

Explanatory Memorandum to the Care and Support (Area Planning) (Wales) Regulations 2017

This Explanatory Memorandum has been prepared by the Health and Social Services Group 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 Care and Support (Area Planning) Regulations 2017. I am satisfied that the benefits justify the likely costs.

Rebecca Evans AM

Minister for Social Services and Public Health
27 January 2017

Part 1: OVERVIEW

1. Description

The Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”) brings together local authorities’ and Local Health Board (LHB) duties and functions in relation to improving the well-being of people who need care and support, and carers who need support.

Section 14A of the 2014 Act requires local authorities and LHBs to each prepare and publish a plan following the carrying out of an assessment of needs (known as a “population assessment”) under section 14 of the 2014 Act. This plan (known as an “area plan”) must set out, amongst other things, the range and level of services the body proposes to provide, or arranges to be provided, in response to the population assessment.

Section 14A also provides the Welsh Ministers with regulation making powers in respect of area plans to, for example, provide for the reviewing of plans.

This Explanatory Memorandum should be read in conjunction with the Explanatory Memorandum for the Partnership Arrangements (Wales) (Amendment) Regulations 2017.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

3. Legislative background

The powers enabling these Regulations to be made are contained in section 14A of the 2014 Act, inserted by the Well-being of Future Generations Act (Wales) 2015.

Section 14A places duties on local authorities and LHBs to prepare and publish a plan (the area plan) in response to the population assessment required under section 14.

Population assessments and area plans

Section 14 of the 2014 Act places a duty on local authorities and LHBs to carry out an assessment of the local population’s needs for care and support and carers needs for support. This population assessment must also include an assessment of the range and level of services required to meet the needs of the people in the local authority’s area and the range and level of preventative services required.

Partnership working

These regulations link to the Partnership Arrangements (Wales) Regulations 2017, made under Section 166 of the 2014.

Those Regulations amend the earlier Partnership Arrangements (Wales) Regulations 2015. They add the section 14A area planning functions to the list of LHB functions required to be carried out by the partnership arrangements under the direction of regional partnership boards.

Procedure

These Regulations are subject to annulment in pursuance of a resolution of the National Assembly for Wales (the **negative procedure**). Subject to this procedure, these Regulations are due to come into force on 1 April 2017.

These Regulations will be laid before the National Assembly alongside the Partnership Arrangements (Wales) (Amendment) Regulations 2017 which will be subject to the affirmative procedure. The draft area planning statutory guidance will also be issued alongside these Regulations as once finalised, it will support the requirements in both sets of Regulations.

4. Purpose and intended effect of the legislation

The purpose of these Regulations is to stipulate the requirements in relation to:

- when an area plan is to be published (regulation 2),
- the review and revision of area plans (regulation 3),
- persons who should be provided with copies of area plans (regulation 4),
- the taking of steps to engage with citizens and the private and third sector organisations and public bodies in the preparation of area plans (regulations 5 and 6), and
- the monitoring and evaluation of area plans (regulation 7).

Along with the Partnership Arrangements (Wales) (Amendment) Regulations 2017 and the area planning guidance, the intended effect of these Regulations is to follow the population assessment by requiring the production of a detailed plan. This plan will enable the delivery of effective care and support services and support services for carers across each region with a focus on integration.

These Regulations build on the requirement for social services and LHBs to work jointly in the preparation of the population assessment and to produce a combined population assessment report by making provision about the preparation and publication of joint area plans.

Statutory guidance to support the Partnership Arrangements (Wales) (Amendment) Regulations 2017 and the Care and Support (Area Planning) (Wales) Regulations 2017

Statutory area planning guidance will issue under section 169 of the 2014 Act alongside these Regulations to support the delivery of the S14A functions and the preparation of a joint area plan under the direction of the appropriate regional partnership board. Preparing a joint area plan follows a logical path from the

preparation of the joint population assessment, the report of which will form the content of the area plan.

The Carers Strategies (Wales) Measure 2010

The Carers Strategies (Wales) Measure 2010 and its associated 2011 Regulations were repealed as a consequence of the 2014 Act. Section 14A within the 2014 Act however, provides parity with the Measure as it also requires LHBs and local authorities to submit any relevant part of their plan in relation to taking action to address the support needs of carers to Welsh Ministers.

This requirement is supported by Regulation 4 of these Regulations which require relevant bodies to submit area plans to Welsh Ministers.

