

Explanatory Memorandum to the Local Health Boards (Establishment and Dissolution) (Wales) Order 2009

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 Order dissolves all the Local Health Boards (LHBs) in Wales, save for Powys Teaching Local Health Board, and establishes six new LHBs that will be known as Aneurin Bevan Local Health Board, Cwm Taf Local Health Board, Cardiff and Vale University Local Health Board, Abertawe Bro Morgannwg University Local Health Board, Hywel Dda Local Health Board, and Betsi Cadwaladr University Local Health Board.

The six LHBs will be established in shadow form on 1 June 2009, and be fully operational from 1 October 2009.

Matters of special interest to the Subordinate Legislation Committee

None.

Legislative Background

The power to make this Order is provided by sections 11 and 203(9) and (10) of and paragraphs 11 and 12 of Schedule 2 to 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 Order, which formed part of the second Consultation Paper, will allow the changes to the administrative structures of NHS Wales to be effected. It amends the Local Health Boards (Establishment) (Wales) Order 2003 (the 2003 Order), by, on the dissolution date of the 1 October 2009, deleting the Schedule to the 2003 Order, and substituting a new Schedule, retaining only Powys Teaching Local Health Board in the 2003 Order.

The Order provides for six Local Health Boards (LHBs) to be established on 1 June 2009 in shadow form, and to be fully operational from 1 October 2009. It also provides for the LHB's accounting date to be the 31 March in each year.

The Order provides that during the shadow period, the LHBs will have limited functions, which are:

- (i) Entering into NHS contracts;
- (ii) Entering into other contracts including contracts of employment;
and
- (iii) Doing such other things as are reasonably necessary to enable it to begin to operate satisfactorily from the 1 October 2009.

The Order will dissolve twenty-one of the existing twenty-two LHBs in Wales on the 1 October 2009, with Powys Teaching Local Health Board remaining.

Implementation

It is intended this Order should come into force on 1 June 2009. This will allow the Local Health Boards (LHBs) to operate in shadow form from that date, and to be fully operational from 1 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: *Proposals to Change the Structure of the NHS in Wales*, 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, a number of options were considered to establish these new NHS bodies:

Do Nothing

This option would not facilitate the changes required to improve the health services for the people of Wales.

The provision of a comprehensive health services is undertaken through NHS bodies in Wales. The National Health Service (Wales) Act 2006 (the 2006 Act) empowers Welsh Ministers to set up three different types of NHS bodies; a Local Health Board, an NHS Trust, and a Special Health Authority:

Option 1 – a Local Health Board (LHB) model established under section 11 of the 2006 Act. Welsh Ministers may establish LHBs by order for the area of Wales specified in their establishment orders. LHBs are responsible for patients who are “...*usually resident in their area*...”. There are currently twenty-two LHBs in Wales, coterminous with Local Authorities;

Option 2 - a National Health Service Trust (NHS Trust) model established under section 18 of the 2006 Act. Welsh Ministers may establish NHS Trusts by order to provide goods and services for the purpose of the health service. There are currently nine NHS Trusts in Wales, although there is a current proposal being consulted on for a further NHS Trust to be established, to be known as the Public Health Wales NHS Trust.

Option 3 – a Special Health Authority (SHA) model established under section 22 of the 2006 Act. Welsh Ministers may establish special bodies by order for the purpose of exercising any functions which may be conferred on them by or under the 2006 Act. There are no such bodies established on a Wales-only basis at present, although there are two cross-border SHAs with an England and Wales remit (the NHS Business Services Authority and NHS Blood and Transplant).

Option 1 – a Local Health Board - was identified as the preferred model for the following reasons:

- By adopting a LHB model, these new bodies will have the ability to continue to work with a number of partners within a collaborative model. A

key aspect of a LHB's statutory functions is the requirement to work in collaboration with partners, in particular local government, through the joint duty to formulate and implement Health, Social Care and Well-being Strategies;

- LHBs can fund services provided by Local Authorities and the Third Sector;
- LHBs are established for a geographical area, unlike Trusts, and will have a responsibility for the health and well-being of its resident population, which can be clearly defined;
- Existing key statutory roles in terms of public health and other services, such as the duty to work with local authorities in considering the need for certain services to children and young people;
- The ability to ensure that the NHS Local Bodies are in place as soon as possible after the National Advisory Board.

