Number: WG32220

Welsh Government
White Paper Consultation Document

Services fit for the future

Quality and Governance in health and care in Wales

Date of issue: 28 June 2017
Action required: Responses by 23:59 on 29 September 2017

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

This White Paper seeks views on proposals covering a number of health and social care issues which may require future legislation. The aim of any new legislation would be to enable organisations and empower citizens. Proposals include the strengthening of local health boards so they function as integrated, accountable, population-based organisations; new duties of candour and quality; areas where health and social care can act more collaboratively; and more effective inspection, regulation and capture of citizens' voices.

Your responses will be considered in developing any new legislation.

How to respond

The closing date for responses is 29 September 2017.

You can respond by

- using the online form or
- downloading a copy of the response form and returning it either by e-mail to:

HQDMailbox@wales.gsi.gov.uk

Or by post to

Healthcare Quality Division
Health and Social Services Group
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also

publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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Foreword by Vaughan Gething, Cabinet Secretary for Health, Well-being and Sport and Rebecca Evans, Minister for Social Services and Public Health

As citizens of Wales we are fortunate to enjoy some of the best health and social care services, provided by committed staff at all levels.

However, over the years, meeting everyone's needs has become an increasing challenge and the system is now under great pressure. People are living longer than ever, which is good news. We all hope for good health as we approach our later years but sadly this is not always the reality. Many people in Wales continue to face numerous health problems, causing them to rely heavily on health and social care services. A number of factors contribute to the current position, including economic disadvantage, the effects of our industrial past, smoking, drinking, lack of physical exercise and poor eating habits.

If we are to be sure of having good quality services available to us for a long time into the future, then all of us - citizens, health and social care organisations, educators, housing providers, national and local government and others - need to come together to prevent illness and reduce overall demand on services.

The Welsh health and care system does not rely on market forces, competition and the sort of fractured picture we see in some other parts of the UK. Our local health boards are not just there to provide services - they have a unique responsibility for the health and well-being of their populations which can only be fulfilled through co-ordinated planning and working with citizens and partners. Understanding the needs of the people living in their areas and meeting those needs requires talented leaders capable of communicating the vision and working both within and across organisational boundaries to deliver high quality services. It also requires continuous improvement, including the engagement of local people on an ongoing basis.

The report published last year by the highly respected Organisation for Economic Co-operation and Development (OECD) assessed our health service as a system which is committed to quality improvement, with the building blocks largely in place to provide excellent, sustainable services to the people of Wales. However the OECD also challenged us to do more to embed prudent healthcare, to strengthen the voice of the citizen, build more accountability and challenge into the system and unlock the undoubted potential of our local health boards.

This White Paper sets out how we may use legislation, either primary or secondary, to respond to some of these challenges. It builds on work already started by the

Social Services and Well-being (Wales) Act 2014 and the Regulation and Inspection of Social Care (Wales) Act 2016. It also acts as a potential platform for any recommendations arising from the Parliamentary Review of Health and Social Care, which is currently underway and which we await with interest. We look forward to receiving your views on our proposals.

Introduction

1. This White Paper sets out the Welsh Government's proposals in various areas of quality and governance in health and care services which may require future legislation. First and foremost, it focuses on the principles of enabling and empowering organisations, staff and citizens. In particular, we want to unlock the potential of local health boards to demonstrate that they govern and behave strategically and that quality is at the heart of all they do. This is very much in support of the principles of Prudent Healthcare and its place in securing health and well-being for future generations. We are therefore proposing a number of specific enablers which are set out in the following Chapters.

2. It is now clearer than ever before that we need to future–proof health and social care services for the generations to come. The Well-being of Future Generations (Wales) Act 2015[1] sets the goals, ways of working we all need to adopt, and places duties on public sector organisations, both individually and working together on Public Services Boards, so the Wales we want becomes a reality in the future. This means health and social care services working together, with staff, partners and the public to prevent ill health and to provide the care people need, when they need it. Organisations cannot continue to work in isolation of each other and must now look beyond their own boundaries when making decisions about what services and actions will deliver the best outcomes for citizens. This requires mature partnership working on a national, regional and local level.

3. We must ensure the right levers are in the system to promote continuous improvement, drive high standards and provide the sort of care that meets people's needs and helps them to live the lives they want to lead. People have to be given a real and meaningful say in what happens to them individually and, more widely, in decisions about services. The concept of co-production is seen by many as the way to achieve sustainability in health and social care in the years ahead but this can only be achieved through an open and transparent approach.

4. Co-production is about breaking down the barriers between professionals and the people who use their services. It is about people making joint decisions about their own care. It is also about service planners and providers seeing their users as people with useful skills and experience to bring to the decision-making and care-giving process. Systems across health and social care now need to make a real shift toward this way of working because this is how standards and quality will be driven up.

5. Between July and November 2015, the Welsh Government published a consultation document called *Our Health, Our Health Service.*[2] This document was a Green Paper. A Green Paper gathers views on issues which

[1] Well-being of Future Generations (Wales) Act 2015
[2] *Our Health, Our Health Service* Green Paper, Welsh Government, July 2015

might appear in future Government policy. The purpose of *Our Health, Our Health Service* was to seek views on what else we might do to improve the quality of services provided by the NHS in Wales, as well the governance and accountability of the organisations and the people who manage them. It asked how we might encourage closer working with other public services, what the barriers are to more joined up working and ultimately whether the Welsh Government should use legislative powers to help achieve continuous improvement and stronger accountability

6. The responses to the Green Paper consultation showed there was an appetite for further work and potential legislation across a number of areas related to quality and governance. These include greater partnership working across local health boards; more effective engagement with the public and representation of citizens' voices; common processes, such as standards and complaints systems to underpin services; openness and transparency and clarity in the remit of inspection.

7. This White Paper develops these areas in more detail and sets out the Welsh Government's proposals for areas which could be addressed in future legislation. We fully intend to dovetail these proposals with the outcome of the Parliamentary Review of Health and Social Care in Wales. We are keen to ensure that any legislation acts as an enabler for real change, and is not just something which papers over the cracks. This has been the overarching principle guiding the development of these proposals.

   We look forward to receiving your views.

The reasoning behind our proposals

8. Before proposing any legislative change we need to be clear about the issues we are trying to address, what we are building on, and the intended effect of the changes. We also need to be clear on the principles which are guiding us and we have already described how above all we want to enable and empower organisations and citizens to work together.

9. It is almost 20 years since the publication of *Quality Care and Clinical Excellence*,[3] which set out a framework for NHS organisations in Wales to continually improve the quality of care. Since that time, there have been a number of policies, pieces of legislation, campaigns and initiatives designed to gradually build a culture of quality improvement within the NHS in Wales.

10. The OECD Review of Health Care Quality in the UK[4], published in 2016, made a number of positive observations about systems for quality improvement in Wales. They noted that the Welsh health service is committed to quality improvement, with the building blocks largely in place to promote high quality care and excellent, person-centred health services. This is very good news and testament to all the work which has been done. There are indeed many examples across health and social care in Wales of people working in partnership and with citizens to deliver person-centred care; however, there is still a lack of a truly systematic approach. It is also the case that systems for ensuring quality have developed separately both within health as well as across health and social care in Wales.

11. The OECD made a number of recommendations on how we might tackle some of these issues in Wales and we have taken these into account in developing this White Paper.

