

Explanatory Memorandum to the Care and Support (Population Assessments) (Wales) Regulations 2015

This Explanatory Memorandum has been prepared by the Department for Health and Social Services 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 (Population Assessments) (Wales) Regulations 2015 and I am satisfied that the benefits outweigh any costs.

Mark Drakeford AM

Minister for Health and Social Services
5 June 2015

Part 1 – OVERVIEW

1. Description

The Social Services and Well-being (Wales) Act 2014 brings together local authorities' duties and functions in relation to improving the well-being of people who need care and support and carers who need support in a single Act. The Act provides the statutory framework to deliver the Welsh Government's commitment to integrate social services to support people of all ages, and support people as part of families and communities.

Section 14 of the Act requires local authorities and Local Health Boards ('LHBs') to jointly assess:

- (a) the extent to which there are people in the local authority's area who need care and support;
- (b) the extent to which there are carers in the local authority's the area who need support;
- (c) the extent to which there are people in the local authority's area whose needs for care and support (or, in the cases of carers, support) are not being met (by the authority, the Board or otherwise);
- (d) the range and level of services required to meet the care and support needs of people in the local authority's area (including the support needs of carers);
- (e) the range and level of services required to achieve the purposes in section 15(2) (preventative services) in the local authority's area; and
- (f) the actions required to provide the range and level of services identified in accordance with paragraphs (d) and (e) through the medium of Welsh.

Section 14 also provides the Welsh Ministers with wide ranging regulation making powers to, for example, provide for the timing and review of assessments.

This Explanatory Memorandum should be read in conjunction with the Explanatory Memorandum for The Care and Support (Partnership Arrangements for Population Assessments) (Wales) Regulations 2015

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

No specific matters identified.

3. Legislative background

The powers enabling these Regulations to be made are contained in section 14 of the Act which requires local authorities and Local Health Boards (referred to in the regulations as "responsible bodies") to jointly assess the matters specified in section 14(1)(a) to (f) of the Act.

This statutory instrument is subject to annulment in pursuance of a resolution of the National Assembly for Wales (the negative procedure).

The regulations will come into force on 6 April 2016.

4. Purpose and intended effect of the legislation

The purpose of these Regulations is to ensure that local authorities and Local Health Boards jointly produce a clear and specific evidence base in relation to care and support needs and carers' needs (the population assessment report) to inform various planning and operational decisions. Currently, assessment of the population's need for care and support and subsequent identification of the range and level of services necessary to meet that need is not carried out in a joined-up or systematic way. The requirements of section 14 of the Act will support the provision of services that are planned and developed to meet the needs of people in an efficient and effective way by public sector partners. The population assessment will also underpin resource and budget decisions in order to ensure services are sustainable.

The population assessment report will also facilitate the key principle of prevention and early intervention. Section 15 of the Act requires that local authorities provide or arrange preventative services to achieve the purposes set out in section 15(2). As part of a population assessment, local authorities and Local Health Boards will need to identify the range and level of preventative services necessary to meet these purposes. The preventative approach will therefore be targeted at clearly identified need.

Regulations under section 14 set out:

Population assessment report

- That the responsible bodies (local authorities and Local Health Boards) must jointly produce a report of the outcome of the population assessment.

Achievement of well-being outcomes

- That local authorities and Local Health Boards must have regard to the statement of well-being outcomes (issued under section 8 of the Act) when carrying out population assessments.

Citizen Engagement

- That local authorities and Local Health Boards must engage with people (including adults and children with care and support needs, carers, and the parents of children with care and support needs) in the production of a population assessment report and establish a procedure for this engagement.

Engagement with the private sector and third sector

- That local authorities and Local Health Boards must engage with private sector and third sector organisations concerned with the provision of care and support or preventative services to the local population in the production of a population assessment report.

Publication Arrangements

- That the first population assessment reports must be produced by 1 April 2017. Each local authority and Local Health Board must publish the relevant population assessment on its website and submit a copy to Welsh Ministers.

Review Arrangements

- That population assessment reports must be kept under review.

