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Market Stability Reports

Code of Practice and Guidance under the Social Services and Well-being (Wales) Act 2014



Market Stability Reports

Code of Practice and guidance on the exercise of social services functions and partnership arrangements in relation to market stability reports

Issued under sections 145 and 169 of the Social Services and Well-being (Wales) Act 2014.

Contents

1 Preamble	2
PART 1 – Code of Practice	
2 Overview	4
3 Preparing market stability reports	7
4 Content and structure of reports	18
5 Submission, monitoring and review	20
PART 2 – Statutory Guidance	
6 Partnership arrangements	21

1. Preamble

- 1.1. 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, and makes provision for regulations setting out the form these must take, matters to be included, and the prescribed period for carrying out market stability assessments. These matters are set out in the *Market Stability Report and Partnership Arrangements (Wales) (Amendment) Regulations 2021* ('the Regulations').

The Regulations are currently being consulted upon in draft form, alongside this code of practice.

- 1.2. The Regulations amend the Partnership Arrangements (Wales) Regulations 2015 so that the preparation and publication of market stability reports must be carried out on a regional footprint, with local authorities and Local Health Boards working together through the seven Regional Partnership Boards (RPBs). The composition, role and functions of RPBs are explained in statutory guidance on partnership arrangements in respect of Part 9 of the 2014 Act:

<https://gov.wales/sites/default/files/publications/2020-02/part-9-statutory-guidance-partnership-arrangements.pdf>

- 1.3. This document is in two parts:
- **Part 1** (chapters 2-5) is a code of practice for local authorities on the exercise of their functions in relation to market stability reports.
 - **Part 2** (chapter 6) is statutory guidance for local authorities and Local Health Boards on partnership working through the RPBs to prepare and publish market stability reports.
- 1.4. The code of practice for local authorities (Part 1) is issued under section 145 of the 2014 Act, which gives the Welsh Ministers the power to issue codes on the exercise of social services functions. This means that local authorities, working in partnership to exercise their functions in respect of market stability reports, **must** act in accordance with the requirements contained in this code. Section 147 of the 2014 Act (departure from requirements in codes) does not apply to any requirements contained in this code, so this code must be followed in full. The code describes how local authorities are to carry out market stability assessments, and what needs to be included in market stability reports. It describes how market stability reports relate to population needs assessments and area plans, and sets out the timetable for carrying out assessments and submitting the reports.
- 1.5. The statutory guidance for local authorities and Local Health Boards (Part 2) is issued under section 169 of the 2014 Act, to which local authorities and Local Health Boards **must** have regard. It deals specifically with the partnership arrangements for preparing and publishing market stability reports.

- 1.6. In both the code of practice and the statutory guidance, a requirement is expressed as **must** or **must not**. Guidelines are expressed as 'may' and 'may not' or 'should' and 'should not'.
- 1.7. This code and guidance should be read in conjunction with the Code of Practice and guidance on the exercise of social services functions and partnership arrangements in relation to Part 2 of the 2014 Act, especially chapters 2 A and B which deal with population needs assessments.

Consultation

- 1.8. Section 144B places a specific duty upon the Welsh Ministers to consult with any persons they think appropriate before making regulations on other matters relating to regulated services to be included in the market stability assessment. In developing the Regulations and this code of practice / statutory guidance, the Welsh Government has continued its practice of implementing the 2014 Act in a way that fully engages stakeholders. Welsh Government is grateful to all those who took part in stakeholder engagement events or who served as members of the reference group.

PART 1 Code of Practice

2. Overview

- 2.1. This chapter summarises what market stability reports are and the overall legal framework governing their preparation and production.

What is a market stability report?

- 2.2. A market stability report is a published document which describes the key characteristics of the social care market within the area covered by a Regional Partnership Board (RPB). It contains an assessment of the sufficiency of care and support within the RPB area, and of the overall stability of the market for regulated services providing care and support. This includes public, private and third sector provision.
- 2.3. Preparing market stability reports will be an important step in ensuring that there are stable and resilient markets for adult and children's social care across each region of Wales, and in promoting sustainable and partnership approaches to achieving this. The Covid-19 pandemic has given an added impetus to measures to ensure that social care markets are stable, and to create a more resilient and diverse social care market going forward.
- 2.4. Market stability assessments will help determine the overall shape and balance of the market for regulated services within the RPB area, ensuring that commissioners are not over-reliant on any one sector or on a limited number of providers. This will enable RPBs to exercise more consistent and robust leadership in managing the market for social care.
- 2.5. The market stability report will be developed alongside the population needs assessment, which sets out the demand and need for care and support within the RPB area. Together they will feed into the area plan, which in turn will help shape more detailed commissioning strategies and market position statements for particular services as necessary.
- 2.6. Market stability reports will be produced on a five year cycle, and the first reports must be published by June 2022.

