

Explanatory Memorandum to the Safeguarding Boards (General) (Wales) Regulations 2015

This Explanatory Memorandum has been prepared by the Department for Health and Social Services and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Safeguarding Boards (General) (Wales) Regulations 2015. I am satisfied that the benefits outweigh any costs.

Mark Drakeford

Minister for Health and Social Services

4 June 2015

Part 1 – OVERVIEW

Description

1. The Social Services and Well-being (Wales) Act 2014 (“the Act”) brings together local authorities’ duties and functions in relation to improving the well-being of people who need care and support and carers who need support in a single Act. The Act provides the statutory framework to deliver the Welsh Government’s commitment to integrate social services to support people of all ages, and support people as part of families and communities.
2. These Regulations relate to Safeguarding Children Boards established under section 134(4) of the Act and Safeguarding Adults Boards established under section 134(5) of the Act. In these Regulations Safeguarding Children Boards and Safeguarding Adults Boards are referred to collectively as “Safeguarding Boards”.

Matters of special interest to the Constitutional and Legislative Affairs Committee

3. The Constitutional and Legislative Affairs Committee will wish to be aware that relevant Safeguarding Board partners have been consulted in accordance with section 134(3) of the Social Services and Well-being (Wales) Act 2014.
4. This Explanatory Memorandum should be read in conjunction with the Explanatory Memorandum to the National Independent Safeguarding Board (Wales) Regulations 2015 and the Explanatory Memorandum to the Safeguarding Boards (Functions and Procedures) (Wales) Regulations 2015

Legislative background

5. The powers enabling these Regulations to be made are contained in sections 134(1) and (3) and 136(3) of the Social Services and Well-being (Wales) Act 2014,
6. This instrument is subject to the negative procedure.

Purpose and intended effect of the legislation

7. The purpose of these Regulations is to provide a coherent, common footprint for the establishment of safeguarding boards which will enable and support joint working across local government, health and police services, reducing complexity and duplication.
8. Work is well advanced to reconfigure existing statutory Local Safeguarding Children Boards and to establish statutory Safeguarding Adults Boards on the public service delivery footprint. These Regulations prescribe the new Safeguarding Board areas and the lead partner for each safeguarding board. They also set out the general requirements on Safeguarding Boards, including arrangements for the participation of children and adults who may be affected by

Boards' work, and the preparation and publication of annual plans and annual reports.

9. Regulation 3 and Schedule 1 set out the areas for which there are to be Safeguarding Boards.
10. Section 134(4) of the Act requires the lead partner in relation to children to establish a Safeguarding Children Board and section 134(5) requires the lead partner for adults to establish a Safeguarding Adults Board for their respective Safeguarding Board areas. Regulation 4 provides that the lead partner for children and adults in each area is set out in Schedule 2.
11. Section 136(1) of the Act requires a Safeguarding Board to publish an annual plan before the start of each financial year. Regulation 5 sets out the information to be included in the annual plans to be published by Safeguarding Boards.
12. Section 136(2) of the Act requires a Safeguarding Board to publish an annual report no later than 31 July each year. Regulation 6 and Schedule 3 set out the information to be included in the annual reports published by Safeguarding Boards.
13. Regulation 7 provides for copies of the annual plan and annual report to be made available to the public and to the National Independent Safeguarding Board.
14. The key outcome of this package of statutory and regulatory reform is to ensure that Safeguarding Board Partners are supported by more robust leadership and a stronger, more effective framework for multi-agency co-operation. This builds upon the finding of the CSSIW Report "Safeguarding and Protecting Children in Wales - The review of Local Authority Social Services and Local Safeguarding Children Boards" (2008) that:

"There is need to achieve a more consistent alignment of policy and practice across all organisations at national, regional and local levels to enable more effective working together to safeguard and protect children".
15. The package also addresses the finding of the National Assembly's Health, Wellbeing and Local Government Committee Inquiry into Local Safeguarding Children Boards in Wales (2010)¹ that:

"There is still too much reliance on, and expectation of, Social Services Departments. It is the responsibility of all organisations at national, regional and local levels to work effectively together to safeguard and protect children...We believe that the local focus of LSCBs is important but that resource and information sharing would give the best of both worlds, and that the Welsh Government should promote a more collaborative approach between LSCBs.

