

Regulation 14-17: Integrated Family Support Services (IFSS)

Integrated Family Support Services (IFSS) are relatively new services and were only completely rolled out throughout Wales in April 2014. They were established in accordance with Part 3 of the Children and Families (Wales) Measure 2014 and the guidance provided at the time was very detailed. Their remit is to ensure that both adult and children's services provide an effective response to working with parents with substance misuse problems to change their behaviour both to prevent the need for their children to become looked after or to enable the children to return home from being looked after.

The services were established with a pooled budget funding arrangement. The services have been subject to a detailed evaluation; the outcome of which was positive.

Given the recent establishment of these services together with the positive outcomes identified in the evaluation no other options were explored to provide an alternative service response.

Given the initial success of these teams the proposal is to extend their remit to encompass parents with mental health problems and cases involving domestic violence. These groups were identified as these services were being established as areas where IFSS could expand and make a positive contribution to the wellbeing of children, young people and families.

Regulation 18: Pooled Funds

The services have been established with a pooled budget funding arrangement. The services have been subject to a detailed evaluation; the outcome of which was positive.

Given the recent establishment of these services together with the positive outcomes identified in the evaluation no other options were explored to provide an alternative service response.

Given the initial success of these teams the proposal is to extend their remit to encompass parents with mental health problems and cases involving domestic violence. These groups were identified

as these services were being established as areas where IFSS could expand and make a positive contribution to the wellbeing of children, young people and families.

Care Homes

We presently have a mismatch between demand and supply of appropriate care home services. In Wales we may have sufficient placements overall but they may not be the right type of placements to respond effectively to demand. We have a shortage of placements in some parts of Wales, for example, in relation to responding to the needs of the elderly mentally ill.

At present, local authorities take a lead commissioning role for nursing homes with health boards funding the funded nursing care (FNC) element of the placement. Health boards commission separately for placements for people eligible for continuing health care (CHC). Fee negotiations are conducted separately between local authorities and health boards with providers.

We also lack a coherent approach to quality assurance.

The care home sector is also experiencing other serious challenges in terms of the recruitment and retention of key staff such as nurses and registered managers and care staff.

The purpose of this measure is to enable health boards and local authorities to develop an integrated approach to the commissioning and provision of services from care homes (residential and nursing homes). Section 14 of the Act requires an assessment of the needs of the population and service provision to enable the partners to plan appropriate services to respond effectively to the needs identified.

This assessment is necessary to assess the need for a range of services from care homes including long term placements, interim placements to facilitate transfers of care from hospital and choice of accommodation, intermediate care (step up / step down reablement facilities) and respite care. Care homes predominantly serve older people but can provide placements for younger adults.

Providers, whether in the public or independent sectors, need the best possible information on demand and the commissioning intentions of health boards and local authorities in order for them to make appropriate investment decisions. This may involve significant borrowing from financial institutions. We therefore want to see an integrated approach to the assessment of need and the requirements in terms of the full range of services the public sector wants to commission from care homes. The public sector will also need to work with providers to estimate demand from those people who fund their own services.

This option was ruled out because of a serious mismatch between demand and supply which has a negative impact upon choice of accommodation and delayed transfers of care. The fragmented approach to commissioning, fee negotiations and quality assurance are also having a detrimental impact upon the sector. Health Boards and local authorities have not addressed these challenges.

Once these arrangements are established and once we have agreed an appropriate formula for agreeing fees, costs should be reduced. The public sector will have one approach to commissioning services which will cut out duplication. A more accurate estimate of demand through joint intelligence should also allow the public sector to negotiate fair, sustainable and realistic fees. The partnerships may wish to block contract for good quality services if they are confident of demand, which will also provide greater certainty for providers.

These measures will also reduce bureaucracy for providers, allowing them to concentrate more on the quality of provision.

There will be one coherent approach to quality assurance and one place to capture information about the quality of services for commissioners, which will offer a greater measure of protection for individual residence. A protocol will be in place between commissioners and the regulators for appropriate sharing of information.

Risks should be minimal. Both health boards and local authorities understand their existing financial commitments to purchasing care home placements. Their statutory responsibilities are well defined, which will inform their contributions to the pooled fund. They should already have a good understanding of demand and future projections of costs.

Risks will be mitigated by regular reports to the partnership board on activity, expenditure and outcomes. The same considerations apply as with any budget. Contributions will be adjusted to cope with demand.