Links to other planning frameworks

The statutory area planning guidance also sets out the expectation that area plans will contribute to assessments of local well-being and local well-being plans, required under the Well-being of Future Generations (Wales) Act 2015. They will also contribute important information and data about care and support needs and support needs for carers to the preparation of the Integrated Medium Term Plans required to be produced by LHBs and provided for under the NHS Finance (Wales) Act 2014.

Consultation

A 12 week consultation on these Regulations, the related 2016 Partnership Regulations and the area plan statutory guidance, ran between 11 July 2016 and 3 October 2016. Further details on the consultation process are set out in the Regulatory Impact Assessment in Part 2.

The consultation summary report and a list of respondents to the consultation can be found at:

<https://consultations.gov.wales/consultations/regulations-and-statutory-guidance-area-plans-following-population-assessment>

PART 2 – REGULATORY IMPACT ASSESSMENT

This Regulatory Impact Assessment should be read in conjunction with the Regulatory Impact Assessment for the Partnership Arrangements (Wales) (Amendment) Regulations 2017 and the working draft of the area plan statutory guidance, available at: <http://gov.wales/topics/health/socialcare/act/code-of-practice/?lang=en> (English) and <http://gov.wales/topics/health/socialcare/act/code-of-practice/?skip=1&lang=cy> (Welsh).

Options

The options considered by the Welsh Government in relation to the area planning requirement are as follows:

Option 1 – Proceed with the minimum plans required under section 14A of the 2014 Act

This option would impose on local authorities and LHBs the minimum plans required by section 14A of the 2014 Act. Under this option, there would be no requirements set out in regulations to:

- specify timing or review arrangements for a plan,
- consult with persons when preparing or reviewing a plan, or,
- set out information about monitoring and evaluation of services and other actions set out in the plan.

Option 2 – Develop regulations which set out more detail on what is required in area plans

Under option 2, regulations would provide further detail in relation to the requirements to prepare and publish a plan set out in section 14A. In keeping with regulations supporting the population assessment, these regulations would require local authorities to take reasonable steps to engage with citizens in the local authority's area when undertaking an area plan, along with the public, private and third sectors.

The Regulations would also specify when the first area plans must be produced, along with publication and review arrangements.

Costs and benefits

COSTS

Option 1 – Proceed with the minimum plans required under section 14A of the 2014 Act

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

Under Section 14A of the 2014 Act, local authorities and LHBs must prepare and publish a plan (the area plan) setting out the range and level of services proposed to be provided or arranged in response to the population assessment. Under this option, there will be no specific requirements for local authorities and LHBs to engage with citizens when preparing area plans. There would not also be no requirements for area plans to be published, nor a timescale set for producing the first area plan.

Many of the potential costs related to producing the area plans under both options have previously been encompassed in local authority and LHBs spend on the production of health, social care and well-being strategies, undertaken as part of the production of Single Integrated Plan (SIPs). These strategies were previously required to be produced by local authorities and LHBs from April 2003 until the implementation of the 2014 Act in April 2016.

When considering potential costs under this option, a comparison can be made with the estimated cost of producing the local well-being plans required under the Well-being of Future Generations (Wales) Act 2015. The estimated annual cost to local authorities and LHBs for preparing each local well-being plan is set out in Table 40 of the Well-being of Future Generations RIA¹. A total of £22,500 is estimated for the combined cost to local authorities and LHBs for preparing each local well-being plan. In the RIA, the costs of developing the well-being plan were assumed to be the same as those for producing a SIP.

The cost presented in the paragraph above is likely to be an upper estimate of the cost of producing the area plan. Compared with area plans, local well-being plans, will have a far wider scope, setting objectives designed to maximise the contribution within that area to achieving the national well-being goals. The local well-being plans will be based on assessments of local well-being, which are required to cover the economic, social, environmental and cultural well-being of an area as a whole, a far greater scope than population assessments.

Option 2 – Develop regulations which set out more detail on what is required in area plans

Under this option, the Welsh Government considers there would be some additional costs that fall to:

- (i) Local authorities and LHBs
- (ii) The Welsh Government

These additional costs are discussed below.

Local authority and LHB costs

¹ [http://www.assembly.wales/laid%20documents/pri-ld9831-em-r%20-%20well-being%20of%20future%20generations%20\(wales\)%20bill%20-%20revised%20explanatory%20memorandum/pri-ld9831-em-r-e.pdf](http://www.assembly.wales/laid%20documents/pri-ld9831-em-r%20-%20well-being%20of%20future%20generations%20(wales)%20bill%20-%20revised%20explanatory%20memorandum/pri-ld9831-em-r-e.pdf)

The cost to local authorities and LHBs to prepare each area plan is expected to be broadly similar to that under option 1. The additional costs are expected to relate to stakeholder engagement and the need to review and update the area plans.

