

## **Explanatory Memorandum to the Proposed Carers Strategies (Wales) Measure**

This Explanatory Memorandum has been prepared by the Directorate General for Health and Social Services of the Welsh Assembly Government and is laid before the National Assembly for Wales.

### **Member's Declaration**

In my view the provisions of the Proposed Carers Strategies (Wales) Measure, introduced by me on the 25 January 2010, would be within the legislative competence of the National Assembly for Wales.

Mrs Gwenda Thomas AM  
Deputy Minister for Social Services  
Assembly Member in charge of the Proposed Measure

14 September 2010

## Contents page

### **PART 1 – Background and Purpose of the Proposed Measure**

1. Description
2. Legislative Background
3. Purpose and intended effect of the legislation
4. Consultation
5. Power to make subordinate legislation
6. Regulatory Impact Assessment

### **PART 2 – Regulatory Impact Assessment**

7. Options
8. Costs and benefits
9. Competition Assessment
10. Post implementation review

### **ANNEX 1 – Explanatory Notes**

## **PART 1 – Background and Purpose of the Proposed Measure**

### **1. Description**

1.1 The purpose of this Measure is to enable the National Assembly to legislate to introduce a new requirement for the NHS and Local Authorities in Wales (“the relevant authorities”) to work in partnership to prepare, publish and implement a joint strategy in relation to carers.

1.2 The strategy will provide for the provision of information and advice to carers and for the effective involvement of the relevant authorities with carers when making decisions about the provision of services to or for carers or the person cared for.

## 2. Legislative background

2.1 The power to make this Measure is contained in section 93 of the Government of Wales Act 2006 (c.32) (“GOWA 2006”). The National Assembly for Wales’ competence to legislate on this matter is found in matter 15.9 in Field 15 of Schedule 5 to the Act. Matter 15.9 was added by the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009 (SI 2009/3010) which permits the National Assembly for Wales to make provision about the following:

### *Matter 15.9*

*“Supporting the provision of care by carers and promoting the well-being of carers.*

*This matter includes (but is not limited to) social care services to help carers.*

*In this matter “carers” means individuals who provide or intend to provide a substantial amount of care on a regular basis for—*

- (a) a child with a physical or mental impairment, or*
- (b) an individual aged 18 or over*

*but it does not include individuals who provide or intend to provide care—*

- (a) by virtue of a contract of employment or other contract with any person, or*
- (b) as a volunteer for a body (whether or not incorporated).*

*Under the heading “Interpretation of this field”, in the definition of “social care services”, after “non-residential care services;” insert “information,”.*

2.2 The term “social care services” as defined by the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008 (SI 2008/3132) means:

*“any of the following provided in connection with the well-being of any person: residential or non-residential care services; advice, counselling or advocacy services; financial or any other assistance”.*

2.3 SI 2009/3010 inserted the word “information” into this definition.

2.4 The term well-being as defined by SI 2008/3132 is as follows:

*“Well-being”, in relation to individuals, means well-being so far as relating to any of the following-*

- (a) health and emotional well-being;*
- (b) protection from harm and neglect;*
- (c) education, training and recreation;*

- (d) the contribution made by them to society;*
- (e) social and economic well-being;*
- (f) securing their rights;*

### **3. Purpose & intended effect of the legislation**

#### **Background**

3.1 The 2001 Census across England and Wales disclosed that Wales has a higher proportion of carers than any English region (11.7 per cent or 341,000 carers) and the highest proportion of people with limiting long-term illness (23.3 per cent). The Census also showed that the level of permanent sickness and disability in the economically inactive population aged 16-74 in Wales is 9.2 per cent, higher than any region of England.

3.2 At present, unpaid carers provide around 70% of care in the community. However, forecast demographic changes of an increasing ageing population coupled with reducing birth rates, suggest that the pool of potential carers relative to the numbers needing care is likely to decrease over the medium term. Mitigating the effects of these demographic changes requires a range of measures specifically designed to support carers in their caring role and to help them maintain their own health and well being.

