

## **Explanatory Memorandum to the Partnership Arrangements (Wales) (Amendment) Regulations 2017**

This Explanatory Memorandum has been prepared by the Health and Social Services Group 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 2017. I am satisfied that the benefits justify the likely costs.

**Rebecca Evans AM**

Minister for Public Health and Social Services

26 January 2017

## Part 1: OVERVIEW

### 1. Description

The Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”) brings together local authorities’ and Local Health Board (LHB) duties and functions in relation to improving the well-being of people who need care and support, and carers who need support.

Sections 166 -169 of the 2014 Act provide the Welsh Ministers with regulation making powers to specify partnership arrangements to be made between local authorities and LHBs. These regulations amend the principal “Partnership Arrangements (Wales) Regulations 2015 (“the 2015 partnership regulations”) made under sections 166-168 of the 2014 Act.

This Explanatory Memorandum should be read in conjunction with the Explanatory Memorandum for the Care and Support (Area Planning) (Wales) Regulations 2017.

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

There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

### 3. Legislative background

These Partnership Arrangements (Wales) Regulations 2017 amend the principal 2015 partnership regulations which came into force on 1 April 2016.

The 2015 partnership regulations are available at:

<http://www.assembly.wales/laid%20documents/sub-ld10399/sub-ld10399-e.pdf>

The accompanying Explanatory Memorandum and Regulatory Impact Assessment for the 2015 partnership regulations is available at:

<http://www.assembly.wales/laid%20documents/sub-ld10399-em/sub-ld10399-em-e.pdf>

The powers enabling these Regulations to be made are contained in section 166 of the 2014 Act.

These Regulations are subject to the **Affirmative** procedure. Subject to agreement by the National Assembly for Wales, these Regulations are due to come into force on 1 April 2017.

All of the primary and secondary legislation and statutory guidance listed below relate to these Regulations.

Population Assessment and area plans

Section 14 of the 2014 Act places a duty on local authorities and LHBs to carry out an assessment of the local population's needs for care and support and carers' needs for support. This population assessment must also include an assessment of the range and level of services required to meet the needs of the people in the local authority's area and the range and level of preventative services required.

The Well-being of Future Generations Act (Wales) 2015 inserted section 14A of the 2014 Act. Section 14A requires local authorities and LHBs to each prepare and publish a plan following the carrying out of an population assessment under section 14 of the 2014 Act. This plan (known as an "area plan") must set out, amongst other things, the range and level of services the body proposes to provide, or arranges to be provided, in response to the population assessment.

These Regulations will be laid before the National Assembly alongside the Care and Support (Area Plans) (Wales) Regulations 2017 which are subject to the negative procedure. Those Regulations set out the detail of what must be included within the area plans.

#### Partnership working

The 2015 partnership regulations require each LHB and the local authorities within that LHB area to enter into partnership arrangements and establish seven regional partnership boards. The objectives of these boards include ensuring local authorities and LHBs work effectively together to-

- (i) Respond to the population assessment required under section 14 of the 2014 Act, and
- (ii) Implement the area plans required under Section 14A of the 2014 Act

The 2015 partnership regulations also make provision, amongst other things, for the operation and management of the partnership arrangements, and the establishment and maintenance of pooled funds.

The Care and Support (Partnership Arrangements for Population Assessments) (Wales) Regulations 2015 were also made under section 166 of the 2014 Act. Specifically, they require LHBs and local authorities to enter into partnership arrangements for the purpose of carrying out their functions under section 14 of the Act relating to population assessments.

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

The purpose of these Regulations is to amend the principal 2015 partnership regulations to:

- Add the Section 14A area planning functions to the list of LHB functions specified to be carried out by the partnership arrangements (regional partnership boards) under the principal regulations
- Omit Regulation 19(1)(c) relating to the establishment and maintenance of pooled funds and add a new regulation (19(1A)).