The Care and Support (Partnership Arrangements for Population Assessments) (Wales) Regulations 2015 will require local authorities and Local Health Boards to enter into partnership arrangements for the purpose of carrying out a population assessment. Partnership arrangements must be entered into by each Local Health Board and the local authorities within that Local Health Board area. In addition, a lead co-ordinator must be appointed for each partnership arrangement.

These Regulations will be supported by chapter 2 in the Part 2 code of practice for the Act covering social services general functions. The power to issue codes is contained in Section 145 of the Act which states that the Welsh Ministers may issue, and from time to time, revise, one or more codes on the exercise of social services functions.

The population assessments required under the Regulations link to and support other requirements on local authority social services under the Act. For example these assessments will inform local authorities in meeting the requirement to promote social enterprises contained in section 16 by aiding in the identification of what needs for care and support and preventative services these social enterprises should provide. They will similarly inform the nature of the information, advice and assistance service that local authorities are required by section 17 to provide.

The Act makes clear that the population assessments must be taken into account in the production of health and well-being strategies as required by the National Health Service (Wales) Act 2006 and children and young people's plans as required by the Children Act 2004. The Welsh Government will ensure that there continues to be a statutory link to any further legislation relating to the strategic planning function of public authorities. Our expectation is that the population assessments will contribute significantly to the development of the elements of any current or future plans and strategies relating to health and social services.

The Integrated Medium Term Plans produced by Local Health Boards over a rolling three year period, as required by the NHS Finance (Wales) Act 2014, set out how resources will be used to address areas of population health need and improve health outcomes; improve the quality of care; and, ensure best value from resources. These three year integrated medium term plans are informed by the assessment of population health and wellbeing need and service development plans which increasingly will be undertaken for populations of between 25,000 and 100,000 through the primary care clusters as envisaged in the Welsh Government's national plan for a primary care service for Wales (November 2014).

Joint local authority and Local Health Board care and support population assessments will inform, and be informed by these very local cluster population assessments and the health boards' Integrated Medium Term Plans.

Part 2 of the Housing (Wales) Act 2014 requires local authorities produce a homelessness strategy for the purposes of preventing and responding to homelessness. Given those affected, or at risk of being affected, by homelessness will likely have care and support needs, these population assessments should inform the production of a homelessness strategy.

The Care and Social Services Inspectorate Wales and Health Inspectorate Wales will take population assessment reports produced into account when carrying out inspections of local authority social services departments and Local Health Boards respectively.

5. Consultation

A 12 week consultation on these Regulations ran between 6 November 2014 and 2 February 2015. Further details on the consultation process are set out in the Regulatory Impact Assessment in Part 2.

The Report and a list of respondents can be found at:

<http://wales.gov.uk/consultations/healthsocialcare/part2/?lang=en>

PART 2 – REGULATORY IMPACT ASSESSMENT

This Regulatory Impact Assessment should be read in conjunction with the Regulatory Impact Assessment for The Care and Support (Partnership Arrangements for Population Assessments) (Wales) Regulations 2015

Options

The options considered by the Welsh Government in relation to the population assessments are as follows:

Option 1: Do the minimum assessment of needs for care and support, support for carers and preventative services required under the Act

This option will impose the minimum assessment required by section 14 of the Act. Under this option, there would be no requirement to publish a population assessment report, no specific timing or review requirements would be set out in Regulations and there would be no requirement to engage with citizens when undertaking the assessment.

Option 2: Bring Regulations into force

Under option 2, Regulations would provide further detail in relation to the implementation of the requirement to carry out the population assessment provided for by section 14 of the Act. These Regulations would link the assessment to other sections of the Act including requiring the responsible bodies to have regard to the Welsh Ministers statement of the well-being of people in Wales who need care and support and carers in Wales who need care and support when preparing population assessments as set out in section 8 of the Act.

These Regulations will also require local authorities to take reasonable steps to engage with citizens in the local authority's area when carrying out a population assessment. Specifically the Regulations require engagement with people who have or may have needs for care and support, including people with parental responsibility for children who have or may have needs for care and support and carers who have or may have a need for support.

