

Explanatory Memorandum to the Carers Strategies (Wales) (Amendment) Regulations 2012

This Explanatory Memorandum has been prepared by the Department for Health, Social Services and Children 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 Carers Strategies (Wales) (Amendment) Regulations 2012 and I am satisfied that the benefits outweigh any costs.

Gwenda Thomas AM

Deputy Minister for Children and Social Services under authority of the Minister for Health and Social Services, one of the Welsh Ministers.

3 February 2012

1. Description

1.1 The Carers Strategies (Wales) (Amendment) Regulations 2012 are derived from the Carers Strategies (Wales) Measure 2010 (“the Measure”). The Measure was granted Royal Assent on 10 November 2010. The Measure provides for strategies to be prepared and published by certain public bodies about arrangements for the benefit of unpaid carers. These are carers that do not receive payment for their caring work. Throughout this Explanatory Memorandum these carers are referred to as ‘carers’ and ‘unpaid carers’.

1.2 The Measure places a duty on a ‘designated authority’ or two or more ‘designated authorities’ to work together to prepare, publish and implement local information and consultation strategies for the benefit of carers. In this initial roll out of the Measure, the first ‘designated authorities’ are the seven Local Health Boards, Velindre NHS Trust, the Welsh Ambulance Service NHS Trust and local authorities. Local Health Boards and the two NHS Trusts are the ‘lead authorities’ charged with coordinating the development of the local strategies.

1.3 The strategies will set out arrangements for the provision of information and guidance for carers to enable them to carry out their caring role effectively and set out arrangements for the full involvement of carers in decisions regarding the provision of services to them and the person(s) they care for.

2. Matters of Special Interest to the Constitutional and Legislative Affairs Committee

2.1 The Committee considered the Carers Strategies (Wales) Regulations 2011 at its meeting of 28 November 2011. It reported that regulation 9(7) which states that “the strategy must be published in both English and Welsh *unless it is not reasonably practicable to do so*” ran counter to the principle of equality between the English and Welsh languages. The Chair of the Committee raised this issue during the plenary debate on the Regulations on 6 December and the Deputy Minister undertook to revoke this regulation. The Chair of the Committee wrote to the Deputy Minister for Children and Social Services formally setting out these concerns and in her reply dated 10 January 2012, the Deputy Minister stated that as public authorities are required under the Welsh Language Act 1993 to produce information that would be of interest to the public in both English and Welsh in any case, that she would revoke this particular Regulation.

2.2 It has also been drawn to the attention of officials that in the Welsh version of the Carers Strategies (Wales) Regulations 2011, ‘Gwynedd’ does not appear in the list of ‘designated authorities’ within the Welsh text of the Schedule to those Regulations.

2.3 Therefore, the Carers Strategies (Wales) (Amendment) Regulations 2012 deal with these issues by revoking regulation 9(7) and by amending the Welsh text of the Schedule to include ‘Gwynedd’.

3. Legislative background

3.1 The powers to make the Carers Strategies (Wales) (Amendment) Regulations 2012 are contained in sections 5(1) and (2) and 10(2) of the Measure.

3.2 The Carers Strategies (Wales) Regulations 2011 were subject to the affirmative procedure and were laid before the National Assembly for Wales on 15 November 2011. Section 10 (5)(b) of the Measure states that “A statutory instrument containing the first Regulations made by the Welsh Ministers under each of sections 2(1), 3(2), 4, 5(1) and 6(4), ...must not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales”.

3.3 As these Regulations are not the first regulations made under section 5(1) the Carers Strategies (Wales) (Amendment) Regulations 2012 are subject to the negative resolution procedure as set out in section 10(3) of the Measure.

4. Purpose & intended effect of the legislation

4.1 The Constitutional and Legislative Affairs Committee, in scrutinising the Carers Strategies (Wales) Regulations 2011, considered that regulation 9(7) ran counter to the principle of equality between the Welsh and English language. This was subsequently raised in plenary on discussing the motion to approve the Regulations. The Deputy Minister for Children and Social Services agreed to bring forward these amending Regulations and revoke regulation 9(7) to avoid any implication that the Welsh and English versions of the strategies are treated differently.

4.2 The Regulations also correct a minor editing error to include ‘Gwynedd’ in the Welsh text of the Schedule to the Carers Strategies (Wales) Regulations 2011. This will ensure consistency and clarity between the Welsh and English texts.

5. Regulatory Impact Assessment

A full regulatory impact assessment was undertaken in relation to the Carers Strategies (Wales) Regulations 2011, and for convenience, a copy is included below. As these regulations only make minor amendments to the existing Regulations it was not considered necessary to carry out a regulatory impact assessment as they make technical amendments that have no major policy impact.