3.3 Research has highlighted the need for Carers to have the right information at the right time to support them in their caring role. In particular, information for carers needs to be easily accessible, relevant and factually correct. The kind of information carers may need is likely to vary and may include prognosis and care planning for the person cared for, medicines management, safe lifting and handling, rights, including the right to a carers assessment, what social services or NHS support could be available, what financial support could be available, employment provisions, including flexible working and support groups.

3.4 Current legislation in relation to carers focuses mainly on statutory authorities' powers and duties. In addition the Welsh Assembly Government has a range of powers to inspect, regulate and issue statutory guidance in respect of local authority social services. Despite this, consultations with carers, carers' organisations and others have identified gaps in the provision of services. Whilst there is good practice in many parts of Wales, there are still key areas that are not being consistently addressed to the standard we would want. These include issues such as the provision of accessible, relevant, up to date and timely information and effective engagement of the Health Service and other agencies with carers as partners.

3.5 The current framework of legislation in relation to carers focuses mainly on statutory authorities' powers and duties. It includes:

- **Disabled Persons (Services, Consultation and Representation)**

- Act 1986**

- This requires local authorities to have regard to the ability of the carer to provide or continue to provide care when deciding what services to provide to the disabled person.

- **Carers (Recognition and Services) Act 1995**

This contains the core statutory responsibilities and requires local authorities to carry out an assessment of a carer's ability to provide and to continue to provide care, if the carer requests this, at the time of the assessment of the person they care for.

- **Carers and Disabled Children Act 2000**

This extends the provisions of the 1995 Act to enable a local authority to undertake a separate assessment of a carer's needs and to supply services (or direct payments) directly to carers following assessment.

- **Carers (Equal Opportunities) Act 2004**

This places a duty on local authorities to inform carers of their right to an assessment, and requires carers' assessments to consider whether the carer works or is undertaking education, training or any leisure activity. It also provides for better co-operation between statutory agencies in the planning and provision of services for carers.

- **The Work and Families Act 2006**

This came into force in Wales in April 2007. It requires employers to consider requests from people with caring responsibilities to work flexibly.

- **The Children and Young Persons Act 2008**

This requires local authorities to make adequate arrangements for short break provision for Disabled Children.

3.6 In addition the Welsh Assembly Government has a range of powers to inspect, regulate and issue statutory guidance in respect of local authority services under the Local Authority Social Services Act 1970, the Care Standards Act 2000 and the Health and Social Care (Community Health and Standards) Act 2003. It also has powers to direct the NHS under the National Health Services (Wales) Act 2006.

3.7 Despite this existing framework of legislation and guidance consultations with carers, carers' organisations and others have identified gaps in service provision that cannot currently be addressed. This indicates that the current framework of legislation and guidance in Wales has clearly proved insufficient to ensure that the Welsh Assembly Government's policy objectives with regard to carers are given the necessary priority, so that these gaps and inconsistencies in service provision are tackled effectively. The Assembly Government's "One Wales" programme of Government therefore included a commitment to prepare new legislation on carers rather than rely on existing reinforcement means alone such as performance measures and inspection, financial incentives or powers of direction.

## Intended Effect of the Measure

3.8 The overall intention of the proposed Measure is to improve the lives of carers in the following key areas:

- to ensure that carers have the right information at the right time to support them in their caring role. The *Carers' Strategy Implementation Plan in Wales 2000* highlighted a need for the provision of easily accessible, relevant and factually correct information for carers, as well as acknowledging the need for a longer term view of the information needs of carers. The kind of information carers may need from time to time would include information about financial benefits, employment provisions including flexible working, rights to a needs assessment, social services functions available to them, care planning for the person cared for, medicines management, safe handling and lifting and other matters related to the care of the person cared for.
- to ensure that statutory agencies properly engage with carers as partners in the provision of care involving them at all levels in the assessment, delivery and evaluation of care arrangements.

3.9 The proposed Measure would enable Welsh Ministers, by Order, to place a duty on a "relevant authority" or two or more "relevant authorities" to prepare and publish a strategy setting out how the authority will work or the authorities will work together to provide appropriate information and advice to carers.

3.10 Relevant authorities are currently defined as:

- (a) any Local Health Board established under section 11 of the National Health Services (Wales) Act 2006 (c.42);
- (b) any NHS trust established under section 18 of that Act;
- (c) any Special Health Authority established under section 22 of that Act;
- (d) any county council or county borough council.