The Regulations will also specify when the first population assessment must be produced along with publication and review arrangements.

Costs and benefits

COSTS

Option 1: Do the minimum assessment of needs for care and support, support for carers and preventative services required under the Act

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

- (i) Local authorities and Local Health Boards
- (ii) the Welsh Government

These additional costs are discussed below.

One-off

It appears reasonable to assume that at least some additional one-off costs will be incurred by local authorities and Local Health Boards in terms of staff time in order to produce the population assessments required by section 14 of the Act. However, as Regulations will not introduce any requirements for publication of a population assessment report, costs would be limited in this regard. As with Option 2, any costs would be encompassed in the current spend by local authorities and Local Health Boards on the production of health, social care and wellbeing strategies which local authorities and Local Health Boards have been required to produce since April 2003. However, given the potential for significant variation in the level and scale of assessments undertaken by Local authorities and Local Health Boards under this option, one-off costs are likely to vary more significantly compared with Option 2.

There will also be costs to the Welsh Government associated with training of local authorities and Local Health Boards in relation to this option. Option 2 details costings for supporting the Care Council for Wales to lead on the development and implementation of a national learning and development strategy for implementation of the Act. Option 1 would also use these figures for estimating the costs of implementation/training incurred by the Welsh Government. These figures are listed below.

This Option envisages that £1m be allocated in 2015-16 from the social care workforce development programme. A further £7.1m from the programme, together with the local authority match funding, making a total of some £11m would support the development and implementation of cross-sector regional training plans, which align with both the national strategy and regional implementation plans. This approach would ensure coherence across the service and workforce planning for implementation at a national, regional and local level.

In addition, Option 2 details the ongoing to support local government and its partners in making the transition to the new arrangements. This is also applicable here and is listed below.

In 2013-14 and 2014-15, a Delivering Transformation grant was made available to the six regional partnerships and selected national partners to enable local government and its partners to put in place the requirements of the new Act. We have doubled the funding available through this grant to £3m in 2015-16. This is in addition to the £20m already announced this year to carry on the work of projects funded through the Intermediate Care Fund and the £10m increase in the Revenue Support Grant for Social Services purposes. In order to build on this momentum and ensure that support for implementation of the Act evolves into support for the embedding process post April 2016 a further £3m in grant funding would be made available in 2016-17, subject to budgetary decisions.

Recurring

As Regulations will not specify a timeframe for when the population assessments must be completed, nor any review requirements; calculating any precise recurring costs for local authorities and Local Health Boards is difficult. However, we envisage these costs would be minimal. Potentially there could be no recurring costs due to there being no statutory review requirements for the assessments, however this is entirely dependent on whether local authorities and Local Health Boards decide to review the assessments.

Option 2: Bring Regulations into force

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

- (i) Local authorities and Local Health Boards
- (ii) the Welsh Government

These additional costs are discussed below

One-off

It appears reasonable to assume that at least some additional one-off costs will be incurred by local authorities and Local Health Boards in terms of staff time in order to produce the population assessments required by section 14 of the Act. Regulations will set out that the first population assessment must be produced by 1st April 2017 and each local authority must publish on its website the population assessment report that has been produced for its area. There will be local authority staff time involved in this requirement.

There will also be a limited administrative cost involved in establishing a process for engaging with citizens in order to develop the population assessment reports. The 'recurring costs' section of this RIA gives a comparative indication of the costs of citizen engagement incurred as part of the production of a Single Integrated Plan. However, the cost for engagement with citizens in the production of the population assessment report required by the Act should be less given the more focused scope of the assessment on care and support needs and the support needs of carers

The work of implementing the Act – and through it the new system for social care required by Sustainable Social Services – goes beyond making subordinate legislation, as important as this is. Preparing the workforce and the population is a key element to a smooth transition from the existing to the new system.

Following positive discussions with stakeholders we have commissioned the Care Council for Wales, as the lead body for workforce development, to lead on the development and implementation of a national learning and development strategy. Stakeholders were of the view that it is important for the Council to have a lead role in this work as a trusted source of knowledge and expertise. The strategy is critical to the implementation of the Act and will need sustained, deliberate and high-profile

leadership, which can reach out across a wide range of organisations and partners beyond the boundaries of the traditional social care sector.

