

National Assembly for Wales
Bill Summary

The National Health Service Finance (Wales) Bill

October 2013

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The National Health Service Finance (Wales) Bill

Introduction date: 30 September 2013

Member in charge: Mark Drakeford AM, Minister for Health and Social Services

Stage 1 Debate 8 October 2013. No Stage 1 committee scrutiny of the Bill.

Committee conducting Stage 2 Scrutiny: Finance Committee [7 November 2013]

1. Introduction

On 10 June 2013, the Minister for Health and Social Services, Mark Drakeford AM, announced that the Welsh Government would be introducing a new Bill giving NHS organisations greater flexibility to manage their budgets early in the next Assembly term. The Bill would propose that the statutory requirement for local health boards (LHBs) to balance their books over a one-year period should be changed to a three-year cycle. The Minister said:

A significant downside of the current financial regime is that it may encourage short-term decision making around the current year. Introducing this change will help the NHS focus its service planning, workforce and financial decisions over a longer and more sustained period rather than focusing too much on a one year, and specifically end of March, approach. Let me be absolutely clear that moving to a three year financial planning regime does not in any way mean a diminution of the rigour with which Health Boards have to manage their finances.

The National Assembly for Wales Finance Committee, Health and Social Care Committee and the Public Accounts Committee have all recommended that a more flexible planning framework for the NHS, including the management of their finances across financial years, should be introduced.

The Bill is scheduled to be introduced early in the next Assembly term and, if passed, the new financial regime would come into effect for the 2014/15 financial year.¹

The ***National Health Service (Finance) Bill*** was introduced on 30 September 2013.

¹ [Welsh Government, Press Release, *New legislation to reform NHS financial regime*, 10 June 2013 \[accessed 1 October 2013\]](#)

2. Timing

The Bill will by-pass the Stage 1 committee scrutiny stage.

During his announcement of the Legislative Statement in Plenary, the First Minister stated:

After the summer recess, we will introduce the national health service finance (Wales) Bill, which will bring about the financial flexibility that local health boards need to ensure that they focus on the challenges of service delivery. A three-year financial regime, rather than an annual financial regime, will mean that LHBs will be able to make prudent long-term decisions in the interests of both patients and the NHS as a whole. **In view of the urgent need for financial flexibility, with the agreement of the Presiding Officer and the support of the Business Committee, I propose that we use the fast-track procedure through the legislative process. This is not in any way intended to limit the scrutiny that Assembly Members are able to give to the Bill, but reflects the high level of support in principle that Members have already given, and the window of opportunity that we have to ensure that LHBs have the financial flexibility to deliver the best value services that they can, for the largest number of patients, within the most appropriate timescale.** [my emphasis]²

He later stated:

With regard to the NHS finances Bill, I would anticipate that it would be a very short Bill, simply to introduce a three-year cycle of funding for local health boards. I would not anticipate it being a lengthy Bill, nor would I anticipate it looking at actual figures in terms of NHS funding. Those are dealt with in other ways. The NHS finances Bill is an example of dealing with a situation where something should not have been put on the face of primary legislation—that is, something that may well have been dealt with in secondary legislation at the time the legislation was passed. It predates the powers that we have in this Assembly. However, it illustrates the delicate balance that has to be measured between including detail on the face of a Bill and introducing that detail through secondary legislation. There will be debates, of course, as to what the balance should be, but, ultimately, it is down to flexibility. If you have something on the face of the Bill that makes it wholly inflexible, it makes it much more difficult to change things. It means, as we are doing with the NHS finances Bill, having to introduce, effectively, an amending Bill to deal with a situation, rather than dealing with it much more quickly via other routes if those routes had been available to us.³

² National Assembly for Wales, [RoP, 16 July 2013 \[accessed 26 September 2013\]](#)

³ National Assembly for Wales, [RoP, 16 July 2013 \[accessed 26 September 2013\]](#)

3. Policy Background

Local Health Boards are defined (in accordance with the Office of National Statistics) as ‘Central Government’ bodies for Resource Accounting and Budgeting purposes. They fall under the Welsh Government budgetary and accounting umbrella and they are governed by Annual Resource Limits.⁴

Financial duties were placed on Local Health Boards under section 175 of the *National Health Service (Wales) Act 2006* requiring that Local Health Boards:

...in respect of each financial year, perform its functions so as to secure that its expenditure which is attributable to the performance by it of its functions in that year (not including its general ophthalmic and pharmaceutical expenditure) does not exceed the aggregate of the amount allotted to it for that year⁵.