However the Welsh Ministers would be able, by order, to amend or add further bodies or authorities or descriptions of body or authority to the bodies and authorities currently defined in section 2(3). It should be noted that whilst a body or authority may be a relevant authority, it does not necessarily mean that the duty to prepare and publish a strategy is automatically placed upon it. A relevant authority must be designated under regulations made under section 2(1) as the authority that has the duty to prepare and publish the strategy. Where this duty has been placed on a relevant authority it is subsequently referred to as a "responsible authority".

3.11 The proposed Measure places a duty upon each relevant authority that is responsible for preparing and publishing a strategy under section 2(1) to implement it.



3.12 Appropriate information and advice is defined in the proposed Measure as information and advice which is likely to be of interest or benefit to carers in their caring role or to the person cared for. Welsh Ministers would be able to make further provision in regulations about what constitutes appropriate information and advice as necessary. The proposed Measure provides that this information and advice should be provided free of charge.

3.13 The proposed Measure would also enable Welsh Ministers, by regulations, to place a requirement on each relevant authority to ensure that in deciding what services to provide to or for carers or the person cared for, they consult carers. It would also enable a requirement to be placed on each relevant authority to ensure that they consult carers before they make decisions of a more general nature about service provision to or for carers or the person cared for. Welsh Ministers would be able to make provision by way of regulations specifying the steps that authorities must or may take in consulting carers.

3.14 The proposed Measure will allow for detailed provision to be set out in regulations as to the preparation and publication of the strategies. It will provide Welsh Ministers with the power to make regulations about the following:

- (a) the services in respect of which the duty to prepare a strategy applies;
- (b) the matters to be dealt with in the strategy;
- (c) how and when the strategy is to be published;
- (d) keeping the strategy under review (including setting a period after which the strategy must be reviewed or replaced);
- (e) the consultation which must be undertaken before or during the preparation, implementation or review of the strategy;
- (f) arrangements to monitor and evaluate the implementation of the strategy;

3.15 Welsh Ministers would be able, for each strategy for which there is more than one responsible authority, to designate one of them as the lead authority for the purposes of co-ordinating and overseeing the preparation and publication (and any subsequent review) of the strategy..

3.16 The proposed Measure would also place a duty upon the lead authority or, where there is no designated lead, the responsible authority or responsible authorities acting together, to submit a draft strategy to Welsh Ministers. Welsh Ministers would then be required to inform the responsible authority or authorities that they are satisfied with the draft strategy, or if they were not satisfied, give the responsible authority or authorities such directions as considered necessary for ensuring that the strategy complies with their requirements.

### **Territorial Extent**

3.17 The Measure applies only in relation to Wales. The limitation relating to functions other than in relation to Wales means that this Measure would not

enable the Assembly to confer on the Welsh Ministers, Welsh local authorities or any other public authority any functions which did not relate to Wales.

## **Commencement**

3.18 The Measure will come into force in accordance with provision made by the Welsh Ministers by order.

## **4. Consultation**

4.1 In July 2009, the Welsh Assembly Government established an Advisory Group of key stakeholders to provide advice to Welsh Ministers on the development of a draft Carers Measure. The group included representatives of local authorities and the Welsh Local Government Association (WLGA), the NHS, Carers organisations, private sector providers and voluntary sector providers as well as relevant Assembly Government policy and legal officials.

4.2 The agreed Terms of Reference for the group focussed, primarily, on the following tasks:

- to help identify and refine the main policy issues, commenting on emerging policy proposals; and
- to help ensure that policy instructions for the draft Measure were based on robust and relevant research evidence and statistical data.

4.3 The group met on three occasions between June and September 2009, and produced a report of its conclusions and recommendations, which has informed the development of the proposed Measure.

