

## **Explanatory Memorandum to the Local Health Boards (Directed Functions) (Wales) Regulations 2009 (the Functions Regulations)**

This Explanatory Memorandum has been prepared by the Department for Health and Social Services (DHSS), and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

### **Description**

The Functions Regulations set out the functions of the seven Local Health Boards (LHBs) in Wales post 1 October 2009. Namely, that seven LHBs will exercise the functions currently exercised by the twenty-two LHBs, and those goods and services provided by seven of the nine NHS Trusts in Wales, as well as exercising certain functions of the Welsh Ministers (which encompass the functions undertaken by Health Commission Wales).

The Functions Regulations will revoke the following Statutory Instruments:

- National Health Service (Functions of Health Authorities and Administration Arrangements) Regulations 1996 (S.I. 1996/708);
- Local Health Boards (Functions) (Wales) Regulations 2003 (S.I. 2003/150 (W.20));
- Local Health Boards (Functions) (Amendment) Regulations 2003 (S.I. 2003/816 (W.101));
- The Powys Local Health Board (Additional Functions) Regulations 2003 (S.I. 2003/815 (W.100)); and
- Local Health Boards (Functions) (Wales) (Amendment) Regulations 2007 (S.I. 2007/315 (W.29)).

### **Matters of special interest to the Subordinate Legislation Committee**

None.

### **Legislative Background**

The power to make these Regulations is provided by sections 12, 203(9) and (10) and 204 of the National Health Service (Wales) Act 2006 (the 2006 Act).

This instrument follows the negative resolution procedure.

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

Welsh Ministers have determined through their *One Wales* policy statement to re-design the delivery of the NHS in Wales, to improve health outcomes and ensure that the NHS delivers care effectively with their partners. The internal market is to be abolished.

The overall objective of the NHS Reform Programme is to improve the provision of healthcare services for patients. *One Wales* committed the

Welsh Assembly Government to ‘...*move purposefully to end the internal market...*’, in order to improve services for patients. The end of the internal market in health is part of the wider Welsh Assembly Government determination to make co-operation, rather than competition, the bedrock of public service delivery in Wales.

On 2 April 2008, the Minister for Health and Social Services issued a Consultation Paper: *Proposals for Changing the Structure of the NHS in Wales* (the first Consultation Paper) for a 12-week consultation period. The proposals were designed to follow the changes already underway in the NHS, and proposed, amongst other things, a reduction in the number of LHBs from twenty two (22) to seven (7), with the responsibility for community services transferring from NHS Trusts to LHBs.

Consultation responses indicated that the proposals in the first Consultation Paper should go further, and there should be one organisation responsible for those services currently undertaken by LHBs and NHS Trusts. As a result, on 2 December 2008, a further Consultation Paper was published for a 12-week consultation period – *Delivering the new NHS for Wales* (the second Consultation Paper).

The Functions Regulations, which formed part of the second Consultation Paper, will specify the directed functions of the seven LHBs in Wales. These LHBs are:

- Abertawe Bro Morgannwg University Local Health Board;
- Aneurin Bevan Local Health Board;
- Betsi Cadwaladr University Local Health Board;
- Cardiff and Vale University Local Health Board;
- Cwm Taf Local Health Board;
- Hywel Dda Local Health Board; and
- Powys Teaching Local Health Board.

The Functions Regulations provide that from the 1<sup>st</sup> October 2009, seven LHBs will undertake the functions listed in the Schedule to the Regulations, which include:

- LHB functions - functions of former Health Authorities in Wales that were transferred to the National Assembly on the 1st April 2003, and which from that date twenty-two LHBs were directed to exercise; and
- Other functions of the Welsh Ministers including :
  - (i) NHS Trust functions - LHBs are directed to exercise functions in sections 1 - 3 of the 2006 Act in order to provide or secure services for the purpose of the health service;
  - (ii) Functions relating to securing Specialised and Tertiary functions currently the responsibility of Welsh Ministers (undertaken by HCW at present) - LHBs are directed to exercise functions in sections 1 - 3 of

the 2006 Act in order to secure services for the purpose of the health services..