12. In terms of the effectiveness of our organisations, the OECD commented that some years after their establishment, local health boards are showing less innovation, and fewer radical approaches to system change and quality improvement that might have been expected. The OECD recommended that the Welsh Government play a more supportive and prescriptive role in order to maximise the potential of local health boards. We are pursuing our direct support of local health boards in a number of ways which do not require legislation, for example, through the current planning process (IMTPs) and actions taken through the escalation and intervention arrangements. Through these measures we are now holding organisations to account much more directly. Our specific proposals in this White Paper therefore look for ways to enable local health boards to demonstrate their effectiveness and their ability to work strategically and in partnership with others. We also propose some specific duties of quality and candour, to help reinforce our commitment to quality and a culture of openness and transparency.

[3] *Quality Care and Clinical Excellence*, Welsh Office, 1998
[4] *Review of Health Care Quality in the UK*, Organisation for Economic Co-operation and Development, 2016

13. The OECD also looked at the system for inspection and regulation and noted the international trend for moving to system-wide methods for accreditation and inspection, in particular inspections which better reflect patient pathways. This would mean an approach to inspection and regulation which spanned the whole experience of the individual, across organisational boundaries traditionally represented by primary care, hospital care and social care, and measured in accordance with common standards. Our specific proposals in this White Paper therefore look at how we might better align our inspection and regulation systems to allow for more joint working in accordance with common standards.

14. In terms of promoting the citizen's voice in the system, the OECD noted the role of Community Health Councils (CHCs) in representing Wales and acknowledged their potential. However they questioned the value added by some of the CHCs' functions and indicated a need to focus on reflecting the patient voice, closer working with other scrutiny bodies in Wales and ensuring that the concerns of citizens are heard and followed through. Other reports have raised concerns about the visibility of CHCs and the duplication of their functions with other bodies. The Welsh Government has also for some time had concerns about the sustainability of the membership model for CHCs. Recruiting members through public appointments, local authorities and the third sector is not delivering a sufficient level of diversity and experience to fully reflect the citizen voice. We have considered all of this and set out some specific proposals in this White Paper on how we might better focus on ensuring the voice of citizens is properly reflected across health and social care, both strategically and locally. We also set out a clearer process for service change and how citizens' views will be woven into plans and decision-making.

15. Taking into account the above, there are now a number of enablers which might need to be set out in primary legislation which will take us further on our journey towards integrated services. These are:

Enabler	**How these are addressed in the White Paper**
Measures to promote effective governance	Board membership and composition and also flexibility for Welsh Ministers' to make particular appointments (e.g. under special measures) Protection for the role/function of Board Secretaries to ensure independence
Duties for health and social care which promote cultural change	Wide Duty of Quality to encompass the needs of population of Wales to facilitate collaborative, regional and all Wales planning and solutions to service change and delivery including

	extending the powers of LHBs and Trusts to work in partnership. Duty of Candour to encourage individual and organisational openness and transparency.
Common processes to underpin person-centred health and care	Common standards across NHS, independent health sector and social care (where appropriate) which organisations are required to comply with Joint investigations of health and social care complaints.
Focus on promoting citizen voice and clarity in inspection and service change	A new arrangement for citizen voice replacing the existing Community Health Council (CHC) model to focus on how organisations are held to account for the way they engage the public. A clear process for service change decision-making. Addressing the legislative gaps underpinning Healthcare Inspectorate Wales. Proposals for a new independent body to bring together inspection, regulation and citizen voice in health and social care.

Chapter 1: Effective Governance

16. The Green Paper said that local health boards need to have the right powers, governance and accountabilities to enable leaders to take the right decisions with and for the people. Boards also need to be of the right size and have the right people on them to act strategically and in partnership with citizens and other organisations.

17. This Chapter sets out our proposals to help bring about this mix of culture, strong leadership and partnership approach which will be essential if local health boards are, in line with the recommendations of the OECD, to unlock their promise as population-based organisations.

1.1. Board Membership and Composition

Where are we now and where do we need to be?

18. Since the creation of local health boards in 2009, we have seen numerous changes and challenges across health and social care. Therefore it is the right time to review the governance of the local health boards to support continuous improvement and future proofing. This will help to deliver a more effective service with focus on strong leadership, key priorities, strategic decision making and a consistent culture.

19. At the heart of a person-centred health service should be a robust governance framework which continually improves the quality of services and experience to ensure that the best possible care is delivered for patients.

20. NHS Wales Board governance has come under increased scrutiny following the Betsi Cadwaladr Targeted Intervention Report (2015)[5], and the OECD Review of Healthcare Quality (2016)[6]. These reports questioned whether Boards have the correct representation and skills to oversee quality and service improvement.

21. The current legislation framework is underpinned by the National Health Service (Wales) Act 2006[7] which makes provisions for the constitution and membership of local health boards and NHS trusts, with regulation making powers that include appointments, tenure and procedure.

22. The current composition of health boards is provided for by the Local Health Boards (Constitution, Membership and Procedures) (Wales) Regulations 2009[8]. This model currently has:

[5] Betsi Cadwaladr Targeted Intervention Report, Anne Lloyd CBE, March 2015
[6] See footnote 4
[7] National Health Service (Wales) Act 2006
[8] The Local Health Boards (Constitution, Membership and Procedures) (Wales) Regulations 2009

- Nine non-officer members (four positions are specified by the regulations) with a Chair and Vice Chair appointed by the Minister, following a public appointment process;
- Nine executive officer members (all positions are specified by the regulations);
- Three associate members. Standing Orders state these associate members should be: the chair of the local health board's Healthcare Professionals Forum, the chair of the local health board's Stakeholder Reference Group and a director of social services from a local authority within the local health board's area. The health board is also, subject to Ministerial approval, able to appoint a fourth associate member.

23. The NHS trusts each have their own Establishment Orders (including subsequent Amendment Orders) which determine the composition of the Boards. The key difference with the NHS trusts' Boards are that they are smaller in size and do not have an appointed Vice Chair.

24. Due to the size and complexity of NHS organisations, it is not possible to have everybody who needs to serve the Board as a fully fledged Board member. However it is crucial that the Board is supported by experienced and skilled membership and support which understands and reflects current priorities but can adapt to changing needs.

What are we proposing to do?

25. Taking into consideration the findings of recent reviews, the feedback from the Green Paper and research within the field of governance, we believe there are a number of key principles that Boards should adopt.

26. We believe key core principles should be consistent and applied across all NHS organisations under the same suite of legislation. We recognise that not all of these principles are necessarily achieved by primary legislation and alternative interventions could assist in meeting these objectives including secondary legislation and improved guidance and training.

Core Key Principles for all NHS organisations

- The Board has a culture of openness and transparency and operates within a highly trusting, challenging and engaging environment;

- It will show clear leadership in quality improvement which will be embedded in everything it does, including board member training;

- It works in partnership with the public and partners to plan and deliver person-centred care;

- There should be a majority of independent members over executive officers on the Board to provide independence and challenge;

- The independent members should be referred to as “public member” as they are there to bring the perspective of the population to board discussions;

- The Board infrastructure is underpinned by a strong governance framework which enables the Board to work effectively and meet its statutory duties including achieving financial balance;

- It should be supported by a well functioning and supporting committee structure that ensures it involves and receives views and input from a wide range of stakeholders including the professions and patients;

- Every chair is supported with a vice chair;

- There should be provision for Welsh Ministers to appoint additional Board Members based on time limited appointments during times of poor performance and escalation as set out in the NHS Wales Escalation and Intervention arrangements. This would allow the Board to call upon the necessary skills and experience to provide specialist advice and closer scrutiny to drive change and improvements within the organisation at a time when it is needed;

- The Board to involve and are supported by the senior management below the Executive Directors to ensure wider professional and staff engagement

- Associate membership of Boards should address citizen representation.

