

Health and Social Services Committee

HSS(2)-08-06(p5)

Date: 11 May 2006~

Venue: Committee Room 2, Senedd, National Assembly for Wales, }

Title: Local Safeguarding Children Boards (Wales) Regulations 2006

Purpose

1 The Committee has identified the draft Local Safeguarding Children Boards (Wales) Regulations 2006 for scrutiny.

Summary / Recommendations

2 These regulations form the basic framework for the establishment of Local Safeguarding Children Boards in Wales. The regulations cover:

- the functions of Boards;
- the membership of Boards;
- the carrying out of serious case reviews;
- a Board's procedures; and
- the functions of local authorities in relation to their Boards.

3 The regulations are scheduled as follows:

Business Committee - 6 June 2006

Legislation Committee - 20 June 2006

Plenary - 27 June 2006

Coming into force - 1 October 2006.

Background

4 These regulations are made under the Children Act 2004, which gives the National Assembly for Wales the power to regulate Local Safeguarding Children Boards. In relation to Safeguarding Boards, the Children Act:

- requires each local authority to establish a Board;
- sets out the objective for Boards - to co-ordinate what is done by those represented on the Board for the purposes of safeguarding and promoting the welfare of children and to ensure the effectiveness of what is done by each such person or body for those purposes;
- enables the Assembly to prescribe by regulations the functions and procedures of Boards;
- enables Board partners to make payments towards the costs of a Board;
- enables the Assembly to regulate the functions of local authorities in relation to Boards and to issue guidance relating to Boards.

5 The regulations cover the following:

Regulation 1: Specifies the title of the Regulations as the Local Safeguarding Children Boards (Wales) Regulations 2006. and states that they will come into force on 1 October 2006.

Regulation 2: Covers interpretation and defines the terms used.

Regulation 3: Deals with the functions of a Board in relation to its objective. In summary the functions are:

- fostering a relationship of mutual trust and understanding;
- raising awareness of the need to safeguard and promote welfare;
- developing policies and procedures;
- reviewing the efficacy of the measures taken by Board members to co-ordinate what is done for the purposes of safeguarding and promoting the welfare of children;
- undertaking "serious case reviews";
- monitoring the implementation of any recommendations;
- developing criteria for measuring the performance of the children's services authority against the children and young people's plan;
- disseminating information about best practice;
- undertaking research;
- reviewing training needs;
- providing training;
- co-operating with other Boards; and
- seeking advice or information in relation to its functions.

Regulation 4: Covers serious case reviews. These are reviews that must be undertaken where, within the area of the Board, abuse or neglect of a child is known or suspected, and:

a child has died, or has sustained a potentially life-threatening injury, or has sustained serious and

permanent impairment of health or development.

A Board may also undertake a review where a child within its area suffers harm but the case does not meet the criteria for a mandatory review.

Regulation 5: Specifies the representatives of each Board partner on Local Safeguarding Children Boards. In summary, these are to be:

- for the local authority - representatives of the authority's lead director for children and young people's services, the director of social services, the chief education officer and the director for housing.
- for the Police - an officer who holds at least the rank of Inspector; and who is charged with responsibility for safeguarding and promoting the welfare of children.
- for the Probation Service - the Chief Officer or someone directly accountable to the Chief Officer.
- for a youth offending team - the team's manager or someone directly accountable to the team's manager.
- for a Local Health Board ("LHB") - the LHB's lead officer for children and young people's services or someone directly accountable to the lead officer together with the designated doctor and nurse for child protection.
- for an NHS Trust - the Trust's lead executive director for children and young people's services or someone directly accountable to him or her.
- for any secure training centre - the governor's or director's deputy or an individual of higher rank.
- for any prison that ordinarily detains children - the governor's or director's deputy or someone directly accountable to them.

Regulation 6: Sets out the procedures for Boards. These provisions cover:

- maintaining a list of those persons appointed to the Board.
- decisions to be taken by majority vote of its members with the Chair having a casting vote.
- the delegation of particular functions to one or more of its members.
- the appointment of a Chair.

Regulation 7: Concerns the functions of a local authority in relation to their Board. This includes the provision of a member of staff to provide administrative services to the Board and the need for the records of a Board to be treated as if they were records of the local authority.