¹http://www.assembly.wales/en/bus-home/bus-third-assembly/3-committees/3-scrutiny/3-hwlg/business-hwlg-inquiries/hwlg3_lscb/Pages/hwlg3_lscb.aspx

16. The Committee made a number of recommendations and highlighted areas where Boards were not operating as effectively as they might. These included recommending that Welsh Government guidance should clarify where accountability lies between partnerships, should clarify the specific focus of Boards and their role in holding other partnerships to account, should address over reliance on local authority social services departments and should strengthen the duty to co-operate.

Consultation

17. A 12 week consultation on these regulations ran between 6 November 2014 and 2 February 2015. Further details on the consultation process are set out in the Regulatory Impact Assessment in Part 2.

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

Option 1: Do nothing

1. In the event of these regulations not being made the Welsh Ministers would not be in compliance with section 134(1) and (3) of the Social Services and Well-being (Wales) Act 2014 which require regulations to be made setting out those areas for which there are to be Safeguarding Boards and the lead partners in relation to children and adults in those areas.

Option 2: Bring Regulations into Force

2. The Collaborative Footprint for Public Services in Wales was agreed by Cabinet in July 2011 and presented to the Partnership Council for Wales in the same month. Building on the areas relating to Local Health Boards and Police Authorities, the footprint is considered to provide a framework within which public services can develop consistent approaches to new collaborative working arrangements; clarity on how public services should collaborate; and greater stability and reduced complexity.
3. The Collaborative Footprint is the Welsh Government's response to the need for leadership on this aspect of public service delivery. It also reflects the principles and ethos which were stated in the Wales spatial plan focusing upon people, places and futures. Previous dialogue with delivery partners across sectors in Wales highlighted the complexities of service delivery where there were different 'footprints' for different policy areas and organisations. The footprint does not require the removal of existing collaborative arrangements which are proving effective. There is a shared expectation that future collaborative working will be aligned to this footprint.
4. Establishing new Safeguarding Board areas which do not align with this footprint would hinder the coherent multi-agency approach which is a key element of these proposals.
5. Bringing the regulations into force will provide clarity and certainty to the structural arrangements to support safeguarding work in Wales. Together with the establishment of the National Independent Safeguarding Board it will facilitate more effective partnership, planning, scrutiny and challenge to safeguarding arrangements in Wales.

Costs and benefits for Option 1

6. There would be no cost associated with not making these Regulations. However, in respect of safeguarding board areas, there would be no statutory basis for the safeguarding boards which have already been established on the public service delivery footprint by safeguarding board partners in Wales. In relation to lead partners, if lead partners are not specified in the Regulations, there would be a lack of clarity and certainty about which Safeguarding Board Partner is

responsible for establishing the Board and for responding to requests for information from the National Independent Safeguarding Board ('the National Board') under section 139(1) and to the Welsh Ministers under section 184(6) of the Act (research and information).

