

Explanatory Memorandum to the National Independent Safeguarding Board (Wales) (No.2) Regulations 2015

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 National Independent Safeguarding Board (Wales) (No.2) Regulations 2015. I am satisfied that the benefits outweigh any costs.

Mark Drakeford
Minister for Health and Social Services
30 October 2015

Part 1 – OVERVIEW

Description

1. 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.
2. These Regulations relate to the National Independent Safeguarding Board ('the National Board') which is established under section 132 of the Social Services and Well-being (Wales) Act 2014 and set out arrangements for appointments to, and the proceedings of, the National Board.

Matters of special interest to the Constitutional and Legislative Affairs Committee

3. These Regulations revoke and replace the National Independent Safeguarding Board (Wales) Regulations 2015 as they are considered to be technically flawed for the reasons set out below. The Regulations have a coming into force date of 25 November 2015. There are no other changes to bring to the Committee's attention.

Legislative background

4. The powers enabling these Regulations to be made are contained in section 133(1) of the Social Services and Well-being (Wales) Act 2014 ('the Act').
5. This instrument is subject to the negative resolution procedure.

Purpose and intended effect of the legislation

6. These Regulations have been made to correct an administrative error. As a consequence of the Social Services and Well-being (Wales) Act 2014 (Commencement No.2) Order 2015 naming the appointed day for commencement of sections 132 and 133 of the Act as 21 October 2015, the National Independent Safeguarding Board (Wales) Regulations 2015 were not only made, but came into force in advance of the relevant powers in the Act.
7. While it may be considered that section 13 of the Interpretation Act 1978, regarding the anticipatory exercise of powers, provides a sufficient legal basis, it is considered prudent to place the matter beyond doubt by revoking and remaking the regulations with a coming into force date after the appointed day for the coming into force of the enabling power in the Act.

8. The Regulations provide for the National Board to consist of up to six members, appointed by the Welsh Ministers, with one of the members to be appointed as chair. The Regulations make further provision about the proceedings of the National Board, the establishment of supplementary groups, consultation by the National Board with those affected by its work, and set out arrangements for the National Board's annual report to the Welsh Ministers.
9. An evaluation of Local Safeguarding Children Boards in 2011 highlighted¹:-

“there is a need for clear strategic direction at a national level with well defined objectives and outcomes, which also facilitate local decision making to meet the needs of children in their local communities”.
10. The National Board will provide this strategic direction for the new Safeguarding Children Boards and the Safeguarding Adults Boards as part of its primary function to provide support and advice to the those Boards.
11. Proposals to establish a National Independent Safeguarding Board were outlined in 'Sustainable Social Services for Wales: A Framework for Action', published by the Welsh Government in February 2011² which stated:-

“we will establish, on a permanent basis, an independently chaired National Safeguarding Board for Adults and Children. This Board will provide national leadership across all stakeholders, will develop and promote high quality standards, and be a focus for learning from experience”.
12. The main responsibility of the members of the National Board will be to ensure that the duties of the National Board are effectively delivered. The National Board will receive information from local Safeguarding Boards and others to assist it to assure the Welsh Ministers that safeguarding and protection are being appropriately led, developed, challenged and promoted in Wales.
13. These proposals are in line with the initial report of the Safeguarding Advisory Panel, established by the then Deputy Minister for Social Services in July 2013 to provide expert advice to the Welsh Government on strengthening safeguarding arrangements for adults and children in Wales. The Panel recommended that a National Board of five members plus the Chair is established, with quoracy expressed as two members alongside the Chair.
14. The Safeguarding Advisory Panel's final report further noted that the National Board should:
 - complement, not duplicate, Safeguarding Boards or Regulator functions;
 - advise, support, challenge, identify concerns and failings by advising the Welsh Ministers;

¹ The Joint Inspection of Local Safeguarding Children Boards 2011 overreview report October 2011

² <http://gov.wales/topics/health/publications/socialcare/guidance1/services/?lang=en>

- not have an inspectorial or scrutiny role with Safeguarding Boards;
- raise awareness - public, workforce and organisational;
- promote and celebrate good safeguarding and protection policy and procedures in Wales;
- undertake specific children and adult work streams within the National Board;
- use a public appointment process to appoint the National Board members;
- ensure the National Board has a clear role and structure, and access to legal, public relations and expert advice;
- ensure it clarifies outcomes - annual report identifies its response to safeguarding themes, challenges and supports Safeguarding Board improvement; and
- promote and raise public awareness of safeguarding using public engagement events.