4.4 The approach recommended by the Group was that:

- a. Measures developed under the LCO for vulnerable children would be the most appropriate way for Welsh Ministers to address the inappropriate caring burden of young carers and not the proposed Carers' Measure. In recommending this, the Group also considered that young carers should still be embraced by the broader information and engagement provisions of the proposed Carers Measure;
- b. the principle of the proposed Carers' Measure should be for NHS organisations and local authorities to work together to produce a single joint Strategy to embrace both the provision of information to carers and the engagement of carers.
- c. there should be a single strategy covering the two components of information and engagement;

- d. strategies should cover directly provided services and services contracted out to third parties;
- e. provisions on the face of the Measure should be short and succinct, leaving many of the detailed arrangements to be set out in subsequent regulations and guidance. This approach would give Welsh Ministers the discretion to adopt a stepped implementation;
- f. NHS organisations should be designated on the face of the Measure as the lead organisation responsible for the development, implementation, monitoring and evaluation of the proposed single strategy.

4.5 The approach and options put forward by the Group have fed into the development of the proposed Measure. The Group have also discussed a range of matters that have been raised during the Assembly's Stage 1 and Stage 2 scrutiny of the proposed Measure.

## **5. Power to make subordinate legislation**

5.1 The proposed Measure contains enabling powers for Welsh Ministers to implement and set out the detail of the preparation and publication of strategies for carers in regulations and orders.

5.2 In each of the cases detailed below, the rationale for the application of subordinate legislation rests upon the need to avoid inappropriate detail on the face of the Measure and to provide flexibility to revise the types of information to be made available to carers, and the detail to be included in the strategy, as necessary.

5.3 Acknowledging the nature of the proposed subordinate legislation, and that the first set of regulations made under the proposed Measure would not be made within the lifetime of the current Assembly,, the first set of regulations made under sections 2(1), 3(2), 4 and 5(1) and any order made by Welsh Ministers under section 7A of the Measure will be subject to the **affirmative procedure**.

### **Section 2 - Duty to produce strategy**

5.4 Section 2(1) gives the Welsh Ministers a power to make regulations to require a relevant authority or two or more relevant authorities to prepare and publish a strategy setting out how the authority will work or the authorities will work together to provide appropriate information and advice to carers and ensure that carers are consulted about service provision.

### **Section 3 - Appropriate information and advice**

5.5 Section 3(2) provides the Welsh ministers with a power to make regulations setting out further provision about what constitutes appropriate information or advice.

### **Section 4 - Consultation**

5.6 This section gives the Welsh Ministers a power to make provision, by way of regulations, specifying the steps which relevant authorities may or must take for the purposes of consulting with carers under section 2(1) (b) and (c).

### **Section 5 - Further provision about strategies**

5.7 Section 5(1) provides the Welsh Ministers with a power to make regulations which set out further provision in relation to the preparation and publication of a strategy under section 2. Section 5(2) lists the types of provision which might be made. Section 5(3) gives the Welsh Ministers power, where there is more than one responsible authority for a strategy, to designate one of them as the lead authority for the co-ordination, oversight, preparation, publication and any subsequent review of the strategy.

## **Section 6 - Submission of draft strategy to Welsh Ministers**

5.8 Section 6 enables the Welsh Ministers, by regulations, to make provision as to how and when the responsible authority or responsible authorities, if there is more than one, must submit the draft strategies to the Welsh Ministers for approval and subsequently publish the strategy.

## **Section 7A - Power to add further relevant authorities**

5.9 This section gives the Welsh Ministers a power, by order, to amend the list of “relevant authorities” set out in the definition at section 2(3) by adding further bodies or authorities or descriptions of body or authority.

## **Section 8 - Orders and regulations**

5.10 This section makes general provision about orders and regulations made under the Measure.

5.11 Subsection (1) provides that where the Welsh Ministers are empowered by the Measure to make orders or regulations, these are to be made by statutory instrument. Subsection (2) provides that such orders or regulations may make different provision for different purposes and may include incidental, supplementary, consequential, transitory or transitional or savings provisions. Subsection (3) provides that orders or regulations made under the Measure will be subject to the negative procedure, except in relation to an order made under section 7A of the Measure, or the first set of regulations made by the Welsh Ministers under each of sections 2(1), 3(2), 4 and 5(1).

