

# Health and Social Services Committee

## HSS(2)-18-06(p4)

**Meeting date: Wednesday 13 December 2006**

**Venue: Committee Room 2, Senedd, National Assembly for Wales**

**Title: Towards a Stable Life and a Brighter Future**

Measures to strengthen arrangements for the placement, health, education and wellbeing of looked after children and young people and changes to the responsible commissioner for secondary health care for vulnerable children placed away from home.

### **Purpose**

1. The Committee is asked to consider proposed legislation to be considered by the Assembly in Plenary in February 2007, under Standing Order 24, to strengthen arrangements for the placement, health, education and wellbeing of looked after children and young people. The Committee is also invited to consider if the proposed legislation, supported by statutory guidance, is sufficiently robust to delivery on commitments I made in a feasibility report debated in Plenary in June under standing order 31.2. These dealt with a much wider agenda to tackle inequalities in health, education and wellbeing and secure improved outcomes for looked after children.

### **Summary**

2. The Committee has identified the instruments for scrutiny. Members will note that the Local Government and Finance Committee will also consider the instruments in January 2007. The final debate is due to take place in Plenary in February 2007, with a proposed coming into force date of 1 July 2007 for the regulations and guidance.

3. In September 2006, I wrote to all Assembly Members, enclosing a copy of the consultation document, to highlight our corporate responsibility for looked after children and encourage their active involvement in the consultation exercise. Committee members have therefore had the benefit of early sight of the draft regulations and statutory guidance.

4. The consultation concluded on 13 November 2006. The proposed changes were positively received and seen as a catalyst to improve processes and outcomes for looked after children. Local government in particular welcomed use of powers in the Children Act 2004 to strengthen the duties of education and health agencies in respect of looked after children.

5. A summary report of the consultation is attached. The regulations and paper before you today incorporate changes to reflect outcomes from the consultation and technical changes by lawyers in Legal Services.

6. The Committee will also note that we have taken the opportunity to devise Wales only regulations in two areas to consolidate the regulations and reflect the approach to these areas, which is unique to Wales. We will have a family of regulations for Wales in respect of the main body of secondary legislation for looked after children. This will bring clarity to this highly regulated and complex area to assist professionals and others to have a clear understanding of their statutory duties for looked after children. Regulations may be subject to further technical refinement, but the statutory instruments before you today reflect the Assembly Government's policy on the final measures we want to bring forward in 2007.

7. Effecting the range of changes we want to see has necessitated changes to four separate sets of regulations and the development of comprehensive statutory guidance.

8. We are exercising, for the first time, new powers under the Children Act 2004, to direct local authorities and their health partners on duties they must undertake to discharge their statutory functions to improve the health and wellbeing of looked after children. The changes aim to ensure that decisions are made on the basis of the 'best interests' of the child, that placements are made close to the child's home and within their community wherever possible (unless there is an overriding risk to the child), and that arrangements are co-ordinated between agencies and delivered by identified key people. The

changes aim to bring greater accountability and scrutiny at all levels across local government and the health service in meeting their corporate parenting responsibilities for looked after children. Outlined below are the key areas of change.

## **Placement and Health Considerations**

9. The placement regulations establish the principles that local authorities and their health partners must consider when placing a child. The regulations impose new duties on the considerations they must take into account and the people who must be involved in the pre-placement planning and decision making process. The regulations will require greater consideration of the child's health and education needs, in particular any mental health needs the child may have and of the services required to meet those needs.

10. Local authorities wishing to place a child out of the area in which they normally reside with their birth parents/carer will be required to convene a panel comprising of senior managers from local authority social services, education services and the local health board (LHB). Where appropriate, panels must involve professionals such as paediatricians and educational psychologists.

11. Regulations impose a continuing duty on a local authority to convene a panel within 25 working days, for a child who has been placed out of area in an emergency. Regulations and guidance set out the considerations a panel must take when making a determination to place a child out of area. The guidance recognises that different models of panel will operate dependent on local arrangements and the particular circumstances of each case. However, there is no exemption from the panel requirement, even in straightforward cases.

12. Regulations place accountability on the head of service to record reasons for emergency placements, to make a declaration of the circumstances that led to the decision to place a child out of area and to provide a written report to the authority's statutory lead member for children and young people's services on the numbers and circumstances of such placements. A copy of the decision must be placed on the child's case record. The register of particulars to be kept by the local authority for each looked after child is extended to include the child's National Health Service and social services identification numbers and if a child is to be placed in a children's home, the name of the designated link worker in the home. To assist health care providers in fulfilling their responsibilities for a child's health care, the authority must provide relevant details from their register of all children placed outside the area to the LHB responsible for providing the child's health care.

13. All looked after children are required to have a statutory health assessment on entering care and annually, or twice annually thereafter for under 5s. Enhancements in regulations extend the responsibility for undertaking initial health assessment to a registered nurse and require more frequent assessments if the child's welfare requires it. Health assessments must be undertaken prior to placement wherever possible and the regulations impose a time limit of no later than 14 days of the placement date in which arrangements for health assessments must be made. Copies of the health assessment must be forwarded to the child's GP to ensure the child's health record is accurate and up to date.

14. To support swift transfer of the child's health and education records, regulations impose a time limit of 10 days by which the authority must notify specified health providers in the area in which the child is placed. Regulations also require the child's health records to be transferred and place an ongoing duty on the authority to monitor the transfer. The duty can only be discharged once the records are transferred. There is also a time limit of 10 days by which the child must be registered with the GP and 25 days for the child to have access to a dentist.

15. Statutory guidance supporting the regulations place a positive requirement on LHBs to designate a specialist health practitioner (and more than one depending on the size of the looked after children) to co-ordinate the health element of the child's care plan (and the pathway plan for care leavers) and address their holistic health needs.

## **Review of Children Cases**

16. Since September 2004 local authorities have been required to appoint an Independent Reviewing Officer (IRO) to improve the safeguards for children in respect of the review of their care plan. The IRO oversees the review process, chairs the review meeting and has specific duties to ensure that children and key adults in the child's life are involved in the decision making process and that meetings take place in accordance with statutory timescales in order to minimise drift and challenge poor practice.