The Care Council has developed this work with key stakeholders to ensure we have a strategy which covers all of those involved in the provision of social care, together with their key partners, and that it is delivered jointly and in collaboration with those partners. The strategy includes a training deployment plan and a one-stop-shop information hub, playing a key supporting role for the sector in ensuring its own readiness for the changes the Act and its regulations will bring into force. The Care Council for Wales will also update, publish on line and promote the basic awareness raising material as a common tool for use across partners and support, encourage and monitor delivery. The resources and material developed by the Care Council will be made available free of charge to all organisations.

This has been supported by £1m in 2015-16 from the social care workforce development programme. A further £7.1m from the programme, together with the local authority match funding, making a total of some £11m will support the development and implementation of cross-sector regional training plans, which align with both the national strategy and regional implementation plans. This approach ensures coherence across the service and workforce planning for implementation at a national, regional and local level.

We will continue to support local government and its partners in making the transition to the new arrangements. In 2013-14 and 2014-15, a Delivering Transformation grant was made available to the six regional partnerships and selected national partners to enable local government and its partners to put in place the requirements of the new Act. We have doubled the funding available through this grant to £3m in 2015-16. This is in addition to the £20m already announced this year to carry on the work of projects funded through the Intermediate Care Fund and the £10m increase in the Revenue Support Grant for Social Services purposes. In order to build on this momentum and ensure that support for implementation of the act evolves into support for the embedding process post April 2016 a further £3m in grant funding will be made available in 2016-17, subject to budgetary decisions.

The work underway now will build on the national consensus we have to make the changes we need to improve social services in Wales. We will continue to ensure all the key aspects of Sustainable Social Services are taken forward with the close involvement of citizens and strong joint leadership from local government, the NHS and private and third sector providers.

The Welsh Government will continue to work with the national partnership forum, the leadership group and citizens panel to support this, and ensure that people who use services remain at the heart of our programme for change.

Recurring

The Code of Practice requires one population assessment report to be produced per local government electoral cycle and be kept under review. This will mean a continued cost to local authorities and Local Health Boards in terms of staff time in producing and reviewing reports. Any cost will not be greater than existing assessment processes.

As these population assessments are a new process, calculating the precise recurring costs to local authorities is difficult. Any cost would however be encompassed in the current spend on the production of health, social care and wellbeing strategies, which local authorities and Local Health Boards have been required to produce since April 2003. The Well-being of Future Generations (Wales) Act 2015 will, when implemented, significantly reform the strategic planning framework, including in replacing health, social care and well-being strategies. The production of new population assessments will therefore replace the existing health and social care planning framework costs rather than be in addition to these costs.

The requirement to undertake a health, social care and well-being strategy has been undertaken as part of the production of Single Integrated Plans (SIPs) from 2012/13. The total costs currently incurred in the production of a strategic needs assessment as part of the process of developing SIPs by local government and their partners via Local Service Boards (LSBs) therefore encompass any potential costs for producing population assessment reports in the future. The costs of a population assessment reports will be less than the costs of producing a strategic needs assessment given the remit of the new assessment will be limited to care and support needs and the support needs of carers.

Estimated costs for the current Single Integrated Planning arrangements have been developed as part of the Regulatory Impact Assessment for the Well-being of Future Generations Act 2015 and are summarised below:

Preparing and updating strategic needs assessments

In 2012/13, comprehensive strategic needs assessments (also called variously joint needs assessments and unified needs assessments) were completed for the first time to inform SIPs. In most cases the approach taken was to build on the needs assessments which had previously been undertaken for the children and young people plans and the health social care and well-being strategies, updating the information contained within them and filling in the gaps as necessary. In all cases, the local authority led this work and undertook the great majority of the evidence gathering, collation, analysis and publication. Other partners, notably health and the police, made contributions, mainly of data which they already collected and analysed for their own corporate and service planning purposes. The preparation of strategic needs assessments was carried out in-house except in two cases where an initial analysis was commissioned from external consultants. In these cases, a cost of approximately £20,000 in total was expended on external consultancy.