## **6. Regulatory Impact Assessment (RIA)**

6.1 A Regulatory Impact Assessment has been completed for this Measure and follows at Part 2.

6.2 The earliest that implementation of changes stemming from approval of the proposed Measure and any subsequent regulations could commence would be the summer/autumn of 2011.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **7. Options**

7.1 The following options are available:

**Option1:** Do nothing

**Option 2:** Introduce changes relying on existing legislation

**Option 3:** Introduce an Assembly Measure

#### **Option 1- Do nothing**

7.2 Doing nothing would maintain a situation in which carers are not effectively engaged with authorities across the whole of Wales as partners in the provision of care and would not lead to any improvements in the current provision of information to carers. The Care and Social Services Inspectorate for Wales has reported that carers' assessment and services for carers vary greatly and are very patchy across Wales. Carers' organisations and carers themselves have also reported that a renewed effort is required by authorities, in particular the NHS in Wales to:

- identify carers;
- to better engage with carers;
- to ensure that carers have the right information at the right time to support them in their caring role; and
- to ensure that timely and appropriate practical and emotional help and other support is provided to carers to sustain them in their caring role

#### **Option 2: Introduce changes relying on existing legislation**

7.3 This option relies on the use of current legislative powers in conjunction with the co-operation and partnership of local government and the NHS in Wales. Section 7 of the Local Authority Social Services Act 1970 gives the Welsh Assembly Government powers to issue general guidance to local authorities on the exercise of their social services functions, and this would include matters relating to carers'. The existing legislative framework in relation to carers is outlined in section 3 of this Explanatory Memorandum.

7.4 The limitations of the legislation are that generally they only place some duties and responsibilities on some local authority social services and not on all local authority services, and the 1986, 1995 and 2000 Acts mentioned above do not encompass the NHS in Wales. The 2004 Act, does empower local authorities to ask other authorities, including the NHS in Wales, for assistance in planning the provision of services to carers and requiring them to give due consideration to such a request but places no statutory duty on the NHS Wales to co-operate or provide any service or to engage in any other way with carers.

7.5 Whilst some improvements could therefore be proposed by relying on the existing legal framework, these would in the main be limited to the issuing of further guidance and/or directions. Local authorities would still have wide discretion both for social services and in particular for their other service areas and this wide discretion would also apply to the NHS in Wales. This option would not deliver the improvements in consistency and fairness across Wales that the Welsh Assembly Government and carers' stakeholders want to achieve.

### **Option 3 – Introduce an Assembly Measure**

7.6 This option would most effectively meet the policy objective of achieving a consistent and fair approach across the whole of Wales to the way in which local authorities, the NHS in Wales and other bodies and authorities undertake their functions:

- engage with carers in relation to the provision of services and support, both for their own needs, and for the person they care for; and
- provide appropriate, timely and up to date information to carers to help them in their caring role.

7.7 As outlined in section 5 of this Explanatory Memorandum, the proposed Measure will, either directly and/or through giving the power to Welsh Ministers to make regulations:

- place a duty on relevant authorities to prepare and publish a strategy setting out how they will work together to provide appropriate information and advice to carers and to ensure carers are consulted about what services are to be provided to or for a carer or the person cared for;
- place a duty on the relevant authorities responsible for the strategy to implement the strategy;
- place a duty on the relevant authorities to provide the information and advice to carers in pursuance of the strategy without charge;
- require each responsible authority to make a copy of the strategy available for inspection at all reasonable hours and free of charge;
- empower Welsh Ministers, for each strategy, to designate an NHS organisation as the lead authority; and
- place a duty on the lead authority to submit a strategy in draft to Welsh Ministers who will need to satisfy themselves that the draft strategy complies with the requirements by or under the proposed Measure.

7.8 The proposed Measure will also provide Welsh Ministers with regulation making powers to make further provision as to the preparation and



publication of a strategy for example by defining what services the duty to prepare a strategy applies; the matters to be dealt with in the strategy and the arrangements to monitor and evaluate the implementation of the strategy.

7.9 The proposal for a Measure to provide information and advice to carers and to bring about more effective engagement and consultation with carers has been widely supported by stakeholder organisations, carers and service users. The contents of the proposed Measure reflect the conclusions and recommendations of the stakeholder Advisory Group.