Consultation

15. The National Independent Safeguarding Board (Wales) Regulations 2015 were subject to a 12 week consultation that 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. No further consultation has been undertaken on these Regulations as they simply revoke and remake the National Independent Safeguarding Board (Wales) Regulations 2015³.

³ S.I. 20151466 (W.160)

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

Option 1: Do nothing

1. In the event of these Regulations not being made, the existing provision about the constitution, membership, proceedings or reporting arrangements of the National Independent Safeguarding Board ('the National Board') would be technically flawed.

Option 2: Bring Regulations into Force

2. Making the Regulations will enable the establishment of the National Board with a remit to provide national leadership, advise Ministers on the adequacy and effectiveness of safeguarding arrangements; and advise on action to help strengthen policy and improve practice.

Costs & benefits for Option 1

3. There would be no costs associated with not making these Regulations. However, the proposed role of the National Board to provide national leadership, advise the Welsh Ministers on the adequacy and effectiveness of safeguarding arrangements; and advise on action to help strengthen policy and improve practice would be incapable of being performed in the manner envisaged in the Social Services and Well-being (Wales) Act 2014 without the risk of challenge.

Costs & benefits for Option 2

4. Appointment of the Chair and Members of the National Board is subject to a public appointments exercise, the costs of which were estimated at £17,000.
5. Running costs of the National Board once established, including remuneration for members, are estimated at £150,000 per annum. Secretariat support will be provided by the Welsh Government at an estimated cost of £30,000 per annum. These costs must be seen as indicative to the extent that the Board will wish to determine its own priorities in the light of experience.
6. These costs should be seen in the context of an overall reduction in the number of Safeguarding Boards and the global effect of this—the package of regulations made under Part 7 of the Social Services and Well-being(Wales) Act 2015. The National Board will provide renewed expert national leadership, advice to Ministers on matters relating to safeguarding arrangements, and on action to strengthen and improve practice.

Consultation

7. The National Independent Safeguarding Board (Wales) Regulations 2015 were subject to a 12 week consultation that 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. No further consultation has been undertaken on these Regulations as they simply revoke and remake the National Independent Safeguarding Board (Wales) Regulations 2015⁴.

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

<http://gov.wales/consultations/healthsocialcare/part7/?status=closed&lang=en>

9. The consultation responses did not raise any issues in respect of the establishment or constitution of the National Board. As part of the consultation, the Welsh Government took the opportunity to gather views as to what should be the priority areas for action by the National Board and these will be used to inform the remit of the National Board once it is established.
10. In addition to that formal consultation, the Safeguarding Advisory Panel was appointed in July 2013 by the then Deputy Minister for Social Services to engage with stakeholders to strengthen the safeguarding proposals in the Social Services and Well-being (Wales) Bill. The Safeguarding Advisory Panel liaised with a range of statutory independent and third sector agencies while the Regulations and Statutory Guidance were being developed.
11. Once developed the draft Regulations and statutory guidance were discussed at two Welsh Government consultation events held on 26 November 2014 and 9 December 2014.

Competition Assessment

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 regulations 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 businesses/organisations?	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

⁴ S.I. 20151466 (W.160)

Q8: Is the sector characterised 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

12. The filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.
13. We do not consider it necessary to undertake a competition assessment for these Regulations since they will not affect the business sector in any significant way

Post implementation review

14. The Social Services and Well-being (Wales) Act 2014 contains provisions to allow the Welsh Ministers to monitor functions of the Act carried out by local authorities and other bodies. The Welsh Ministers may require these bodies to report on their duties in implementing these Regulations.
15. Additionally, the Welsh Government will continue to monitor the impact of the Regulations on areas such as the Welsh language, equality, tackling poverty and the United Nations Principles for Older Persons.
16. As required by the Rights of Children and Young Persons (Wales) Measure 2011, the Welsh Ministers will have due regard to the United Nations Convention on the Rights of the Child (UNCRC) when exercising relevant functions under the Act.