

## **Explanatory Memorandum to the Welsh Health Specialised Services Committee (Wales) Regulations 2009 (the Regulations)**

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

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Welsh Health Specialised Services Committee (Wales) Regulations 2009. I am satisfied that the benefits outweigh any costs.

**Mrs Edwina Hart AM OStJ MBE, Minister for Health and Social Services  
25<sup>th</sup> November 2009**

### **Description**

The Regulations make provision for the constitution and membership of the Welsh Health Specialised Services Committee (the Joint Committee), including its procedures and administrative arrangements.

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

None.

### **Legislative Background**

The power to make these Regulations is provided by Section 11 of and paragraph 4 of Schedule 2 to the National Health Service (Wales) Act 2006 (the 2006 Act), which empowers Welsh Ministers by Regulations to make provision in relation to the membership of Local Health Boards (LHBs).

Paragraphs 4(1) (d) and (e) of Schedule 2 provide that Regulations may make provision about the appointment and constitution of any committees and the appointment and tenure of office of the members of any committee of a LHB; the reference to committee includes a joint committee.

This instrument follows the negative resolution procedure.

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

*One Wales* committed the Welsh Assembly Government to ‘...*move purposefully to end the internal market...*’, in order to improve health services for patients. In order to address this commitment, the Welsh Assembly Government has set out practical proposals for putting this pledge into action.

## Consultation Paper II: Delivering the new NHS for Wales

On the 2<sup>nd</sup> December 2008, the Minister for Health and Social Services agreed the content of a second Consultation Paper: *Delivering the new NHS for Wales*, which was issued for a 12-week consultation period on the 2<sup>nd</sup> December 2008.

Following consideration of the consultation responses, on the 10<sup>th</sup> March 2009, the Minister made an Oral Statement to Plenary confirming that she would be establishing the six new LHBs, largely as set out in the second Consultation Paper.

### Consultation Paper: *Proposals for the future of Specialised and Tertiary Services*

On the 26<sup>th</sup> March 2009, the Minister for Health and Social Services published a Consultation Paper: *Proposals for the future of Specialised and Tertiary Services* (the Consultation Paper) for a twelve week consultation period, ending on the 19<sup>th</sup> June 2009.

The Consultation Paper re-affirmed the proposal that the seven LHBs in Wales would be responsible for planning, funding, designing, developing and securing the delivery of primary, community, in-hospital care services, and specialised services for the citizens in their respective areas. It also proposed that the seven LHBs will form joint arrangements to enable them to fulfil these functions. They would work collaboratively to determine those services planned and delivered locally, and those services which need to be planned together. The LHBs would also agree joint arrangements for securing services from specialist and tertiary services delivery bodies.

It set out new proposals for:

- A new National Service for specialised and tertiary services;
- The organisation model for that new National Service – through a Joint Committee of the seven LHBs – to be known as *The Welsh Health Specialised Services Committee* (WHSSC);
- The new Cwm Taf LHB to host the Joint Committee;
- The Joint Committee's functions and membership;
- A Management Team of the Joint Committee to carry out the actions agreed by the Joint Committee – this team will be known as *The Welsh Health Specialised Services Team* (WHSST);
- The transfer of roles and responsibilities from HCW to Cwm Taf LHB, and the implications for the staff of HCW; and
- The criteria for the Assessment of Specialised Services.

On the 14<sup>th</sup> July 2009, following consultation, the Minister issued a Written Cabinet Statement confirming the direction of travel, largely as set out in the Consultation Paper. A copy of the Written Cabinet Statement can be found at:

<http://new.wales.gov.uk/about/cabinet/cabinetstatements/2009/090714specialist/?lang=en>

Following a short consultation process, on the 1<sup>st</sup> October 2009 the Minister made the *Welsh Health Specialised Services Committee (Wales) Directions 2009* (the Directions), which came into force at 6.10pm on that day. These Directions directed the seven (7) LHBs to establish the Welsh Health Specialised Services Committee (the Joint Committee), as soon as practicable after the 1<sup>st</sup> October 2009.

On the 8<sup>th</sup> October 2009, the Minister issued a further Written Cabinet Statement on Specialised and Tertiary Services. A copy of this second Written Cabinet Statement can be found at:

<http://new.wales.gov.uk/about/cabinet/cabinetstatements/2009/091008health/?lang=en>

### The Welsh Health Specialised Services Committee (Wales) Regulations 2009 (the Regulations)

On the 9<sup>th</sup> November 2009, the Minister agreed a consultation draft of the Regulations, and that the Regulations could be issued electronically (in English only) to the 7 LHBs, the 3 NHS Trusts and to Health Commission Wales for a 2-week consultation period. The Regulations would ensure that clear provisions are set for the membership, proceedings and administrative arrangements of the Joint Committee.

The Regulations make provision for:

- The composition and membership of the Joint Committee (regulation 3);
- The appointment of the Chair, Officer, Vice-Chair and Non-Officer Members (NOMs) to the Joint Committee (regulation 4) – the Chair will be appointed by Welsh Ministers using the Office for the Commissioner of Public Appointments (OCPA) principles, with the Vice-Chair (an existing LHB NOM), Non-Officer Members (2 existing LHB NOMs) and Officers appointed by the Joint Committee. The Associate Members (the Chief Executives of Velindre, Welsh Ambulance Services and Public Health Wales NHS Trusts) and the 7 LHB Chief Executives will be members of the Joint Committee by virtue of their NHS Wales appointment;
- The eligibility requirements for the Chair and Officer Members of the Joint Committee (regulation 5 and Schedule 2);
- The tenure of office, termination of appointment and suspension of members of the Joint Committee (regulations 6 to 11) – the Chair will be appointed for a term no longer than 4 years and for a total period of 8 years, whereas the Vice-Chair and NOMs will be appointed for a term no longer than 2 years and for a total period of 4 years; and
- The proceedings of the Joint Committee, including the powers of the Vice-Chair (regulations 12 and 13).