17. Changes to these regulations further strengthen the role of the IRO and extend their duties to include ensuring the child is registered with a GP, has access to a dental practitioner, to monitor the transfer of the child's health and education records and ensure the child is receiving services for any assessed mental health needs.

18. For children placed in children's homes under the new regulations, the IRO must involve the statutory 'link worker' - in the child's case review. The regulations also place an ongoing duty on IROs to monitor these arrangements (and for the local authority to inform the IRO of any changes in the child's care plan) and act in the best interests of child. Where the IRO considers that the local authority has failed to act in the best interests of the child, under existing provisions the IRO can refer the child's case to the Children and Family Court Advisory Support Services (CAFCASS) Cymru.

## **Children Homes**

19. Amendments to the Children's Homes (Wales) Regulations 2002 bring forward a step change in driving up the quality of care and support children receive in these settings. Children's Homes are registered by the Care Standards Inspectorate for Wales (CSIW). From 1 July 2007 for a home to be deemed 'fit for purpose' it will have to satisfy new prescribed requirements in respect of: the percentage of staff who are permanent employees and a period by which time managers (November 2007) and staff (March 2008) must be registered with the Care Council for Wales (the Council) and hold a relevant qualification on a list held by the Assembly and maintained by the Council.

20. Regulations provide a period of three years from the coming into force date (July 2007) for staff to attain the qualifications on the list, and a requirement for 80% of staff to hold the relevant qualification by 2010. Managers (in existing homes or new homes registered after July 2007) must hold the relevant qualification by November 2007.

21. Failure to comply with the regulations will deem the children's home unfit for registration. Existing homes that fail to achieve the requirements by the prescribed date may be de-registered following inspection and enforcement action taken by CSIW. All children's homes will be required to designate a 'link worker' for each child to champion and act in their best interests. In addition they will undertake specific duties set out in the regulations and guidance, including contributing to the child's education and health and partaking in the review of the child's care plan.

22. The link worker is required to foster strong links with the child's designated nurse and education co-ordinator. Regulations place specific duties on the link worker to monitor arrangements such as ensuring the child is registered with a local GP, has access to a dentist, that the personal education plan (PEP) and schooling arrangements are effective etc. In recognition of the key role and status of the link worker in the child's life, regulations require the link worker's details to be recorded on the local authority register for looked after children.

## **Education**

23. Changes to the placement regulations place a greater emphasis on considerations the local authority must have regard to prior to placement. This will ensure that the placement meets and promotes the child's educational needs, and in particular any special education needs. A time limit of 10 days is imposed for the transfer of the child's education records including the personal education plan (PEP).

24. Using provisions under the Children Act 2004 local authorities are required to designate a specialist practitioner (Looked after children education co-ordinator) to co-ordinate the child's education plan and address the educational needs of looked after children. The duties of the designated practitioner are extended to care leavers. He/she will have specific duties in feeding into the young person's pathway plan to ensure they are supported and encouraged to maximise education opportunities, including access to further and higher education and training where appropriate. The guidance provides comprehensive direction on the role of the designated practitioner in promoting and delivering high quality processes and support for the education of looked after children and care leavers.

## **Responsible Commissioner**

25. Changes in regulations provide a departure from the normal rule of residency in Wales i.e. in Wales Local Health Boards (LHBs) are responsible for the health and well-being of their resident population. The changes relate to the LHB's duty to provide secondary health care services for looked after children and other vulnerable children such as those placed away from home in residential schools or for health reasons.

26. From July 2007, the LHB of origin (in the case of a placement where the primary focus is social care or education) or the placing LHB (in the case of a placement where the primary focus is health care) (collectively referred to as the LHB of origin) will remain responsible for commissioning secondary health care services for specified groups up to the age of 21 years, including children placed in England. It also makes it clear that secondary health care costs include the cost of statutory health assessments for looked after children.

27. The guidance also establishes a new three-stage dispute resolution process to strengthen accountability and transparency. New duties are placed on the statutory LHB Lead Officer for children and young people's services (under the CA 2004) to come to a local resolution of a dispute (within 4 weeks) and any escalation to regional or national level must be through due process, following negotiation. In the event that local agreement is not reached, NHS Regional Offices will provide the Head of NHS Wales with a detailed report (and proposed solution) for consideration by the Minister for Health and Social Services.

28. The Department of Health (DH) has developed parallel provisions that ensure that Primary Care Trusts (PCTs), placing children in Wales meet secondary care costs. DH is currently considering the cross border position with placements in Wales and has indicated that its Regulations might be delayed from the planned coming into force date of 1 January 2007. Officials are in discussion with DH colleagues and will update the Committee as soon as there is an agreed way forward. On that basis, there is scope for minor amendments to the Regulations in this area, to ensure that the Welsh and English provisions mirror each other as far as possible and to ensure that there is reciprocity in relation to cross-border placements. These will be brought to the Committee's attention as soon as possible.

## **Considerations**

29. The changes will bring about much needed improvements to the placement arrangements and to the health and education arrangements for looked after children. They will instil greater vigour and accountability to the process. Foundations will be laid for a new way of working within the partnership environment, extending corporate parenting responsibilities and accountability for improving outcomes for looked after children across all agencies. Corporate parenting is a serious business. We must all give it the priority and commitment it deserves.

## **Financial Implications**

30. Consultation has identified that there are likely to be additional costs attached to these changes. Additional resources of £5.6 m have been made available to local government through RSG for 2007/08 in recognition of pressures in the areas of foster care and placement identified in the Expenditure Subgroup report.

## **Actions for Subject Committee**

31. The Committee is invited to scrutinise the proposed legislation intended to strengthen arrangements for the placement, health, education and wellbeing of looked after children and young people. In particular the Committee is invited to consider if the proposals, supported by statutory guidance, are sufficiently robust to delivery on commitments I made in a feasibility report debated in Plenary in June under standing order 31.2.