There are certain functions that are conferred on LHBs outside of the Functions Regulations. For example, the References to Health Authorities Order 2007 was made pursuant to section 75 of the Health Act 2006, and changed references to Health Authorities to references to LHBs in non-health related legislation.

LHBs will also continue to exercise functions directly conferred on LHBs in legislation. For example, section 40 of the 2006 Act places a duty on LHBs and Local Authorities to formulate and develop a Health, Social Care and Well-being Strategy. These functions are not listed in the Functions Regulations.

### **Implementation**

It is intended these Regulations should come into force on the 1<sup>st</sup> October 2009.

### **Consultation**

The Consultation process has been described in detail in the Regulatory Impact Assessment below.

### **Regulatory Impact Assessment**

#### **Options**

Following the responses to the first Consultation Paper, there was significant support from stakeholders on the overall direction of travel. A number of respondents suggested that the consultation should have gone further by suggesting that there should be one NHS body to undertake the functions of the LHBs and NHS Trusts.

As a result, the Minister for Health and Social Services confirmed that there would be seven LHBs in Wales that would undertake the functions currently the responsibility of twenty-two LHBs, and seven of the nine NHS Trusts in Wales, together with some functions the responsibility of Welsh Ministers (specialised and tertiary services).

Following consultation on the second Consultation Paper, the Minister confirmed that she would be proceeding to make the changes, largely as provided for in consultation.

As a result, on the 1<sup>st</sup> June 2009, *the Local Health Boards (Establishment and Dissolution) (Wales) Order 2009* (the Establishment Order) came into force, which established the six new LHBs in shadow from the 1st June 2009, to be fully operational from the 1st October 2009. It also dissolves all twenty-one of the twenty-two LHBs (all except for Powys Teaching LHB) from the 1st

October 2009. Therefore, from the 1<sup>st</sup> October 2009, there will be seven LHBs in Wales, as listed above.

On the same date the *Local Health Boards (Constitution, Membership and Procedures) (Wales) Regulations 2009* (the Membership Regulations) came into force, which set out the LHB Board membership and the administrative arrangements of the new organisations. The Regulations will in due course also apply to Powys.

On the 21<sup>st</sup> May 2009, the Minister made the *National Health Service Trusts (Dissolution) (Wales) Order 2009* (the Trusts Dissolution Order), which provides for the dissolution of seven NHS Trusts in Wales: Abertawe Bro Morgannwg University NHS Trust, Cwm Taf NHS Trust, Cardiff and Vale NHS Trust, Gwent Healthcare NHS Trust, Hywel Dda NHS Trust, North Wales NHS Trust, and North West Wales NHS Trust. The Order will come into force on the 1<sup>st</sup> October 2009.

### Do Nothing

This option would not facilitate the changes required to clarify the functions to be undertaken by seven LHBs in Wales post 1<sup>st</sup> October 2009.

### Option 1 – make the Functions Regulations

The Functions Regulations will set out the specific functions which will be exercised by the LHBs, including those previously provided by NHS Trusts and in some cases Welsh Ministers.

### **Costs**

The cost of any administrative work in drafting and preparing these Regulations, including those costs incurred by Legal Services, will be accommodated within existing and planned administration costs budgets.

It is accepted that in the short term there will be some transitional costs in dissolving the NHS Trusts, and in dissolving and establishing LHBs (both administrative and staff costs). Such costs will be met from within existing resources in the DHSS MEG. In the longer term, reducing the numbers of LHBs from twenty-two to seven should result in direct cost savings. A Benefits Realisation Framework has been developed.

Work is now on-going to quantify the net benefits arising, and baseline comparators are known against which future savings will be assessed.

### Local Authorities

It is not considered that there would be any significant cost implications for Local Authorities arising from the making of these Regulations. Due to the reduction in the number of LHBs, which will result in the end of co-terminosity between LHBs and Local Authorities, it will be essential that existing

partnerships are strengthened and enhanced. The statutory duty for Health, Social Care and Well-being Strategies and Children and Young People's Plans will remain.

