

Explanatory Memorandum to The Local Authority Social Services Annual Reports (Prescribed Form) (Wales) Regulations 2017

This Explanatory Memorandum has been prepared by the Health and Social Services Department 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 Local Authority Social Services Annual Reports (Prescribed Form) (Wales) Regulations 2017

I am satisfied that the benefits justify the likely costs.

Rebecca Evans
Minister for Social Services and Public Health

8 March 2017

Part 1 – OVERVIEW

Description

The Social Services and Well-being (Wales) Act 2014 (the Act) provides a single legal framework that 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. It delivers the Welsh Government's commitment to integrate social services to support people of all ages, and support people as part of families and communities.

The Act, as amended by the Regulation and Inspection of Social Care (Wales) Act 2016, requires local authorities to prepare and publish an annual report about the exercise of their social services functions. The annual report must be in such a form as may be prescribed by regulations.

Matters of special interest to the Constitutional and Legislative Affairs Committee

There are no matters of special interest to consider.

Legislative background

Section 56 of the Regulation and Inspection of Social Care (Wales) Act 2016 amends Part 8 of the Social Services and Well-being (Wales) Act 2014 by inserting section 144A. This requires that a local authority must prepare and publish an annual report about the exercise of its social services functions.

Section 144A (2)(b) and (4) of the Act provides that an annual report must contain such information and be in such form as may be prescribed by regulations. The original statement of policy intent in relation to the regulation making powers under this section stated;

- I. The regulation making power will set out the form of the report and will specify any additional information which should be included in the report
- II. The regulation making power will be used to ensure that reports are clear and accessible and are produced in a way which allows for the performance of local authorities to be compared easily.
- III. The regulation making power will enable the Welsh Ministers to require that additional information is included in the report and so allow them to respond appropriately to new models of service and recommendations of best practice.

The code of practice on the role of the director of social services

Section 144 of the Act consolidates the requirement that a local authority must appoint a director of social services. The code of practice on the role of the director of social services has been published under section 145 of the 2014 Act and came into effect as part of the commencement of the wider Act on 6 April 2016.

In keeping with the outgoing "Statutory Guidance on the role and Accountabilities of the director of social services" issued in 2009, the new code of practice sets out the

requirements and guidelines for an annual report. Specifically, chapter 5 of the code deals with this issue in a way that is consistent with the statutory requirement under section 144A.

Powers to regulate

The Local Authority Social Services Annual Reports (Prescribed Form) (Wales) Regulations 2016 set out that requirement that the annual report must be in the form of a template included in an attached Schedule.

The template and supporting toolkit has been produced by a reference group led by the Association of Directors of Social Services Cymru with the assistance of stakeholders including the Care and Social Services Inspectorate Wales (CSSIW), the Care Council for Wales (CCW) the Social Services Improvement Agency (SSIA) and the Older People's Commissioner. The Children's and Future Generations Commissioners were also invited to participate. These have been published at:

<http://gov.wales/topics/health/socialcare/act/resources/?lang=en>

This approach achieves the original intention to standardise and make proportionate the reporting requirements across local authorities, and to provide clarity and straightforward comparisons for citizens in respect of outcome and impact.

The code of practice on the role of the director of social services and this supporting template set out that an annual report should be presented in such a way as to set out how the local authority has achieved the six quality standards in relation to well-being, as described in the code of practice in relation to measuring social services performance. The forthcoming CSSIW Local Authority Inspection Framework is based around those six quality standards. This in turn is consistent with the matters that CSSIW must have regard to when conducting any review, as provided for by sections 149A to D of the Act (as inserted by section 57 by the 2016 Act).

Consultation

A 12 week consultation on these regulations ran between 28 June 2016 and 20 September 2016. Overall the Regulations were well received with respondents generally supporting the proposals.

Further to the consultation, the template for local authority annual reports on the exercise of their social services functions has been added to the regulations as a schedule. The Report and a list of respondents can be found at:

<https://consultations.gov.wales/consultations/phase-1-implementation-regulation-and-inspection-social-care-wales-act-2016>

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

Option 1: Do nothing – Do not produce regulations.

The Code of Practice on the Role of the Director of Social Services (Part 8 of the Social Services and Well-being (Wales) Act 2014) sets out the requirement to “*prepare and publish an annual report about the exercise of the local authority’s social services functions*”.

Annual reports must evaluate the performance of the local authority in relation to the delivery of its social services functions. The code of practice states that reports should be presented in such a way as to set out how the local authority has achieved the six quality standards in relation to well-being outcomes as described in the code of practice in relation to measuring social services performance, issued under section 145 of the Act.

Additionally, the code already requires certain specific content to be included within the annual reports, including:

- How the local authority has promoted the wellbeing of people who need care and support, and carers who need support, identified in the Population Assessment Report
- The extent to which the authority has assessed and met the needs of individuals, in accordance with Parts 3 and 43 of the 2014 Act.
- Governance and structural arrangements within the local authority
- Assurances in relation to effective partnership working via Regional Partnership Boards
- Assurances in relation to safeguarding arrangements
- The performance of the handling and investigation of complaints and representations
- A response to any inspections undertaken in relation to social services functions.
- An update on Welsh language provision and their implementation of *More than just words*
- The experiences of service providers and services users.