Brian Gibbons

Minister for Health & Social Services

Contact Point: Donna Davies, Department for Health and Social Services, tel 029 2082 6844

**To: Business Committee**

**From: Brian Gibbons AM**

**Minister for Health and Social Services**

## **Explanatory Memorandum**

Social Services and National Health Service, Wales

1. Placement of Children (Wales) Regulations 2007

## 2. Review of Children's Cases (Wales) Regulations 2007

## 3. Children's Homes (Wales) (Miscellaneous Amendments) Regulations 2007

## 4. Local Health Boards (Functions)(Wales)(Amendment) Regulations 2007

### **Summary**

These regulations revoke the Arrangement for Placement of Children (General) Regulations 1991 and the Review of Cases Regulations 1991 in relation to Wales, introducing new Wales only regulations. They amend the Children's Homes (Wales) Regulations 2002 and the Local Health Board (Functions)(Wales) Regulations 2003. Amendments made to these regulations are interrelated and they should be considered as a package to be issued alongside statutory guidance under the Children Act 2004.

These regulations strengthen local authorities' arrangements for placement of children, to take particular account of the child's health and educational needs. Authorities wishing to place a child outside the child's home area must first convene a panel to consider whether the placement is appropriate and in the child's best interests, in addition to how the placement may be best supported. Numbers and circumstances of such cases must be reported to the lead member for children's services. They impose time limits by which notifications of placements, arrangements for health assessments, registration with a GP and access to a dentist must take place. They place a responsibility on the authority to ensure that the child's health and education records are transferred when a child moves placement.

Responsibility for undertaking initial health assessments and preparing a written report is extended to a registered nurse and copies of assessments must be sent to the child's GP. Health assessments must take particular account of the child's mental health needs and occur more frequently than existing statutory timescales if the child's health needs dictate this. The role of the IRO is extended to ensure the child is registered with a GP, has access to a dentist, that health and education records are transferred and any identified mental health needs are being met.

The regulations require managers and staff of children's homes to register with the Care Council for Wales and to hold a relevant qualification by a specified date. In addition children's homes are required to nominate a link worker to co-ordinate and raise the profile of the child's health and education in liaison with key education and health professionals. Details of the link worker must be included on the register of the child's details maintained by the Responsible Authority.

For children placed away from their home area (including looked after children, sick children in independent hospitals and children with a statement of special educational needs) up to the age of 21 years, the originating Local Health Board will be responsible for resourcing secondary health care services. These duties extend to children placed in a primary care trust (PCT) in England. Parallel provisions are made by Department of Health to require PCTs to continue to resource secondary health provision for children placed across the border in Wales.

1. This Memorandum is submitted to the Assembly's Business Committee in relation to the Placement of Children (Wales) Regulations 2007, the Review of Children's Cases (Wales) 2007, the Children's Homes (Wales) (Miscellaneous Amendments) Regulations 2007 and the Local Health Boards (Functions)(Wales)(Amendment) Regulations 2007 in accordance with Standing Order 24.

2. A copy of the Instruments are submitted with this Memorandum.

### **Enabling Powers**

#### **Placement of Children (Wales) Regulations 2007**

The powers enabling this Instrument to be made are contained in sections 23(2)(a), (f)(ii), and (5), 59(2) and (3), 104(1) and (4) of and paragraph (12), (13) and (14) of Schedule 2, paragraph 4(1)(a) of Schedule 4, paragraph 7(1)(a) of Schedule 5 and paragraph 10(1)(a) of Schedule 6 to the Children Act 1989.

#### **Review of Children's Cases (Wales) Regulations 2007**

26(1), (2), (2A) and (2B), 59(4)(a) and (5) and 104(1) and (4) of, and paragraphs 10(1) and (2)(l) of Schedule 6 to, the Children Act 1989

Children's Homes (Wales) Amendment Regulations 2007

The powers enabling this Instrument to be made are contained in Sections 1(4), 22(1),(2)(a) to (d), (f) to (j), 5(a) and (c), (7) (a) to (h), (j), (8)(c), 25(1), 33, 34(1), 35, 118 (5) to (7) of the Care Standards Act 2000

### **Local Health Boards (Functions)(Wales)(Amendment) Regulations 2007**

The powers enabling this Instrument to be made are contained in Sections 16BB and 126(4) of the National Health Service Act 1977.

All of the above powers have been conferred on the National Assembly for Wales. Responsibility for issues relating to the contents of these Regulations has been delegated to my portfolio as Minister for Health and Social Services.

### **Effect**

These instruments bring forward changes to improve the health and wellbeing of looked after children, the principles of which were debated and approved by the National Assembly for Wales in June and outlined in a feasibility report tabled on 31 May.

The overall objective is to strengthen local authority arrangements for placement of children and subsequent review of cases, ensuring that the child's health and wellbeing and educational needs are paramount in any decisions made. The proposed changes will place a greater obligation on statutory partners to promote the health and education of looked after children. The overriding aim is to ensure that decisions are made in the 'best interests' of the child; that placements are close to the child's home wherever possible and services are co-ordinated between agencies and delivered by identified key workers. In addition the regulations clarify and improve arrangements for secondary healthcare provision for vulnerable children placed away from their home area.

The changes will bring much needed improvements to the placement health and education arrangements for looked after children along with greater accountability and scrutiny to the process and will extend responsibilities as corporate parents beyond local government.

The new requirements set out in regulations and guidance under the Children Act 2004 in respect of health assessments, tracking, transfer and monitoring of records, GP registration, access to a dentist and greater emphasis on health in the assessment, placement and review process along with the appointment of designated nurses to oversee the process, should improve health outcomes for looked after children. A greater focus on identifying and meeting the child's mental health needs should result in early identification and intervention to prevent problems escalating.

Similarly for education greater attention is applied to the child's educational needs and in particular any special educational needs as part of the placement and review considerations. The requirement to appoint a designated person to promote the child's or young person's education and coordinate the transfer of education records etc will drive up aspirations for looked after children, promote lifelong learning and improve access to further and higher education.

New requirements for children's homes will raise standards and improve quality of care within these settings and contribute to the Assembly's vision of a qualified and valued children's workforce so that residential care becomes a positive profession of choice. Regulating occupational standards will also strengthen the Care Standards Inspectorate's inspection and enforcement duties. The regulations should lead to improved recruitment and retention and provide career pathways and stability for staff and managers of children's homes. In addition they will ensure a greater commitment by managers to support lifelong learning.