Under this option, regulations will require local authorities and LHBs to take reasonable steps to engage with people in the area who may have needs for care and support, people in the area with parental responsibility for children who have or may have needs for care and support, and carers in the area who have or may have needs for support. Therefore, as with the population assessments, there will also be a limited administrative cost involved in establishing a process for engaging with citizens, the third, public and private sectors in order to develop area plans.

Quantifying this cost is difficult as such a planning exercise has not previously been undertaken in this way. However, similar to option 1, some comparison can be made with the estimated costs associated with producing SIPs. Estimated local authority and LHB staff costs for citizen engagement in the production of a SIP were produced as part of the RIA for the Well-being of Future Generations Act 2015. Table 31 of that RIA gives an estimated cost for citizen engagement in year 1 of the SIP planning cycle of £21,300 per area.

As with option 1, this is likely to be an upper estimate of the cost of the engagement required on area plans. Compared with area plans, local well-being plans will have a much wider scope and will require engagement with a broader range of stakeholders.

Furthermore, citizen engagement will already have taken place as part of the population assessment process. The area plan statutory guidance states 'engagement with citizens when preparing a joint area plan does not need to be as far reaching as the extensive citizen engagement carried out as part of the process of undertaking the population assessment'. Therefore, citizen engagement at the area plan stage would not be as extensive as that undertaken during preparation of the SIP.

In terms of funding this citizen engagement for area plans, local authorities could make use of the Social Services Delivering Transformation Grant (DTG). The DTG is a Welsh Government grant which supports the implementation of the Social Services and Well-being (Wales) Act 2014. This grant has already been used by local authorities to fund some of the citizen engagement exercises undertaken as part of the population assessment process.

The Regulations under this option require area plans to be kept under review and subsequent plans to be published within one year after the most recent population assessment report is produced. This will mean a continued cost to local authorities and LHBs in terms of staff time, both in reviewing existing area plans then producing subsequent plans. An estimated cost is set out below.

Preparing future area plans

As set out under option 1, some comparison can again be made with the costs associated with preparing a local well-being plan as set out in Table 40 of the Well-being of Future Generations Act (Wales) RIA included under option 1.

However, the estimated recurring cost of producing subsequent plans is likely to be lower than the one-off costs under option 1 given the process for preparing an area plan could be replicated to prepare subsequent plans, meaning no costs would be incurred in respect of establishing a new process.

The costs of engagement with citizens, for this option described under 'one-off costs' above would also apply to the recurring costs of producing area plans. However, these costs are likely to be further lowered given processes for engaging with citizens, the public, private and third sectors could again be replicated to prepare subsequent plans.

Potential joint working with Well-being of Future Generations Act

Under this option, regulations set out that the first area plans must be produced by 1 April 2018. This is in line with the timescales for local well-being plans required under the Well-being of Future Generations Act.

Through this alignment of plans, costs to organisations could be potentially be reduced through joint working on the citizen engagement requirements for the respective plans, outlined under one-off costs under this option. It is difficult to estimate a precise figure for this saving as it will depend on the extent to which organisations are able to integrate their processes. However, this is an approach the Welsh Government will support and encourage to ensure costs to organisations are minimised where possible.

Welsh Government Costs

The Regulations under this option require completed area plans are submitted to the Welsh Ministers. There will be a recurring cost to the Welsh Government in terms of staff time for considering these area plans once they are submitted.

There will also be a recurring cost to the Welsh Government in terms of assessing the effectiveness of the area planning process more widely to ensure it adds value. Again, these costs will be in terms of staff time and should be minimal.

In terms of quantifying Welsh Government staff costs for these activities, we have estimated that each area plan will require one day of Welsh Government analysis at Higher Executive Officer (HEO) level. Therefore, to analyse the seven combined area plans, a total of seven days at HEO level will be required.

The cost of one day at HEO level is £196; therefore a total cost of £1372 is estimated for this work.

BENEFITS

Option 1 – Proceed with the minimum plans required under section 14A of the 2014 Act

No significant benefits have been identified under this option. However, because there will be no additional regulatory requirements on local authorities and LHBs over and above those contained in section 14A of the 2014 Act, costs to local authorities and LHBs should be minimal as only the minimum implementation of this section of the Act will be undertaken.