Local Health Boards

27. Local health boards should be the right size and mix of executive, non-executive and associate members in order to be dynamic, ideally no more than 20 full members. As mentioned above, currently the roles of all the executive members of the Board are set out in regulations. This has proved restrictive and some local health boards have sought to merge roles and/or include the roles in the Chief Operating Officer post. This can result in a loss of focus in some important areas, such as primary care and mental health, not meeting the requirements of existing law. In order to address this issue we have considered whether there should be a “core” membership together with some flexibility for Boards to decide what further roles are required to meet their population needs.

28. One option could be to set out a core membership in regulations, allowing a small amount of flexibility for other roles. This would ensure key roles are covered, and provide an element of consistency between all local health boards However, we are conscious to achieve smaller, more agile Boards together with some element of flexibility, could mean some executive Board members not being regarded as “core” and this could be unpopular.

29. Another option could be to be altogether less prescriptive in regulations about Board membership and allow Boards to decide on almost all the executive

members themselves, apart from one or two and noting the spilt between clinical and non-clinical members. The advantage of this would be to allow Boards to decide on executive membership to meet local needs; however complete flexibility would mean that consistency across health boards would inevitably be sacrificed. We welcome views on both these options.

NHS Trusts

30. For NHS Trust Boards we believe executive members should continue to be determined through the regulations to include a Chief Executive Officer and Finance Director. The trust Boards should be able to appoint up to three additional executive officer posts to support it to deliver on its purpose.

Questions on Board Membership

The Welsh Government believes that the Boards of both health boards and NHS trusts should share some core key principles which are outlined including delivering in partnership to deliver person centred care and a strong governance framework to enable the Board to work effectively and meet its responsibilities.

All Boards should have Vice Chairs in order to support focussed and skilled leadership.

The Welsh Government also believes that Ministers should have the authority to appoint additional Board members on time limited appointments if an NHS Health Board/Trust is under performing or under escalation procedures in accordance with the NHS Wales Escalation and Intervention arrangements.

The Welsh Government believes that Board Executive Officer membership for local health boards should probably include some key positions which are consistent across local health boards but also allow some flexibility to appoint based on remit and priorities.

Do you agree with these proposals?

What further issues would you want us to take into account in firming up these proposals?

1.2. The role of the Board Secretary

Where are we now and where do we need to be?

31. The Welsh Ministers issued directions in April 2011 (updated in March 2014), in the form of Model Standing Orders for adoption by local health boards and NHS trusts. They describe the Board Secretary as the guardian of good governance within the local health board and as an advisor to the Board.

32. The role of the Board Secretary is crucial to the ongoing development and maintenance of a strong governance framework within NHS organisations. As principal advisor to the Board and the organisation, they are a key source of advice and support on all aspects of good governance and the assurance framework. The Board Secretary is not a Board member, and the independence of the role is an important element of the assurance mechanism to ensure that the Board is properly equipped to fulfil its responsibilities and meet its statutory duties.

33. The role of Board Secretary has come under scrutiny following the Overview of Governance Arrangements at Betsi Cadwaladr University Health Board report 2014 undertaken jointly by the Wales Audit Office and Healthcare Inspectorate Wales. The report raised issues in relation to unsustainable wider responsibilities and the potential for considerable conflict of priorities.

34. The importance of the separation and accountability of the Board Secretary role is understood and consideration should be given to providing statutory protection for the role.

35. The role of Board Secretary across each NHS Wales organisation varies considerably in terms of their responsibility, scope of portfolio, reporting lines and available resources. One of the key issues is whether there should be a legislative requirement for the key principles of the Board Secretary role which strengthen good governance to be adopted consistently across all local health boards and NHS trusts.

What are we proposing to do?

36. Taking into consideration the findings of recent reviews, the feedback from the Green Paper consultation and models used within other public sectors, we believe there are a number of key principles to adopt for the role of Board Secretary.

Key Principles

- There is statutory protection to have a Board Secretary and for the role;

- There is protection to cover raising concerns and independently challenging the decisions of the Chief Executive and the Board more widely.

- An independent process is put in place to dismiss a Board Secretary from post.

- The Board Secretary should be able to highlight in a report when/if there is a key issue of concern to either the Board Chair or Chief Executive, depending on where the concern lies;

- There should be a standard job description that is clear on the requirements and duties that should and also should not be undertaken by the Board Secretary, to avoid potential conflicts of priorities and interests.

- NHS organisations should ensure an appropriate level of resource to support Board Secretaries to effectively carry out their role.

37. We recognise to deliver on these principles does not necessarily require primary legislation and alternative interventions could assist in meeting these objectives such as secondary legislation (regulations), guidance and training.

Questions on Board Secretary

In order to deliver on the key principles outlined the Welsh Government believes that the role of Board Secretary should be placed on a statutory basis and have statutory protection to allow the role to be independent with safeguards in place to challenge the Chief Executive of an NHS organisation or the Board more widely.

Do you agree with these proposals?

What further issues would you want us to take into account in firming up these proposals?

Chapter 2: Duties to Promote Cultural Change

38. The Green Paper said that in order to promote a culture of co-production, we must explore options for further enhancing openness, transparency and candour in health and social care. It also talked about the need for local health boards to look beyond their own statutory boundaries and population when making decisions in order to focus on the quality and safety of health and care services. To do this they may need to plan and make decisions collectively working with our NHS Trusts and other partners. The Social Services and Well-being (Wales) Act 2014 and the Well-being of Future Generations (Wales) Act 2015 are landmark pieces of legislation which impact on the statutory duties of NHS organisations to plan in partnership.

39. This Chapter sets out our proposals for two new duties to be placed on local health boards and NHS Trusts which we believe will further support cross boundary working and bring more focus to their actions and decision-making.

2.1. Duty of Quality for the Population of Wales

Where are we now and where do we need to be?

40. NHS bodies are already under a duty of quality which is set out in legislation dating back to 2003[9]. This duty was put in place when our landscape looked very different - when it was largely made up of smaller NHS Trusts which were divorced structurally from primary care. It therefore predates our planned, integrated health system. This duty is focused on having arrangements in place to monitor and improve the quality of health care provided by or on behalf of an organisation. The current duty is particularly focussed on the quality of services provided to an individual rather than at a wider population level. This is not suited to local health boards which should no longer see themselves as mere providers of care but as organisations responsible for the health of their population. As such, local health boards must be prepared to apply quality across the planning and provision of services for their populations. Within NHS Wales we have adopted the model of the Triple Aim[10] - a quality system based on securing better outcome, better user experience and better value, underpinned by the internationally accepted Institute of Medicine definition of quality[11] which is to provide safe, effective, patient-centred, timely, efficient and equitable care.

41. The NHS (Wales) Act 2006 also sets out the responsibilities of local health boards in developing plans for improving the health of the local population. The Well-being of Future Generations (Wales) Act 2015 also sets out responsibilities for Health Boards as statutory partners on Public Services Boards to work in partnership on local well-being assessments and plans.

42. All health systems are facing significant challenges to provide sustainable services. Changes in demographics, the evidence base, innovative treatments, the need to meet standards as well as the resource constraints contribute to this. There will be times when services need to be planned and provided across health board boundaries whether regionally or all Wales. Local health boards perceive the need to plan and deliver across boundaries conflicts with their current duties outlined above.