Extending the duties of the IRO will ensure greater accountability on authorities and health partners to ensure compliance with statutory requirements regarding care planning for the child.

Changes to the responsible commissioner depart from the normal rules of residency and will act to remove any incentive for local health boards and local authorities to place children out of their home area in order to transfer costs. The changes will reduce costly and lengthy disputes over who pays, promote speeding decision making and challenge in the system to ensure services are effectively planned to meet the needs of children. The changes will also encourage LHBs where appropriate to develop specialist services locally to meet gaps in provision. These changes will benefit looked after children and other vulnerable groups and ensure continuity of care.

## **Target Implementation**

It is intended that these Instruments be made on 6 February 2007 and come into force on 1 July 2007. The provisions in respect of children's homes will in some areas come into effect at a later date.

To address cross border issues in respect of the responsible commissioner the Assembly with Department of Health have aligned changes that are scheduled to come into force in England in early 2007.

## **Financial Implications**

Consultation has identified that there are likely to be additional costs attached to these changes but we believe these will be marginal. Additional resources have been made available to local government through RSG for 2007/2008 (£5.6m) recognising pressures in the areas of foster care and placement identified in the Expenditure Subgroup report. Regulations will require a change to business processes and market management of placements and in the longer term will result in savings. Designated posts such as LAC Educational Co-ordinators and Specialist nurses have been in place for several years funded by local authorities and health partners.

## **Regulatory Appraisal**

A Regulatory Appraisal has been carried out in relation to this Instrument and is attached.

## **Consultation**

### **With Stakeholders**

The draft Regulations were subject to an eight week public consultation between 18 September 2006 and 13 November 2006. A list of those consulted is attached at Annex 1 to the Regulatory Appraisal. 62 consultation responses were received including 19 from local authorities, 23 from health bodies, 2 from children's homes 10 from voluntary the sector and 8 from others. A summary of responses is attached at Annex 2 to the Regulatory Appraisal. All responses were generally supportive of the changes proposed by the draft Regulations and the following amendments were suggested. In addition the Assembly ran three consultation events in October attended by over 300 delegates including elected members and all sectors.

As a direct result of comments received during the consultation the regulations have been subsequently amended to extend the deadline by which panels must convene to consider out of county placements, to reduce the burden on local authorities and their partners. We have also extended the time by which staff in children's homes must register with the Care Council for Wales by six months to allow staff to complete the induction process. In addition we have extended the deadline by which access to a dentist must be arranged.

### **With Subject Committees**

These Regulations were notified to the Health and Social Services Committee (HSS 41(06), The Education and Lifelong Learning Committee and the Local Government and Public Services Committee LGPS (2)-17-06 (p) via the respective lists of forthcoming legislation, on 13 July 2006). They were identified for detailed scrutiny at both the H&SS and LGPS Committees.

## **Recommended Procedure**

Subject to the views of the Business Committee, I recommend that these Regulations proceed to Plenary under the Standard

procedure, so that Members have a further opportunity to debate them.

## **Compliance**

The proposed legislation will (as far as is applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 section 120);
- be compatible with the Assembly's scheme for sustainable development (section 121);
- be compatible with Community Law (section 106);
- be compatible with the Assembly's human rights legislation (section 107); and
- be compatible with any international obligations binding the UK Government and the Assembly (section 108).

The information in this Memorandum has been cleared with the Legal Services Department (LS).

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22. Head of Division: Keith Ingham – Extension 6746.

23. Drafting Lawyer: Ian Pike – Extension: 6882, Michael Lubienski – Extension: 3913

**Brian Gibbons, AM November 2006**

**Minister for Health And Social Services**

## **Regulatory Appraisal**

Social Services And National Health Service, Wales

1. Placement of Children (Wales) Regulations 2007
2. Review of Children's Cases (Wales) Regulations 2007
3. Children's Homes (Wales) (Miscellaneous Amendments) Regulations 2007
4. Local Health Boards (Functions)(Wales)(Amendment) Regulations 2007

## **Purpose and intended effect of the measure**

1. These Regulations revoke the Arrangements for Placement of Children (General) Regulations (1991) and the Review of Children's Cases Regulations 1991 in Wales and amend the Children's Homes (Wales) Regulations 2002 and the Local Health Boards (Functions)(Wales) Regulations 2003.
2. These instruments introduce changes to improve the health and wellbeing of looked after children, the principles of which were debated and approved by the National Assembly for Wales in June and outlined in a feasibility report tabled on 31 May.
3. They will strengthen local authority arrangements for placing children and subsequent review of children's cases and ensure that the child's health and wellbeing and educational needs are paramount in any decisions made. The proposed changes will place a greater obligation on statutory partners in this process. The overriding aim is to ensure that decisions are made in the 'best interests' of the child, that placements are close to the child's home, unless considerations of risk or welfare



override it and services are co-ordinated between agencies and delivered by identified key workers. In addition the regulations clarify and improve arrangements for secondary healthcare provision for vulnerable children placed away from their home area.

## **Risk Assessment**

4. Taking no action would not deliver the Welsh Assembly Government's commitment to the National Assembly for Wales to bring forward measures to strengthen placement and improve the health and wellbeing of looked after children.

5. Failure to amend the responsible commissioner arrangements in Wales for vulnerable groups of children placed away from home will lead to a disparity between England and Wales and inequitable treatment in healthcare provision for looked after children and other vulnerable groups placed across the border.

## **Options**

### **Option 1: Do Nothing**

There are a number of implications if we do nothing:

- We would not see the desired improvement we want to achieve in the health, education and wellbeing of looked after children.
- There will continue to be inequalities in health and education and outcomes for LAC.
- Large numbers of children will continue to be placed away from their home communities.
- Standards and quality of care in children's homes would remain poor.
- CSIW would not have the necessary powers to exercise effective enforcement of occupational standards in children's homes.
- Non-action on responsible commissioner arrangements would complicate processes and lead to disparity and complex cross charging arrangements between England and Wales.
- It would not provide the desired levers and messages on extending corporate parenting responsibilities to health partners.
- Most importantly the Welsh Assembly Government and National Assembly for Wales will fail in its corporate parenting responsibilities to looked after children.