A duty under section 176 of the *National Health Service (Wales) Act 2006* also requires ‘that the use of its resources in a financial year does not exceed the amount specified for it in relation to that year by the Welsh Ministers’.⁶

Whilst there has been no formal consultation on the legislative proposal, the issue of the annual statutory duty on Local Health Boards has been the subject of discussion within the NHS and wider stakeholder network. Specifically, a joint Welsh Government and NHS Group was established in 2012 to look at financial flexibility which reported to the NHS Directors of Finance in December 2012. Recommendations of the Group included Financial Flexibility to support integrated Medium Term Plans, review of legislation to provide additional flexibility whilst ensuring that strong governance and discipline, and brokerage mechanism for NHS bodies to support each other.⁷

Several Assembly Committees, including the Finance Committee and the Health and Social Care Committee have made recommendations regarding a more flexible planning framework for the NHS. In April 2012 the Public Accounts Committee (PAC) recommended that ‘that Local Health Boards are enabled to make more effective use of funding across financial years in line with Local Authorities. This would enable improved financial planning in the medium to long-term.’⁸

⁴ [National Health Service Finance \(Wales\) Bill : Explanatory Memorandum \[accessed 30 September 2013\]](#)

⁵ [National Health Service \(Wales\) Act 2006 \[accessed 2 October 2013\]](#)

⁶ [National Health Service \(Wales\) Act 2006 \[accessed 2 October 2013\]](#)

⁷ [National Health Service Finance \(Wales\) Bill : Explanatory Memorandum \[accessed 30 September 2013\]](#)

⁸ National Assembly for Wales, [Public Accounts Committee, A Picture of Public Services, Report April 2012 \[accessed 30 September\]](#)

A Wales Audit Office report on Health Finances in 2012 stated:

The resource accounting regime of the NHS has a short-term focus on breaking even within each financial year. This potentially makes it difficult for NHS bodies to create funds to invest in transformation and change in order to deliver savings in future years. Within the current framework of resource accounting, the Welsh Government should assess the current requirement for health boards to break-even each and every year, and develop options that would enable NHS bodies to invest in new ways of working where these are likely to deliver savings in the future and enable them to break-even over a longer period.⁹

Later in 2012 PAC conducted an inquiry based on issues raised in the Auditor General's 2012 report on health finances.¹⁰ PAC then took evidence from the Welsh Government, the Welsh NHS Confederation, Betsi Cadwaladr University Health Board and Cardiff and Vale University Health Board. In its inquiry report PAC again recommended that 'the Welsh Government considers forthcoming legislative opportunities to address the inflexibility of Health Board finances across financial years.'¹¹ It noted:

The Auditor General's July report outlines concerns that the focus on breaking even at the end of the year encourages an excessively short-term focus. The Auditor General recommended that the Welsh Government should assess the requirement for NHS bodies to break even each year. His report also notes that the Welsh Government has plans for a review of the financial regime for the NHS.¹²

Cardiff and Vale University Health Board told the PAC that:

One of the ways in which our financial regime is not producing the right kinds of behaviour is this focus on one year and a year-end balance, because people are then inclined to focus simply on getting to that finishing line, each and every year. If you go back to look at last year, you can see that lots of nonrecurring measures were put in place to get there, but the underlying recurring position was not addressed by those nonrecurring measures. A much better model would be to look at a two or three-year time frame and pay attention not to the end-of-year results, but to the underlying recurring position.¹³

⁹ [Wales Audit Office, *Health Finances, 2012* \[accessed 1 October 2013\]](#)

¹⁰ [Wales Audit Office, *Health Finances, 2012* \[accessed 1 October 2013\]](#)

¹¹ National Assembly for Wales, [Public Accounts Committee, *Health Finances, Report February 2013* \[accessed 30 September 2013\]](#)

¹² National Assembly for Wales, [Public Accounts Committee, *Health Finances, Report February 2013* \[accessed 30 September 2013\]](#)

¹³ National Assembly for Wales, [Public Accounts Committee, *Health Finances, Report February 2013* \[accessed 30 September 2013\]](#)

4. The Bill

The *National Health Service Finance (Wales) Bill* gives effect to the Welsh Government's proposals in *Together for Health* to introduce a more flexible finance regime. It provides a **new legal financial duty for Local Health Boards to break even over a rolling three financial years** rather than each and every year. The Bill creates a duty for Local Health Boards to adopt a financial regime to flexibly manage resources, expenditure and approved limits over a rolling three year period. This will enable Local Health Boards to focus their service planning, workforce and financial decisions, and implementation, over a longer more manageable period. The intention of the Bill is to allow for better decision making and implementation of optimal solutions in Local Health Boards and remove a significant challenge within the current regime which encourages short term decision making around the financial year.

