

Explanatory Memorandum to the Local Health Boards, NHS Trusts and Special Health Authorities (Constitution, Membership and Procedures) (Miscellaneous Amendments) (Wales) Regulations 2024

This Explanatory Memorandum has been prepared by the Health, Social Care and Early Years Group and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Local Health Boards, NHS Trusts and Special Health Authorities (Constitution, Membership and Procedures) (Miscellaneous Amendments) (Wales) Regulations 2024. I am satisfied that the benefits justify the likely costs.

Jeremy Miles MS
Cabinet Secretary for Health and Social Care

11 December 2024

PART 1

1. Description

- 1.1 The Local Health Boards (Constitution, Membership and Procedures) (Wales) Regulations 2009 (the Local Health Board Regulations), the National Health Service Trusts (Membership and Procedure) Regulations 1990 (the NHS Trust Regulations), the Public Health Wales National Health Service Trust (Membership and Procedure) Regulations 2009 (the Public Health Wales Regulations) and the Health Education and Improvement Wales Regulations 2017 (HEIW Regulations) all make provision for the constitution and membership of NHS bodies including their procedures and administrative arrangements.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 None.

3. Legislative background

- 3.1 These Regulations make amendments to the legislation concerning the membership and procedures of Local Health Boards, NHS trusts and Special Health Authorities in Wales.
- 3.2 Part 2 of the Regulations amends the Local Health Boards (Constitution, Membership and Procedures) (Wales) Regulations 2009 (S.I. 2009/779 (W. 67)), which make provision concerning the membership and procedures of Local Health Boards in Wales. Regulation 3(a) and (c) amends the provisions concerning the appointment of officer members to the board and regulation 3(b) inserts a provision to allow trade unions recognised by the Local Health Board in relation to employment matters to make nominations for the position of trade union member. Regulation 4 amends the eligibility requirements for members who are, or have recently been, employed by NHS bodies in Wales with amended definitions of Local Health Boards and NHS trusts, whilst also inserting provision for those employed by Special Health Authorities. Regulation 5 amends the number of days required for notice of board meetings.
- 3.3 Part 3 of the Regulations amends the National Health Service Trusts (Membership and Procedure) Regulations 1990 (S.I. 1990/2024), which make provision concerning the membership and procedures of NHS trusts in England and Wales. Regulation 7 inserts a definition for the National Health Service (Wales) Act 2006 and amends the definition of health service body to include Local Health Boards. Regulation 8(a) to (c) amends the existing eligibility requirements so that they will only apply to England and (d) to (f) amends the eligibility requirements for NHS trusts in Wales to disqualify those who have been

employed by NHS bodies in Wales within the last 12 months from the positions of chair, vice-chair or non-executive director.

- 3.4 Part 4 of the Regulations amends the Public Health Wales National Health Service Trust (Membership and Procedure) Regulations 2009 (S.I. 2009/1385 (W. 141)), which make provision concerning the membership and procedures of Public Health Wales as an NHS trust. Regulation 10 amends the eligibility requirements to disqualify those who have been employed by NHS bodies in Wales within the last 12 months from the positions of chair, vice-chair or non-executive director. Regulation 11 amends the number of days required for notice of board meetings.
- 3.5 Part 5 of the Regulations amends the Health Education and Improvement Wales Regulations 2017 (S.I. 2017/909 (W. 221)), which make provision concerning the membership and procedures of Health Education and Improvement Wales as a Special Health Authority. Regulation 13 amends the definition of health service body to include Special Health Authorities. Regulation 14 amends the eligibility requirements for non-officer members to disqualify those who are, or have been within the previous 12 months, employed by a Special Health Authority. Regulation 15 amends the number of days required for notice of board meetings.
- 3.6 The regulations are being made under section 203(9)(a) and (b) and (10)(a) of, and paragraph 4(1)(a), (b) and (f) of Schedule 2, paragraph 4(1)(a) and (e) of Schedule 3 and paragraph 5(a) and (f) of Schedule 5 to the National Health Service (Wales) Act 2006
- 3.7 The Regulations are being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

- 4.1 The Regulations are necessary to ensure that the boards of all NHS bodies are subject to the same eligibility criteria and appointment processes. Without these Regulations the legislation is not consistent with the provisions of the Financial Reporting Council UK Corporate Governance Code (2018); and whilst the policy position on these matters is long standing, Welsh Government is at risk of being criticised for enforcing criteria that is inconsistent with the legislation. These Regulations will not detrimentally impact any NHS bodies or other relevant stakeholders given they are consistent with a longstanding policy position that is being followed.
- 4.2 The Regulations also include changes to the pre-existing publication timeframe for Board papers. This is to reflect arrangements for publishing information via electronic means and ensure the most accurate and up to date information is available to NHS Boards, the public and stakeholders. This amendment will benefit NHS Boards, the public and stakeholders given as it will ensure the most accurate and up to date information is available.