### **Option 2: Make the Legislation**

The new arrangements will strengthen existing arrangements for placement introducing greater accountability on local authorities and health partners to ensure that the child's needs are met. Changes to Children's Homes regulations will raise the standard of the workforce making this type of provision one of choice. Changes to the responsible commissioner arrangements will standardise the position with England, clarifying arrangements that are currently the subject of dispute and delays in provision of healthcare to the child. The changes will also encourage local development of service provision.

## **Benefits**

6. The changes will introduce greater accountability and scrutiny of placements made outside the local authority area and ensure that the health and educational needs and best interests are the primary concern. They will act to raise the standard of the children's homes workforce where often children with the most specialised needs are placed. Changes to the responsible commissioner arrangements will clarify arrangements in terms of responsibility for secondary health provision for children placed out of area which is currently the subject of disputes between LHBs/PCTs often leading to a delay in the child's

treatment. It will remove any financial incentive to place a child out of area and encourage LHBs to develop services locally to meet the needs of the population and it will ensure that those who have been at the forefront in developing services are not disadvantaged by large numbers of children being placed in their area.

## **Costs**

7. Consultation has identified that there are likely to be additional costs attached to these changes but we believe these will be marginal. Additional resources have been made available to local government through RSG for 2007/2008 (£5.6 m) recognising pressures in the areas of foster care and placement identified in the Expenditure Subgroup report. Regulations will require a change to business processes and market management of placements and in the longer term will result in savings. Designated posts such as LAC Educational Co-ordinators and Specialist nurses have been in place for several years funded by local authorities and health partners.

## **Consultation**

### **With Stakeholders**

8. The draft regulations were subject to a public consultation between 18 September 2006 and 13 November 2006. In addition three consultation events were held in Llandrindod Wells, Swansea and Wrexham attended by over 300 attendees from local authorities (including elected members), health bodies, children's homes and the voluntary sector.

### **With Subject Committee**

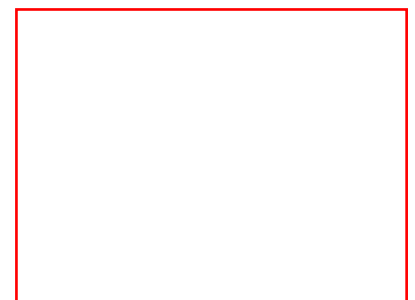
9. These regulations were notified to the Health and Social Services Committee (HSS 41 (06), the Education and Lifelong Learning Committee and the Local Government and Public Services Committee (LGPS (2)-17-06 (p) via their respective lists of forthcoming legislation. They were identified for detailed scrutiny at both the H&SS and LGPS Committees on 13 December and 18 January 2007 respectively.

## **Review**

10. The impact of the Regulations will be subject to ongoing policy review and monitored and inspected through existing inspection mechanisms such as Social Services Inspectorate for Wales and the Care Standards Inspectorate.

## **Summary**

11. These draft Regulation will strengthen local authority arrangements for placing children and subsequent review of children's cases, ensuring that the child's health and wellbeing and educational needs are the prime consideration in any decisions made. They will act to raise occupational standards in children's homes, where children with the most specialist needs are quite often placed. Changes to the responsible commissioner arrangements will clarify arrangements in terms of responsibility for secondary health provision for children placed out of county



Analysis of responses to the Welsh Assembly Government's consultation on Measures to strengthen arrangements for the placement, health, education and wellbeing of looked after children

The consultation period ran from 18 September to 13 November. Sixty-three responses were received and the main points raised are outlined below. Some respondents submitted a 'free standing' response and did not answer the questions set out in the consultation document. In these circumstances every effort has been made to link responses to specific questions where appropriate. Where this was not possible the essence of such responses have been fully considered and added under "additional points". Numbers in brackets after each question indicate the number of responses addressing that particular question.

In general the tone of the responses was very positive. Most organisations welcomed the changes and considered that they would provide better outcomes for Children in Care. What is not demonstrated here, due to the framework of the answers, is that many respondees expressed an interest in getting their organisations more involved, and other organisations were supportive of the cost increase to their business believing that the initial costs would bring savings in the long run. Many organisations did ask for more clarity surrounding particular areas and these are reflected under the relevant headings, but in the main the majority of respondees welcomed the proposed changes.

## **General**

### **Q1 - Is the principle of this guidance clear? (46)**

38 said the principal of this guidance is clear, but 4 said there was a need for more clarity about who these changes would apply to, and 8 felt there needed to be more clarity generally.

### **Q2 - Are the proposed changes within a framework which local authorities and their statutory partners can work within? (39)**

31 said that local authorities could work within the framework given. Only 3 responses felt the framework to be unworkable but 7 said that there might be difficulties implementing the framework. 6 wished for more clarity around the framework.

### **Q3 - Will the changes give rise to difficulties that may not have been anticipated? (39)**

37 said that there would be difficulties that were not anticipated. The major difficulties that people expected to face were resource based. 13 raised the issue of lack of funding and financial issues and 22 said there was a lack of resources, especially dentistry, specialist nurses and CAHMS. 6 felt that the processes involved would cause difficulties.

## **Additional Points (29)**

The major themes of the "additional points" again related to resources. 12 said there is a need to recognise issues around CAMHS following assessment and referral and 12 said that there are capacity issues throughout the guidance, especially regarding the workload of LAC nurses and funding streams for this work. 8 thought that finance related issues required further consideration. 4 felt foster carers should have been considered more in this guidance. 1 felt that this guidance did not put children at its centre.