Regulatory Impact Assessment

1. Options

Option 1 - Do nothing

1.1 Not introducing the Regulations will mean that the policy intention of the National Assembly for Wales in passing the Measure will not be given effect and carers will not benefit from having the duty placed upon the 'designated authorities' to meet their information and consultation needs. During the scrutiny process associated with the Measure, it was agreed that the detail of work to be taken forward would be provided for in the Regulations. The Measure simply describes the duties to be placed on 'relevant authorities' in relation to the development of local strategies and sets out the Regulation making powers under sections 2(1), 3(2), 4, 5(1) and 6(4).

Option 2 – Bring all of the Regulations into force

1.2 Introducing all of the Regulations will mean that the policy intention of the National Assembly for Wales in passing the Measure is given effect. It will mean that the seven Local Health Boards, Velindre NHS Trust, the Welsh Ambulance Service NHS Trust and local authorities will have clear, detailed requirements placed on them to prepare, publish and implement a local strategy that will meet the information and consultation needs of carers.

2. Costs and Benefits

Option 1 - Do nothing

2.1 Not introducing the Regulations will mean that no additional financial costs are incurred by the 'designated authorities' but that no benefit will be brought to carers in relation to meeting their information and consultation needs. Another significant cost arising from not supporting carers in these ways include the possibility of increased numbers of admissions to hospital of cared for persons.

Option 2 – Bring all of the Regulations into force

2.2 Introducing all of the Regulations will mean that financial costs will be borne by the 'designated authorities'. The costs will be met by funding from the Welsh Government. The level of funding was agreed during the Measure's scrutiny process (£900,000 in 2012-13; £1.7m in 2013-14; £3.2m in 2014-15) and the formula for its allocation has been agreed by the Deputy Minister for Social Services and Children and Minister for Health and Social Services. The drafting of a specific Chapter that dealt with the information and consultation needs of young carers was also agreed during the scrutiny process and funding for that purpose is also provided: £80,000 in 2012-13; £150,000 in 2013-14 and £200,000 in 2014-15.

2.3 The funding is being allocated to LHBs in recognition of their role as 'lead authorities' and the Deputy Minister for Social Services and Children's clear

wish is for the NHS to be in the lead in taking forward this legislation. The formula for allocation is the standard LHB Hospital, Community and Health Services formula and the allocation for 2012-13 is set out below:

<u>LHB</u>	<u>Allocation</u>
Abertawe Bro Morgannwg	72,064
Aneurin Bevan	81,944
Betsi Cadwaladr	97,436
Cardiff and Vale	55,428
Cwm Taf	43,451
Hywel Dda	53,493
Powys	16,184
Velindre NHS Trust	20,000
Welsh Ambulance Service NHS Trust	10,000

This funding will be distributed in the first week of April 2012. Ministers will require a short joint Local Health Board/Social Services report by 1 September 2012 confirming how this funding has been spent and the good practice generated.

The second allocation will be made available to support the implementation of the Measure. The distribution for the second allocation will also include dedicated funding for delivering the Young Carers Chapter of local strategies and is detailed below:

<u>LHB</u>	<u>Main Allocation</u>	<u>Young Carers</u>
Abertawe Bro Morgannwg	72,064	13,726
Aneurin Bevan	81,944	15,608
Betsi Cadwaladr	97,436	18,559
Cardiff and Vale	55,428	10,558
Cwm Taf	43,451	8,276
Hywel Dda	53,493	10,189
Powys	16,184	3,083
Velindre NHS Trust	20,000	
Welsh Ambulance Service NHS Trust	10,000	

This funding will be allocated to organisations following Ministerial sign-off of the local strategies towards the close of 2012, as provided for in Regulation 8. Funding for subsequent financial years will be confirmed in due course.

3. Consultation

3.1 A public consultation on the draft Regulations and Guidance was held between 31 March 2011 and 30 June 2011. The documents can be found at this location and are available in English, Welsh, Everyday English and Easy Read English:

<http://wales.gov.uk/consultations/healthsocialcare/carers/?lang=en&status=closed>

64 responses were received from the following types of organisations:

Individual (including groups of individuals)	11
LHB/NHS Trust	8
Professional/Representative organisation	3
Social Services	12
Third sector organisation	27
Other organisation	3

3.2 A report of the consultation that sets out the main issues raised and whether they have been accepted or rejected for inclusion in the final Regulations and Guidance can be found through the above link.

3.3 A Carers Measure Stakeholder Advisory Group was established at the commencement of the legislative process to develop the Measure and have contributed advice throughout. The Group's membership included representation from the NHS, Social Services and the Third Sector.

4. Post implementation review

4.1 The Regulations commit LHBs, the two NHS Trusts and Social Services to monitor the implementation of Strategies and set out what those arrangements will be.

4.2 The Regulations also commit LHBs, the two NHS Trusts and Social Services to review the implementation of the Strategies after an 18 month period and for them to be replaced every three years.

4.3 Welsh Ministers are also considering establishing a group which will be led by officials to oversee the implementation of the Measure. The group would include senior representatives from the NHS, Social Services and the Carers Third Sector.