43. We also need to have a changing focus to promoting good health and wellbeing so developing services to promote wellness rather then the traditional focus on treating ill health. This means enabling individuals to take more control of their own health as well as being directly involved and engaged in co-designing and co-producing solutions. The introduction of the

[9] Health and Social Care (Community Health and Standards) Act 2003
[10] Institute for Healthcare Improvement (IHI)
[11] *Crossing the Quality Chasm* Institute of Medicine, 2001

prudent healthcare principles provides a universal framework to help make this shift. This encompasses the six domains which make up our definition of quality and particularly the need to tackle inequalities in service provision and outcomes.

44. We are mindful other legislation has also come onto the statute book which is not sufficiently aligned with the current duty of quality. The legislation that underpins the requirement to have an integrated medium term plan[12], whilst requiring bodies to plan services to improve health or provision of health care services focuses very much on doing so within budgets available and makes no explicit reference to quality. It is also, as already noted above not explicit about giving consideration to planning beyond organisational boundaries. Under the Social Services and Well-being (Wales) Act 2014, local authorities are under a duty of cooperation with their relevant partners, persons or bodies to ensure well-being and safeguarding of those requiring care, and improve the quality of care and support needed.

45. Taking all this into account we therefore consider the existing duty of quality and the local population planning duty to be outdated, too provider focussed and too narrow in their scope.

46. When we consulted on the Green Paper there was considerable support for a duty of quality to span organisations, including social health and for it to align with the Well-Being of Future Generations Act and the Social Services and Well-being Act to enable a greater focus on quality.

What are we proposing to do?

47. We are looking to place a new enhanced and extended duty of quality on NHS bodies to enable and require them to demonstrate that where needed they collaborate on planning and agree regional or all-Wales solutions to secure quality services for the population of Wales. For local health boards this would ensure there is an explicit need to extend this to the development of their integrated plans and future service proposals. To better enable the planning and provision of person centred care we would also look to extend that duty and also broaden the powers of local health boards and trusts to co-operate and work in partnership with local authorities and/or other bodies including the third sector, aligning it with the duties already placed on local authorities.

48. We consider this will enable a system shift to promote services based on the person, rather than the organisation. There are also situations where more specialist services may be required but cannot be provided in every local health board area as demand and resources - human, physical and financial could not deliver this, let alone meet the clinical service standards required. We believe this new duty would facilitate planning and decision making within and by NHS bodies if they were under a wider duty of quality requiring them to

[12] Section 175(2), NHS (Wales) Act 2006 – as amended by the NHS Finance (Wales) Act 2014

take in account a regional or all Wales population perspective. To further support this we propose to strengthen the existing planning duty to make sure of this.

Questions on Duty of Quality for the population of Wales

The Welsh Government believes that the duty of quality should be updated and enhanced to better reflect our integrated system. This duty should be sufficiently wide in scope to facilitate the needs of the population of Wales to facilitate and enable collaborative, regional and all-Wales solutions to service design and delivery

NHS bodies should also be placed under a reciprocal duty with local authorities to co-operate and work in partnership to improve the quality of services provided.

Welsh Government also believes that strengthening the existing planning duty will make sure health boards work together on the needs of the population of Wales in the planning and delivery of quality healthcare services.

Do you agree with these proposals?

What further issues would you want us to take into account in firming up these proposals?

2.2. Duty of Candour

Where are we now and where do we need to be?

49. The 2016 Welsh Labour Manifesto[13] promised a consultation on a potential statutory duty of candour so as to further promote a culture of openness in our health and care system. We are not starting from scratch because the existing Putting Things Right arrangements for the investigation of concerns and complaints in the NHS already promotes openness and the underpinning regulations[14] contain a duty to be open with patients when harm has been caused. In social care, there are also proposals out to consultation[15] to place a duty, in regulations, on regulated providers in Wales to be open and transparent in all dealings with people, not just when concerns are being raised. The details of how regulated providers should comply with this requirement will be set out in guidance.

[13] *Together for Wales*, Welsh Labour Manifesto, 2016
[14] The NHS (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011
[15] Consultation on Phase 2 implementation of the Regulation and Inspection of Social Care (Wales) Act 2016

50. There have been several calls for a stronger legal duty of candour in the NHS in Wales. Mr Keith Evans's review[16] of Putting Things Right in 2014 supported these calls. The Green Paper consultation responses also revealed significant support for a statutory duty of candour.

51. The Welsh Ministers do not currently have the power to provide for an express statutory duty of candour for the health service. The existing NHS complaints regulations referred to above, are drawn from powers set out in the Health and Social Care (Community Health and Standards) Act 2003. These are limited to making regulations about the handling and consideration of complaints, including the action to be taken as a result of complaints. In order to trigger the duty to be open, therefore, a member of staff must first notify a concern under the procedure. It seems clear that the current duty on NHS organisations in Wales, as set out in the Putting Things Right regulations needs to go further.

52. The proposed regulations in social care in Wales (referred to above) are drawn from the Regulation and Inspection of Social Care (Wales) Act 2016. They are arguably wider since they encourage candour at all levels and do not necessarily rely on a concern being notified.

What are we proposing to do?

53. We want to ensure that all health and social care organisations and providers are under similar duties to be open and transparent, because then the public will know what they should be able to expect. More consistency will encourage the health and care system to behave culturally as one and will be in the interests of a person-centred system of health and social care.

54. We have looked at the situation in the rest of the UK. There is currently a legal duty of candour for the NHS in England, set out at Regulation 20 of duty of the Health and Social Care Act 2008 (Regulated Activities), Regulations 2014[17]. This duty of candour was put in place in England following the Mid Staffordshire NHS Foundation Trust inquiry. It only applies to health service bodies (hospitals and special health authorities), so it does not cover GPs, dentists or pharmacists.

55. In Scotland, a duty of candour procedure is set out in Part 2 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016[18]. This duty applies across all health and social care services, including independent health care, GPs, dentists and pharmacists. It means that if an unintended or unexpected incident occurs in the course of providing a health service, a care service or a social work service, then the person responsible is under a duty to be open and honest.

[16] *Using the Gift of Complaints*, Keith Evans, 2014
[17] The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014
[18] Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016

56. We would like to achieve a position where all health and social care bodies are under a statutory duty to be open and transparent, in all dealings with individuals as well as at a population level. In taking this forward, we would look to build on the work already done on duty of candour under the Regulation and Inspection of Social Care (Wales) Act 2016.

Questions on Duty of Candour

The Welsh Government believes that the development of a statutory duty of candour across health and social services in Wales would consolidate existing duties and be in the interests of a person centred system.

Do you support this proposal?

What further issues would you want us to take into account in firming up this proposal?

Chapter 3: Person-Centred Health and Care

57. Every person in Wales who uses health and social care services or supports others to do so has the right to receive excellent care as well as advice and support to maintain their health and wellbeing. This right exists whether the care is received in their own home, in their community, in a primary care setting, a residential home, a nursing home, or a hospital. All health and social care service providers in Wales need to demonstrate that they are doing the right thing, in the right way, in the right place, at the right time and with the right staff. Their care should be 'person centred' and individualised.

3.1. Setting and Meeting Common Standards

Where are we now and where do we need to be?

58. The current system consists of separate standards for NHS health care, independent health care and social care. The Health and Care Standards for Wales[19] have been designed so that they can be implemented in all NHS health care services, settings and locations. They establish a basis for improving the quality and safety of healthcare services by providing a framework which can be used in identifying strengths and highlighting areas for improvement. This includes services and arrangements to promote health and well being and not merely those focused on treating ill health. They also provide the framework for wider governance and accountability within NHS bodies. Healthcare Inspectorate Wales (HIW) inspects NHS services against the Health and Care Standards, whilst it inspects and regulates the

[19] Health and Care Standards, Welsh Government, April 2015

independent sector against the National Minimum Standards for Independent Healthcare[20].