6 The regulations will apply to all 22 local authorities and their Board partners in Wales.

Financial Implications

7 These regulations are based on current best practice or are strengthening existing requirements on local authorities and their Board partners. Compliance may involve extra costs for those agencies not already applying best practice.

8 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.

9 Any additional costs that local authorities are likely to incur as a result of the Regulations are intended to be met from within the additional resources provided for local authorities as Children First grant and in the revenue settlement. A total of £44.6m is available to local authorities in 2006-2007, £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.

10 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.

11 There are no further financial implications for the Assembly as a consequence of these Regulations.

Consultation

12 These regulations were issued for full public consultation for three months and 41 written responses were received. Events were held in North and South Wales and were attended by 143 people. 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.

13 The issues that were raised in the consultation responses 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;

- 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.

Action for Subject Committee

14 The Committee is invited to consider and comment upon these draft regulations.

Dr Brian Gibbons
Minister for Health and Social Services

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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 in Wales to make arrangements to promote co-operation between the authority and its partners with a view to improving the well-being of children in the authority's area;
- enables the Assembly, by Regulations, to require a local authority to prepare and publish a plan setting out the authority's strategy for discharging their functions in relation to children and relevant young persons;
- requires each local authority to appoint a lead director and designate a lead member for children

and young people's services;

- requires each Local Health Board to appoint a lead officer and designate a lead member for children and young people's services;
- requires each NHS trust to appoint a lead executive director and designate a lead non-executive director for children and young people's services;
- requires local authorities, Local Health Boards, NHS trusts, the police authority and chief officer of police, the British Transport Police Authority, local probation boards, youth offending teams and prisons or secure training centres to make arrangements to ensure that their functions are discharged having regard to the need to safeguard and promote the welfare of children;
- enables the Assembly, by Regulations, to require local authorities to establish and operate information databases or to itself establish and operate (or make arrangements for the operation and establishment) of one or more databases;
- requires each local authority to establish a Local Safeguarding Children Board to include representatives of each Board partner - the partners being the police, probation, youth offending teams, Local Health Boards, NHS trusts, secure training centres and prisons that ordinarily detain children along with other persons or bodies that the Assembly may prescribe in Regulations;
- 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;
- 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 when a child dies, and abuse or neglect are known or suspected to be a factor in the death, and to consider whether a review should be conducted where a child sustains a potentially life-threatening injury or serious and permanent impairment of health or development, and enables LSCB's to undertake a review where a child suffers harm which is not potentially life threatening or does not constitute a serious and permanent impairment of health or development;
- 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.

Risk assessment

5. The central role of LSCBs is to protect children from abuse and neglect. This includes:

(a) raising awareness of the need to safeguard and promote the welfare of children and to provide information about how this might be achieved;

(i) 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.

(c) undertaking "serious case reviews";

(d) disseminating information about best practice in safeguarding and promoting the welfare of children; and

(e) undertaking research into safeguarding and promoting the welfare of children.

6. The Regulations are designed to strengthen the current non-statutory arrangements.

Options

Option 1: Do Nothing

7. 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.

8. 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

9. This option will ensure that existing weaknesses are tackled. As a consequence of recent consultation workshops, and the written consultation responses, provisions have been amended without undermining any of the essential safeguards. 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

10. These Regulations will affect the following in Wales:

- local authorities;
- Local Health Boards;
- NHS trusts;
- The police

- Probation boards;
- Youth offending teams;
- Secure training centres; and
- Prisons that ordinarily detains children.

11. The Regulations being put forward have been carefully drafted to meet the fundamental principles set out in the Children Act 2004. They provide safeguards for helping to ensure that children in Wales are adequately safeguarded.

12. Benefits which 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.

13. The primary and secondary legislation, 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

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

15. 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.

16. 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. A total of £44.6m is available to local authorities in 2006-2007, £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.

17. 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

18. These Regulations were issued for full public consultation for three months between May and August 2005. Those consulted included: local authorities, voluntary bodies, health services, the police, probation and youth offending teams. A list of consultees is attached at Annex 1.

19. 41 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 being addressed in the redrafting of the guidance.

20. The issues that were raised in the consultation responses (summarised at Annex 2) 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;
- The proposal in the Regulations for each Board to produce an annual business plan which would be too onerous and impractical - this provision has been removed from the Regulations.