A Local Authority elected member will be one of the Non-officer members on the LHB Board.

### Third Sector

It is not considered that there would be any significant cost implications for the Third Sector arising from the making of the Order. The Third Sector will be essential in delivering healthcare services in the new structures.

In its response to the second Consultation Paper, the Wales Council for Voluntary Action (WCVA) (the national support network for the Third Sector) worked up proposals with the Third Sector for a minimum infrastructure to enable participation and engagement, and ensure strategic working at the LHB level. The recommendation is for Regional Co-ordinators at the LHB level, in addition to the existing local health and social care facilitators at the Local Authority level.

A Third Sector employee or member will be one of the Non-officer members on the LHB Board.

### Independent Sector

It is not considered that there would be any significant cost implications for the Independent Sector arising from the making of the Order.

## **Consultation**

### Stakeholder Engagement

There has been evidence of stakeholder engagement throughout the NHS Reform Programme. Consultation on the Regulations (December 2008 – February 2009) followed an inclusive engagement phase, which started in April 2008 when the first Consultation Paper was issued.

Consultation Paper I: *Proposals to Change the Structure of the NHS in Wales* was more of a discussion paper that set out proposals to abolish the internal market in Wales. During the consultation period - from the 2<sup>nd</sup> April to the 25<sup>th</sup> June 2008 - a number of consultation events were held across Wales:

- Forty-eight Technical Consultation Events were held to ensure that participation would be possible for those who had a direct interest in shaping the detailed arrangements that would be needed to support our final proposals. They were chaired by the Head of the Department for Health and Social Services;

- Twenty-three Local Consultation Events (in each Local Health Board area and two in Powys) were held with patient groups, local leaders, Community Health Councils and voluntary organisations to ensure that local interests were fully engaged in the process. Invitation letters were issued to every Community Health Council, County Voluntary Council Local Health Board and NHS Trust in Wales, requesting that they invite all their contacts, patient groups and community networks to these events.

In total, eight hundred and seven responses were received to the first Consultation, which identified that there was significant support from stakeholders on the overall direction of travel. A summary of the consultation responses can be found at

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

At that stage, the NHS Reform Programme was established, with a formal Programme Board. This Board now meets on a bi-monthly basis, and comprises a number of key external stakeholders, including:

- Local Government;
- Third Sector;
- Wales Audit Office;
- NHS senior managers and clinicians; and
- Trade Union/Representative bodies.

#### Consultation on the Functions Regulations

The Functions Regulations were subject to a twelve week consultation period, between the 2<sup>nd</sup> December 2008 and the 25<sup>th</sup> February 2009.

The second Consultation Paper, which included the draft Functions Regulations, was published electronically in the first instance, and was available on the Welsh Assembly Government website and on the HOWIS website. Hard copies of the second Consultation Paper were produced and sent to LHBs, NHS Trusts, Community Health Councils and County Voluntary Councils, to be displayed wherever the public has access.

There were three technical consultation events led by the Chief Executive, NHS Wales during the consultation period:

- 27<sup>th</sup> January 2009 – South East Wales event – All-Nation Centre, Cardiff;
- 6<sup>th</sup> February 2009 – North Wales event – Venue Cymru, Llandudno;
- 10<sup>th</sup> February 2009 – Mid and West Wales event – Halliwell Centre, Carmarthen.

In addition, the seven Transition Directors (who are leading change within the new LHB area) held local consultation events within their areas.

## Consultation Responses

Four hundred and seventeen (417) responses were received during the consultation period. All responses are available on the Welsh Assembly Government website at:  
<http://wales.gov.uk/topics/health/publications/health/responses/responses/?lang=en>

## Summary of Responses

The following is a summary of the consultation responses that referred to the LHBs establishment and functions:

- (i) General Responses:
  - Approximately 65% of respondents were mostly or totally in favour of the proposals presented in the Consultation Paper;
  - Approximately 10% of respondents were against the proposals; and
  - Approximately 6% of respondents were indifferent or neutral to the proposals presented.
  