Costs and Benefits for Option 2

7. Under the 2004 Children Act, each local authority was required to establish a Local Safeguarding Children Board in its area. These, along with the 18 non-statutory Adult Area Protection Committees will be replaced with six statutory Safeguarding Adults Boards and six statutory Safeguarding Children Boards.
8. Currently, costs of Local Safeguarding Children Boards are met by the statutory partner agencies that make up the membership of the Boards as specified by section 33 of the Children Act 2004. The Social Services and Well-being (Wales) Act 2014 allows for a core statutory membership comprising local authorities, the police, health services and providers of probation services. The prime motivation for moving from the local authority footprint to the public service delivery footprint is to support better multi-agency working, greater consistency and higher priority for the work of safeguarding boards, thereby representing a real strengthening of safeguarding arrangements. It will also have the effect of reducing duplication and bureaucracy.
9. It is recognised that the introduction of Safeguarding Adults Boards will incur some costs. However, the configuration of Safeguarding Boards on the public service delivery footprint will deliver significant and measureable cost savings on an all Wales basis.
10. Whilst not sharing a statutory basis similar to Local Children Safeguarding Boards (LSCBs), Adult Area Protection Committees (AAPC) have operated as parallel structures to LSCBs for many years. As with the statutory LSCBs, AAPCs have no operational budgets and the costs of determining and undertaking work are met by the relevant agencies. The cost of running an "average" AAPC, including opportunity costs, was estimated at £200,000 per annum in a response of the then Deputy Minister for Social Services to the Finance Committee in March 2013. Configuring Boards on the public service delivery footprint will deliver significant and measureable cost savings on an all Wales basis.
11. Figures provided by Safeguarding Boards to the Welsh Government indicate that the total budget for the 22 Safeguarding Children Boards in Wales for 2012-13 was £1.146 million whereas the total budget for the six Safeguarding Children Boards and six Safeguarding Adults Boards which have been established in anticipation of implementation of the Act was £0.834 million in 2014-15.
12. One of the important principles underpinning the funding arrangements for Safeguarding Boards is that budgets should be agreed as part of a medium term financial plan rather than subject to annual re-negotiation. This will ensure sustainability in taking forward programmes of work, and facilitate forward

planning. This is reinforced in the statutory guidance for Safeguarding Boards issued under Part 7 of the Act.

Consultation

13. A 12 week consultation on these regulations ran between 6 November 2014 and 2 February 2015.
14. The Report and a list of respondents can be found at:

<http://gov.wales/consultations/healthsocialcare/part7/?status=closed&lang=en>
15. Whilst consultation responses indicated a general welcome for the clarification of the funding arrangements for safeguarding boards some concern was expressed that the use of the word 'estimate' in relation to the expenditure of safeguarding boards in the draft Regulations would not provide for sufficient certainty in respect of contributions to be made by the safeguarding board partners. We have therefore amended the Regulations so that they refer instead to the 'the amount of expenditure which the Safeguarding Board partners agree'.
16. There was also some concern that the funding formula should not appear on the face of the Regulations since there may be a need to adjust the formula in the light of experience and that a more flexible approach, whilst maintaining the principle that the contributions of safeguarding board partners should be clearly set out, would allow for any such adjustments to be made.
17. As a result the Welsh Government has determined not to specify the funding formula in Regulations but to continue to use the statutory guidance to ensure that there is a clear, consistent partnership approach to support the identification, agreement and delivery of Boards' priorities and resources. We will keep this issue under review and, should it appear necessary to amend the Regulations in order to provide greater clarity and certainty, we will do so.

Competition Assessment

| Competition Filter Test | |
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| Question | Answer yes or no |
| Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share? | No |
| Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share? | No |
| Q3: In the market(s) affected by the new regulations do the largest three firms together have at least 50% market share? | No |
| Q4: Would the costs of the regulation affect some firms substantially more than others? | No |
| Q5: Is the regulation likely to affect the market structure, | No |

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| changing the number or size of businesses/organisations? | |
| Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet? | No |
| Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet? | No |
| Q8: Is the sector characterised by rapid technological change? | No |
| Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products? | No |

18. The filter test shows that it is not likely that the Regulations will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.

19. We do not consider it necessary to undertake a competition assessment for these Regulations since they will not affect the business sector in any significant way

Post implementation review

20. The Social Services and Well-being (Wales) Act 2014 contains provisions to allow the Welsh Ministers to monitor functions of the Act carried out by local authorities and other bodies. The Welsh Ministers may require these bodies to report on their duties in implementing these regulations.

21. The Welsh Government will continue to monitor the impact of the Regulations on areas such as the Welsh language, tackling poverty, equality and the United Nations Principles for Older Persons.

22. As required by the Rights of Children and Young Persons (Wales) Measure 2011, the Welsh Ministers will have due regard to the UN Convention on the Rights of the Child when exercising relevant functions under the Act.