Section 1 Provides an Overview of the Bill

Section 2 Financial duties of Local Health Boards amends Chapter 6 of Part 11 of *National Health Service (Wales) Act 2006*. S(1) of section 175 (financial duties of Local Health Boards) is replaced by:

(1) Each Local Health Board must, in respect of each three-year accounting period, perform its functions so as to secure that its expenditure which is attributable to the performance by it of its functions in that period (not including its general ophthalmic services expenditure) does not exceed the aggregate of—

- (a) the amount allotted to it for each financial year in that period under section 174(1)(b),
- (b) any sums received by it in each financial year in that period under any other provision of this Act, and (c) any sums received by it in each financial year in that period otherwise than under this Act for the purpose of enabling it to defray any such expenditure.

At the end of section 175 insert a new subsection—

- (8) "Three-year accounting period" means a period of three years which begins with the first day of a financial year, so that the first begins with 1 April 2014 and ends with 31 March 2017 and the second begins with 1 April 2015 and ends with 31 March 2018 (and so on).

Section 176 (resource limits for Local Health Boards) is repealed.

Section 3 Short title and commencement

The Bill does not contain any provisions to make subordinate legislation.

It is anticipated that the Bill will gain Royal Assent in January 2014. The Bill will come into force from 1 April 2014

In his statement on the Bill the Minister for Health and Social Services said:

It is my intention that the new planning framework and the plans that support it will see a greater role for the Welsh Government in scrutinising, reviewing and approving the plans of Local Health Boards at regular intervals. This new planning framework will replace the current annual arrangement with one based on Integrated Medium Term Plans, including balanced Medium Term Financial Plans.¹⁴

For the first two years that the Bill will take effect i.e. 2014-15 and 2015-16, there will not be a formal 'statutory financial duty' test. Consequently the Wales Audit Office will not be required to provide an audit opinion on this. However, from 2016-17 onwards the test will apply and consequently be audited. The Welsh Government will agree annual resource limits with each Local Health Board. As there will be no actual statutory financial duty test in these years, failure to maintain their costs within the limits that the Welsh Government set will not result in a 'regularity' audit qualification but would result in a substantive narrative report by the Wales Audit Office and possible PAC attendance and any relevant escalation procedures as deemed appropriate under the circumstances.¹⁵

¹⁴ Welsh Government, [Written Statement by the Minister of Health and Social Services \(Mark Drakeford AM\), The National Health Service Finance Bill, 1 October 2013](#) [accessed 1 October 2013]

¹⁵ [National Health Service Finance \(Wales\) Bill: Explanatory Memorandum](#) [accessed 30 September 2013]

5. Reaction

During the First Minister's Legislative Statement in Plenary on 16 July 2013, Andrew R T Davies AM, Leader of the Welsh Conservatives, stated:

I would also like to draw attention to the national health service finance Bill that is coming forward, which has been trailed in the media following comments from the Minister for health. Obviously, we are aware of the challenging financial circumstances that the health service finds itself in, and allowing greater flexibility is something that has to be welcomed, but, if you do not change the dynamics of the financing, all you end up with is a far bigger deficit at the end of the three-year process. The Government needs to give us assurances that, by moving to a three-year financing window, we are not just pushing the problem further out. I think that there needs to be far greater clarity around that issue.¹⁶

The Leader of Plaid Cymru, Leanne Wood AM, said:

You were just asked about the NHS finance Bill. You said that it would provide some flexibility, but you did not answer the central question: will the NHS finance Bill avoid the issues that were raised in the Wales Audit Office report today—for example, operations being delayed to break even—or will problems be stored up in a multi-annual framework, leading to desperate problems at the end of the three-year cycle?¹⁷

For the Welsh Liberal Democrats, Aled Roberts AM, stated:

[...] there is reference in the statement to a fast-track process being used for the NHS Finance (Wales) Bill. While most of us would accept that there is a need for greater financial flexibility, and are aware that specific problems arise as a result of the need for health boards to balance books at the year end, I would ask, First Minister, that the drafting of the Bill takes into account the evidence that we are hearing in the Public Accounts Committee. If we are to give health boards a greater degree of flexibility, there is a need for us to have greater assurance with regard to the robustness of their financial controls. We heard evidence last week from Betsi Cadwaladr health board that there was no agreed budget in place at the beginning of the financial year, and that there was no internal agreement with regard to its budget, in some instances until the end of September of that year. If we are to give health boards greater flexibility, we need to have greater confidence in relation to the way in which they operate.¹⁸

