

## **REGULATORY APPRAISAL**

### **CHILDREN AND YOUNG PERSONS, WALES**

#### **SOCIAL CARE, WALES**

### **THE LOCAL SAFEGUARDING CHILDREN BOARDS (WALES) REGULATIONS 2006**

#### **Background**

1. The Children Act 2004 requires each local authority to establish a Local Safeguarding Children Board to include representatives of each Board partner - the partners being the police, probation boards, youth offending teams, Local Health Boards, NHS trusts, secure training centres and prisons that ordinarily detain children. A local authority must also take reasonable steps to ensure that the Board established by them includes representatives of other persons or bodies that the Assembly may prescribe in Regulations. The Act also sets out the objective for Safeguarding Boards, being to co-ordinate what is done by each person or body represented on the Board for the purposes of safeguarding and promoting the welfare of children in the area of the authority by which it is established; and to ensure the effectiveness of what is done by each such person or body for those purposes. It enables the Assembly to prescribe by Regulations the functions and procedures of Boards, enables Board partners to make payments towards expenditure incurred by, or for persons connected with, a Local Safeguarding Children Board and enables the Assembly to make provision in Regulations as to the functions of local authorities in relation to Boards and to issue guidance relating to Boards.

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

2. These Regulations set out arrangements for the establishment of Local Safeguarding Children Boards (LSCBs) by local authorities in Wales. They:
  - specify the functions of Boards in relation to their objective;
  - require LSCBs to undertake serious case reviews where abuse or neglect of a child is known or suspected and the child dies or has sustained a potentially life-threatening injury or a serious and permanent impairment of health or development and to monitor the extent to which any recommendations made in a review are being or have been met. They also enable LSCB's to undertake a review where a child suffers harm, which is not potentially life threatening or a serious and permanent impairment of health or development, if it is believed that important lessons for interagency working could be learnt from that case;
  - specify the representatives of Board partners; and
  - make provision as to the procedures of Boards and the functions of local authorities in relation to Boards.
3. The Regulations will apply to all 22 local authorities and their Board partners in Wales.

4. Safeguarding Boards will replace Area Child Protection Committees (ACPCs). ACPCs were established by local authorities under statutory guidance issued to local authorities under Section 7 of the Local Authority Social Services Act 1970.
5. These Regulations will apply to the following organisations in Wales:
  - local authorities;
  - Local Health Boards;
  - NHS trusts;
  - The police
  - Probation boards;
  - Youth offending teams;
  - Secure training centres; and
  - Prisons that ordinarily detain children.

### **Risk Assessment**

6. The central role of LSCBs is to protect children from abuse and neglect. This includes:
  - raising awareness of the need to safeguard and promote the welfare of children and to provide information about how this might be achieved;
  - developing policies and procedures to co-ordinate what is done by each body for the safeguarding and promoting the welfare of children in relation to information sharing; actions, including thresholds for intervention to be taken where there are concerns about a child's safety or welfare; the recruitment and supervision of persons who work with or have regular access to children; and the safety and welfare of children who are privately fostered;
  - undertaking "serious case reviews";
  - disseminating information about best practice in safeguarding and promoting the welfare of children; and
  - undertaking research into safeguarding and promoting the welfare of children.
7. The Regulations are designed to strengthen the current non-statutory arrangements. Similar Regulations in England came into force on 1 April 2006. In the interests of providing parallel statutory safeguards for children in Wales it is important to bring forward these provisions as soon as possible.

### **Options**

#### Option 1: Do Nothing

8. In his report into the death of Victoria Climbié, Lord Laming recommended that statutory Safeguarding Boards should be established to replace Area Child Protection Committees. The Children Act 2004 makes provision for the establishment of such Boards. The Act has already been passed and includes specific provisions in relation to Wales that reflect the Assembly's needs. It now

needs to be implemented through Regulations if the Assembly's policy intentions are to be delivered.

Option 2: Bring forward Regulations under the Children Act 2004 that are less prescriptive than drafted, supported by new guidance.

9. The Regulations as drafted seek to minimise the degree of regulation on the establishment of Boards. The risk with further simplifying the Regulations is that they would not deliver the fundamental improvements required and identified during a number of consultations. Improved statutory guidance alone could not fill the gaps left by a simpler set of regulations.