## **Specific**

### **Chapter 1: The Placement of Children (and Miscellaneous Amendments) Regulations 2007**

#### **Section 1 – Placement Panels pages 12-17**

##### **Q1 - Are the panel requirements clear? (44)**

32 said yes, but 11 said that the requirements of the panel need further clarity surrounding operation, implementation, structure and accountability. Only 4 felt that the requirements were unclear

Q2 - Is the 20 days by which a panel must convene following an emergency placement reasonable? (43)

19 said the timescales were reasonable but 9 added that for this to happen there needed to be flexibility around "convening", e.g. virtual meetings, telephone pathways. 12 said the timescales were unreasonable and 3 thought that 10 working days was more reasonable. 1 felt more clarification was needed.

Comment: In response to issues raised regarding timing of panels following an emergency placement, the timescale has been extended to 25 working days in the regulations. Guidance will reflect the fact that different types of Panel may operate dependent on the particular circumstances of the child and will seek to provide good practice examples.

Q3 - Is the suggested core membership and senior level of panel members clear and reasonable? (38)

23 said yes, and 16 suggested that additions are made, such as senior CAMHS representatives, fostering agencies, voluntary organisations, LAC nurses and so in being represented on the panel. 7 people felt that more clarity was needed around this and 9 felt that the senior level of people involved would make calling a panel at short notice difficult.

Comment: We have not been prescriptive about the make up of Panels recognising that this will depend on the particular circumstances of the case.

Q4 - Are the panels reporting requirements and accountability clear? (40)

29 said that they thought that the reporting requirements of the panel were clear and 18 said that the accountability was clear. 10 thought that the reporting requirements were unclear and 8 thought that the accountability was unclear.

Q5 - What will be the impact and cost implication on your business? (29)

3 said that there would be no cost implications to their business. 11 felt that there would be a business impact due to the need to provide staff at senior levels and administration to such as system. 10 felt that there would be a cost impact for generally the same reasons. 9 said that they were unable to quantify the cost and business impacts in advance.

### **Additional Points (14)**

Issues were raised about how this applies to existing placements, about how CAMHS could be included, about capacity and about how SEN statements could be considered. The biggest theme from 6 respondees was that sometimes a child with complex needs could not have all those needs met in one place. 2 were cautious about the use of the CCSR, feeling that it did not provide the panel with enough information. 1 felt that "out of area" did not have enough meaning as some areas are very large and a child can be placed 80 miles away in area, while in other areas a child can be out of area 10 miles away.

### **Section 2 – Placements and Health Assessment page 17 –24**

Q1 - Is the time limit of 10 working days of placement in which responsible authorities must notify relevant agencies of placement arrangements reasonable? If not, what do you consider a reasonable timescale? (42)

29 said that they felt the timescales were reasonable, but 5 said that they felt a maximum of 5 working days to be more realistic if the 28-day timescale for completing health assessments was to be viable. 3 felt that this timescale was unworkable. 1 suggested 3 working days was appropriate and 1 suggested 15 working days.

Comment: The regulations are clear that notifications should take place prior to placement wherever practicable. The 10 working day deadline is the new timescale imposed by which notifications must be made in any event.

Q2 - Are the arrangements regarding transfer of the child's health records and the involvement of various professionals clear and reasonable? (40)

21 said that this was reasonable, but 13 said that they felt the arrangements were unclear. 9 said that the CNS LAC should not

be responsible for the transfer of GP records as the GPs already have a robust system in place and the CNS could only liaise.

Comment: Transfer of GP records will remain the responsibility of the GP Practice. The CNS LAC will have a monitoring role in this regard.

Q3 - Will extending responsibility for undertaking initial health assessments to a registered nurse sufficiently safeguard the health needs of looked after children? If not, what additional measures are needed? (39)

30 said that extending responsibilities for initial health assessments to CNS was a good thing. 6 raised issues around the capacity of the LAC nurse and their caseload. 10 said that they felt a CNS could not properly undertake specialist assessments (i.e. CAMHS), only refer on to specialists, and often there is no capacity to ensure specialist assessments are undertaken and needs are met. 9 reported that nurse led health assessments were more popular amongst LAC as many LAC felt that they do not need to see a doctor when they are not ill. Only 1 felt that safeguarding measures were needed. 9 asked for clarity around the role of the RMP, especially about their responsibility for the CNS. 1 felt that the child should be given the choice as to who does their health assessment.

Q4 - Is the timescale of 14 days for ensuring the child has access to a dentist and arranging a dental assessment reasonable? If not, what would you consider a reasonable timescale? (42)

24 that the great shortage of dental facilities in Wales meant that getting a dental assessment within 14 days would be challenging, although 7 suggested that registering within 14 days was possible. 3 suggested a fast tracking system for LAC to get their initial dental assessment. 8 said they felt the time scales were reasonable but 6 suggested a 28-day timescale for getting LAC registered, with a recognition that actually getting an appointment would take longer.

Comment: Based on responses received the deadline for ensuring the child has access to a dentist has been extended to 25 working days.

Q5 - Is the requirement for the child to be registered with a GP within 14 days of the placement date reasonable? If not, what would you consider a reasonable timescale? Should there be a time limit on temporary registration with a GP? If yes, what should this be? (41)

33 said they felt the time scale to be reasonable, but 2 said 10 days was reasonable. 12 felt that temporary registration with a GP was not suitable for LAC, with 16 saying that they felt a LAC should be permanently registered with a local GP within 3 months at the very latest. 4 felt that temporary registration was acceptable for short periods.

Comment: The guidance will be amended to ensure that the child has permanent registration with a GP by the time of the first review (3 months).

Q6 - Will the requirement on LHBs to appoint a designated person to co-ordinate the health services for looked after children and care leavers improve the health of these children and young people? What are the practical implications of this proposal bearing in mind that this is also a core action of the NSF? (38)

28 said that it should bring improvements, but 7 said that this was not sufficient. 8 said the role needs clarification of function and purpose. 15 people said that funding would need to be made available for this to happen.

Q7 - What will be the impact and cost implication on your business? (29)

19 said that there will be cost implications, with attributes being LAC nurse, paediatrician time, admin support, community dental services, CAMHS support and intervention. 3 said that the impact would be in the time required to fulfil new duties. 2 said that there would be little to no cost to their business and 4 were unable to quantify the impact at present.