Not including any requirements in regulations to specify timing or review arrangements for plans, consult with persons when preparing or reviewing a plan nor set out information about monitoring and evaluation of services and other actions set out in the plan will mean that any costs incurred by local authorities and LHBs in terms of staff time should be further minimised.

Option 2 – Develop regulations which set out more detail on what is required in area plans

Through the production of the detailed area plans required under this option, local authorities and LHBs will be able to more effectively plan how services can be targeted within their areas. This will support the implementation of the shift in focus under the 2014 Act to planning services preventatively, ensuring the sustainability of social services into the future.

It is a natural progression of the policy legislated for in the Care and Support (Population Assessments) (Wales) Regulations 2015 that the area plans arising from the population assessments are similarly legislated for via detailed regulations. The detailed regulations under this option will also ensure the section 14A requirements are set out in a clear and effective manner. Specifying review, consulting, monitoring and evaluation arrangements within these regulations will also provide a coherent framework within which the area plans can be produced.

Regulations under this option will also ensure the views of people are better taken into account. Under this option, detailed Regulations will require local authorities and LHBs to take reasonable steps to engage with people in the area while developing area plans, ensuring they are involved in informing how services are developed in response to the needs identified in the population assessment.

RISKS

Option 1 – Proceed with the minimum plans required under section 14A of the 2014 Act

The Care and Support (Population Assessments) (Wales) Regulations 2015 provide further detail in relation to the implementation of the requirement to carry out the population assessment provided for by section 14 of the 2014 Act.

Not legislating for a detailed area planning function, as envisaged under this option could result in an imbalance of legal emphasis between the population assessments and the area plans.

This lack of detail under this option would result in a mismatch between the statutory basis provided for the production of population assessment reports and the area plans resulting from those reports.

Option 2 – Develop regulations which set out more detail on what is required in area plans

Bringing detailed regulations into force to support the section 14A requirements risks increasing pressure on local authorities and LHBs. This is due to regulations under this option requiring local authorities and LHBs to engage with citizens when producing area plans, as well as introducing statutory requirements relating to the timing and review arrangements for area plans.

Introducing these regulatory requirements could lead to an increase in local authority and LHB costs. This will be in terms of both one-off set-up costs of implementing the new regulatory requirements and ongoing staff costs for the ongoing review of the area plans.

However, the impact of these additional costs will be mitigated by the statutory guidance being developed which will be published alongside the regulations. This will provide more detail to assist local authority and LHB staff on the content of area plans.

Consultation

A 12 week consultation on these Regulations, the related 2017 Partnership Regulations and the area plan statutory guidance, ran between 11 July 2016 and 3 October 2016. The consultation report can be found at: <https://consultations.gov.wales/consultations/regulations-and-statutory-guidance-area-plans-following-population-assessment>

There were 27 substantive written responses received to the consultation from a wide range of statutory organisations, third sector groups and professional bodies. This included regional partnership boards, individual health boards, the Children's and Older People's Commissioners and the ADSS Cymru / Welsh Local Government Association (WLGA) who produced a joint response.

Overall, responses to the consultation were broadly supportive of the proposals put forward in the draft statutory guidance and regulations. Generally, suggestions made by respondents focussed on matters of detail, small additions and amendments to the text within the statutory guidance.

As a result of the consultation, the wording of the draft area planning regulations has been amended to allow for engagement with a wider range of organisations when preparing area plans than was initially provided for. This should ensure local authorities and LHBs engage with a wider range of relevant organisations when preparing area plans, leading to their area plans presenting a clearer picture of the range and level of services to be provided in an area.

Competition Assessment

The competition filter test	
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 regulation, 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, changing the number or size of firms?	No
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 categorised 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

The competition assessment filter test has been completed on the proposed regulation. It has been determined that this regulation will have no detrimental effect on competition.

Once completed, the area plans will set out the range and level of services proposed to be provided, or arranged, to respond to the care and support needs, and the support needs of carers, identified in the combined population assessment reports. These plans will subsequently inform the procurement of services by local authorities and LHBs.

The extent to which this could affect the market structure for health and social care providers will vary depending on both the extent of the care and support needs identified in the population assessments for each LHB area, then how these needs are planned to be addressed in each area plan. This should become clearer following the publication of the first set of population assessment reports in April 2017.

Post implementation review

The area plans will be reviewed by Welsh Government officials when the first plans are submitted to Welsh Ministers by 1 April 2018, as required under option 2. This will provide an opportunity to review how well the plans enable the delivery of effective care and support services, and support services for carers across each region