## Section 14A area planning functions

The duty to prepare an area plan under Section 14A of the 2014 Act is within the remit of a regional partnership board as a result of the existing 2015 partnership regulations. However, the existing Regulations only cover this Section 14A area plan function in relation to local authorities, not LHBs. (In the current 2015 partnership regulations, the duty is a local authority function because it is set out as a “social services function in “Table 1- local authority functions” of Schedule 1).

These regulations rectify this by amending the 2015 partnership regulations to add the Section 14A functions to the list of LHB functions specified to be carried out by the partnership arrangements. This is done by inserting the Section 14A functions into Schedule 1, Table 2 (LHB functions) of those regulations.

## Pooled funds- addition of Regulation 19 (1)(c)

Regulation 19(1)(c) of the 2015 partnership regulations requires pooled funds to be established and maintained for any functions local authorities and LHBs decide to exercise jointly in response to the population assessment.

Following the consultation exercise undertaken between August and October 2016, stakeholders highlighted that there may be cases where local authorities and LHBs exercise functions jointly but pooled funds would not be the most appropriate or effective way of managing budgets. As the wording of Regulation 19(1)(c) does not allow any discretion for these cases, it was decided to replace this Regulation with a new requirement, Regulation 19(1A).

Regulation 19(1A) requires local authorities and LHBs to consider whether it is appropriate to establish pooled funds, whenever they do things jointly in response to the population assessment. This gives the flexibility for joint working without a pooled fund being in place, if this is determined to be the most appropriate way of managing budgets.

## Statutory guidance to support the Partnership Arrangements (Wales) (Amendment) Regulations 2017 and the Care and Support (Area Planning) (Wales) Regulations 2017

Statutory area planning guidance will issue under section 169 of the 2014 Act alongside these Regulations to support the delivery of the S14A functions and the preparation of a joint area plan. Preparing a joint area plan follows a logical path from the preparation of the combined population assessment, the report of which will form the content of the area plan.

## **Consultation**

A 12 week consultation on these Regulations, the related 2016 Area Planning Regulations and the area plan statutory guidance, ran between 11 July 2016 and 3 October 2016. Further details on the consultation process are set out in the Regulatory Impact Assessment in Part 2.

The consultation summary report and a list of respondents to the consultation can be found at:

<https://consultations.gov.wales/consultations/regulations-and-statutory-guidance-area-plans-following-population-assessment>

## PART 2 – REGULATORY IMPACT ASSESSMENT

### Overview

This Regulatory Impact Assessment should be read in conjunction with the Regulatory Impact Assessment for the Care and Support (Area Planning) (Wales) Regulations 2017 and the working draft of the area plan statutory guidance, available at: <http://gov.wales/topics/health/socialcare/act/code-of-practice/?lang=en> (English) and <http://gov.wales/topics/health/socialcare/act/code-of-practice/?skip=1&lang=cy> (Welsh).

### Options

The options considered by the Welsh Government are as follows:

#### Option 1 – Do Nothing

Under this option, the existing Partnership Arrangements (Wales) Regulations 2015 would remain in place with no amendment regulations being made.

#### Option 2 – Amend the Partnership Arrangements (Wales) Regulations 2015

Under this option, regulations would be introduced to amend the principal 2015 partnership arrangements regulations to:

- Add the Section 14A area planning functions to the list of LHB functions specified to be carried out by the partnership arrangements (regional partnership boards) under the principal regulations
- Omit Regulation 19(1)(c) relating to the establishment and maintenance of pooled funds and add a new regulation allowing more flexibility.

### COSTS

#### Option 1 – Do Nothing

This is the baseline option and as such, there are no additional costs associated with this option.

#### *Do not add the Section 14A area planning functions*

Under this option, the Section 14A area planning functions would not be added to the list of LHB functions specified to be carried out by regional partnership boards.

Not adding these functions to the list of LHB functions to be carried out by regional partnership boards could result in a perceived weaker support for joint working between local authorities and LHBs compared with option 2. This could potentially result in an increase in costs brought about by increased local authority and LHB duplication of work as a result of not working jointly to prepare area plans.