The following table provides a best estimate for the cost of compiling a strategic needs assessment for the first time. In the future the element of the costs of this wider assessment that relates specifically to assessing care and support needs will instead be incurred when undertaking the population assessment required by section 14 of the Act.

Table 1: Estimated cost for preparing a strategic needs assessment to inform a Single Integrated Plan

Organisation	Official	Time commitment	Annual salary (£)	Cost of preparing the Strategic Needs Assessment (£)
Local authority	Analyst	100 days	51,900	23,600
Local health board	Analyst	5 days	50,310	1,100
Public Health Wales	Analyst	2 days	50,310	500
Police (will not be a partner in the Population Assessment reports)	Analyst	3 days	51,900	700
TOTAL				25,900

Citizen engagement as apart of the production of a Single Integrated Plan

Engagement with people and communities, including communities of interest and children and young people, has been part of the overall process of developing SIP's. Again, this does allow some comparison with what the costs for engaging with citizens for the production of new population assessment reports might be.

The engagement in relation to the production of SIPs took many forms, some electronic using existing mechanisms (surveys, questionnaires, internet consultation) but there are more labour intensive elements including workshops and meetings involving the public, representatives on second tier partnerships and other stakeholders e.g. third sector. The LSB support officer plays an important role in leading engagement and analysing the results but draws also on the expertise of engagement officers, mainly in local government, and the managers of second tier partnerships, such as those for children and young people.

The total cost for citizen engagement in the year that the plans are produced is estimated to be £31,900. Each local authority is expected to participate in citizen engagements and the total cost across Wales is therefore estimated to be £701,800. The total cost for engagement with citizens in the production of the new population assessment report required by the Act should be less however given the more focused scope of the assessment to care and support needs and the support needs of carers. Local authorities and LHBs are, via supporting code of practice, encouraged to utilise existing panels or forums to undertake the new population assessment. This should further limit the cost.

There will be a recurring cost to the Welsh Government in terms of considering the population assessment reports when they are submitted to the Welsh Ministers, as stipulated in the proposed regulations. There will also be a recurring cost to the Welsh Government in terms of assessing the effectiveness of the population assessment process more widely to ensure that it adds value. These costs will be in terms of staff time and will be minimal. In terms of quantifying staff costs, we have estimated that

each combined population assessment report will require one day of Welsh Government analysis at Higher Executive Officer (HEO) level. Therefore, to analyse the seven combined LA/LHB assessment reports, a total of seven days at HEO level will be required. The cost of one day at HEO is £114.21; therefore a total cost of £799.47 is estimated for this work.

BENEFITS

Option 1: Do the minimum assessment of needs for care and support, support for carers and preventative services required under the Act

No significant benefits have been identified under this option. However, because there will be no additional regulatory requirements on local authorities and Local Health Boards over and above those contained in section 14 of the Act, costs should be minimal as only the minimum implementation of this section of the Act will be undertaken. Not including any requirement to publish the assessments undertaken by local authorities and Local Health Boards under section 14 will also mean that any costs incurred by local authorities and Local Health Boards in terms of staff time should be minimised.

Option 2: Bring Regulations into force

The primary focus of the Act is to establish a revised and coherent framework for social services that can achieve the changes needed to enable sustainability for the future. The population assessment process, as set out in detail within the Part 2 Code of Practice, is central to the ability to meet need for both individuals and population needs. These Regulations, in conjunction with *The Care and Support (Partnership Arrangements for Population Assessments) (Wales) Regulations 2015*, will ensure effective implementation of the shift in focus and planning to include services for prevention and early intervention that are essential for sustainability of social services into the future. Through the production of the population assessment reports required by these Regulations, local authorities and Local Health Boards will be able to identify how services can be more effectively and efficiently targeted within their areas.

The Regulations will also ensure that the views of people are better taken into account by local authorities and Local Health Boards when identifying the needs for care and support and support needs of carers through the citizen engagement requirement contained within Section 2 of the Regulations. This requires local authorities and Local Health Boards to take reasonable steps to engage with people in the local authority's area who have or may have needs for care and support, people with a parental responsibility for children who have or may have needs for care and support and carers who have or may have needs for support.