¹⁶ National Assembly for Wales, [RoP, 16 July 2013 \[accessed 26 September 2013\]](#)

¹⁷ National Assembly for Wales, [RoP, 16 July 2013 \[accessed 26 September 2013\]](#)

¹⁸ National Assembly for Wales, [RoP, 16 July 2013 \[accessed 26 September 2013\]](#)

The Chair of the Public Accounts Committee, Darren Millar AM, said:

First Minister, I very much welcomed the announcement of the NHS finances Bill when it was made a few weeks ago and I am very pleased also to see that it was referred to today in your statement. You know that the Public Accounts Committee has done some work on NHS finances over the past two years, and there have been two reports in which we have made clear recommendations to address the inflexibility of the financial arrangements for Welsh local health boards. In our 'A Picture of Public Services' report in April 2012, we recommended that there should be flexibility across financial years, in line with local authorities. In February 2013, we said that brokerage ought to continue to be provided to local health boards, pending a more permanent legislative solution. Therefore, I am pleased that we have a permanent legislative opportunity to address these things in the longer term.

However, at no point has the Public Accounts Committee recommended a three-year budget process. In fact, we did not take a lot of evidence from people that suggested that a three-year period of budgeting would be a more appropriate solution. Therefore, I wonder what the evidence base is that a three-year period of budgeting is the most appropriate way forward. My party will support flexibility and we will try to support the Government's proposals to try to allow the NHS to have more flexibility in its finances, but I would appreciate some information from you on what the evidence base is for that.¹⁹

The First Minister replied:

In relation to the first issue, the three-year period has been chosen because it is standard in the public sector. It is standard in terms of the revenue and capital settlements that we get from the UK Government and it is standard in local government, where it has become the norm for a three-year funding period or budget period to be incorporated. Therefore, that is where the three years come from.²⁰

¹⁹ National Assembly for Wales, [RoP, 16 July 2013 \[accessed 26 September 2013\]](#)

²⁰ National Assembly for Wales, [RoP, 16 July 2013 \[accessed 26 September 2013\]](#)

6. Regulatory Impact Assessment

The Regulatory Impact Assessment (RIA) that accompanies the Bill sets out provisional costings for two options. **Option 1** being to use the current legislation providing an annual financial duty, with annual expenditure not to exceed annual resource limit, and continue with the issue of directions for medium term financial planning.

Option 2, the preferred option, being to introduce legislation replacing the annual financial duty with a three year financial duty, and continue with the policy of providing directions for integrated medium term planning and medium term financial planning. The costs for Option 2 are in addition to those for estimated for Option 1.

Option 1 sets out estimated costs in relation to current Welsh Government commitments and existing auditing costs. These costs will still be incurred in **Option 2 with £2,500 estimated transitional costs and £119,000 on-going, or annually recurrent costs**. A variety of evidence is referred in the RIA in respect of the financial flexibility and medium term financial planning that the preferred option is intended to provide to LHBs. This is shown in Table 1

The RIA includes an Annex²¹ to show how the legislation is intended to be implemented and how it would work in practice. This includes how the Welsh Government will react to over or underspends against agreed budgets and what action would be taken where the Welsh Government has not approved an LHBs plans in advance.

The RIA does **not attempt to quantify the benefits** in terms of how the additional flexibility would improve financial management and the use of scarce resources.

²¹ [National Health Service Finance \(Wales\) Bill: Explanatory Memorandum, Annex 2 \[accessed 30 September 2013\]](#)

Table 1 Estimated costs highlighted in the RIA for costed options

	Option 1	Option 2
	£	£
Transitional costs		
<i>Welsh Government</i>		
Framework	50,000	50,000
External Scrutiny	62,500	62,500
Training & Development	10,000	10,000
Guidance	-	500
Communication	-	2,000
Total transitional	122,500	125,000
Recurrent costs		
<i>Local Health Boards</i>		
Existing Baseline Audit Costs		
Wales Audit Office (WAO)	1,768,000	1,768,000
Extra WAO audit requirements	-	119,000
Total recurrent	1,768,000	1,887,000

Source: [National Health Service Finance \(Wales\) Bill: Explanatory Memorandum, Tables 3, 4 and 5](#)