Option 3: Make the Legislation

10. These Regulations will ensure that existing weaknesses are tackled and will strengthen the current non-statutory arrangements. They will ensure that there are proper processes in place for promoting and safeguarding the welfare of children and young people. The Regulations have been designed to minimise burdens while ensuring that essential functions are conducted properly, consistently, and within the framework provided by the 2004 Act.

**Benefits**

11. Benefits that should stem from the new Regulations include:

- clarity about the functions of Local Safeguarding Children Boards;
- clarity about the conduct of "serious case reviews"; and
- ensuring appropriate representation of Board partners on LSCBs.

12. These Regulations, together with associated statutory guidance, should enable local authorities and their Board partners to optimise their functions, whilst allowing appropriate local flexibility, and so contribute to the development of more effective safeguarding structures.

**Costs**

13. These Regulations are based on current best practice and strengthen existing requirements on local authorities and their Board partners. As the new Regulations and associated guidance are more detailed than the current guidance, compliance with them may involve extra costs for those agencies not already applying best practice.

14. The main area of costs associated with establishing the new Boards is likely to be in the provision of administrative support by the local authority responsible for establishing each Board. Although we have no definitive information on the costs of providing such support, we sought information from ACPCs in 2005 on their costs. There were 14 responses and based on these we estimate that the provision of support could cost up to £80,000 for each Board. The limited information available suggests that most ACPCs are already funding support at this level. Where they are not we estimate that, on average, it may cost £20,000 per Board to do so, giving a total additional cost across the 22 Safeguarding Boards of £440,000. The information currently available on ACPC funding

identifies differential levels of funding for the different ACPCs, and this is likely to continue based on historic and therefore predicted levels of work.

15. Any additional costs that local authorities are likely to incur as a result of these Regulations are intended to be met from within the additional resources provided for local authorities as Children First grant and in the revenue settlement. Adequate resources are available to meet the implementation costs of these Regulations. A total of £44.6m is available to local authorities in 2006-2007, i.e. £28.8m in revenue support and £15.8m in Children First grant. This includes additional funding to take forward implementation of the Children Act 2004. Children First funding is allocated to local authorities on a formula basis that takes account of a number of factors, including population and social need and therefore the expected differential levels of work.
16. From 2007-2008, the remainder of the Children First Grant will be made available to local authorities through Revenue Support Grant (RSG). Indicative figures indicate that this will be in the sum of £45 million.

## **Consultation**

### With Stakeholders

17. These Regulations were issued for formal consultation between 10 June and 31 August 2005 with two formal consultation events on 21 and 29 June. There were also further informal consultations with local authorities, voluntary bodies, health services, the police, probation and youth offending teams. A list of consultees is attached at Annex 1 and a summary of responses is attached at Annex 2.
18. Forty one written responses were received. Respondents were generally supportive of the Regulations, although greater clarity around the associated guidance was sought in a number of areas and this is being addressed in the redrafting of the guidance. The guidance will provide an overview of the roles and responsibilities of Board partners, advice on the role of LSCBs and advice on the function and operation of safeguarding policies and procedures.
19. Areas where respondents expressed a wish for change were:
  - the need for regulation around the links between LSCBs and Children and Young People's Partnerships - there is no provision enabling us to regulate in this area and the issue is therefore being addressed through guidance;
  - the funding and resourcing of the Boards should be covered by the Regulations - again we are unable to regulate in this area and once more we are seeking to address this through guidance;
  - the proposal to review all child deaths was welcomed but significant further guidance would be required and the resourcing implications needed to be considered - this provision has been removed from the Regulations whilst further work is undertaken on how reviews might be undertaken and on the likely financial implications; and

- the proposal in the Regulations for each Board to produce an annual business plan would be too onerous and impractical; this provision has been removed from the Regulations.

20. Consultation events, to which all consultees were invited, were also held in North and South Wales and were attended by 143 people.

#### With Subject Committee

21. These Regulations were notified to the Health and Social Services Committee via the list of forthcoming legislation on 2 March 2005 (HSS(2)-04-05(p.2); item number HSS 73(04)) and have remained on the list ever since. The Regulations were subsequently identified for detailed scrutiny in January 2006 and were scrutinised by the Committee on 11 May 2006. No amendments were proposed, but several points of clarification were raised. In particular, the reports produced as a result of a 'serious case review' where the committee was keen to ensure concerned that the findings of such reports were implemented. The committee were content that regulation 3, which covers the functions of the Boards, including monitoring the extent to which recommendations from serious case reviews are being met, addressed this issue. The Regulations were agreed as clarified (HSS(2)-08-06 (p.6)). A draft transcript of the Committee discussion is attached at Annex 3.