## **Implementation**

It is intended these Regulations should come into force on the 17<sup>th</sup> December 2009. If the Regulations are not made, we would be unable to specify the appointment and other constitutional arrangements for the Joint Committee.

## **Consultation**

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

## **Regulatory Impact Assessment**

### **Options**

#### Do Nothing

This option would not allow Welsh Ministers to specify the constitution and membership of the Welsh Health Specialised Services Committee (the Joint Committee), including its procedures and administrative arrangements.

#### Option 1 – make the Regulations

The Regulations will specify the appointment, termination and criteria for the members of the Joint Committee, and other constitutional arrangements, and therefore will ensure that the members of the Joint Committee, particularly the Chair and Officer Members, will be bound by similar criteria as those members of LHB Boards.

### **Costs**

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

There are additional implications for the Welsh Assembly Government arising from the establishment of the Joint Committee. The cost of advertising for the Chair position will be met from the NHS Public Appointments current budget.

It is proposed that the Chair should receive a remuneration of £249 per day (Band 2) for a time commitment of at least 36 days a year (3 days every month); approximately £8,964 per annum.

The Joint Committee Officer Members will be employed by the host LHB; Cwm Taf LHB.

Work is now on-going to quantify the net benefits arising, and baseline comparators 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. A Local Authority elected member is one of the Non-Officer Members on the main LHB Board, and therefore it is possible that one of the Independent Members of the Joint Committee could be from a Local Authority.

## Third Sector

It is not considered that there would be any significant cost implications for the Third Sector arising from the making of these Regulations. The Third Sector will be essential in delivering healthcare services in the new structures. A Third Sector employee or member will be one of the Non-Officer Members on the LHB Board, and therefore it is possible that one of the Independent Members of the Joint Committee could be from the Third Sector.

## Independent Sector

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

## **Consultation**

### Stakeholder Engagement

There has been evidence of stakeholder engagement throughout the NHS Reform Programme, which started in April 2008.

Specifically, in response to the Consultation Paper: *Proposals for the future of Specialised and Tertiary Services*, issued for a 12-week consultation on the 25<sup>th</sup> March 2009, one hundred and twenty-four (124) responses were received. Overall, respondents were in favour of the proposals as set out in the Consultation Paper.

In response to the question - *Do you agree overall with the proposals contained in this Consultation Paper?* - of the 75% of the respondents who answered the question, over 90% agreed with the proposals overall.

In response to the question - *Do you support the proposal for a Joint Committee?* - of the 67% of the respondents who answered this question, over 95% agreed with the Joint Committee proposal.

All responses to this consultation are available on the Welsh Assembly Government's website at:

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

## Consultation on the Regulations

As there has already been consultation on the establishment, membership and functions of the Joint Committee as part of the Consultation Paper referred to above, the Regulations were issued electronically for a 2-week consultation period; from the 9<sup>th</sup> November 2009 until the 23<sup>rd</sup> November 2009. Consultation was with the 7 LHBs who will be affected by these changes, Health Commission Wales, and the 3 NHS Trusts in Wales.

The Draft Regulations were also available on both the Welsh Assembly Government and the Health of Wales Information Site (HOWIS) websites from the 11<sup>th</sup> November 2009:

<http://wales.gov.uk/consultations/healthsocialcare/committee/?jsessionid=h5vTLNGZXcL97KrMGsx3q6kcK9cyLFR7pLRbp0hl8VT0xnZSypGD!686978193?!lang=en&status=closed>

## Consultation Responses

Five (5) responses were received during the consultation period, and one (1) response was received the day after the consultation period (which has been accepted). 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:

- (i) A number of responses referred to the importance of the governance and working arrangements for the Joint Committee;
- (ii) There needs to be clarity between the role of the three NOMs to eliminate any potential conflict of interest or unfair under-representation of the LHBs who do not have NOM representation;
- (iii) The Standing Orders for the Joint Committee need to be issued as soon as possible;
- (iv) Each LHB Chief Executive to have a designated deputy;
- (v) The Regulations should provide for the 3 LHB NOMs to be from an equitable geographical location across Wales;
- (vi) The Regulations should provide for the timing of the appointment of the Chair, Vice-Chair, NOMs and Officer Members;
- (vii) The appointments should be staggered;
- (viii) The Regulations should specify the eligibility criteria for the Finance Director;
- (ix) There should be a Director of Planning;
- (x) There should be one Independent Member who is not a LHB NOM, to reflect the national and specialised perspective.

## Changes to the Draft Regulations

It is considered that most matters referred to above – particularly numbers (i) – (vii) would more appropriately be addressed in a Memorandum between the LHB Chief Executives and in the Joint Committee's Standing Orders, which are being prepared by the Health and Social Services' Governance Team, in partnership with the LHBs and Health Commission Wales.

The eligibility criteria for the Director of Finance referred to in (viii) will be specified in the appointments criteria.

The responses referred to in numbers (ix) – (x) were considered as part of the original consultation on the future of specialised and tertiary services, and are not accepted.

A number of minor amendments have been made to the Regulations since the draft was issued for consultation; these are technical in nature and facilitate the meaning and accuracy of the Regulations. The changes do not change the policy identified in the Regulations already consulted on.

### **Post implementation review**

The effect of the NHS Reform Programme will be monitored as part of the Programme's Benefits Realisation Framework.

### **Summary**

The Regulations make provision for the constitution and membership of the Welsh Health Specialised Services Committee (the Joint Committee), including its procedures and administrative arrangements.