59. Social Care possesses its own separate standards and regulations. A number of Acts and Regulations govern the standards of social care in various settings. The Care Standards Act 2000 makes provision for the registration and regulation of social care services. Care and Social Services Inspectorate Wales (CSSIW) is the regulator for social care and social services in Wales and inspects services from child minders and nurseries to residential and nursing homes for older people.

60. There have been numerous developments in social care in Wales in recent years. The Regulation and Inspection of Social Care (Wales) Act 2016 provides for requirements to be placed on providers of regulated services and responsible individuals in regulations and statutory guidance, currently being consulted on.[21] The aim of these requirements is to assist individuals to achieve the outcomes they wish to achieve.

61. The existence of different standards can be confusing for service users and care providers alike and makes for complexity for commissioners of services if they are not commissioning services for individuals against a common framework, wherever they may be receiving a service. In the absence of common standards there is potential for care to be fragmented and poorly coordinated. In a system without common standards, care can appear to be complex and confusing to the recipient. Individuals receiving care can be left perplexed as to why different standards operate in different settings when they feel that they have the right to the same standard of care regardless of where they receive it.

What are we proposing to do?

62. The person receiving care needs to feel confident that the standard of care will remain the same regardless of where they receive their care. The care should be focused on meeting the person's needs and helping the person to achieve the outcome they desire.

63. The standards that underpin care should therefore have common principles regardless of whether the focus is health care or social care. Care and the standards that underpin care needs to be perceived principally through the eyes of the person receiving care and not through the eyes of the organisations delivering the care. There should therefore be common standards.

64. We are proposing that a common set of high level standards are developed which applies to health and social care and regardless of the location where care is delivered.

[20] National Minimum Standards for Independent Healthcare Services in Wales, Welsh Government, April 2011
[21] See footnote 15

65. Common standards will provide a common set of requirements applying across all health and social care organisations to ensure that services commissioned and provided are both safe and of an acceptable quality. Common standards also provide a framework for continuous improvement in the overall quality of care people receive.

66. Person centred care aims to be people focused, to promote independence and autonomy and to provide choice and control. The principle of individual care is that people are treated as individuals, reflecting their own needs and responsibilities. All those who provide care have a responsibility to ensure that whatever care they are providing includes attention to basic human rights. Where people are unable to ensure these rights for themselves, when they are unable to express their needs and wishes as a result of a sensory impairment, a mental health problem, learning disability, communication difficulty or any other reason, access to independent advocacy services must be provided. This includes complying with the Welsh Language standards and considering how they can be delivered in the form of an active offer which is a key element of the *More Than Just Words*[22] strategic framework. Every person has unique needs and wishes. Individual needs and wishes vary with factors such as age, gender culture, religion and personal circumstances, and individual needs change over time, respecting people as individuals is an integral part of all care.

Questions on Common Standards

The Welsh Government believes there should be a common set of high level standards applied to health and social care and that the standards should apply regardless of the location of care.

Do you support this proposal?

What further issues would you want us to take into account in firming up this proposal?

3.2. Joint Investigation of Health and Social Care Complaints

Where are we now and where do we want to be?

67. More than ever before, services are being provided to individuals by organisations working together. For example, packages of care for individuals may be arranged by local health boards and local authorities working together, or provided by staff employed by different bodies, or by care homes. This way of working puts people at the heart of their own health and care and is something we want to build on. People receiving health and social care

[22] More Than Just Words

may not, and should not need to, understand that different organisations are responsible for different parts of their care. To the individual, this should appear seamless.

68. If something goes wrong with a person's care, organisations should work to discover what went wrong, and to put things right. When the concern spans health and social care, it should not be for the person receiving the care or their family to make multiple complaints or to be passed around between organisations. We want to make it easier for people to complain when their complaint covers care provided by different organisations. By working together to investigate complaints, health and social care organisations can learn lessons and improve the quality of their services. There are several examples in the Public Services Ombudsman for Wales's casebooks of complaints which span both health and social care.

69. Complaints about health services in Wales are dealt with under the Putting Things Right[23] process and complaints about social care follow the Social Services Complaints procedure.[24] Complaints about private care homes are dealt with by the individual businesses. The Care and Social Services Inspectorate for Wales (CSSIW) has an overview of these concerns, although CSSIW cannot investigate them.

70. The statutory health service process came into effect in 2011. The process is:

- You are encouraged to talk to the staff involved with your care or treatment as soon as possible, so they can try to resolve your complaint immediately.
- If this does not help, you should contact the health board or trust's concerns team.
- The concerns team will look into your concern (complaint) and aim to respond within 30 working days.
- If you are not happy with their response you can contact the Public Services Ombudsman for Wales.

71. The statutory social services process came into effect in 2014. The process is:

- You talk to the local authority about your complaint as soon as possible. They will try to resolve it within 10 working days.
- If this does not help, you should contact the local authority's complaints officer.
- An independent investigator will work with the complaints officer to look into your complaint and aim to respond within 25 working days.
- If you are not happy with their response you can contact the Public Services Ombudsman for Wales.

[23] Putting Things Right - raising a concern about health services in Wales
[24] A guide to handling complaints and representations by local authority social services

72. At present, people whose complaint covers health, social care, or a private care home have to make at least two complaints. This also means the staff in the organisations concerned may be looking at the same complaint for different reasons. We want organisations to work together when investigating these complaints. Mr Keith Evans noted this when he reviewed Putting Things Right in 2014. His report[25], recommended that we need a complaints process which is people centred not service centred.

What are we proposing to do?

73. We want to make it a requirement for organisations to work together to investigate and resolve complaints which cover both health and social care. This will benefit the citizen but will also help those working in health and social care to understand how to investigate complaints together and learn lessons which can be used to improve their services.

74. We propose that health and social care organisations and independent providers of health and social care will need to come together to agree to follow a joint complaints process for these types of complaint. When people make a complaint about health and social care, organisations will need to explain to them that they will be following this joint process rather than the separate existing complaints processes. We acknowledge that there may be a number of operational challenges to overcome, for example, the consideration of the redress arrangements in relation to health service related concerns, but feel that seeking to have a joint process for certain complaints will be in the best interests of citizens.

75. In order to make these changes it may be necessary to change the regulations which underpin Putting Things Right[26] and the Social Services Complaints procedure regulations[27]. Primary legislation may also be required to provide the Welsh Ministers with the powers to make revisions to the regulations.

Questions on Joint Complaints

The Welsh Government believes that requiring different organisations to work together to investigate complaints will make it easier for people to complain when their complaint is about both health and social services. We also believe it will encourage organisations to learn lessons to improve their services.

Do you support this proposal?

What further issues would you want us to take into account in firming up this proposal?

[25] See footnote 16
[26] NHS (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011
[27] The Social Services Complaints Procedure (Wales) Regulations 2014

Chapter 4: Effective Citizen Voice, Co-production and Clear Inspection

76. The Green Paper described how the direction of travel is for health and social care services to be provided in a more integrated fashion, aiming to provide a seamless, person centred experience, along a pathway which potentially encompasses primary, community, hospital and social care. The system of inspection and regulation and the representation of citizens' views should support this direction of travel. Co-production means continuous involvement and engagement with the public on how decisions are reached and working with individuals to make decisions about their own health care.

