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Llywodraeth Cymru  
Welsh Government

## Welsh Government Consultation Document

# Market Stability

Draft regulations, code of practice and statutory guidance on social care market stability reports

Date of issue: 16 September 2020  
Action required: Responses by 25 November 2020

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

**Overview** This consultation seeks views on draft regulations and a code of practice / statutory guidance on market stability reports, which local authorities are required to prepare and publish under section 144B of the Social Services and Well-being (Wales) Act 2014.

**How to respond** Please send responses to this consultation to [PartnershipandIntegration@gov.wales](mailto:PartnershipandIntegration@gov.wales)

or by post to:  
Partnership and Integration Branch  
Social Services and Integration Directorate  
Welsh Government  
Cathays Park  
Cardiff CF10 3NQ

using the attached consultation form.

**Further information and related documents** **Large print, Braille and alternative language versions of this document are available on request.**

**Contact details** For further information:  
[PartnershipandIntegration@gov.wales](mailto:PartnershipandIntegration@gov.wales)

## General Data Protection Regulation (GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, 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. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

## Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:  
Welsh Government  
Cathays Park  
CARDIFF  
CF10 3NQ

e-mail:

[Data.ProtectionOfficer@gov.wales](mailto:Data.ProtectionOfficer@gov.wales)

The contact details for the Information Commissioner's Office are:

Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Tel: 01625 545 745 or  
0303 123 1113

Website: <https://ico.org.uk/>

## Summary

Section 144B of the Social Services and Well-being (Wales) Act 2014 ('the 2014 Act') requires local authorities to prepare and publish market stability reports. It also makes provision for regulations. It is the Welsh Government's intention to commence section 144B (in part), and bring into force a set of regulations, by April 2021.

Welsh Government also intends to use the regulation-making powers around partnership working in the 2014 Act, to require local authorities and Local Health Boards to undertake these functions in partnership, and to produce one market stability report for each of the seven Regional Partnership Board (RPB) area.

The regulations will be supplemented by a code of practice for local authorities, on the exercise of their functions in relation to market stability reports, and statutory guidance for local authorities and local health boards on taking a partnership approach to preparing and publishing market stability reports for each RPB area.

This consultation seeks views on draft regulations, a code of practice and statutory guidance.

## What are the main issues?

Local authorities and local health boards already have a duty, under section 14 of the 2014 Act, to work with the local health board to assess the care and support needs of their local populations and the services that are required to meet those needs. The population needs assessments must be produced on a regional footprint, with local authorities and local health boards working together through the RPBs to produce a combined assessment for each RPB area. The first population needs assessments were published in April 2017.

Section 144B, which was inserted into the 2014 Act by the Regulation and Inspection of Social Care (Wales) Act 2016, requires local authorities to assess the sufficiency of the care and support provided to meet the needs of the local population, and to assess the stability of the market for regulated care and support services. Whereas the population needs assessments deal with demand, market stability reports will consider sufficiency in supply in meeting that demand.

Local authorities and local health boards are also required to work in partnership through the RPBs to produce area plans under section 14A of the 2014 Act. These plans are key strategic documents which set out the range and level of care and support the RPB partners propose to provide (or arrange to provide) in response to the population needs assessment. The first plans were published in April 2018. Population needs assessments and area plans must be produced every five years, aligned with the local government electoral cycle.

Our intention is to replicate these arrangements for market stability reports, so that their preparation overlaps with the population needs assessment and feeds into the area plan. We propose that the first market stability reports are published by 1 June 2022, three months after the next population needs assessments, and feeding into the area plans which are due in April 2023.

Guidance on population needs assessments and area plans may be found here: <https://gov.wales/sites/default/files/publications/2019-05/statutory-guidance-in-relation-to-area-plans-under-section-14a.pdf>

## What are we proposing?

Welsh Government proposes to commence section 144B before the end of this Senedd term, in order to give the RPBs a good lead-in time before the first market stability reports are due. We are aware of long-standing pressures on the social care market, which have been exacerbated by the impact of the Covid-19 pandemic. Our proposals for market stability reports are designed to ensure that local authorities and Local Health Boards have undertaken an assessment of the sufficiency of care and support across the RPB area, and have an up-to-date and comprehensive picture of the composition and characteristics of the market for regulated services, so that they can make confident and informed judgements about provision, and commission a diverse range of services which meet local need and help promote good outcomes for people who need care and support.