5. Consultation

- 5.1 There is no statutory duty to consult on regulations made under section 203(9)(a) and (b) and (10)(a) of, and paragraph 4(1)(a), (b) and (f) of Schedule

2, paragraph 4(1)(a) and (e) of Schedule 3 and paragraph 5(a) and (f) of Schedule 5 to the National Health Service (Wales) Act 2006. The Regulations are also limited, affect a small number of individuals and do not reflect a change in the Welsh Government's policy so a formal public consultation did not take place. However, officials have consulted with the Chairs, Chief Executives, Directors of Governance and Board Secretaries of all NHS Bodies as well as the Trade Unions recognised by those NHS bodies on the intended amendments to the Regulations. The amendments have been noted by these stakeholders and they are broadly supported.

PART 2: REGULATORY IMPACT ASSESSMENT (RIA)

1. Options

Option 1

6.1 Business as Usual. The Regulations will not reflect best practice and good governance, nor will they support the longstanding policy position. This could potentially expose Welsh Government to the risk of being challenged or criticised.

Option 2

6.2 Amend existing Regulations to:

- ensure the boards of NHS bodies are subject to the same eligibility criteria and appointment processes to reflect the provisions of the Financial Reporting Council UK Corporate Governance Code (2018) and the longstanding policy position; and
- reduce the publication timeframe for Board papers from ten clear days to 5 clear days to reflect electronic ways of working and ensure NHS Boards, the public and other stakeholders have access to accurate and up to date information.

7. Costs and benefits

Option 1

7.1 This is the baseline option and, as such, there are no additional costs or benefits associated with this option.

Option 2

Amendments to eligibility requirements for NHS Boards

7.2 Currently there are inconsistencies in relation to the eligibility requirements set out in Regulations for NHS Boards. The policy position on this is longstanding and therefore there will be no impact or cost implications by making these regulations.

7.3 The benefit is that the amendments will reflect good governance and remove the risk of Welsh Government being challenged on its policy position. This will

also reduce the number of ad hoc requests for advice from Welsh Government Legal Services and policy officials.

Amendments to the appointment arrangements of the boards Trade Union Member

7.4 The Local Health Board Regulations are silent with regard to the arrangements for appointing the trade union member in accordance with regulation 3(4)(c). This could unnecessarily delay recruitment to these positions and may mean individuals apply who do not have the support of their trade union and its members. This approach is also inconsistent with the arrangements for the Local Authority and University members which make the provision for recruitment to be via nomination.

7.5 The amended Regulations specify that trade unions recognised by the Board will be invited to nominate up to two eligible candidates and the Cabinet Secretary may choose the person nominated to be the trade union member under regulation 3(4)(c). This will ensure candidates have the support of their Trade Unions.

7.6 Whilst there are no cost implications, recognised Trade Unions will be invited to nominate individuals, but this should not be a disruptive or a laborious process.

Amendments to arrangements for the appointment of Officer Members

7.7 Regulation 4(2) of the Local Health Board Regulations state that officer members are appointed by the Board. As a result, officer members of the board participate in decisions relating to the appointment of their officer colleagues.

7.8 Amending the Regulations will ensure consistency with the provisions within the NHS Trust Regulations, the Public Health Wales Regulations and the regulations relating to both Special Health Authorities. It will also reflect the provisions of the Financial Reporting Council Corporate Governance Code 2018 which state that '*A board should establish a nomination committee to lead the appointment process for appointments, ... A majority of members of the committee should be independent non-executive directors.*'

7.9 NHS bodies have been adhering to this principle and therefore this amendment will solidify the current arrangements being implemented. There is no cost associated with this amendment.

Amendment to timeframe for publication of board papers

7.10 Reducing the publication timeframe to 5 days will not have any cost implications.

7.11 The benefit is that it will ensure the most accurate and up to date information is available to NHS Boards, the public and stakeholders.

8. Competition Assessment

8.1 The Regulations are not expected to impact on levels of competition in Wales or the competitiveness of Welsh businesses.

9. Post implementation review

9.1 Not applicable.