Consideration was given as to whether the requirements set out within this code of practice were sufficient without specific regulations in relation to the form of an annual report. Specifically whether this would support achievement of the original policy intention; ensuring reports are clear, accessible, and allow for the performance of local authorities to be compared easily.

Option 1 would not require any regulations to be made, on either the form or content of annual reports.

Option 2: Regulate to require that the form of the report must follow a template.

Consultation on the Code of Practice on the Role of the Director of Social Services asked the specific question “*To what extent do you agree that the requirements in*

relation to the production of an annual report are sufficient to ensure effective scrutiny and accountability of the director of social services?” There was general agreement in response to this question, although some respondents suggested that it may be useful for Welsh Government offer more guidance on particular areas of the report, such as conveying the experiences of service users.

As set out under option 1 above, the code of practice requires specific information which must be included in the annual reports. Option 2 would be to expand on the content specified in the code of practice, and provide a template in relation to the form of annual reports.

Regulations require this template must be followed in the production of an annual report. This also allows for clarity on the reporting requirements.

The template and supporting toolkit proposed also provide direction to relevant sections of the National Outcomes Framework and other sources of information and evidence which can be used when producing reports.

The template and supporting toolkit could be strengthened in the future.

This approach ensures greater consistency in reporting and aids comparison across Wales.

Option 3: Regulate to specify the form and content of the annual report.

If further prescription than option 2 is deemed appropriate, regulations could be made which specify additional detail required in the annual reports.

Option 3 would be to issue such regulations, which would require any and all additional information to be required in the reports, and also potentially to specify in regulations the form of the annual report. i.e. specific sections or chapter headings which must be included in the reports.

If regulations were to provide further requirements than already specified in the Code of Practice on the Role of the Director of Social Services, made under Part 8 of the Social Services and Well-being (Wales) Act 2014, then in this would also require re-issuing that code of practice.

This option would also reduce the flexibility to amend the prescribed template for an annual report based on consideration of best practice.

Costs, Benefits and Risks

Option 1

This is the 'Do Nothing' option and as such, there are no additional costs or benefits associated with this option.

There is a risk that if there is no further clarity as to the form of the annual reports, the final product could vary.

This would therefore present a risk to achieving one of the original policy intentions, to; *ensure that reports are clear and accessible and are produced in a way which allows for the performance of local authorities to be compared easily.*

Option 2

As reported above, a template and supporting toolkit has already been produced by a reference group led by the Association of Directors of Social Services Cymru, the costs associated with producing the template and toolkit are therefore sunk costs.

Local authorities are already required to produce an annual report on the delivery of social services functions. The requirement to use a standard template as the basis of this report is not expected to generate any additional costs.

Production of a template would ensure consistency in the appearance of these annual reports, therefore supporting the policy intention of facilitating performance across local authorities.

An additional benefit would be a reduction on the administrative burden for local authorities in production of this report, as there would be guidelines for them to follow, and the template would also include reference to supporting information and evidence to be included.

This would also ensure that the same information and evidence is used consistently across local authorities.

Also, this approach would enable the template to be revised and adapted in future years, to take account of emerging national issues and trends which should be included in the reports. As this option does not require the specification of additional information (content) to be included in the annual reports, then any changes to the content requirements would not require re-issuing of regulations

Option 3

Specifying additional content to be included in regulations presents a risk in ensuring these reports can respond to emerging issues and trends in a timely manner.

If regulations were specific in regard to the content of annual reports, this would pose a future risk, especially if there is additional, new areas which must be reported on in

future years. Depending upon the nature of the additional content, this may result in local authorities incurring an additional reporting cost.

Another risk of this approach is that being too prescriptive in the content and the form of these reports reduces the local authority's ability to report on local issues and circumstances.

Preferred option

Option 2 has been determined the most cost-effective option. The requirement that local authorities must produce an annual report in the form of a template will provide additional clarity and allow for the performance of local authorities to be compared easily.

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 firms?	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 categorised 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 filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.

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.

Post implementation review

The post implementation arrangements for regulations can be handled as part of the wider performance measurement framework has been developed that local authorities will be required to report against under the Social Services and Well-being (Wales) Act 2014. In March 2016 the former Minister for Health and Social Services announced the evaluation framework to assess the success of this delivery.

The evaluation will be undertaken in 3 phases:

The initial phase will be about monitoring policies under the act during the initial year of implementation to understand whether policy is being implemented as intended and to support policy improvement.

The second phase will involve on-going evaluation, through the national outcomes framework and the local authority performance measurement framework. Reporting will be undertaken annually and will provide information on whether well-being is improving nationally. The first report of the national outcomes framework will be published in 2016/17 and the first report of the performance measurement framework will be in 2017/18.

The third phase will be an independent long term one-off evaluation which will commence in the third year of the implementation of the act.

It is anticipated that the information gathered from this reporting mechanisms will contribute to the overall post implementation review of the 2014 Act and its subordinate legislation including these regulations.