### **Additional Points (16)**

5 said that policy must address the need to develop local capacity and better manage the market, with 3 of them saying that current staffing levels are inadequate. 4 welcomed the proposals of an LHB list of LAC but 4 were strongly opposed to it. 2

wanted clarity of titles for the CNS. 1 did not see the point of making healthy children have a health assessment.

### **Section 3 – Review of Children’s Cases – IROs pages 25-26**

Q1 - Are the IRO’s extended duties clear in relation to the additional matters to which they must have regard in respect of the review of the child’s case for example; to consult the children’s home "link worker"; to ensure the transfer of health and education records takes place and so on? (42)

30 said they thought this was largely clear, but 19 wanted more clarity around the IRO’s role such as how they monitor GP record transfers, how they work with the Link worker and what powers they would actually have. Only 3 felt that the role was unclear. 2 felt the IRO should have more independence.

Q2 - What will be the impact and cost implication on your business? (19)

8 thought that there would be cost impacts, but 7 thought that there would be no cost to their business. 3 were unsure how the costs would affect them.

### **Additional Points (0)**

## **Chapter 2 – The Children’s Homes (Amendment) (Wales) regulations 2007**

### **Chapter 2 – Children’s Homes pages 52-57**

Q1 - Is 1 July 2007 deadline by which all (existing and new managers) must have the relevant qualifications (and be registered with the Care Council) reasonable? Should it be later for existing managers of Children’s Homes? (18)

16 felt that this is reasonable. 2 felt it to be unreasonable and a 12 month extension should be granted.

Comment: We have extended the time by which staff in children's homes must register with the Care Council for Wales by six months to allow them to complete the induction process.

Q2 - Is it practical for all staff to be registered with the care council by 1st July 2007? (16)

11 said this was reasonable, but 4 felt that this would not be possible. 1 suggested that May 2008 might be more sensible so the managers were qualified before their staff.

Q3 - Is allowing 3 years for all existing staff (by July 2010) to qualify too long, should it be 2 years? (17)

12 said that 3 years was reasonable, 4 said 2 years was achievable. 4 felt that even three years may be impossible with such high turnover. 1 said that three years was too long.

Q4 - Is the proposed threshold of 90% of care staff working in the children’s homes having a permanent contract reasonable and achievable? (13)

9 said they thought this was reasonable, but 5 said there were wider difficulties with this. 1 thought that 97% was reasonable.

Q5 - Are the proposed new training requirements clear? Will they lead to a better understanding of the qualifications needed by managers in residential services for children and young people? (10)

9 said that they thought this was reasonable but 1 thought it could cause difficulties.

Q6 - Will the introduction of a trainee/qualifying category for registration lead to clearer career progression for new staff and contribute to improved standards and stability? (11)

9 said yes, 1 didn’t know and another thought that this would not be possible. 1 wanted more clarity about what the trainees

duties would be.

Q7 - What are the main obstacles for introducing the changes to qualification requirements? (14)

9 said that training and facilities for training would need to be available. 5 said that the high level of staff turnover would prove an obstacle and 3 raised the need for casual staff who are not employed often enough to get trained.

Q8 - Do the proposed changes to the list of relevant qualifications safeguards standards of competence for those managing residential childcare services? (15)

12 said they do, but 2 felt that there was a need to include previous experience and qualifications of current managers and 1 said that previous experience would need a more quantifiable measurement. 1 thought that equivalent qualifications recognised by the Care Council for Wales should be included.

Q9 - Are all the predecessor qualifications listed appropriate for inclusion in the revised list of relevant qualifications? (11)

8 said they were appropriate, but 3 said that getting 80% of staff qualified to those levels was impossible. 1 felt that qualifications pre-dating 1971 should be disregarded

Q10 - Should staff with deputising responsibilities hold a level 4 care qualification as recommended for managers in order to ensure secure and safe management and to assist with succession planning? (10)

9 said yes, they should. 1 said they should have level 3 and be moving towards level 4.

Q11 - Do you agree with the proposal for a link worker in post by July 2007? Is this achievable? (17)

10 said that they thought this was reasonable, but 8 said that more clarity was needed around the role of the link worker. Only 1 thought that this was not possible. 1 wanted to know how much choice the young people had in their link worker. 2 were worried that this may disempower other staff who have a good relationship with the child.

Q12 - What will be the impact and cost implication on your business? (11)

11 said that there would be a significant cost implication to their business with one from Landsker Child Care stating that the regulations could cause his Children's Homes to close.

### **Additional Points (7)**

1 raised HR concerns: difficulties in recruiting social workers; issues of supporting staff who were no longer adequately qualified and options for them; a lack of NVQ assessors; difficulties training night staff and the need for shared training across sectors. 1 said that generally the timescales may not be practical. One wanted to know how respite units mapped into these regulations. 1 welcomed the 80% qualified requirement, but 2 said that it would not be possible. 1 wanted to know if children's homes offering treatment should be registered with HCW. 1 felt that the emphasis should be on foster care. 1 thought it was unreasonable for the LAC nurse to supervise registration with GP and Dentist, that should be responsibility of Children's Home or Foster Carer.

### **Chapter 3 – Promotion of Education pages 68-71**

Q1 - Will the requirement on local authorities to designate a specialist education practitioner (the LAC Education Co-ordinator) to co-ordinate the child's education plan and address the education needs of Looked After Children and Care Leavers ensure that the educational needs of these children and young people as required by section 52 of the Children Act 2004 are met? (32)

29 felt that this would help, but 9 said that there was more to be done. 8 said that there are funding and capacity issues surrounding this role.

Q2 - Are the roles and responsibilities of this nominated post clear? Is the relationship with other key practitioners clear? (25)

17 said it was clear, but 6 said that they felt this post needed clarification, especially surrounding accountability, levels of qualifications and interfacing across services.

Q3 - Is the time limit of 10 working days of placement in which responsible authorities must notify the relevant education authorities of arrangements to place the child reasonable? If not what do you consider a reasonable timescale? (24)

21 said that this is reasonable, but 3 of them said exemptions should be made in school holidays and genuine emergencies. 3 thought that 5 days was more reasonable and 1 thought 15 days was appropriate.