This engagement is in keeping with the principle of voice and control that underpins the wider Social Services and Well-being (Wales) Act 2014. This principle, as originally set out in the Regulatory Impact Assessment for the Bill stated that the way social services are delivered will be transformed, primarily through promoting people's independence to give them stronger voice and control.

Similarly, other services providers, including in the third and private sector, will be able to deliver services to meet people's needs for care and support to some extent. Therefore the requirement to engage with other service providers contained in the regulations will ensure that they can assist in making sure the range and level of services identified as necessary will be realistic and sustainable.

In addition, the requirement that a population assessment report is published will ensure that the assessment becomes an effective tool to inform a range of planning decisions within local authorities, Local Health Boards and beyond. The Regulations, combined with the Code of Practice provide local authorities and Local Health Boards with a clear framework for producing a coherent and detailed population assessment which links in with many other pieces of work required within health and social services legislation, including the need to promote social enterprises and the provision of information, advice and assistance.

Finally, the need to have regard to the national outcomes framework will ensure that in identifying the range and level of services necessary, local authorities and Local Health Boards will have a description of successful outcomes that they should aspire to.

RISKS

Option 1: Do the minimum assessment of needs for care and support, support for carers and preventative services required under the Act

One risk of this approach will be that the quality of population assessments undertaken across Wales could vary significantly. This is because not having any requirements in place for local authorities and Local Health Boards to publish assessments undertaken or submit them to Welsh Ministers will make it difficult for the Welsh Government to carry out any comparison, or assessment of quality of the population assessments undertaken.

Additionally, any population assessments carried out under this option could also risk being compromised by not having sufficient engagement with citizens, the third sector and the private sector. This is because under this option there are no specific requirements for local authorities and Local Health Boards to take reasonable steps to engage with these groups when carrying out a population assessment. This would also be contrary to the core principles in the Act, that people play a vital role in securing the best quality of services designed around their own needs.

Option 2: Bring Regulations into force

Bringing Regulations into force to support the section 14 requirements risks increasing pressure on local authorities and Local Health Boards. This is due to the Regulations requiring citizen engagement when carrying out population assessments, as well as introducing statutory requirements to publish the population assessment reports and keep them under review. Introducing these regulatory requirements will lead to an increase in local authority and Local Health Board 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 assessment reports.

However, the impact of these additional costs will be mitigated by the Welsh Government providing funding to both the Care Council for Wales and local authorities to aid in implementation of the Act. Further specific detail on this funding was provided in the 'costs' section of this RIA for Option 2. To further assist local authority and Local Health Board staff, guidance and a toolkit will be developed by the Welsh Government in addition to a statutory Code of Practice, which will aid local authorities in producing their population assessment reports.

Consultation

A 12 week public consultation on these Regulations and accompanying Code of Practice ran between 6 November 2014 and 2 February 2015. The Consultation Summary Report can be found at:

<http://wales.gov.uk/consultations/healthsocialcare/part2/?lang=en>

Competition Assessment

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. The only question with an affirmative response was 'Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?'

Once completed, the population assessment reports will indicate the care and support needs in an area. This could affect how various organisations will plan their services, and subsequently inform the procurement of services by local authorities and local health boards. However, the impact of this is likely to be minimal.

Post implementation review

Under option 2, Regulations state that the responsible bodies must jointly keep the population assessment report under review and may issue an addendum to the report whenever they consider it appropriate to do so. In addition, Regulation 6(4) states that each local authority must submit to the Welsh Ministers a copy of the population assessment report which has been produced for its area. This will provide an opportunity for the Welsh Government to review the population assessment reports in terms of their level of detail, presentation format and content. The Welsh Government will carry out this review following receipt of the first set of population assessments in 2017. This review of the assessment reports will help to inform any changes that may need to be made to regulations following potential implementation of the proposed changes contained in the Welsh Government White Paper, [Reforming Local Government: Power to Local People](#).