## **8. Costs & Benefits**

### **Option 1: Do nothing**

#### **Benefits**

8.1 There is no benefit to be gained by doing nothing. The variability in information provision for carers and the engagement of carers by authorities will continue.

#### **Costs**

8.2 There would be no additional administrative or implementation costs incurred by authorities.

### **Option 2: introduce minimal changes relying on existing legislation**

#### **Benefits**

8.3 Further changes to the existing statutory guidance would not apply to the totality of local authority functions or more generally to the NHS in Wales. Some improvements may be achieved but they would only be minor in nature.

#### **Costs**

8.4 Only if new burdens were placed on social services or there was an expansion in service provision would additional administrative and implementation costs be incurred. As proceeding with this option would not add any new burdens and would only achieve minor improvements any additional costs are likely to be minimal.

### **Option 3: Introduce an Assembly Measure**

#### **Benefits**

8.5 This option would most effectively meet the policy objective of ensuring that local authorities, the NHS in Wales and other bodies and authorities in undertaking their functions:

- engage with carers' in relation to the provision of services and support both for their own needs and for the person they care for; and
- provide appropriate, timely and up to date information to carers to help them in caring role.

#### **Costs**

8.6 There would be implementation and administrative costs for local authorities and the NHS in Wales associated with the proposed Measure.

8.7 Local authority social services across Wales already have in place arrangements to provide information and to engage with carers. These existing arrangements in some areas could need further development and strengthening. For other local authority functions such as housing and education, some authorities may have such arrangements in place but again will need further development and strengthening or in some cases developed and put in place for the first time.

8.8 For the NHS in Wales, many of their service areas have no or very under developed arrangements to provide information and to engage with carers. Many NHS service areas will be starting from scratch. The first step for some NHS organisations may be to open discussions with carers and their representatives to ascertain what their priorities for information provision are and the level and nature of the engagement that carers want.

8.9 It is likely that there will be an incremental implementation of the strategies. For the first year, it is intended that the initial phase will be on developing, in consultation with carers, and their representatives, the strategies themselves. After Welsh Ministers have confirmed that they are satisfied that a strategy complies with the requirements imposed by or under the proposed Measure, the next phase will involve preparation for implementing the strategies; from developing and distributing the appropriate information; making any necessary adjustments to each authority's own guidance and procedures; through authorities undertaking any required staff training on their role in successfully implementing the strategy. This implementation preparatory work phase will probably run through year 1 into year 2. The commencement of implementation on the ground will then get underway during the second half of year 2 with full implementation from year 3.

8.10 Such an incremental implementation approach will ensure that carers' priorities for information and engagement are properly taken into account in strategies and that the implementation of strategies is achieved in a sustainable way. In particular, the training of an authority's staff on their role in achieving the successful implementation of a strategy is critical.

8.11 With such a incremental approach to implementation and, as noted in paragraphs 7.13 and 7.14, taking account of the variability of the current position in each authority, we estimate the administrative and other implementation costs across Wales will be some £0.9 million in year 1; £1.7 million in year 2 rising to £3.2 million in year 3. It is also intended that each Strategy should seek to address the particular circumstances that apply to young carers. The additional implementation costs for this are estimated to be £80,000 in year 1; £150,000 in year 2 and £200,000 in year 3.

8.12 The Scottish Executive provides the only other example in the UK of an administration adopting a similar approach for authorities to devise carers' strategies. In Scotland, these arrangements have been in place since 2006 and the Scottish Executive has provided some £9 million in funding for the 3

years commencing 2008-09 (£1 million in year 1; £3 million in year 2 and £5 million in year 3). The population of Wales is some 60% of the population of Scotland.

8.13 For illustrative purposes only, within Wales there are 22 local authorities and 7 Local Health Boards. Dividing the estimate of implementation costs (set out in section 8.11 above) equally between these 29 authorities gives a figure of some £34,000 per authority in year 1; £63,000 per authority in year 2 and £117,000 per authority in year 3.