21. Events were held in North and South Wales attended by 143 people.

With Subject Committee

22. 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)]. The Committee are due to scrutinise the Regulations on 11 May 2006.

Enforcement and Sanctions

23. 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.

24. These Regulations are to be made several months in advance of coming into force. 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

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

26. 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

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

Total 41

Analysis of Responses

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.

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.

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.

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.

To: Business Committee

From: Brian Gibbons AM

Minister for Health and Social Services

Explanatory Memorandum

Children And Young Persons, Wales

Local Safeguarding Children Boards (Wales) Regulations 2006

Summary

These regulations form the basic framework for the establishment of Local Safeguarding Children Boards in Wales. The regulations cover:

- the functions of Boards;
- the membership of Boards;
- the carrying out of serious case reviews;
- a Board's procedures; and
- the functions of local authorities in relation to their Boards.

Local Safeguarding Children Boards will replace the non-statutory Area Child Protection Committees (ACPCs).

This Memorandum is submitted to the Assembly's Business Committee in relation to the Local Safeguarding Children Boards (Wales) Regulations 2006 in accordance with Standing Order 24.6.

Enabling Power

The powers enabling this Instrument to be made are contained in sections 31(2), (4) and (5), 32(2) and (3), 34(1) and 66(1) of the Children Act 2004. These powers have been conferred on the National Assembly for Wales and responsibility for issues relating to the content of these Regulations has been delegated to my portfolio as Minister for Health and Social Services.

Effect

These Regulations are designed to ensure proper processes for promoting and safeguarding the welfare of children and young people. They set out arrangements for the establishment of Local Safeguarding Children Boards (LSCBs) by local authorities in Wales. The Regulations:

- specify the functions of Boards in relation to their objective;
- require LSCBs to undertake serious case reviews when a child dies, and abuse or neglect are known or suspected to be a factor in the death, and to consider whether a review should be conducted where a child sustains a potentially life-threatening injury or serious and permanent impairment of health or development, and enables LSCB's to undertake reviews where a child suffers harm which is not potentially life threatening or does not constitute a serious and permanent impairment of health or development;
- specify the representatives of Board partners;
- make provision as to the procedures of Boards and the functions of local authorities in relation to Boards.

- Safeguarding Boards will replace the existing non-statutory 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.

Target Implementation

It is intended that this Instrument will be made on 27 June 2006 and will come into force on 1 October 2006.

Financial Implications

- These regulations are based on current best practice or are strengthening existing requirements on local authorities and their Board partners. The new regulations and associated guidance are more detailed than the current guidance, and compliance with them may involve extra costs for those agencies not already applying best practice.
- 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.
- 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. A total of £44.6m is available to local authorities in 2006-2007, £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.

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.

Regulatory Appraisal

A Regulatory Appraisal in relation to this Instrument has been prepared and is attached.

Consultation

With Stakeholders

The Regulations were issued for full public consultation for three months between June and August 2005. In the following months until the end of December 2005 there were 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 to the Regulatory Appraisal.

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. Areas where respondents expressed a wish for change was in:

- 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;
- 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.

A summary of responses is attached at Annex 2 to the Regulatory Appraisal.

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

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)]. The Regulations were subsequently identified for scrutiny in January 2006. The Committee considered the Regulations on 11 May 2006.

Recommended Procedure

These Regulations make significant changes to the mechanisms and procedures for children's safeguards in Wales. Subject to the views of Business Committee I therefore recommend that these Regulations

proceed to Plenary under the Standard Procedure.

Compliance

The proposed legislation will (as far as is applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 Section 120);
- be compatible with the Assembly's scheme for sustainable development (Section 121);
- be compatible with Community law (Section 106);
- be compatible with the Assembly's human rights legislation (Section 107); and
- be compatible with any international obligations binding the UK Government and the Assembly (Section 108).

The information in this memorandum has been cleared with the Legal Services Department (LS) and the Assembly Compliance Officer (ACO).

The policy division contact is Mr Mike Burns, Directorate of Children's Health and Social Services (ext 6535).

The Head of Division is Mr Keith Ingham (ext 6746).

The drafting lawyer is Ms Rachel Stephens (ext 6815).

Brian Gibbons April 2006
Minister For Health And Social Services