Legal framework

- 2.7. The duty to prepare and publish market stability reports is contained in section 144B of the 2014 Act, and was inserted by section 56 of the Regulation and Inspection of Social Services (Wales) Act 2016 ('the 2016 Act'), which sets out the

system for regulating and inspecting the provision of social care in Wales. **The provisions are expected to be commenced, in part, on 1 April 2021.**

- 2.8. Section 144B requires local authorities to produce a market stability report which includes an assessment of the sufficiency of provision of care and support; any other matter relating to the provision of regulated services as prescribed by regulations; and the effect on the exercise of the local authority's social services functions of the commissioning by the authority of any services in connection with those functions. The report must also include any action taken by the local authority during the specified period in pursuance of their duty under section 189(2) of the 2014 Act, to meet the care and support need of individuals in the case of provider failure.
- 2.9. Section 144B requires local authorities to consult with the Local Health Board with which it carried out the population needs assessment. However, by amending the Partnership Arrangements (Wales) Regulations 2015, **the Regulations require local authorities and the Local Health Board to carry out these functions in partnership across the area covered by a RPB** ('the RPB area').
- 2.10. The Regulations specify that the period of assessment of the sufficiency of care and support, and of the effect of commissioning and funding on the provision or regulated services, should be the five year period since the last population needs assessment was produced. The Regulations require local authorities to produce market stability reports every five years, with the first reports published by 1 June 2022. This means that market stability assessments will be undertaken concurrently with the population needs assessments, and links them with the five year local government election cycle. The relationship between the population needs assessment, the market stability report, and the area plan, including the time cycle for their production, is explained further in chapter 3 below.
- 2.11. The Regulations also contain a Schedule which lists the specific matters which must be included in the market stability report in respect of regulated services. This includes the sufficiency and overall quality of provision of those services, current or developing trends, significant challenges, and the impact of commissioning and funding on local authority social services functions.
- 2.12. Market stability reports must be submitted to the Welsh Ministers. The Regulations require this to be in an electronic format, and for each local authority to publish on its website the report for its RPB area. (See chapter 5 below.)

Market oversight

- 2.13. The market stability provisions were inserted into the 2014 Act by means of section 56 of the 2016 Act 2016, and were intended to work in conjunction with sections 59 to 63 of the 2016 Act which provide for the setting up of a statutory market oversight regime for service providers.

- 2.14. Initial conversations between Welsh Government, the regulator (Care Inspectorate Wales) and stakeholders, including local authorities and providers, have suggested that introducing a statutory market oversight scheme may not be appropriate or proportionate at this time. Welsh Government therefore intends to develop a non-statutory market oversight framework, appropriate to the Welsh context and drawing upon existing sources of information about providers. The market stability reports produced under section 144B will be a key building block of that framework. Commencing section 144B means that the decision not to commence the market oversight provisions in sections 59 to 63 must be kept under review. Monitoring the effectiveness of the non-legislative market oversight framework will form a key part of this ongoing process of review.
- 2.15. The decision not to implement the market oversight provisions means that the requirement to assess (as part of the market stability assessment) the extent to which regulated services were provided in a local authority area by service providers to whom section 61 of the 2016 Act applies, cannot be commenced at this time **(1)**.

(1) Section 61 would allow the Welsh Ministers, through the service regulator, to assess the financial sustainability of providers to which the market oversight regime applies. The relevant part of the 2014 Act is section 144B(2)(a)(ii).

3. Preparing Market Stability Reports

3.1. This chapter sets out guidelines for preparing market stability reports. It contains guidelines for assessing the sufficiency of care and support, and for assessing the stability of the market for regulated services providing care and support.

Purpose

3.2. Market stability reports **must** provide an assessment of:

- the sufficiency of care and support in meeting the needs and demand for social care, as set out in the population needs assessment, and
- the stability of the market for regulated services providing care and support.

3.3. The market stability report will particularly help commissioners of care and support (local authorities and their partner Local Health Boards) to understand the composition and dynamics of the market for regulated services within the RPB area, setting this within the wider context of care and support provision as a whole. It will have a quantitative and qualitative aspect, aiming both to describe the current pattern of provision of regulated services, and to assess issues such as the sufficiency, quality and sustainability of provision.

3.4. The duty to prepare and publish a market stability report, as set out in the 2014 Act, sits with each local authority, but the Regulations require them to carry out this function on a regional footprint, so that one market stability report will be prepared for each of the seven RPB areas across Wales. The report must contain an assessment of sufficiency, and of the stability of the market for regulated services, for each local authority area as well as across the RPB area as a whole. In this way, the report will inform both regional and local decision-making around commissioning care and support (especially, but not exclusively, regulated services), feeding into the strategic area plan for the RPB area and helping shape local and regional commissioning strategies.

3.5. There **must** be a clear link between the market stability report and the population needs assessment which must also be prepared for each RPB area. The population needs assessment sets out current and projected need and demand for care and support, and the range and type of services that will be required to meet that demand. The market stability report will assess the sufficiency of the care and support provided in meeting the needs and demand established through the population needs assessment, as well as the overall characteristics and stability of local and regional markets for regulated services. Together the two documents should provide those commissioning care and support, at the regional and local level, with a comprehensive picture of current and projected demand and supply.

3.6. The market stability report will also function as a useful tool for providers and potential providers of regulated services, enabling them to better understand the state of the

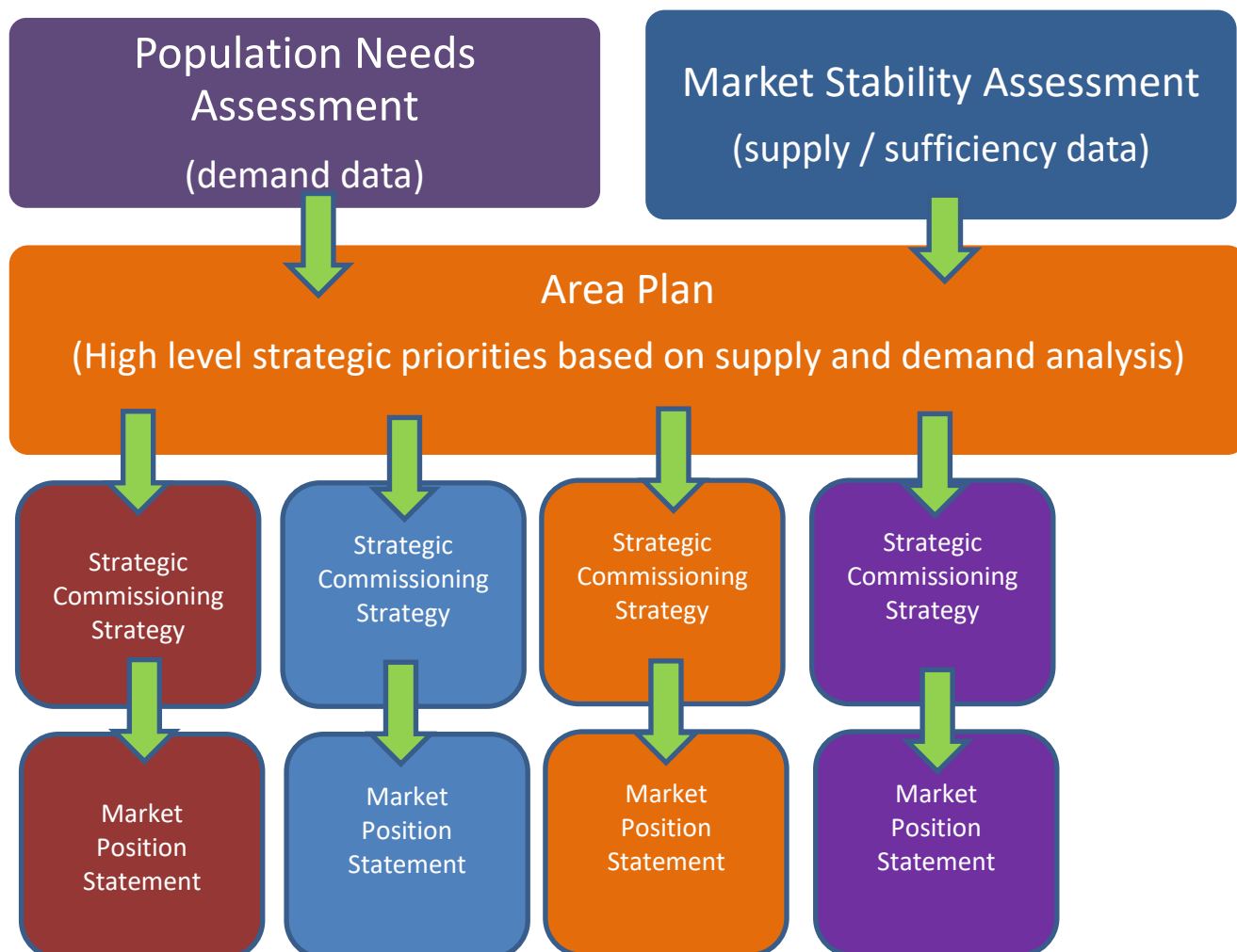
market within a particular region, and helping to inform their own strategic thinking about future investment in that market.

- 3.7. Market stability reports are designed to give a high-level overview and assessment of overall sufficiency of care and support, and of the stability of the market for regulated services. There will still be a need for local authorities and / or RPBs to produce more detailed market position statements for particular regulated services or segments of the social care market, linked to the commissioning priorities and intentions set out in local or regional commissioning strategies.
- 3.8. Market stability reports will also be of interest to citizens, particularly individuals with care and support needs, their families and carers, and those who advocate and work on their behalf. The sufficiency assessment, in particular, will help hold local authorities and Local Health Boards accountable to the populations they serve, providing transparency about the use of resources and how decisions about service provision are made.

Commissioning framework

- 3.9. The diagram below shows how market stability reports fit into the overall commissioning framework for RPBs.

Regional Partnership Board Planning and Commissioning



Who needs to be involved?

- 3.10. Local authorities **must** work together, in partnership with the Local Health Board and other partners through the RPB, in preparing a market stability report for their RPB area. The market stability report should be owned by the RPB as a whole, with each partner contributing as necessary. Although a large proportion of care and support is commissioned by local authorities (especially regulated services), the overall market for social care is much wider and more varied than this. Some care and support services will be jointly commissioned with Local Health Boards, and within local authorities education and housing will have a role in meeting social care needs alongside social services. Some social care will be purchased by individuals, using direct payments or as self-funders. Local authorities must take a holistic approach in considering the sufficiency of care and support provided, both through regulated services and through other provision, and each RPB partner will have a contribution to make to this. Further guidelines on partnership working are set out in Part 2 (chapter 6) below.
- 3.11. Local authorities **must** take reasonable steps to engage with citizens when preparing their market stability reports. This includes people with care and support needs, parents of children with care and support needs, and carers. Local authorities must also make contact with providers or potential providers of regulated services across the private and third sectors. Local authorities should also involve their own service managers or staff where such services are provided directly.

What needs to be assessed?

- 3.12. Local authorities **must** carry out an assessment of:
- the sufficiency of care and support in meeting the needs and demand for social care, as set out in the population needs assessment, and
 - the stability of the market for regulated services providing care and support.
- 3.13. In assessing the sufficiency of care and support, there should be a clear link back to the population needs assessment, which will have set out the range and level of services which are required to meet the care and support needs of the local population.
- 3.14. Regulated services are those listed in the Schedule to the 2016 Act. Currently these are:
- a care home service (adult and children's)
 - a secure accommodation service (for children)
 - a residential family centre service
 - an adoption service
 - a fostering service

- an adult placement ('Shared Lives') service
- an advocacy service
- a domiciliary support service.

Other services may be added to the Schedule to the 2016 Act from time to time.

3.15. When assessing the stability of the market for regulated services, local authorities **must** particularly assess the following matters set out in the Schedule to the Regulations:

- the sufficiency of provision of regulated services providing care and support, including any gaps in provision to meet needs identified in the most recent population assessment;
- the overall quality of care and support provision being provided by regulated services in meeting the needs and personal outcomes of people who need care and support and carers;
- current or developing trends in the provision of regulated services providing care and support, and their impact or likely impact upon the sufficiency, quality or stability of service provision;
- any significant challenges to current or future sufficiency, quality and stability of the provision of regulated services providing care and support; and
- the impact of commissioning and funding on the sufficiency, quality and stability of regulated services providing care and support, including regional approaches and the use of pooled funding.

3.16. There are other services not regulated under the 2016 Act which also help meet an individual's need for care and / or support. This is particularly true of support for carers and for young people leaving care. When preparing their market stability reports local authorities **must** consider how these services impact upon the provision of regulated services – and, indeed, how the shape of the market for regulated services impacts upon other aspects of care and support provision. For example, when assessing the market for fostering and residential care for older looked after children (both regulated services), local authorities should also consider what accommodation options are available for them to move on to when they leave care, including (for example) the impact of 'When I am Ready' arrangements on the availability of foster placements.

3.17. Preventative services are not regulated services, but the Part 2 Code of Practice specifically requires local authorities and Local Health Boards to consider preventative services as part of the population needs assessments, and set out the range and type of preventative services that will be required to meet those needs. When preparing their market stability reports, local authorities

3.18. The availability of preventative services can also have a major impact upon the need for regulated services - for example, in reducing the need for children to go into care, or enabling older people to stay at home rather than enter residential care

or hospital. Local authorities will therefore need to understand the profile, sufficiency, quality and impact of preventative services, as well as the market for regulated services, in order to fully meet the care and support needs of their local populations. The overall impact of preventative services on the market for regulated services **must** be considered by local authorities when preparing their market stability reports.

Sufficiency

- 3.19. Sufficiency is more than just measuring the quantity of care and support provision in the local area. The assessment of sufficiency should be measured against the population needs assessment, which establishes levels of demand and citizens' expectations. The market stability report **must** consider to what extent the care and support provided within the RPB area delivers the right type and mix of services to meet the needs and preferences of individuals with care and support needs, and delivers outcomes-focused care and support. For regulated services, it **must** also consider the diversity of the market, and the mix of providers across the public, private and third sectors.
- 3.20. The sufficiency assessment should not just focus on current provision, but also consider sustainability and the future provision of care and support to meet the needs and demand identified in the population needs assessment. The assessment **must** include changing patterns of demand, including changing expectations of service users; current and emerging trends; challenges, risks and opportunities; and how each of these will affect sufficiency of provision going forward into the next five year period.
- 3.21. The market stability assessment **must** also consider where care and support is located, and issues around accessibility. Where possible, care and support should be provided within an individual's local community, where they can be near friends and family. This is particularly important, for example, when placing looked after children, or for older residents who need to move into residential care or supported accommodation.
- 3.22. Local authorities have a general duty under Part 6 of the 2014 Act to take steps to ensure that they have sufficient accommodation within their local authority area to meet the needs of their looked after children. With the exception of 'other arrangements' for some 16-17 year olds, this accommodation will be provided by regulated services (fostering, care homes, secure accommodation, or residential family centres). The Part 6 Code of Practice (Looked After and Accommodated Children) requires local authorities to have regard to the benefits of having a sufficient number and range of providers in their area to discharge this duty, and capable of meeting different needs. The aim is to improve the quality and choice of placements, and minimise the likelihood of suitable placements not being available for looked after children in their local area. The Part 6 Code suggests that local authorities may wish to consider making arrangements on a regional basis where

appropriate. Accommodation that might need to be commissioned regionally includes residential care for children with complex care packages, or safe accommodation for children at risk to going into or stepping down from secure accommodation. The market stability assessments will provide an opportunity for the local authorities to assess how they have fulfilled the sufficiency duty under Part 6, and help them determine which types of accommodation for looked after children might best be commissioned on a regional footprint. The process should also help to secure appropriate buy-in from Local Health Boards and other regional partners, in respect of services which might need to be co-commissioned.

Regulated services

3.23. When assessing the sufficiency and stability of the market for regulated services, local authorities **must** have regard to the following matters as set out in the Schedule to the regulations.

- **Quality**

3.24. The market stability report **must** consider the extent to which regulated services deliver quality care and support to individuals requiring care and support, and whether the state of the market poses any risks to the quality of provision. Quality will be monitored at many levels, individual, organisational and regional. Information and intelligence about the quality of regulated services will include the outcomes of inspections, local authority contract monitoring, information from local authority and Local Health Board quality monitoring systems, and from national commissioning frameworks such as those for children's services managed by the Children's Commissioning Consortium Cymru.

- **Trends**

3.25. The assessment of market stability should not only consider the composition and stability of the current market for regulated services, but **must** also consider what the market for regulated services is likely to look like in the future. Market stability reports feed into the area plan, which sets the strategic direction for the RPB for the following five years. Understanding market trends, such as entry and exit, will help to future-proof the decisions the RPB, local authorities and the Local Health Board make about commissioning care and support services. Assessing trends is likely to be informed by intelligence about what citizens want more of (for example, extra care housing or supported living, rather than traditional care home accommodation), the impact of demographic changes on the social care market (for example, the need for more specialist care home provision for the oldest and frailest individuals), or the impact of new technologies such as Technology Enabled Care.

- **Challenges**

- 3.26. Local authorities need to be open and transparent about the challenges and risks faced by commissioners and/or providers of regulated services within the RPB area, and open about how they intend to mitigate those risks and respond to those challenges. These challenges will also give rise to opportunities to innovate or respond in new ways to changing expectations or circumstances.
- 3.27. The fact that market stability reports will be published should not inhibit the honest discussion of risks and challenges between local authorities and their RPB partners. Local authorities will need to strike a balance between creating space for open and frank discussions within their own organisations and within the RPB, and being open and transparent with providers and the public in the final published document.
- 3.28. Local authorities **must** also consider how the identified risks might be mitigated, including how those risks will be shared between the RPB partners.

- **Impact of commissioning**

- 3.29. When preparing their market stability reports, local authorities **must** consider the impact of commissioning and funding on the sufficiency, quality and stability of provision of regulated services across the RPB area. They **must** assess regional as well as local approaches to commissioning, and the use of pooled funding. This will include the effectiveness of the RPB as a commissioning mechanism for specialist services, and the use of revenue and capital funding streams across the RPB area.
- 3.30. It is worth re-emphasising here that the primary purpose of the market stability report is to provide information and analysis about the market for regulated services, which together with the population needs assessment will help RPBs develop their Area Plan and any more detailed commissioning documents which fall out of it. Assessing the impact that the commissioning decisions of the RPB, local authorities and the Local Health Board have had on the shape and stability of provision of regulated services over the five years since the last population needs assessment was undertaken, will help the RPB and its constituent bodies determine what their strategic commissioning intentions should be going forward.

Social enterprise

- 3.31. Market stability reports provide an opportunity for local authorities to consider the role and added value that the social value sector plays in the provision of care and support. This includes the contribution that social enterprises, co-operatives, user-led services and the third sector have made to the market for regulated services in the RPB area. Local authorities **must** consider the social value sector when preparing their market stability reports, including the types and range of services provided, including any areas of specialism or added value.

- 3.32. Local authorities have a duty under section 16 of the 2014 Act to promote social enterprises, co-operatives, user-led services and the third sector. The market stability report should consider to what extent local authorities in the RPB area have used this duty to shape or re-shape care and support provision, including the market for regulated services. Examples include where local authorities have supported small independent fostering agencies to become not-for-profit providers, or have supported the development of co-operative models for delivering domiciliary care services. This should form part of the assessment of the impact of commissioning decisions on the way regulated services are provided.

Resources

- 3.33. Funding resources, and the way they are used, will have a major impact upon the sufficiency and pattern of care and support across the RPB area, and how the market for regulated services operates. Local authorities will need to consider the impact of resourcing when undertaking their sufficiency assessments, and they **must** consider how resourcing and investment decisions are impacting upon the stability of provision of regulated services across the RPB area. This will include strategic decisions on budget allocation as well as methods for agreeing service fees and costs. It is important that cost of delivery is carefully considered and calculated within setting a service price.
- 3.34. The market stability report **must** include intelligence on those who fund their own care and support packages, to build up a profile of this group of service users and the effect they have on the market for regulated services. It is important to understand what they purchase and would like to purchase, including changing patterns of demand. Local authorities will also want to assess the extent to which the market for regulated services in particular provides self-funders with the choice and quality of services they need, and the factors that might promote or hinder this.
- 3.35. The report **must** also consider the provision of care and support purchased by individuals who purchase their own care and support using direct payments. This should include the take-up of direct payments and the effect this has had on the market for regulated services. It will be important to understand what care and support these individuals purchase, what they would like to purchase in the future, and any factors or issues affecting the availability, choice or quality of services for individuals who use direct payments. The purpose of direct payments is to give individuals greater choice and direct control over the care and support they receive, and to promote innovative solutions to meeting needs and improving outcomes, so understanding the relationship between regulated services and other means of support in direct payment packages will be particularly important in assessing how the market for regulated services works for this particular group of users.

Workforce

- 3.36. The composition and characteristics of the social care workforce will be an important factor in determining the sufficiency of the care and support provided in the RPB area.

The market stability assessment **must** provide a description of the current care and support workforce, particularly across regulated services. This should include the size and nature of any shortfall in numbers in any particular sector, and any current or projected risks or challenges. The assessment will also need to consider the impact of recruitment, development and training of the social care workforce upon the provision of care and support, and identify any skills gaps, including where there is a lack of

suitably trained staff to deliver particular models of care (for example, trauma informed approaches to working with children in care).

Welsh language

- 3.37. Local authorities **must** assess the sufficiency of care and support provided through the medium of Welsh against the Welsh language community profile established during the population needs assessment. This includes any gaps in provision. Local authorities **must** also consider how current or future trends in the market for regulated services might affect the provision of care and support to the Welsh-speaking community, as well as any identified challenges and risks, and the impact of local authority and Local Health Board commissioning and funding decisions.

Provider failure

- 3.38. When preparing market stability reports, local authorities **must** consider any lessons that have been learned from actions taken under section 189(2) of the 2014 Act, which places a duty on local authorities to take action in the event that a registered service provider becomes unable to provide a service because of business failure. In such circumstances the local authority are required, for so long as it consider necessary, to meet the needs of the adults for whom the registered person was providing accommodation or services. Section 144B of the 2014 Act specifically requires that the learning from the exercise of this duty be included in the market stability report, and the co-ordinating body will need to collate this information from the local authorities across the RPB area.

Undertaking a market stability assessment

- 3.39. Local authorities **must** have regard to the statement of well-being outcomes and measures issued by Welsh Ministers under section 8 of the 2014 Act when preparing their market stability reports.
- 3.40. The statement describes the national well-being outcomes for people who need care and support and carers who need support. The statement builds on the definition of well-being in the 2014 Act, and describes the national well-being outcomes in relation to all areas of an individual's life. It was issued to build a common understanding of well-being across all agencies, to ensure everyone is working together towards the same outcomes. The well-being of people who need care and support and of carers who need support will be monitored annually by Welsh Government through the national outcomes framework which was published in February 2019. The framework,

Citizen engagement

- 3.41. Local authorities **must** take reasonable steps to engage with citizens, including people with care and support needs, parents of children with care and support needs, and carers, when preparing their market stability reports. The views of citizens will be

particularly important when assessing the sufficiency and quality of provision of regulated services in meeting individual care and support needs and achieving personal well-being outcomes. Other parts of the report will not require direct public involvement – for example, identifying market pressures or trends, or the impact of commissioning on social services functions. There will already be mechanisms in place to engage citizens in the population needs assessment, and local authorities should be able to use these when preparing their market stability reports also.

Engagement with providers

- 3.42. Local authorities **must** take reasonable steps to ensure that they engage with any private sector or third sector organisations which are concerned with, or have an interest in, the provision of care and support to the local population. Information and data provided by service providers will be necessary to build up a profile of care and support at regional and local level, and the views of providers on the operation of the market for regulated services will contribute to a rounded assessment of overall market stability. Local authorities which directly provide regulated services **must** also take steps to engage with managers and staff, as appropriate, when undertaking their market stability assessment. This includes NHS managers and staff where services are jointly commissioned.

Equality impact assessment

- 3.43. An Equality Impact Assessment **must** be undertaken as part of the process of preparing a market stability report, in line with the duty on local authorities under the 2014 Act to have due regard to the UN Convention on the Rights of the Child, the UN Convention on the Rights of Persons with Disabilities, and the UN Principles for Older Persons; and the Public Sector Equality Duty contained in section 149 of the Equality Act 2010, which requires all public authorities to have due regard to protected characteristics when exercising their functions.
- 3.44. This means that when assessing the sufficiency of care and support, and the stability of the market for regulated services, local authorities **must** particularly consider the impact upon age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and beliefs, sex and sexual orientation (the 'protected characteristics'), and take due regard of the UN conventions and principles. The Equality Impact Assessment **must** be published as an appendix to the market stability report, but RPBs should also ensure that any significant impacts upon

particular groups, or in relation to any of the protected characteristics, are also discussed and embedded within the main body of the report where appropriate.

Timetable

- 3.45. Local authorities **must** produce market stability reports every five years, with the first reports published by 1 June 2022. This links to the local government electoral cycle, and means that local authorities will be undertaking their sufficiency and market stability assessments concurrently with the population needs assessments.

4. Content and structure of market stability reports

- 4.1. This chapter sets out what needs to be included in market stability reports and how they should be presented. **Content**
- 4.2. The market stability report **must** include an assessment of the sufficiency of care and support across the RPB area in meeting the needs identified in the most recent population needs assessment. The market stability report **must** include an assessment of the stability of the market for regulated services providing care and support across the RPB area, including the following matters which are set out in the Schedule to the Regulations:
- the sufficiency of provision of regulated services providing care and support, including any gaps in provision to meet needs identified in the most recent population assessment;
 - the overall quality of regulated services providing care and support in meeting the needs and personal outcomes of people who need care and support and carers;
 - current or developing trends in the provision of regulated services providing care and support, and their impact or likely impact upon the sufficiency, quality or stability of service provision;
 - any significant challenges to current or future sufficiency, quality and stability of regulated services providing care and support; and
 - the impact of commissioning and funding mechanisms and approaches on the sufficiency, quality and stability of regulated services, including regional partnership approaches and the use of pooled funding.
- 4.4. The report **must** include a section on any action taken by any of the local authorities in the RPB area during the specified period in pursuance of their duty under section 189(2) of the 2014 Act, to meet the care and support needs of relevant individuals in the case of provider failure. This must include any lessons learnt and recommendations for future mitigating action.
- 4.5. The report **must** also describe:
- the role and involvement of each local authority and other RPB partners in carrying out the sufficiency and market stability assessment, and preparing the report
 - how the local authorities engaged with citizens in carrying out the sufficiency and market stability assessment, and a summary of the key messages and issues arising
 - how the local authorities engaged with private and third sector providers which have an interest in the provision of care and support to the local population, and a summary of the key messages and issues raised.

- 4.6. The report should be drafted using accessible language so that it can be read and understood by as wide a range of stakeholders as possible, including citizens and providers.
- 4.7. The report **must** include an equality impact assessment as set out in paragraphs 3.43 and 3.44 above.

Structure

- 4.8. The way the market stability report is set out should make it easy to link back to the population needs assessment, which set out the care and support needs of the local population and the range and type of services that will be required to meet those needs. The Part 2 Code of practice requires population needs assessments to include specific core themes, including:
- children and young people
 - older people
 - health / physical disabilities
 - learning disability / autism
 - mental health
 - sensory impairment
 - carers who need support
 - violence against women, domestic abuse and sexual violence.
- 4.9. The market stability report should also reflect these core themes, profiling and measuring the sufficiency of care and support against each theme, where appropriate. There **must**, at the very least, be a clear read across between what the population needs assessment says about need and demand for care and support, and what the market stability report says about the sufficiency of provision of regulated services to meet those needs.

5. Preparing Market Stability Reports

- 5.1 This chapter sets out the requirements for agreeing and submitting market stability reports, monitoring and reviewing the reports, and what local authorities need to do when revisions are made.

Agreeing the report

- 5.2. When completed, local authorities **must** submit the market stability report to the RPB, before it is submitted to each local authority for formal approval. The report will need to be approved by the full Council on submission by the council's executive or board. Sufficient time should be allowed for this, in order to meet the deadlines for publication and submission to the Welsh Ministers.

Publication

- 5.3. Market stability reports are public documents and must be published. Each local authority **must** publish on its website the report for their RPB area, and the report should also be published on the RPB website.

Submission to Welsh Ministers

- 5.4. Market stability reports **must** be submitted to the Welsh Ministers in an electronic format at the time of publication. This function should be delegated to the lead co-ordinating body.

Review

- 5.5. Local authorities **must** keep their market stability reports under regular review and revise them as necessary. The reports should be reviewed whenever significant changes occur within the social care market, and at least at the mid-point of the assessment cycle, following the mid-cycle review of the population needs assessment. If significant changes are identified following a review, local authorities **must** produce either a revised report or an addendum, which **must** be published on the RPB and local authority websites, and submitted to the Welsh Ministers.

PART 2 Statutory Guidance

6. Partnership arrangements

- 6.1. This chapter deals with the partnership arrangements between local authorities and Local Health Boards for the purpose of preparing and publishing market stability reports.

This chapter is statutory guidance issued under section 169 of the 2014 Act, to which local authorities and Local Health Boards must have regard.

- 6.2. The Partnership Arrangements (Wales) Regulations 2015 required local authorities and Local Health Boards to establish seven regional partnership boards (RPBs) to carry out certain delegated local authority and health board functions. The *(draft) Market Stability Report and Partnership Arrangements (Wales) (Amendment) Regulations 2021* ('the Regulations') include the preparation and publication of market stability reports among the functions to be undertaken under these partnership arrangements. This means that market stability reports **must** be produced on a regional footprint by local authorities and Local Health Boards, working together through the RPB.
- 6.3. Local authorities and the Local Health Board for each of the RPB areas **must** prepare and publish a market stability report for that area. In doing so, local authorities **must** act in accordance with the requirements of the code of practice set out in chapters 1-5 of this document, and Local Health Boards **must** engage as active partners with local authorities in fulfilling those requirements.
- 6.4. In preparing their market stability report, local authorities and the Local Health Board **must** undertake an assessment of the sufficiency of care and support within the RPB area, including those services which are jointly commissioned, and of the stability of the market for regulated services. Regulated services are those listed in the Schedule to the 2016 Act. In assessing the sufficiency and stability of regulated services they **must** include the following matters: the overall quality of those services; current or developing trends in provision; any significant challenges to current or future sufficiency, quality and stability; and the impact of commissioning and funding mechanisms and approaches on the sufficiency, quality and stability of regulated services, including regional partnership approaches and the use of pooled funding. (Code of Practice, paragraphs 3.23 to 3.30)
- 6.5. Local authorities and the Local Health Board **must** take reasonable steps to engage with citizens, including people with care and support needs, parents of children with care and support needs, and carers, when preparing their market stability reports. They **must** also make arrangements to engage with providers or potential providers of regulated care and support services, across the public, private and third sectors. (Code of Practice 3.41 and 3.42).

- 6.6. Local authorities and Local Health Boards **must** produce one market stability report per local government electoral cycle. The first report **must** be produced by 1 June 2022.
- 6.7. Local authorities and the Local Health Board **must** nominate a lead co-ordinating body for preparing and publishing the market stability report, taking into account existing expertise, knowledge and relevant resources. It is expected that the lead body will be a local authority. The lead co-ordinating body will be responsible for co-ordinating the sufficiency and market stability assessments, and producing the market stability report, but each local authority and the Local Health Board **must** participate in the exercise as required by the lead co-ordinating body. The nominated lead coordinating body can be reviewed when the partnership sees fit.
- 6.8. Local authorities and the Local Health Board **must** produce a single market stability report. The report **must** cover the RPB area as a whole, but also contain an assessment of the sufficiency of care and support within each of the local authority areas, and any factors particularly affecting the stability of the market for regulated services within that local authority area. The lead co-ordinating body **must** ensure that the combined market stability report has a consistent format.
- 6.9. It is the responsibility of the lead co-ordinating body to resolve issues that may hinder the production of a combined market stability report. The RPB may also serve to help in resolving any conflicts which arise either in relation to undertaking the sufficiency and market stability assessments, or in agreeing the report.
- 6.10. As market stability reports do not simply describe the composition and characteristics of the market for regulated services, but involve a degree of judgement, particularly around sufficiency and the impact of commissioning by local authorities and Local Health Boards, it is important that the assessment and report are agreed between the partnership bodies. In exceptional circumstances, it may not be possible for all the local authorities and the Local Health Board to agree to a particular aspect of the combined market stability report. Where there are disagreements about conclusions or the content of the report, the lead co-ordinating body should try to resolve these in the first instance, but where this is not possible the matter should be referred to the RPB. If it is still not possible to agree on any aspect of the assessment, then the RPB should take note of the differing views and reflect these in the report.
- 6.11. The local authorities and the Local Health Board in the RPB area **must** each contribute to any costs involved in the exercise. (Costs should be minimal and mostly consist of staff time, although some costs might be incurred for printing or carrying out citizen engagement).
- 6.12. The local authorities and the Local Health Board in the partnership arrangement **must** share any information required to prepare the market stability report. Any personally identifiable information **must** be shared within the principles of the Wales Accord on the Sharing of Personal Information (WASPI). All local authorities and Local Health Boards in Wales are signatories to the WASPI Accord. More information on WASPI

can be found at: <http://www.waspi.org>.

- 6.13. When completed, local authorities and the Local Health Board **must** submit the market stability report to the RPB for agreement, before it is submitted to each local authority and to the Local Health board for formal approval.
- 6.14. The first market stability report **must** be published by June 2022 and submitted to Welsh Ministers at the time of publication. The lead co-ordinating body is responsible for submitting the report to the Welsh Ministers.
- 6.15. Local authorities and Local Health Boards **must** keep market stability reports under regular review and revise them as necessary. The lead co-ordinating body is responsible for managing this review and for submitting any subsequent addendums to the Welsh Ministers.