#### **Enforcement and Sanctions**

22. Local authorities and their Board partners will be required to comply with these Regulations. The Assembly is responsible for the inspection of local authorities, Local Health Boards and NHS trusts in Wales. It is not expected that any significant extra work for the regulating authorities will ensue from these Regulations.

23. These Regulations are to be made three months in advance of coming into force as endorsed by the agencies during consultation. This should provide ample time for agencies to prepare for the new requirements, and so reduce the risk of them being in breach of new requirements.

#### **Summary**

24. These Regulations will effectively govern the essential work of Local Safeguarding Children Boards. They are intended to replace current non-statutory arrangements.

25. The Regulations establish Boards in a way that will provide vital safeguards for vulnerable children. The Regulations set out the duties of Boards in a systematic and logical manner.

## Annex 1

### Consultees:

Local authorities  
*incl. Chief Executives*  
*Directors of Social Services*  
*Directors of Education*

Police  
British Transport Police  
Prison Service  
Probation Service  
Youth Offending Teams  
Area Child Protection Committees  
NHS Trusts  
Designated Doctors and Nurses  
Local Health Boards  
Voluntary organisations  
*incl. NSPCC*  
*Barnardo's*  
*Voices from Care*  
*Children in Wales*

Children's Commissioner  
Crown Prosecution Service

## Annex 2

### LOCAL SAFEGUARDING CHILDREN BOARDS: ANALYSIS OF CONSULTATION RESPONSES

#### General Comments

1. 41 responses were received from a wide range of stakeholders consisting of:

Area Child Protection Committees	9
Social Services Departments	4
NHS Trusts	10
Local Health Boards	5
WAG organisations	3
Voluntary organisations	2
Others	8
<b>Total</b>	<b>41</b>

#### Analysis of Responses

2. Of the 41 responses, 25 stated that the links between LSCBs and Children and Young People's Partnerships needed to be clarified and many felt that the relationship should be subject to regulatory control.
3. The funding and resourcing of the Boards was also a matter of concern to a number of respondents (13) and a number thought it should be covered by the Regulations.
4. Generally the proposal to review all child deaths was welcomed. However, 12 respondents felt that significant further guidance would be required and several felt that the resourcing implications needed to be considered closely and sufficient guidance given on this issue.
5. The final area of concern was the proposal in the Regulations for each Board to produce an annual business plan, which a number of respondents felt would be too onerous and impractical.

### Annex 3

#### Extract from the draft transcript of the H&SS Committee meeting on 11 May 2006 - The Local Safeguarding Children's Boards (Wales) Regulations

**Rhodri Glyn Thomas:** No amendments have been put forward, but Jenny Randerson has set out three points of clarification. Do you want to present them?

[195] **Jenny Randerson:** Have they been circulated to everyone? I see that they have. The first one relates to the explanatory memorandum. When I read that through, it was obvious that, when a child dies, the local safeguarding children's boards would be alerted. However, there has to be an indeterminate position when a child suffers some injury, and should that information go to them or not. How are you going to ensure that they are always fully informed where a child suffers harm that is not life-threatening, and so on? Who will make that decision? After all, it is then up to the LSCBs, as I understand it, to decide whether or not to hold an investigation.

[196] **Brian Gibbons:** Some of this will be covered in guidance. It might be useful to provide you with some of the thinking that officials are working up in the guidance. One of the key points is whether or not the serious case review will be looking at areas where interagency working is likely to be problematic and in some way contributes to the poor outcome for a child, or, obviously, fatality in some cases. I think that our best estimate is that 200 or 300 children in this category in Wales die, but the unexpected death is probably something of the order of 100 to 150. So, those are the sorts of rough figures that we are working to at present.