77. This Chapter sets out our proposals for further strengthening the voice of citizens in health and social care, for how services should be co-created with citizens and how further clarity and future-proofing might be brought to the work of Healthcare Inspectorate Wales and Care and Social Services Inspectorate Wales.

4.1. Representing the Citizen in Health and Social Care

Where are we now and where do we need to be?

78. With organisations now increasingly starting to collaborate to provide seamless services to individuals and communities, there needs to be a way of capturing people's views about services across the whole system. This will mean that people are more involved in the way services develop and how they are delivered. There are a number of arrangements already in place from which we can build better, stronger ways to represent the voice of people in health and social care and work collaboratively to engage and involve the public. At a cross-boundary level, the statutory Regional Partnership Boards (RPBs) established under the Partnership Arrangements (Wales) Regulations 2015, bring together organisations to effectively assess and plan for the health and social care needs of local populations. The Public Services Boards, established under the Well-being for Future Generations (Wales) Act 2015 also bring together public services organisations on a local level to work together to develop local well-being assessments and plans. They need to all be informed about people's views in undertaking their functions and potentially work together to engage with the public.

79. For health services, there are a number of mechanisms for engaging with patients and the public. Local health boards are under a duty to involve and consult service users in the way services are planned and delivered and they carry out this duty in numerous ways. GPs are required to have Patient Participation Groups. The statutory Community Health Councils (CHCs) represent the public's interest in the way services are planned and provided. There are seven CHCs in Wales, which mirror the boundaries of, and are responsible for the same local populations as the local health boards. They are comprised of both paid staff and volunteer members. Members are appointed in part by the Welsh Government as well as selected from local

authorities and third sector organisations. There is also a Board of CHCs which oversees the work and performance of the seven CHCs. CHCs can be said to have four broad functions:

- Scrutiny of the operation of the health service, including the entry and inspection of premises;
- Engagement with the public on issues;
- Referral by individual CHCs of matters to Welsh Ministers in connection with service changes;
- Independent complaints advocacy services (a function of Welsh Ministers which has been conferred on CHCs through regulations).

80. Local authorities are also under a duty to promote user-led services and to involve people in the design and provision of services[28]. There are no specific statutory bodies for citizen engagement in social care, as in health with CHCs. Instead, effective citizen engagement is an expectation of the implementation of the Social Services and Well-being (Wales) Act 2014 and the Care and Support (Area Planning) (Wales) Regulations flowing from that Act require engagement with citizens. It is largely left to regions to decide the most effective method within their area and the Welsh Government has not been prescriptive as to how citizen engagement should look.

81. As part of this picture, a number of reports in recent years have questioned whether the CHC model for representing the public voice in the health service, which has been in place since 1974, is flexible enough to respond to a health and care services that works increasingly across organisational boundaries[29,30,31]. The Green Paper asked whether the current CHC model needed to change or if its activities needed to be refocused. We received a large number of responses to these questions, expressing a wide range of views. What is certain, and supported by the findings of the OECD, is that there is now a need to take some action.

82. The way CHCs are currently configured enables them to represent the public's interest in the health service, something which is not reflective of an increasingly integrated approach to service delivery. As highlighted above, their attachment to a particular geographical area and population also causes challenges when cross-boundary working or service change is proposed. More broadly, while members are appointed according to their skills and ability to represent patients, the membership is not at all representative of local communities. The member appointments process has over recent years

[28] Section 16, Social Services and Well-being (Wales) Act 2014
[29] *Moving Towards World Class? A Review of Community Health Councils in Wales*, Professor Marcus Longley, June 2012.
[30] *Lessons Learned Independent Review into NHS Service Change Engagement and Consultation*, Ann Lloyd CBE, January 2014
[31] *An Independent Review of the Work of Healthcare Inspectorate Wales,* Ruth Marks MBE, November 2014

grown increasingly unsustainable and it is becoming difficult to attract sufficient people to the role, whether it is through the public appointments process, local authority or third sector nominations. Overall CHCs also lack visibility within communities.

83. There is also a perception, highlighted by the OECD review that some of the CHCs' activities, such as inspections, duplicate the work of other bodies and detract from the true representation of citizens' voices. However we are aware that the CHCs have been mindful of this and changing the focus away from inspection to one of engagement which includes visiting premises to gain feedback on the experience of care.

What are we proposing to do?

84. We want to further strengthen the voice of people in the way health and social care is planned and delivered by setting up a new arrangement which will have a national and local focus, but will be flexible, look at the whole system and work within the context of increased joint working and planning across public services through the regional partnership boards and public services boards

85. We would therefore propose the creation of a new, independent, arrangement to replace CHCs, based in some respects on the Scottish Health Council[32] and working across health and social care. This new national citizen voice arrangement would represent the interests of the public in health and social care and would sit alongside Healthcare Inspectorate Wales and the Care and Social Services Inspectorate Wales and work closely with them. We want these bodies to be organised in such a fashion that they can take a unified approach when required, for example, through joint planning or advisory structures, but similarly can continue to operate independently of each other when necessary. Some further discussion on how this arrangement could work in practice is set out in the final chapter 4.3.

86. The new citizen voice body would have considerable operational autonomy and be free to decide its own work programme and recruit volunteers locally in line with a number of refreshed functions. We propose the current functions of CHCs could be replaced by a new set of functions which could include:

- Working with local community organisations, user groups and others to promote the co-design and co-creation of services;

- Support the building of local networks and effecting join up across health and social care groups;

- Providing support for health and social care organisations (local health boards, NHS trusts, local authorities, Regional Partnership Boards, etc.) in improving the way they engage individually and jointly with their communities on health and social care service matters;

[32] http://www.scottishhealthcouncil.org/home.aspx

- Monitoring and evaluating the way in which health and social care organisations involve local people, probably in accordance with agreed standards;

- Providing advice to local health boards and/or the Cabinet Secretary in relation to the level of engagement undertaken on substantial changes (as outlined below).

87. We believe this refreshed citizen voice arrangement will provide better assurance and the impetus for health and social care organisations to improve the way they engage with the public and work in partnership to gather views and involve citizens in planning and delivery of services. Positioning the new arrangement alongside the inspectorates, will increase profile and visibility, remove a number of duplicative activities and functions currently invested in CHCs (for example inspection of premises) and embed patient voice more systematically within the work of the inspectorates. We think this is the best way to strengthen the public voice in line with the recommendations of the OECD and will be more sustainable than the current system which relies on the recruitment and retention of members.

88. We would propose some of the resources and staffing currently allocated to CHCs could be repurposed to support the new arrangements but this would need further detailed consideration as part of the development of the proposals. The current independent advocacy service provided by CHCs in relation to NHS complaints has proved valuable and this could be continued under the new arrangements. We may want to consider how such a service could be extended to also cover complaints about social care services, in order to mirror the proposals about the joint investigation of complaints outlined in Chapter 3.2.

89. To abolish CHCs in their current form and establish a new body with responsibility for representing the interests of the public across health and social care, would require primary legislation.

Questions on Citizen Representation

The Welsh Government believes that local health and social care organisations should be working with the public to co-design and co-create services and that the way they do this needs to be independently monitored. We propose replacing the current statutory CHCs and their functions with a new national arrangement to represent the citizen voice in health and social care, to advise and provide independent assurance. The new body will work alongside Healthcare Inspectorate Wales and Care and Social Services Inspectorate Wales and have autonomy to decide how it will operate at local level.

Do you support this proposal?

Can you see any practical difficulties with these suggestions?

4.2. Co-producing Plans and Services with Citizens

Where are we now and where do we need to be?