8.14 While it will be for those drawing up each Strategy to establish in consultation with carers what its priorities should be, we would envisage that these could possibly include:

- the establishment of (new) carers liaison posts within each LHB;
- the expansion of the existing carers co-ordinators role within each local authority social services or the appointment of new co-ordinators to embrace other local authority service areas such as, for example, housing;
- where necessary, providing funding to develop and sustain a local carers/young carers infrastructure or strengthening any existing carers/young carers infrastructure for authorities to effectively engage with;
- meeting the reasonable engagement costs of carers/young carers and carers organisations;
- the establishment of local information and advice services;
- funding an increase in the community based capacity of carers/young carers organisations to help and support carers/young carers
- the funding of carers training 'partnerships' and delivering training to carers themselves
- the development of new information and advice materials for carers/young carers in a range of formats and languages
- training for each authority's own staff on their role in successfully delivering the strategy.

## **9. Competition Assessment**

9.1 The impact of any new arrangements will have no detrimental effect on competition for business, charities, local government and/or the voluntary sector.

## **10. Post implementation review**

10.1 The monitoring and review arrangements will be set out in the details of regulations to be made under the proposed Measure (see section 5(2)(f) of the proposed Measure).

# Annex 1

## Explanatory Notes

### Introduction

1. These Explanatory Notes relate to the proposed Carers Strategies (Wales) Measure as introduced into the National Assembly for Wales on 25 January 2010.
2. The Welsh Assembly Government's Directorate General for Health and Social Services has prepared them in order to assist the reader of the proposed Measure and to help inform debate on it. They do not form part of the draft Measure and have not been endorsed by the National Assembly for Wales.
3. The Explanatory Notes should be read in conjunction with the proposed Measure. They are not, and are not meant to be, a comprehensive description of the Measure. So where a section or part of a section does not seem to require any explanation or comment, none is given.
4. Under the proposed Measure, Welsh Ministers will have the power to require "relevant authorities" (as defined in the Measure) to publish a strategy setting out how they will work together to provide appropriate information and advice to carers, and also how they will work together to ensure that each carer is consulted before the authorities decide what services are to be provided to the carer or the person cared for.
5. In addition, the strategy must set out how the relevant authorities will ensure that, before they make decisions of a general nature regarding the provision of services to carers and the persons they care for, they will consult carers about those decisions.

### Section 1 – Carers

This section defines carer and the person cared for.

Subsection (1) defines carer as someone who provides (or intends to provide) a significant amount of care, on a regular basis, for a disabled child or for an individual aged 18 or over. For these purposes, the meaning of "disabled child" is taken to be the same as in Part 3 of the Children Act 1989.

Subsection (2) excludes from the definition of carer those who are employed as carers, or carry out their duties as a carer on a formal basis by way of a formal agreement with any other person. Those who are volunteer carers for any body, for example a charity are also excluded from the definition.

Subsection (3) defines the person being cared for as a person who is provided care by a carer, or it is intended that care will be given to that person by a carer.

## **Section 2 – Duty to produce strategy**

This section provides for a duty to be placed on relevant authorities to produce a strategy in relation to carers.

Subsection (1) provides that the Welsh Ministers may by way of regulations require a relevant authority or two or more relevant authorities to prepare and publish a strategy setting out how the authority will work or the authorities will work together to provide information and advice which is appropriate to carers, and also how they will work together to ensure that carers are consulted before they decide what services are to be provided to a carer or the person being cared for.

In addition, the strategy must set out how the relevant authorities will ensure that before they make directions of a general nature regarding the provision of services to carers and the persons they care for, they will consult carers before making such decisions.

Subsection (2) provides that each relevant authority which has a duty under subsection (1) to prepare and publish a strategy must also implement the strategy.

Subsection (3) currently defines relevant authorities as—

- (a) any Local Health Board established under section 11 of the National Health Service (Wales) Act 2006 (c. 42);
- (b) any NHS trust established under section 18 of that Act;
- (c) any Special Health Authority established under section 22 of that Act;
- (d) any county council or county borough council.

Subsection (4) makes it clear that it does not matter whether the services are provided by a relevant authority or by another person (for example, under contracting-out arrangements).

Subsection (5) defines responsible authority.

## **Section 3 – Appropriate information and advice**

Subsection (1) defines the term “appropriate information and advice” which is contained in section 2(1) (a) of this Measure.