[197] So, first, is there evidence that the bad outcome was due to poor procedures and so forth? Was there clear evidence of a significant risk to the child that was not recognised by the professionals involved? Was that information properly shared with the other agencies and, if it was shared, was it appropriately acted on? Was there an institutional setting in which the child was abused? Again, that would be a trigger. Was the abused child being looked after by local authorities? That would also be a trigger. Were concerns raised but for some reason did not send off sufficiently loud alarm bells and induce a response? How did the procedures that are in place actually operate? Were there some prima facie reasons to suggest that the formal procedures were not properly operated or that they were inadequate in some way? Had the child been on the child protection register? Are there implications for wider agencies? Again, as I said at the beginning, are there implications for interagency working? So, I think that these will be the tests that the various component bodies will go through within their own organisations to make a decision as to whether or not this is an appropriate incident to come to the local safeguarding children board.

[198] **Rhodri Glyn Thomas:** Jonathan, did you want to come in on that?

[199] **Jonathan Morgan:** I have a brief point of clarification on Jenny's first point. In terms of the process, how do you imagine these boards undertaking their work where an incident of serious harm has been identified with a particular child? Once an incident of serious harm, or any level of harm, is identified, you will automatically kick in the legal proceedings, so the police will be involved, and then there is the potential for someone to be arrested and charged. Do you anticipate this sort of work



being undertaken while a criminal investigation is being undertaken? I see that the police will be represented on these boards and that they have been consulted, so, I would imagine that they are content with what has been proposed. However, I could not quite see, from a procedural point of view, how the work of the boards would fit into whatever the police would be undertaking. Naturally, a police investigation would touch on some of the issues that I would imagine that one of these local boards would examine.

[200] **Brian Gibbons:** Again, this will be covered in guidance, but, clearly, it is implicit in some of the regulations, for example, that the outcome of the investigation will be available at the local LSCB office. So, it will be a public domain document, and it is our expectation that that is the minimum requirement. Clearly, this document should be more widely available. It will go to all the organisations that make up the local safeguarding children board. However, we would expect it to be available on the internet as the system matures. I think that that suggests that the police prosecution procedures will take priority, so that any legal investigation will not be prejudiced. Again, this will be covered in guidance, which will be issued on the back of this.

[201] **Jenny Randerson:** My second point relates to the financial resources available to local authorities. The estimate in the explanatory memoranda is roughly £80,000 a year, to set up the boards and administer them. However, when you consider their responsibilities, they are very wide-ranging. You refer to the Children First grant, for example, as one of the other funds available, but I am concerned that there should be sufficient money to do this job properly, allocated within local authorities' resources. Could you explain to us how that funding will be allocated between the 22 local authorities because, clearly, this kind of problem exists more intensively in some areas than in others and the simple pro rata, size-of the population formula would not be good enough?

[202] **Brian Gibbons:** Some of the money that has gone into the revenue support grant is obviously distributed according to the standard spending assessment. So, the SSA is based on recognising social care needs and so forth. So, hopefully, the allocation method through the SSA will pick that up. I would accept that there is an argument as to how sensitive the standard spending assessment and the revenue support grant are for meeting need. However, the intention of the SSA is to reflect social care need, and that will then go into the revenue support grant. So, that is how we would envisage it. Some of the money in the Children First grant is still ring-fenced and allocated on a formula basis, although the expectation is that, over the next few years, that money will also go into the revenue support grant and be distributed according to that mechanism.

[203] **Jenny Randerson:** In the statutory instrument, paragraph 4(4)(b) refers to the production of a written report in each case. I could not see in the instrument any obligation on the organisation's concern to implement the findings. Those findings could go well beyond references to local authority procedures, could they not? They could refer to the procedures in many other organisations. That is the key point: once you have a report, there is some action.

[204] **Brian Gibbons:** The key point is that this is a statutory body and, through these regulations, these organisations are statutory members of this organisation, and, as you can see in the regulations, one of the duties of the safeguarding board is to monitor how the recommendations are being implemented. If an organisation was failing to implement the recommendations, then it would be a matter for the internal performance management of that organisation to address. Copies of all the documentation comes to us in the Assembly, so it is the expectation that our officials will also be monitoring what is going on in terms of implementing the recommendations. For example, if any organisation was not delivering, then we would expect our officials to liaise with that organisation to find out why it was not carrying out its duties as a member of the statutory body.