90. The NHS in Wales is finding it difficult to bring about the sort of change which will place services on a more sustainable long-term footing and deliver improvements in service quality and safety, whilst at the same time ensuring that the voice of the citizen is an integral part of decision-making. Services may need to be provided locally, regionally or nationally in order to provide the best possible outcomes for Welsh people. However, making decisions about how and where services should be provided is not easy within the current NHS Wales structure where local health boards have responsibility for the population within specific geographical boundaries.

91. It is particularly hard to agree change when services affect large numbers of people and it is often these changes which end up being referred to the Minister for a decision. This will sometimes be the right thing to do, but it should be the last resort. We feel that changes need to be made to the process to ensure everything possible has been done to allow decision-making to take place locally. This means supporting more of a shift towards the genuine involvement of people in drawing up plans, together with better and more independent scrutiny of any substantial service change and reconfiguration proposals.

92. We describe in Chapter 2.1 how we think a Duty of Quality for the Population of Wales will facilitate collaborative all-Wales and regional planning and service delivery.

93. Proposals for service change must of course be based on strong clinical evidence on what will provide the right health outcomes for people; but plans will have a greater chance of success if citizens are involved in co-designing and co-creating them. People must have an opportunity to weigh up the arguments and consider how a possible service change will affect them and others. Local health boards must be able to show they have listened to the views of citizens and taken their views into account in their proposals to deliver sustainable services for the future. This process requires a very open approach by local health boards which must find ways to balance the clinical evidence with the views and experiences of local people. They must also be able to demonstrate they have done so.

94. The National Health Service (Wales) Act 2006 already places a duty on local health boards to involve and consult local people or their representatives in the planning and delivery of services, including proposed service changes. Whilst this duty, and associated guidance, sets a broad framework for involving the public in decision-making, there is currently quite a wide interpretation of what this means. To date, NHS organisations in Wales have

taken different approaches to involving citizens in service planning, delivery and change.

95. Our goal is for inclusive continuous engagement that fully reflects public voice to become the norm, so we can “co-create” improved patient outcomes. We want to place more emphasis on the importance of regional and strategic working and the range of modern digital and social media options available to better target engagement and make it more inclusive and representative. As a first step we will be revising existing guidance to illustrate what effective engagement based on co-production principles looks like and to provide greater clarity on what is meant by substantial service change.

96. Community Health Councils (CHCs) currently have a role in scrutinising change proposals to promote a better understanding and ensure they meet the health needs of local communities. Under present arrangements, CHCs, on behalf of the public, can refer a matter to the Cabinet Secretary for decision if they are not satisfied a proposal would be in the best interests of their local communities. In these circumstances they are expected to represent wider public views in proposing alternative change options and plans, a function which has not been consistently delivered.

97. Disagreement may arise between local health boards and/or CHCs, particularly on proposals which cross local health board and CHC boundaries that could deliver important benefits for the wider population. This is because there is usually an expectation from local communities and politicians that CHCs will act in the interests of their local population and prioritise these local interests ahead of wider, national interests. In such cases, implementing essential improvements to services can become cumbersome and involve lengthy delays to resolve disputes. In turn, higher quality, safer services and improved patient outcomes take longer to deliver.

98. As indicated in Chapter 4.1, we propose to replace CHCs with a different arrangement which enables citizens to have a stronger, continuous voice in contributing to the planning and development of their health and social care services.

What are we proposing to do?

99. When a change can be described as substantial, then we need a very clear process in terms of decision-making. Under the current arrangements, independent expert advisory panels have been convened on an ad hoc, non-statutory basis when a disputed substantial service change decision has been referred to the Minister by a CHC and there is a need for stronger clinical evidence. If the proposed changes are made to CHCs, there will no longer be a mechanism for referring disputed substantial service change proposals to the Cabinet Secretary. We have considered a number of options for introducing independent scrutiny into the process to provide advice on all health board service change proposals that meet agreed criteria for substantial change and reconfiguration.

100. We are aiming to establish an approach similar to that currently in place in Scotland, in which health boards in Wales will be required to identify all change proposals meeting the criteria. This will then trigger a process of further scrutiny relating to the clinical evidence and an assessment of whether adequate involvement of the public has been achieved in drawing up the proposals.

101. We propose to establish an independent mechanism to provide clinical advice and assurance on substantial change proposals; the new citizen voice body referred to in Chapter 4.1 will provide an independent assessment on the adequacy or otherwise of the involvement of citizens. Health boards will be expected to reach a decision through their existing governance arrangements, based on both these sources of evidence. In the event that they are unable to reach consensus, then as a **last resort** the Welsh Ministers will be able to intervene and make a decision based on the independent evidence, both clinical and how well public opinion has been integrated into the proposals. The diagram at Figure 1 shows, at a high level, how this process could work in practice.

Figure 1

Service change phase	Action and broad steps	CONTINUOUS ENGAGEMENT
Planning	**Step 1:** Health Board/s develop and set out their service change proposals engaging with the population and staff	
Assessment	**Step 2:** Health board considers whether change could be described as a substantial proposal. If yes it moves to step 3 and 4. If no, it moves straight to Step 5	
Advice – citizen voice	**Step 3*:** Independent citizen voice body advises whether public engagement process undertaken by the health board complies with guidance. This could result in more engagement.	
Advice – clinical	**Step 4*:** Independent clinical panel considers the relevant clinical evidence for the change proposal.	
Decision	**Step 5:** Health board(s) make decision through their existing governance mechanisms, based on independent clinical panel recommendation, advice from the citizen voice body and any other relevant factors	
Call in	**Step 6:** If health board(s) **cannot** reach a decision **on a substantial proposal**, Minister may call in the proposal. In making a decision the Minister will consider the advice received, including from the clinical panel and citizen advice body and any other relevant factors	

***Steps 3 and 4** are undertaken simultaneously

102. Following our consultation on the Green Paper, there was support for the principle that ultimate accountability for making such decisions should rest with the Welsh Ministers, however there will need to be careful consideration of the point at which Ministers will intervene and call in decisions.

Questions on Service Change

The Welsh Government believes that introducing an independent mechanism to provide clinical advice on substantial service change decisions, with advice from the proposed new citizen voice body, will encourage continuous engagement and increase the pace of strategic change through enabling a more evidence-based, transparent process and a more directive and guiding role on the part of Welsh Government.

Do you agree with this proposal?

What further issues would you want us to take into account in firming up this proposal?

4.3. Inspection and Regulation

Where are we now and where do we need to be?

103. Healthcare Inspectorate Wales (HIW) is the inspectorate and regulator of healthcare in Wales. It is responsible for reviewing and inspecting NHS and independent healthcare organisations to provide assurance for patients, the public, the Welsh Government, and healthcare providers, that services are safe and of good quality. Although HIW is part of the Welsh Government and carries out functions on behalf of Welsh Ministers, its independence is secured through operational autonomy. This is also the case for the Care and Social Services Inspectorate Wales (CSSIW).

104. Over the last three years, there has been a continuing discussion about the role of HIW and an assessment of whether the scope of its work needs to be reformed and broadened[33, 34, 35, 36]. The wider opportunities for better joined up working with other bodies, such as CSSIW and CHCs have featured as a prominent part of these discussions. In relation to CHCs, their ability to enter and inspect premises has raised concerns about duplication with HIW's role. These reviews culminated in the Green Paper consultation exercise which sought views on enhancing HIW's independence, enabling collaboration with CSSIW, and further exploring opportunities for setting up a single inspectorate.