Subsection (2) confers on the Welsh Ministers the power to make regulations further specifying what is meant by “appropriate information and advice” for the purposes of section 2(1)(a) of this Measure.

## **Section 4 – Consultation**

This section confers on Welsh Ministers the power to make regulations specifying in further detail the steps which relevant authorities must or may take in satisfying their duty to consult carers which is contained in section 2(1) (b) and (c) of this Measure.

### **Section 5 – Further provision about strategies**

Subsection (1) confers on Welsh Ministers the power to make regulations containing further provisions as to how the relevant authority is or relevant authorities are to prepare and publish their strategies under section 2 of the Measure.

Subsection (2) lists some examples of the further provisions the Welsh Ministers may make in regulations made under subsection (1) with respect to the preparation and publication of strategies.

Subsection (3) provides that, where there is more than one responsible authority for a strategy, the Welsh Ministers may designate one of them as being the lead authority for each strategy, the designation of lead authority being for the purposes of co-ordinating and overseeing the preparation, publication and any subsequent review of the strategy.

### **Section 6 – Submission of draft strategy to Ministers**

This section details how a responsible authority or the lead authority, if there is more than one relevant authority (or, where there is no lead authority, the responsible authorities acting together) are to submit a draft strategy to the Welsh Ministers.

Subsection (1) provides a duty to submit the strategy in draft to the Welsh Ministers.

Subsection (2) details what the Welsh Ministers must do upon receipt of the draft strategy. They must either inform the responsible authority or authorities that they are satisfied that the draft strategy complies with the requirements imposed by this Measure, or if they are not satisfied, the Welsh Ministers will then give such directions as they think fit to the responsible authorities so that the responsible authorities will then be able to ensure that the strategy does comply with the requirements imposed by this Measure.

Subsection (3) provides that the responsible authority or authorities must not publish a strategy in its final form, until such time as they have sent a draft strategy to the Welsh Ministers, and the Welsh Ministers are satisfied that the draft strategy complies with the requirements of this Measure, or if the Welsh Ministers upon receipt of a draft strategy, have issued directions stating what the responsible authorities must do in order to ensure that the strategy does comply with the requirements of this Measure, that such directions have been complied with.



Subsection (4) confers on the Welsh Ministers the power to make regulations specifying in further detail how and when the provisions of this section 6 must be complied with.

### **Section 7 - Public access to strategy**

5.9 This section provides for a copy of the strategy of each responsible authority to be made available for inspection, free of charge, at its principal office.

### **Section 7A - Power to add further relevant authorities**

5.10 This section gives the Welsh Ministers a power, by order, to amend the list of “relevant authorities” set out in the definition at section 2(3) by adding further bodies or authorities or descriptions of body or authority.

### **Section 7B - Amendment to the Local Authority Social Services Act 1970**

5.11 This section adds the Carers Strategies (Wales) Measure 2010 to the list of enactments at Schedule 1 of the Local Authority Social Services Act 1970. The 1970 Act makes provision concerning the exercise of social services functions, including a requirement that Welsh local authorities in exercising their social services functions comply with guidance and directions issued by the Welsh Ministers. The inclusion of the Measure at Schedule 1 of the Act ensures that local authority functions under the Measure are social services functions for the purposes of the Act.

### **Section 8 – Orders and regulations**

This section contains general provision about subordinate legislation (orders and regulations) made under this Measure.

Subsection (1) provides that where the Welsh Ministers are empowered by the Measure to make orders or regulations, these are to be made by statutory instrument. This means that the provisions of the Statutory Instrument Act 1946 are to be applied to such orders and regulations, including requirements about publication.

Subsection (2) provides that orders or regulations made under this Measure may make different provision for different purposes and may include incidental, supplementary, consequential, transitory or transitional or saving provisions.

Subsection (3) provides that orders or regulations made under the Measure will be subject to the negative procedure whilst subsections (4) and (5) provide that subsection 3 does not apply in relation to an order made under section 7A of the Measure, or the first set of regulations made by the Welsh Ministers under each of sections 2(1), 3(2), 4 and 5(1).

## **Section 9 – Commencement**

The Measure will come into force by the Welsh Ministers making a Commencement Order.