- (ii) LHB Establishment - there were very few comments that referred specifically to the establishment of the six new LHBs. Of those who commented (4%) there was a suggestion that LHBs should remain as they were, or that changes should be postponed. A very small number (3) volunteered that any changes should wait until the current Community Health Council consultation was completed.
  
- (iii) LHB Functions
  - Approximately 30% of respondents commented on the LHB functions. Opinions were largely divided, with a broad range of responses;
  - Some did not support the shift of focus from local to regional (14), while others referred to the need to preserve the role of clinical networks (12);
  - A similar number (11) believed that the changes proposed would maintain unity of service and equality across Wales;
  - Beyond these, the responses were very equally distributed among small numbers, who made the following comments:
    - Further details needed about the final status of the transferred services, and the need to monitor the transition carefully to ensure it does not affect the quality of the service;
    - Advocating a change in the LHB functions to give more weight to the opinions and participation of the citizens, and the need to ensure that LHBs were well resourced and organised for their new functions;

- Both support and rejection for the transfer of specialist services to the LHB, suggesting that LHBs should consult with the Local Medical Councils about these services;
- A small number of respondents mentioned the dangers to morale and service levels caused by the transfer of functions (3), and a similar number warned of the costs of the changes.

### The Health, Well-being and Local Government Committee

On 12 February 2009, the Minister for Health and Social Services, the Chief Executive NHS Wales, and the Deputy Chief Medical Officer (in his role as Medical Director) attended the Health, Well-being and Local Government Committee to discuss the provisions of, amongst other things, the Functions Regulations.

The Committee did ask for clarification on a number of issues relating to the establishment of LHBs, in particular how the larger LHBs will address the needs of local populations, the differences between the LHB and NHS Trust model, and how the remaining aspects of the internal market would change the way in which the NHS operates; these were addressed in full. A transcript of the meeting can be found at <http://www.assemblywales.org/bus-home/bus-committees.htm>

### Changes to the Draft Functions Regulations

The amendments made to the Functions Regulations since the draft were issued for consultation are technical in nature, and do not change the policy identified in the second Consultation Paper and in the draft of the Functions Regulations already consulted on.

It was originally proposed that a revised version of the Functions Regulations would be issued during the consultation period. This was not done as the policy of the Functions Regulations has not changed. LHB Transition Directors received a copy of the final draft of the Functions Regulations for comment on the 15<sup>th</sup> June 2009.

These main changes are:

- (i) The word “Directed” has been added to the name of the Functions Regulations to make it clear on the face of the Statutory Instrument its purpose;
- (ii) The Explanatory Note (at the start of the Functions Regulations) has been expanded. It reflects the same policy as that provided in the second Consultation Paper, but is more detailed;
- (iii) Regulation 4 specifies the functions to be exercised by LHBs. The wording is different to that used in the draft Regulations in the second Consultation Paper, but the meaning and policy is the same. The



amended wording reflects the more detailed functions as listed in the Schedule;

- (iv) Regulation 5 is new, but is technical legal drafting and does not affect the policy. It refers to the fact that the Functions Regulations do not direct LHBs with regard to the making of any Orders or Regulations, or the giving of direction;
- (v) Regulation 7 is also new and recites a number of consequential amendments to be made as a result of the more detailed functions listed in the Schedule.
- (vi) The Schedule has been inserted and lists those functions LHBs are directed to exercise on behalf of Welsh Ministers in more detail;
- (vii) In addition, there are some minor drafting and legal changes.

### **Post implementation review**

The effect of the NHS Reform Programme (including those changes identified in the Functions Regulations) will be monitored as part of the Programme's Benefits Realisation Framework, and also as part of the next Welsh Assembly Government's Office for Government and Commerce (OGC) Review, which is planned for September 2009.

### **Summary**

The Functions Regulations provide directions to LHBs to exercise specified functions post 1<sup>st</sup> October 2009.