Comment: The regulations are clear that notifications should be made prior to placement wherever practicable. The 10-day deadline imposes a timescale by which notifications must be made in any event notifications are made

Q4 - Are the arrangements regarding transfer of the child's education records and the roles and responsibilities of the relevant professionals clear and reasonable? (23)

14 said yes, but 9 wanted more clarity about this issue

Q5 - What will be the impact and cost implication on your business? (16)

12 said that there will be a cost impact and 3 were unsure. 1 said none as they already employ such a person.

### **Additional Points (8)**

1 felt that the 20 day time scale for completing the PEP is too short to allow the LAC educational co-ordinator to build up a strong enough relationship with the LAC to get a good enough idea of what they need. 1 felt that clearer reporting frameworks are necessary to ensure that the role of corporate parenting is developed. 1 said that there is a need to replicate requirements in the English Green paper for schools to be required to admit Looked After Children even when full. 1 said that Post ELWa the role of the Department for Education, Lifelong Learning and Skills needs to be clarified. 1 said that the CSSR and panel should support the need to check educational placement availability. 1 said that there needs to be a simplified system needed to recoup SEN costs. 1 suggested an educational co-ordinator being employed by Independent Fostering Agencies to liaise with LAC co-ordinator and Local Authorities. 4 said that the role of foster carers needed to be built and emphasised. 1 raised the issue of how care leavers can be included. 3 felt that the role of the school and the head teachers should be emphasised.

### **Local Health Boards (Functions) (Wales) (Amendment) Regulations 2007**

#### **Chapter 4 – Responsible Commissioner pages 73-82**

Q1 - Do you agree with the principle of the changes i.e., responsibility and resourcing for secondary care costs remain with the originating LHB? (30)

26 welcomed these changes, but 12 said they did not see how they would work in practice, citing funding confusions surrounding how the originating LHB would pay for the secondary care costs.

Q2 - Is this a framework that LHBs can work within? (26)

11 said yes. 17 thought that there were difficulties in the framework that need to be corrected before LHBs could work with it.

Q3 - Are there other groups of children that the new arrangements should be applied to? (16)

14 said yes, and variously suggested UASC, Children of travellers, Children in private fostering arrangements, children up for adoption, children permanently placed, young offenders, young people up to the age of 25, disabled children and children not in care but with complex and continuing needs out of county that isn't funded by HCW. 3 felt no other children should be



included.

Q4 - Proposals for agreeing new secondary care health needs (and tertiary care health needs where appropriate) are identified. Do you consider that these are reasonable, achievable and workable? (16)

9 said yes, but 6 of them said arrangements would vary from area to area. 1 said no, but 8 wanted more clarity surrounding the issues

Q5 - Are the arrangements for dealing with children who are placed/accommodated in England clear? Explain any issues? (18)

5 said yes, 6 said no. 9 wanted more clarity in the proposals, especially how the November regulation changes in England will affect placements.

Q6 - Should the new arrangements be applied to children placed out of area before the commencement date – July 2007? If yes, what is the likely impact on your service/ resources? (15)

5 said yes, 6 said the date of July 2007 should be adhered to. 4 did not want the regulations to apply retrospectively. 1 wanted more investigation to be done.

Q7 - Will the changes give rise to difficulties that may not have been anticipated? If so, what are these and how might they be overcome? (14)

13 said yes, 5 specifying funding as a problem. 1 felt unable to say in advance.

Q8 - What will be the impact and cost implication on your business? (12)

7 said that there would be a cost and 7 said that there would be a significant impact. 1 was unsure

### **Additional Points (5)**

2 said there were issues around capacity, joint training and ongoing medical issues such as notification and administration of medication. 1 felt the timescales for resolving commissioning disputes was too long. 1 was concerned about safeguarding children. 1 felt that this could turn into a cost recovery exercise. 1 felt that the role of the HCW should be emphasised.

Organisations that responded to this consultation

- All Wales Local Health Boards Chief Executive
- All Wales Nurse Directors
- Amicus/Community Practitioners and Health Visitors Association
- Association of Directors of Social Services Cymru
- Association of Voluntary Organisations in Wrexham
- Blaenau Gwent Educational Department
- Blaenau Gwent Social Services
- Bridgend County Borough Council
- Caerphilly Teaching Local Health Board
- Caerphilly Children's Services
- Caerphilly County Borough Council
- CAFCASS Cymru
- Care Co-ordination Network UK
- Care Council for Wales
- Cardiff Children First Health Team
- Cardiff Children's Services
- Cardiff and Vale NHS Trust
- Carmarthenshire Local Health Board

- Carmarthenshire NHS Trust
- The Chairs of Local Health Boards
- Children in Wales
- Children First Team (Education) Vale of Glamorgan Council
- City and County of Swansea
- Consultant Community Paediatrician, Flintshire
- Conwy County Borough Council
- Conwy Local Health Board
- Denbighshire County Council
- The FCA
- Flintshire County Council
- Foster Care Associates Ltd, Cymru regions
- The Fostering Network Wales
- Gwent NHS Healthcare Trust
- Gwynedd Social Services
- Landsker Child Care
- Merthyr Tydfil Local Health Board
- Mid and West Wales Regional Looked After Children Forum
- Monmouthshire CNS LAC
- National Public Health Service for Wales, Child Protection and LAC Services
- National Youth Advocacy Services (NYAS)
- NCH Cymru
- Neath Port Talbot Children's Services
- Newport CNS LAC
- Newport City Council
- North East Wales NHS Trust
- North Wales Children Looked After Health Workers Forum
- North Wales LAC Education Co-ordinators Group
- North Wales Specialist CAMHS Group (Children Looked After)
- NSPCC Cymru
- Pathway Care, Independent Fostering Services
- Pembrokeshire County Council
- Powys County Council
- Powys Local Health Board
- Rhondda Cynon Taff Children's Services
- Rhondda Cynon Taff Teaching Local Health Board
- Prospects for Young People
- The Royal College of Nursing, Wales
- Vale of Glamorgan Council
- Vale of Glamorgan Local Health Board
- Voices From Care Cymru
- The Welsh Local Government Association
- Wrexham County Borough Council