However, the impact of not adding the S14A functions would be mitigated by the statutory guidance being developed alongside the Care and Support (Area Planning) (Wales) Regulations 2017. This guidance states that area plans should be prepared jointly by the LHB and the local authorities within that LHB area under the direction of the regional partnership boards.

While this joint working message is not as strong compared with adding the S14A functions via legislation, setting out clearly in guidance that local authorities and LHBs should prepare area plans jointly would ensure a message of joint working is supported. This should ensure the potential for an increase in costs to local authorities and LHBs through not working jointly is limited.

#### Retain Regulation 19(1)(c)

Under this option, Regulation 19(1)(c) of the 2015 partnership regulations requiring pooled funds to be established and maintained for any functions local authorities and LHBs decide to exercise jointly in response to the population assessment would be retained.

Stakeholders have highlighted during the consultation process that establishing pooled funds can often be a very complicated and onerous task. By retaining Regulation 19(1)(c), local authorities and LHBs will have to establish pooled funds for anything they decide to do jointly as a result of the population assessment. This will likely result in an increased cost to both local authorities and LHBs compared with option 2 as more pooled funds would have to be established, including when they are not appropriate or beneficial, e.g. for small-scale projects. This would lead to an increase in local authority and LHB staff costs in terms of staff time to set up and maintain the pooled funds.

#### Option 2 – Amend the Partnership Arrangements (Wales) Regulations 2015

Under this option, the Welsh Government considers there would be no significant additional costs falling to either local authorities, LHBs or the Welsh Government.

Adding the Section 14A functions to the list of LHB functions to be carried out under the direction of regional partnership boards is related to the development of the Care and Support (Area Planning) (Wales) Regulations 2017 which set out the detail of what must be included within the area plans.

The potential costs to local authorities, LHBs and the Welsh Government of developing the area plans required under those regulations are outlined under Option 2 of that RIA. No specific additional costs over and above those outlined in that RIA are expected under this option.

Omitting Regulation 19(1)(c) and adding a new regulation (19(1A)) to allow more flexibility for pooled funds could result in potential cost savings to local authorities and LHBs. This is because adding Regulation 19(1A) under this option gives the flexibility for joint working without a pooled fund being in place, if this is determined to be the most appropriate way of managing budgets.

Stakeholders have highlighted during the consultation process that establishing pooled funds can often be a very complicated and onerous task. Therefore, allowing the flexibility not to establish pooled funds where they are not considered appropriate would result in a reduction in local authority and LHB staff costs. This would be in terms of staff time for establishing and maintaining pooled funds.

## BENEFITS

### Option 1 – Do Nothing

No specific benefits have been identified under this option other than an efficiency saving in terms of Welsh Government staff time compared with Option 2. This saving would be a result of no amendment regulations having to be prepared by Welsh Government officials, nor guided through the National Assembly for Wales as part of the legislative process.

### Option 2 – Amend the Partnership Arrangements (Wales) Regulations 2015

The benefits of adding Regulation 19(1A) in terms of the reduction in local authority and LHB staff costs through allowing increased flexibility for local authority and LHBs not to establish pooled funds are outlined under the 'costs' section for Option 2.

In addition, enabling this additional flexibility in planning arrangements will enable regional partnership boards to work in a more effective way, supporting their objectives under the Part 9 Statutory Guidance (Partnership Arrangements), paragraph 16 of which requires boards to ensure partnership bodies (local authorities and LHBs) work effectively together to:

- Respond to the population assessment carried out in accordance with section 14 of the Act, and
- Implement the plans for each of the local authority areas covered by the board which local authorities and LHBs are each required to prepare and publish under section 14A of the Act (area plans).
- Ensure the partnership bodies provide sufficient resources for the partnership arrangements, in accordance with their powers under section 167 of the Act.

The wording of Regulation 19(1A) which states 'If any of the partnership bodies decide to do things jointly in response to the assessment carried out under section 14 of the Act, they must consider whether it is appropriate to establish and maintain a pooled fund', also gives consistency to local authorities and LHBs in terms of the role of the regional partnership board. This is because paragraph 16 of the guidance also states regional partnership boards should ensure partnership bodies work effectively together to:

- Promote the establishment of pooled funds where appropriate.