[205] **Helen Mary Jones:** This is an additional point that only occurred to me on re-reading the papers last night, so it may be something that the Minister would want to address when the regulations are brought to the Assembly, if he cannot give me the answer today. My question is on regulation 5 and the officers that are specified from each authority as members of the board. Is the Minister confident that there are sufficiently senior representatives? Some of the problems with the structures that this is intended to replace were related to having people attending who did not have the authority to speak on behalf of their organisations. On what basis were those decisions made, because there seems to be some variation between some of the different bodies? I am sure that there is a logical explanation for that, but it would be useful to know what it is. The Minister may want to come back to me on that issue with a written note, as I have not given him advance notice of the question, or perhaps we could address it in Plenary.

[206] **Brian Gibbons:** Now that Mike and Keith are here, perhaps we could go back, if that is okay, Chair, to deal with the issue of some of the members of the safeguarding board being non-compliant with the recommendations of an investigation or a review. What mechanisms are in place to ensure that they deliver on the recommendations and do not just ignore them?

[207] **Rhodri Glyn Thomas:** Please come to the table, Mike, so that your comments are recorded. We are a bit ahead of time, but I am sure that you can pick up on the points.

[208] **Mr Burns:** I take it that this is in respect of the serious case reviews?

[209] **Rhodri Glyn Thomas:** Yes.

[210] **Mr Burns:** First, there is a requirement in the regulations for safeguarding boards to monitor implementation of the recommendations. That is part of the specified functions. If you bear with me, I can give you the reference in the draft regulations. It is regulation 3(1)(f), where it states that one of the functions is: 'to monitor the extent to which any recommendations made in a review under paragraph (d), or a serious case review are being or have been met'.

[211] So, they have their own internal function for ensuring that they follow recommendations. As Assembly officials, we will receive copies of their reports and recommendations, and we will also monitor what is being done.

[212] **Brian Gibbons:** To deal with Jenny's point about seniority—

[213] **Rhodri Glyn Thomas:** Is it about the written reports?

[214] **Helen Mary Jones:** It was my point about the seniority—

[215] **Brian Gibbons:** Sorry, it was Helen Mary's point to make sure—

[216] **Helen Mary Jones:** It was about ensuring that the people specified in the regulations are sufficiently senior. Is it consistent across the organisations?

[217] **Brian Gibbons:** The issue is about whether the person that will turn up at the meeting is sufficiently senior.

[218] **Mr Burns:** In terms of the devolved functions in there—local authorities and health bodies—the level of representation was set as a result of the consultation exercise, because we wanted to ensure that we would get a reasonable level of representation. Everyone basically agreed that we should name lead directors, and, if they were unable to attend, someone directly accountable to them should attend. So, it could not be delegated too far down the line.

[219] In terms of the non-devolved functions, which are basically the police, probation, youth offending and prison services, we had to go along with the approach that they have taken in England. We have consulted the Home Office on this issue, and the provisions in the regulations come as a result of that, following what it recommended. In England, they are trying to ensure that they get the highest level of accountability that they possibly can in those areas, so they are naming the senior officers to which someone attending the board would be accountable.

[220] **Brian Gibbons:** Directly accountable; in other words, down through the pecking order to the lowest person in the organisation.

[221] **Rhodri Glyn Thomas:** We seem to have covered all the points of clarification. Did you want to raise something, Jonathan?

[222] **Jonathan Morgan:** I return to the point that I raised about the process that would be followed for a serious case review. I mentioned to the Minister that in an instance where a child has died or has sustained a potentially life-threatening injury, one would imagine that a police investigation would ensue, someone would be arrested and that court proceedings would be brought forward. It is difficult, one would imagine, to envisage how long a case review could take. However, one envisages a situation in which it could be sub judice. Is that not the case?

[223] **Mr Burns:** There have been many cases where there have been child deaths and where the serious case review has been delayed because of ongoing police investigations or criminal prosecutions. Our advice to any child protection committee, and we do the same with the safeguarding boards, has always been that they should still look to see whether there are any obvious lessons that can be learned that would not prejudice any police investigation. Our advice is not to sit back and wait

until everything is over. Do what you can, at least, and then complete a full review as soon as any criminal investigation and prosecutions are out of the way.

**Rhodri Glyn Thomas:** Thank you for your attendance.

[225] Thank you for coming. I think that we got there in the end and managed to cover all three points.