Consideration was also given to establishing a new statutory NHS body with tailor-made duties and powers, but this would require new primary legislation or a Measure for which legislative competence would be required. This option was therefore not considered feasible.

The current NHS structures have the transactional costs of a market structure but few of the potential benefits, as these bodies are not operating as market-run systems. By reducing the numbers of NHS bodies in Wales from thirty-one (31) to nine (9) (subject to the Public Health Wales NHS Trust being established this would increase to ten (10) NHS bodies), these structures will be streamlined, with one NHS body with responsibility for all functions, which will improve efficiency in practice.

Costs

The cost of any administrative work associated with the NHS Reform Programme will be accommodated within existing and planned administration costs budgets.

Any future additional costs for the LHBs resulting from this proposal will be met from their existing running cost allocations.

The Minister has stated that one of the aims of this restructuring would be reduced transaction costs and improved management of NHS services. It is expected that reductions in transaction costs will be demonstrated by reduced costs of management and premises costs in these areas. Each LHB is preparing a detailed assessment of its future management costs against which the extent of savings can be monitored.

It is accepted that in the short term there will be some transitional costs in dissolving and establishing LHBs (both administrative and staff costs). In the longer term, reducing the numbers of LHBs from twenty-two to seven and the NHS Trusts from nine to two (which could be increased to three subject to the establishment of the Public Health Wales NHS Trust), should result in direct cost savings.

Work is now on-going to quantify the net benefits arising, and baseline comparators are known against which future savings will be assessed. A wider Benefits Realisation Framework has also been developed.

By adopting the LHB model, the following financial aspects were considered:

- The LHB financial regime does not have the same financial flexibility as that for NHS Trusts. However, the Department is satisfied that the LHBs will be able to function effectively, and that there are significant advantages in the LHB model particularly around the collaborative working practices it allows;
- The adoption of a mid year implementation creates additional work for finance staff, both within the NHS and the Assembly Government. However, balanced with the effect of further delay on staff morale and potential disruption to services, it was considered that the change should take place as soon as possible within this financial year.

Local Authorities

It is not considered that there would be any significant cost implications for Local Authorities arising from the making of the Order. 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 Order (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 2nd April to the 25th 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 Order

The Order was subject to a twelve week consultation period, between the 2nd December 2008 and the 25th February 2009.

Consultation Paper II: *Delivering the new NHS for Wales*, which included the draft Order, 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 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 have been three technical consultation events led by the Chief Executive, NHS Wales during the consultation period:

- 27th January 2009 – South East Wales event – All-Nation Centre, Cardiff;
- 6th February 2009 – North Wales event – Venue Cymru, Llandudno;
- 10th 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) have 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 establishment of the new Local Health Boards:

- (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 Names – in general, the consultation responses did not comment on the names of the LHBs, save for in respect of the North Wales LHB:

- One hundred and twenty-eight respondents (30.7% of total respondents) commented on the name Betsi Cadwaladr University LHB. Most of those respondents did not support the name, and the reasons given ranged from unidentified dislike for the name, to a number that commented on Ms Cadwaladr herself. Responses also commented on the lack of reference to the regional area in the title;
- Responses were recorded in support for the name, with two in particular being received on behalf of groups, such as the Board of the North West Wales NHS Trust and the Nursing, Midwifery and Specialist Community Public Health Nurses, North West Wales NHS Trust;
- A small number of respondents opposed the use of the term “University” in the names.

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 Order.

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>

Conclusion

Following consultation, there have been minor amendments to the Order, which are purely technical in nature and do not affect policy.

Post implementation review

The effect of the Order will be monitored as part of the NHS Reform 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

It is considered that establishing the six new LHBs is the most effective model for the new NHS bodies in Wales, which with Powys Teaching LHB will undertake the functions currently undertaken by all LHBs and seven of the current nine NHS Trusts in Wales, together with certain functions currently undertaken by Welsh Ministers (Specialised and Tertiary Services).

The LHB model will ensure that existing partnership working with Local Authorities and with the Third Sector will continue. The existing statutory duty to formulate and implement Health, Social Care and Well-being Strategies and Children and Young People's Plans with Local Authorities will remain.

Due to the reduction in the numbers of LHBs in Wales, and the end of co-terminosity with Local Authorities, further work is being undertaken to ensure that the existing partnerships are strengthened and enhanced.