Adding the Section 14A area planning functions to the list of LHB functions to be carried out by regional partnership boards will also support boards in ensuring partnership bodies work effectively together to implement area plans. This is because adding these functions to the regional partnership board functions in

legislation will serve to reinforce the joint working message between local authorities and LHB set out in the Part 9 statutory guidance. More generally, reinforcing the importance of joint working between local authorities and LHBs via adding these S14A functions is consistent with the regulations and Code of Practice prepared to support the production of population assessments.

## RISKS

### Option 1 – Do Nothing

As set out under the 'costs' section for option 1, not adding the Section 14A functions to the list of LHB functions to be carried out by regional partnership boards could result in a perceived weaker support for joint working between local authorities and LHBs compared with option 2. Leaving these S14A functions out of the functions carried out by regional partnership boards would also be inconsistent with the area plan statutory guidance which states that area plans should be prepared jointly by the LHB and the local authorities within that LHB area under the direction of the regional partnership boards.

Retaining Regulation 19(1)(c) would risk adding to the burden of local authorities and LHBs in terms of having to establish pooled funds when they are not appropriate. This could potentially lead to delays in regional partnership boards responding to the population assessments and implementing area plans.

### Option 2 – Amend the Partnership Arrangements (Wales) Regulations 2015

No significant risks were identified in respect of adding the Section 14A functions to the list of LHB functions to be carried out by regional partnership boards.

There is a potential risk of fewer pooled funds being established by local authorities and LHBs in response to the population assessment as a result of the increased flexibility brought about by adding Regulation 19(1A). However, Regulation 19(1A) is worded to state that partnership bodies must consider whether it is appropriate to establish and maintain a pooled fund if they decide to do things jointly in response to the population assessment. This should mitigate this risk and ensure pooled funds are given proper consideration by partnership bodies.

## **Consultation**

A 12 week consultation on these Regulations, the related 2017 Partnership Regulations and the area plan statutory guidance, ran between 11 July 2016 and 3 October 2016. The consultation report can be found at:

<https://consultations.gov.wales/consultations/regulations-and-statutory-guidance-area-plans-following-population-assessment>

There were 27 substantive written responses received to the consultation from a wide range of statutory organisations, third sector groups and professional bodies. This included regional partnership boards, individual health boards, the Children's

and Older People's Commissioners and the ADSS Cymru / Welsh Local Government Association (WLGA) who produced a joint response.

Overall, responses to the consultation were broadly supportive of the proposals put forward in the draft statutory guidance and regulations. Generally, suggestions made by respondents focussed on matters of detail, small additions and amendments to the text within the statutory guidance.

As a result of the consultation, the wording of the draft area planning regulations has been amended to allow for engagement with a wider range of organisations when preparing area plans than was initially provided for. This should ensure local authorities and LHBs engage with a wider range of relevant organisations when preparing area plans, leading to their area plans presenting a clearer picture of the range and level of services to be provided in an area.

The preferred option in this RIA to amend the 2015 partnership regulations also came about as a result of feedback received during the consultation process around the inflexibility of pooled funding arrangements.

### Competition Assessment

| The competition filter test                                                                                                              |                     |
|------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| Question                                                                                                                                 | Answer<br>yes or no |
| <b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?                               | No                  |
| <b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?                               | No                  |
| <b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?          | No                  |
| <b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?                                           | No                  |
| <b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of firms?                                | No                  |
| <b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?  | No                  |
| <b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet? | No                  |
| <b>Q8:</b> Is the sector categorised by rapid technological change?                                                                      | No                  |
| <b>Q9:</b> 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 regulation. It has been determined that this regulation will have no detrimental effect on competition.

### Post implementation review

As set out in the RIA for the Care and Support (Area Plans) (Wales) Regulations 2017, the area plans will be reviewed by Welsh Government officials when the first

plans are submitted to Welsh Ministers by 1 April 2018. This will provide an opportunity to review how well the plans enable the delivery of effective care and support services, and support services for carers across each region