105. In parallel to the reviews of HIW and the Green Paper consultation, the introduction of the Social Services and Well-being Act 2014 and the Regulation and Inspection of Social Care Act 2016 (the 2016 Act) has led the way in placing service quality and improvement at the heart of social care in Wales.

106. The 2016 Act created a clear statutory framework for CSSIW and a clearer platform for assurance that services are meeting people's needs. This has highlighted the constraints that the existing legislation underpinning HIW creates practically, which we would like to future-proofed in a similar vein to that which now underpins CSSIW. Legislative reform for HIW would address the fact that there are insufficient powers to regulate in some areas, and that different arrangements apply across NHS and independent healthcare settings. There is also some seemingly illogical use of HIW resources, for

[33] *The work of Healthcare Inspectorate Wales*, Health and Social Care Committee, March 2014
[34] See footnote 29
[35] *Wider issues emanating from the governance review of Betsi Cadwaladr University Health Board*, Public Accounts Committee, February 2016
[36] See footnote 4

example the regulation of lasers in tattoo and beauty parlours. Services are also regulated and inspected on an establishment, rather than service basis, which is at odds with the way CSSIW regulate and inspect under the 2016 Act.

107. While legislation may be required, it is important to acknowledge the ongoing work that has been and continues to develop in terms of joint working and the sharing of intelligence, for example, a planned pilot joint review of healthcare provision in care homes. This work has informed our considerations as to what is currently preventing good practice and what mechanisms are necessary in order to improve and build on the opportunity for bodies to work together

What are we proposing to do?

108. We want to ensure the system of regulation and inspection across health and social services is aligned and future-proofed in order to provide the relevant assurances to support improvement within organisations from a person-centred perspective. In improving well-being, preventing ill-health and providing services in health and social care, there should be a consistent approach to inspection and to examining the quality and safety of services received. People should expect the inspectorates to work together where those health and care services overlap. In practical terms there appears to be no strong appetite at the moment for merging the two inspectorates or for making them legally independent. Both HIW and CSSIW are already operationally independent and can work together if they need to – but this may be too narrow a view.

109. It would clearly be desirable and beneficial to, at the very least, overhaul HIW's underpinning legislation to ensure it has a clear, single, legislative framework to work to, as CSSIW now does following the Regulation and Inspection of Social Care (Wales) Act. Working to a similar framework would no doubt lead to more integration and common methodologies, and this in turn will benefit citizens.

110. However, we would also like to seek views on a wider proposal to create a new independent body, picking up on some of the recommendations made in the Ruth Marks review. We could, for example set up a Welsh Government Sponsored Body to encompass both inspectorates, as well as the national citizen's voice body proposed in 4.1. Such a new body could see the pooling of significant existing resources to create a more independent entity which could provide further rigour and focus on quality in a more integrated system.

Questions on Inspection and Regulation and single body

The Welsh Government believes that ensuring a clearer underpinning legislative framework for HIW will help to foster closer integration and joint working with CSSIW and at the very least this should be taken forward.

What do you think of this proposal?

Are there any specific issues you would want us to take into account in developing these proposals further?

However we also believe there could be merit in considering a new body – for example, a Welsh Government Sponsored Body – to provide more independence in regulation and inspection and citizen voice.

Would you support such an idea?

What issues should we take into account if this idea were to be developed further?

Summary of questions

Chapter 1: Effective Governance

1.1. Board Membership and Composition

The Welsh Government believes that the Boards of both health boards and NHS trusts should share some core key principles which are outlined including delivering in partnership to deliver person centred care and a strong governance framework to enable the Board to work effectively and meet its responsibilities.

All Boards should have Vice Chairs in order to support focussed and skilled leadership.

The Welsh Government also believes that Ministers should have the authority to appoint additional Board members on time limited appointments if an NHS Health Board/Trust is under performing or under escalation procedures in accordance with the NHS Wales Escalation and Intervention arrangements.

The Welsh Government believes that Board Executive Officer membership for local health boards should probably include some key positions which are consistent across local health boards but also allow some flexibility to appoint based on remit and priorities.

Do you agree with these proposals?

What further issues would you want us to take into account in firming up these proposals?

1.2. Board Secretary

In order to deliver on the key principles outlined the Welsh Government believes that the role of Board Secretary should be placed on a statutory basis and have statutory protection to allow the role to be independent with safeguards in place to challenge the Chief Executive of an NHS organisation or the Board more widely.

Do you agree with these proposals?

What further issues would you want us to take into account in firming up these proposals?

Chapter 2: Duties to Promote Cultural Change

2.1. Duty of Quality for the Population of Wales

The Welsh Government believes that the duty of quality should be updated and enhanced to better reflect our integrated system. This duty should be sufficiently wide in scope to facilitate the needs of the population of Wales to facilitate and enable collaborative, regional and all-Wales solutions to service design and delivery

NHS bodies should also be placed under a reciprocal duty with local authorities to co-operate and work in partnership to improve the quality of services provided.

Welsh Government also believes that strengthening the existing planning duty will make sure health boards work together on the needs of the population of Wales in the planning and delivery of quality healthcare services.

Do you agree with these proposals?

What further issues would you want us to take into account in firming up these proposals?

2.2. Duty of Candour

The Welsh Government believes that the development of a statutory duty of candour across health and social services in Wales would consolidate existing duties and be in the interests of a person centred system.

Do you support this proposal?

What further issues would you want us to take into account in firming up this proposal?

Chapter 3: Person-Centred Health and Care

3.1. Setting and Meeting Common Standards

The Welsh Government believes there should be a common set of high level standards applied to health and social care and that the standards should apply regardless of the location of care.

Do you support this proposal?

What further issues would you want us to take into account in firming up this proposal?

3.2. Joint Investigation of Health and Social Care Complaints

The Welsh Government believes that requiring different organisations to work together to investigate complaints will make it easier for people to complain when their complaint is about both health and social services. We also believe it will encourage organisations to learn lessons to improve their services.

Do you support this proposal?

What further issues would you want us to take into account in firming up this proposal?

Chapter 4: Effective Citizen Voice, Co-production and Clear Inspection

4.1. Representing the Citizen in Health and Social Care

The Welsh Government believes that local health and social care organisations should be working with the public to co-design and co-create services and that the way they do this needs to be independently monitored. We propose replacing the current statutory CHCs and their functions with a new national arrangement to represent the citizen voice in health and social care, to advise and provide independent assurance. The new body will work alongside Healthcare Inspectorate Wales and Care and Social Services Inspectorate Wales and have autonomy to decide how it will operate at local level.

Do you support this proposal?

Can you see any practical difficulties with these suggestions?

4.2. Co-producing Plans and Services with Citizens

The Welsh Government believes that introducing an independent mechanism to provide clinical advice on substantial service change decisions, with advice from the proposed new citizen voice body, will encourage continuous engagement and increase the pace of strategic change through enabling a more evidence-based, transparent process and a more directive and guiding role on the part of Welsh Government.

Do you agree with this proposal?

What further issues would you want us to take into account in firming up this proposal?

4.3. Inspection and Regulation and single body

The Welsh Government believes that ensuring a clearer underpinning legislative framework for HIW will help to foster closer integration and joint working with CSSIW and at the very least this should be taken forward.

What do you think of this proposal?

Are there any specific issues you would want us to take into account in developing these proposals further?

However we also believe there could be merit in considering a new body – for example, a Welsh Government Sponsored Body – to provide more independence in regulation and inspection and citizen voice.

Would you support such an idea?

What issues should we take into account if this idea were to be developed further?