Welsh Government proposes to commence section 144B and to bring into force regulations which will:

- require local authorities and local health boards to work in partnership to prepare and publish market stability reports for each of the RPB areas
- specify that the following matters must be considered with respect to regulated services:
  - the sufficiency of regulated services providing care and support
  - overall quality of regulated care and support services
  - current or developing trends in regulated services providing care and support
  - significant challenges to current or future provision of regulated care and support services
  - impact of commissioning and funding of care and support.
- specify that the period of assessment will be the period since the latest population needs assessment was published
- require market stability reports to be published in an electronic form on their websites by 1 June 2022, and subsequent reports every five years

Welsh Government also proposes to bring into force a code of practice under section 145 of the 2014 Act, on the exercise of local authority functions in relation to market stability reports, and statutory guidance for local authorities and local health boards under section 169 of the 2014, on working in partnership to prepare and publish these reports on a regional basis.

The code of practice and statutory guidance include additional requirements to:

- engage with providers or potential providers of care and support services across the public, private and third sectors
- take reasonable steps to engage with citizens, particularly adults and children who need care and support, and carers who need support
- appoint a lead co-ordinating body to carry out the assessment and prepare and publish the market stability report
- keep market stability reports under regular review and produce revised reports or an addendum as necessary.

## **What do we want to know?**

Welsh Government would welcome comments on the draft regulations, code of practice and statutory guidance from local authorities, local health boards, and other organisations or sectors which are represented on RPBs or have an interest in the provision of care and support to the local population. It would also welcome comments from members of the public, including especially individuals who need care and support, and carers who need support.

In particular, we would welcome responses to the following questions:

### **Question 1**

Do you agree that market stability reports should be prepared on a regional basis, by local authorities and local health boards through the regional partnership boards? If not, please give your reasons.

### **Question 2**

Do you agree that market stability reports should be produced on a five yearly cycle alongside the population needs assessments? If not, what alternative arrangements would you propose, and why?

### **Question 3**

Have we specified all the key matters that need to be included in market stability reports? If there are other matters you think should be included, please specify.

### **Question 4**

Do you agree that market stability reports should be kept under regular review and revised as necessary, but at least at the mid-way point of the five year cycle? If not, what other monitoring and review arrangements would you propose, and why?

### **Question 5**

In your opinion, does the draft code of practice strike the right balance between what is required of local authorities and what is left to their discretion? Are there further requirements or guidelines you would like to see added, or other ways in which the document might be improved?

### **Question 6**

In your opinion, does the draft statutory guidance set out clearly the partnership approach that local authorities and local health boards should take in preparing their market stability reports? Are there further requirements or guidelines you would like to see added, or other ways in which the document might be improved?

### **Question 7**

What impacts do you think our proposals will have on the duties of public bodies under the Equality Act 2010, or upon a local authority's duty under the 2014 Act to have due regard to the United Nations Convention on the Rights of the Child, the United Nations Convention on the Rights of People with Disabilities, or the United Nations Principles for Older People?

### **Question 8**

We would like to know your views on the effects that our proposals with regard to market stability reports would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

### **Question 9**

Please also explain how you believe the proposed policy around market stability reports could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

### **Question 10**

Under the Well-being of Future Generations (Wales) Act 2015, public bodies have a duty to consider the long-term impact of their decisions. We would like to know to what extent you think our proposals will support the principle of sustainable development set out in that Act.

Further information on the Well-being of Future Generations (Wales) Act 2015 may be found here: <https://www.futuregenerations.wales/about-us/future-generations-act/>

### **Question 11**

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

Please enter here:



## **Consultation Response Form**

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

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Do you agree that market stability reports should be produced on a five yearly cycle alongside the population needs assessments? If not, what alternative arrangements would you propose, and why?

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### **Question 5**

In your opinion, does the draft code of practice strike the right balance between what is required of local authorities and what is left to their discretion? Are there further requirements or guidelines you would like to see added, or other ways in which the document might be improved?

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In your opinion, does the draft statutory guidance set out clearly the partnership approach that local authorities and Local Health Boards should take in preparing their market stability reports? Are there further requirements or guidelines you would like to see added, or other ways in which the document might be improved?

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Please enter here:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: