



Llywodraeth Cymru
Welsh Government

IMPACT ASSESSMENT

Market stability reports: integrated impact assessment

Commencement of section 144B of the Social Services and Well-being (Wales) Act 2014, and development of supporting regulations and code of practice and statutory guidance.

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Section 1. What action is the Welsh Government considering and why?

The Welsh Government is proposing to commence section 144B of the Social Services and Well-being (Wales) Act 2014 (inserted by section 56 of the Regulation and Inspection of Social Services (Wales) Act 2016).

Section 144B requires local authorities to prepare and publish market stability reports (MSRs), including an assessment of the sufficiency of care and support and of the stability of the market for regulated services within the local authority area. Regulations will be made under s.144B covering the assessment period, matters to be covered in the report in respect of regulated services, and the date by which the MSRs must be published; and we will also amend the Partnership Arrangements (Wales) Regulations 2015 so that the preparation and publication of MSRs 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 regulations will be supplemented by a code of practice for local authorities, and by statutory guidance on partnership arrangements for local authorities and Local Health Boards.

These actions are part of the Welsh Government's programme, which began with Sustainable Social Services (2010), to safeguard the longer term stability and sustainability of social care provision in Wales. The cornerstones of this programme are the Social Services and Well-being (Wales) Act 2014 ('the 2014 Act') and the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act'), and these actions implement section 144B of the 2014 Act, which will be inserted through section 56 of the 2016 Act.

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Long term

We are proposing to require RPBs to produce MSR on a five year cycle, with the first reports to be published by 1 June 2022. This ties in with the local government electoral cycle, and places MSR within a strategic planning and commissioning cycle which includes regional population needs assessments (PNAs) and area plans. PNAs provide data about the need and demand for care and support within the RPB area, and the type and level of services needed (that is, demand side data), whereas MSR will provide an assessment of the sufficiency of care and provision and of the stability of the market for regulated services (supply side data). Together they will help inform and shape the strategic area plan for the region.

The MSR will focus not only on whether current provision is sufficient to meet the demand set out in the PNA, and whether the current market for regulated services is stable, but also on the sustainability of provision measured against projected future demand and the expectations of service users. Among the 'matters' we propose to specify in the regulations with regard to regulated services are current or developing trends and 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 provision; 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. The intention is that these will enable RPBs to take a more strategic view of care and support provision over the next five years, and help them shape and re-balance ('future proof') social care markets.

This work has been undertaken in parallel with preparation of a White Paper consultation on rebalancing care and support, including proposals for new legislation to improve arrangements for care and support and strengthen partnership working to achieve the vision set out in the 2014 Act. This includes setting out a clear national framework to support services to be planned

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regionally and delivered locally, and for the strengthening of partnership arrangements. Analysis of the MSRAs and the next round of PNAs will help feed into this wider national framework approach during the next Senedd Cymru term.

Prevention

Prevention and early intervention are fundamental principles in the 2014 Act, which aims to increase preventative services within the community to minimise the escalation of critical need. MSRAs will require RPBs to assess the sufficiency and sustainability of preventative services. These services are not regulated, which means that there is no legal requirement in section 144B to assess the stability of the market for them, but we intend to use the code of practice to encourage RPBs to take a holistic view of their social care markets when undertaking their MSRAs.

Integration

Most social care is currently commissioned by local authorities, although some is jointly commissioned with the NHS (for example, residential care with nursing) and some is self-funded or arranged via Direct Payments. MSRAs are an opportunity for RPBs to take a more integrated and collaborative approach to planning, commissioning and providing care and support services including residential and domiciliary care.

They support the approach we have taken to develop the role of RPBs as strategic regional partnerships, and will allow for more integrated and strategic approaches to commissioning services which are high-cost low-volume, such as specialist services for disabled people, or safe accommodation for children with complex needs. MSRAs should help facilitate the use of pooled budgets, which

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are already required under the Partnership Arrangements (Wales) Regulations 2015, and also developing approaches such as the 'No Wrong Door' approach advocated by the Children's Commissioner for Wales.

Collaboration

RPBs have a wide membership, which consists of statutory agencies (local authorities and Local Health Boards) and other stakeholders including citizens' and providers' representatives and the third sector. In developing our proposals we have worked with a small reference group including RPBs, the National Commissioning Board, the Children's Commissioning Consortium Cymru, and Care Inspectorate Wales.

The proposals were subject to public consultation from 16 September to 25 November 2020, and the key messages from the consultation were considered by the reference group before the code of practice and statutory guidance was substantially revised and rewritten. The whole approach to producing MSRs is based upon collaboration between local authorities and Local Health Boards, working through the RPBs.

Involvement

The regulations governing PNAs already require RPBs to engage with citizens and providers of care and support in their preparation. Unfortunately the regulation-making power in respect of MSRs do not allow us to include this in regulations, but we will use the code of practice and statutory guidance to make this a requirement for MSRs also. This means that a wide range of citizens, including children and young people, must be involved in the sufficiency and market stability assessments, and their representatives on the RPB will have a

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role to play in considering the final report. The same will be true for providers from across the public, private and third sector, including the regional Social Value Forums. RPBs will be required to prepare their MSRMs in line with the principles of the 2014 Act, which include co-production and giving citizens greater voice and control.

Mechanism

These proposals concern the commencement and implementation of legislation which is already in the statutes book, the making of regulations, and the production of a code of practice and statutory guidance to support implementation by RPBs.

Three options were considered during the development of these proposals:

- option 1 - maintaining the status quo, i.e. not commencing these sections of the Acts at this time, and therefore placing no formal duty upon local authorities to prepare market stability reports
- option 2 – commencing section 56 of the 2016 Act and making regulations under section 144B of the 2014 Act, requiring local authorities to prepare market stability reports. This would be supplemented by a code of practice for local authorities
- option 3 – as option 2, but also amending The Partnership Arrangements (Wales) Regulations 2015 so that local authorities and Local Health Boards are required to prepare market stability reports for their region, working through the RPB. As well as a code of practice, statutory guidance on partnership arrangements would also be published

The costs, benefits and risks of each of these options are set out in the Regulatory Impact Assessment, which forms part of the Explanatory Memorandum to The Partnership Arrangements (Amendment) and Regulated

Services (Market Stability Reports) (Wales) Regulations 2021, and which will be published when the regulations are laid before the Senedd Cymru in January 2021.

Conclusion

7.1 How have people most likely to be affected by the proposal been involved in developing it?

Section 144B of the 2014 Act contains a requirement for Welsh Ministers to consult ‘any persons they think appropriate’ before making regulations under that section. A small reference group convened to develop draft regulations and a supporting code of practice and statutory guidance, with input from the RPBs, National Commissioning Board, the Children’s Commissioning Consortium Cymru, and Care Inspectorate Wales.

A public consultation was held from 16 September to 25 November 2020. Due to COVID-19 restrictions, and the pressures of COVID-related work, the consultation process was not as extensive as we would have liked, but the responses received (19 in total) were comprehensive and covered a wide range of stakeholders including six of the seven RPBs, Welsh Local Government Association and Association of Directors of Social Services Cymru, the Children’s Commissioner for Wales, the Welsh Language Commissioner, provider organisations, the third sector and trades unions. The consultation findings were discussed with the reference group, and the code of practice was substantially revised and rewritten in the light of the comments received.

The first market stability reports (MSRs) must be produced by 1 June 2022, and there is a requirement in the code of practice and guidance for RPBs to engage with citizens and providers when undertaking the sufficiency and market stability assessments.

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7.2 What are the most significant impacts, positive and negative?

As a result of these Regulations, code of practice and statutory guidance, local authorities and Local Health Boards, working with their RPB partners, will prepare and publish seven regional Market Stability Reports by 1 June 2022 and every five years thereafter.

These published reports will set out an assessment of the sufficiency of care and support provision across the RPB area, and an assessment of the stability and sustainability of the market for regulated services. Together with the regional population needs assessment, the MSR will help inform and shape the next round of Area Plans, to be published by 1 April 2023. MSRs should, therefore, have a direct positive impact upon local and regional planning and commissioning decisions.

The reports will also be submitted to the Welsh Ministers, and help build up a national picture of the sufficiency of care and support provision and the stability and sustainability of the social care market.

If MSRs are prepared effectively in line with the code of practice and statutory guidance, they will help identify where there are gaps in the provision of care and support, enabling social care commissioners (primarily local authorities) and providers to make informed decisions about future provision and investment. Likewise, MSRs should ultimately help make social care markets more stable and sustainable, which in turn will ensure that the type and level of care and support services available within local communities meet individuals' needs and expectations in ways that enable them to achieve their personal well-being outcomes. MSRs will help to future proof markets for social care (particularly regulated services) by considering trends, challenges, opportunities and risks.

MSRs 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.

MSRs should also help make a positive contribution to the development of the social care workforce, as the impact of 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. This will 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, or nursing approaches in adult care homes with nursing).

The MSRs should have a positive impact upon rebalancing the social care market and creating a more diverse provider base with a particular focus upon social value. They will particularly assist with developing social value approaches to commissioning and procurement, including the development of social enterprises, co-operatives and third sector provision, helping local authorities fulfil their duty under section 16 of the 2014 Act.

The requirement for the MSRs to be produced on a regional footprint through RPBs will help ensure that an integrated approach will be taken to the commissioning and provision of care and support services. This will be particularly important where services are commissioned jointly by local authorities and the NHS (e.g. residential care with nursing, or reablement services for those returning home from hospital); but will also hopefully encourage and stimulate more innovative shared approaches, perhaps on a regional basis, such as the development of safe accommodation for children with complex needs. MSRs should help achieve more holistic wrap-around provision of care and support, to meet the range of people's health, social care and well-being needs. (This will contribute to the national well-being goal of a

healthier Wales).

There will potentially be benefits in terms of Welsh language provision, in that the MSRs must assess the sufficiency care and support provided through the medium of Welsh and the market for regulated services provided in Welsh. It is hoped that this will stimulate the growth of new provision to meet identified need and demand. (This will contribute to the national well-being goals of a Wales of a vibrant culture and thriving Welsh language and a more equal Wales).

Overall, by helping to build a better understanding of how supply aligns with need and demand, and of the nature of local and regional markets for social care, MSRs should have a positive impact in building a balanced care and support sector which meets the identified needs of local populations across Wales – furthering the goal of the 2014 Act that all individuals who need care and support, and all carers who need support, have access to the services they need to meet their well-being goals. (This will contribute to the national well-being goal of a more equal Wales).

7.3 In light of the impacts identified, how will the proposal:

- maximise contribution to our well-being objectives and the seven well-being goals; and/or
- avoid, reduce or mitigate any negative impacts?

As set out above, the intended impacts of MSRs will particularly contribute to the following well-being goals:

- a healthier Wales
- a more equal Wales
- a Wales of vibrant culture and a thriving Welsh language

MSRs will require local authorities and Local Health Boards to work together, with their RPB partners to assess two areas which could potentially have negative impacts upon the lives of some of the most vulnerable people in Wales: to what extent care and support provision is sufficient to meet demand; and to what extent social care markets are stable and sustainable. MSRs must assess trends, challenges and risks, and will also identify opportunities for shaping and rebalancing the overall social care market. This should help local authorities, the NHS and other relevant partners identify gaps and areas that need further investment, and to mitigate risks to market stability. Although MSRs will not achieve this on their own, they have the potential to be a useful tool in helping deliver the goals of the 2014 Act.

7.4 How will the impact of the proposal be monitored and evaluated as it progresses and when it concludes?

MSRs must be submitted to the Welsh Ministers when they are completed. The first reports are due by 1 June 2022. Welsh Government and Care Inspectorate Wales will use the reports, along with other relevant sources of data and information, to build up a national overview of the sufficiency of care and support, and of the shape and stability of the market for regulated and other services in Wales. MSRs will help inform national policy on commissioning, resourcing and reshaping care and support; assist Welsh Government and CIW to develop a proportionate and appropriate approach to market oversight; and contribute to discussions between Welsh Government and RPBs about their strategic area plans.

MSRs will be subject to annual review, and revised plans (or addendums to existing plans) must also be submitted to Welsh Ministers when changes are made as a result of these reviews. The learning from the first round of assessments, and from the annual reviews, will be used to shape subsequent cycles.

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