

Explanatory Memorandum to The Community Health Councils (Constitution, Membership and Procedures) (Wales) (Amendment) Regulations 2020

This Explanatory Memorandum has been prepared by Health and Social Services Group and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Community Health Councils (Constitution, Membership and Procedures) (Wales) (Amendment) Regulations 2020. I am satisfied that the benefits justify the likely costs.

Vaughan Gething MS

Minister for Health and Social Services

7 May 2020

PART 1

1. Description

These Regulations amend the Community Health Councils (Constitution, Membership and Procedures) (Wales) Regulations 2010 (as amended by the Community Health Councils (Constitution, Membership and Procedures)(Wales) Regulations 2015) (“the Community Health Councils Regulations”).

As well as setting out Constitution and Procedural requirements for Community Health Councils, the Community Health Councils Regulations set the maximum terms of service for:

- members of Community Health Councils that are appointed by the Welsh Ministers, voluntary organisations and local authorities;
- co-opted (non-voting) members of Community Health Councils, that are appointed by the Community Health Councils themselves; and
- the maximum period a CHC member may serve as a chair or vice chair of a CHC or as a chair or vice chair of a CHC local committee.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

The SI is being laid under the ‘Negative Procedure’ and is in response to the suspension of the public appointments process in Wales due to the COVID-19 situation. Given the uncertainty about the duration of the COVID-19 situation and the forthcoming abolition of Community Health Councils and the Establishment of the Citizen Voice Body, after the Health and Social Care (Quality and Engagement)(Wales) Bill receives Royal Assent, the SI provides amendments to make the membership arrangements fit for purpose during the transitional period.

3. Legislative background

The instrument is being made under sections 203(2), (4), (9) and (10) of, and paragraph 2 of Schedule 10 to, the National Health Service (Wales) Act 2006.

4. Purpose and intended effect of the legislation

In response to the COVID-19 pandemic, on 19 March the Welsh Government informed all health boards and NHS Trusts that public appointment activity would be suspended with immediate effect. Arm's-length bodies were formally advised of the suspension in a letter from the Permanent Secretary on 23 March 2020. The suspension lasts until September 2020, at which point the position will be reviewed.

This has implications for Community Health Councils, as one half of their membership is appointed by the Welsh Ministers under the public appointments arrangements. The Community Health Councils Regulations currently prescribe a maximum period of service of 8 years as a member of a Community Health Council. In conjunction with the Board of Community Health Councils, we ascertained how many CHC members would come to the end of their current

tenure arrangements in the next 12 months. There is a significant number, the majority of whom will see their tenure expire on or before 31 July 2020.

Community Health Councils are already carrying vacancies. Consequently, in order to avoid their membership being further depleted, which could have an adverse impact on their capacity and their ability to perform their functions, these Regulations remove the maximum limit of 8 years that a CHC member may currently serve.

This would enable a current CHC member who has reached the 8 year maximum to be reappointed as a CHC member, subject to being able to satisfy the usual checks that are performed prior to making a reappointment, such as satisfactory performance and attendance.

There are also a number of co-opted members whose maximum terms of service, as prescribed in the Community Health Councils Regulations, will come to an end at the end of May. Co-opted members carry out essential functions for the CHC and discussions with the CHC Board have indicated a need for these co-opted members to be able to continue in post, particularly as there is no immediate prospect of being able to recruit additional co-opted members to replace them due to the restrictions in place as a result of the COVID-19 response. There is also no prospect of running a public appointments process to replace the resource that would be lost.

The Regulations also extend the period of time a CHC member is able to serve as a chair or vice chair of a CHC from 3 years to 5 years. As the chairs of the individual CHCs have a seat on the Board of CHCs in Wales, this means the length of time a chair of a CHC can sit on the Board of CHCs is also increased to 5 years.

The Regulations also increase the time a CHC member can sit as a chair or vice chair of a CHC's local committee from 2 years to 5 years. The Community Health Councils Regulations prescribe the functions of local committees which include monitoring and keeping under review the planning and provision of NHS services in their district.

These changes were made in response to the COVID-19 pandemic to enable continuity in the chairs and vice chairs of Community Health Councils and their local committees, who perform essential leadership roles at the individual CHCs.

However, unlike many regulations that are made in response to the COVID-19 pandemic, it is not proposed that the effect of these Regulations is time limited.

In accordance with the provisions of the Health and Social Care (Quality and Engagement)(Wales) Bill, Community Health Councils will be replaced with the Citizen Voice Body for Health and Social Care. It was originally intended to establish the new Citizen Voice Body with effect from 1 October 2021, but due to the COVID -19 response, it is now intended the new Body will be established from April 2022. Keeping the CHCs fully operational in this transitional period is a Ministerial commitment which was provided when the Health and Social Care (Quality and Engagement)(Wales) Bill was being scrutinised and is important in ensuring continuous delivery of their functions across Wales.

CHC recruitment is unlike other public appointment recruitments in that often Welsh Ministers are seeking to recruit to around 50 vacancies. Therefore, these

appointments take proportionately longer to run and so, even after the public appointments suspension is lifted, it would take an additional 4-6 months for the recruitment process to run its course. Any temporary application of the changes would therefore need to be sufficiently long to take this into account, which would take us close to the proposed establishment date for the Citizen Voice Body, which is estimated to be in April 2022.

The amendments that are being made as a result of the COVID-19 pandemic will assist in dealing with problems with recruitment of new members, by allowing existing, experienced members to remain in post past the current 8 year maximum, and will assist the CHCs in remaining fully operational and quorate in the transitional period between now and when the new Citizen Voice Body is established.

5. Consultation

No public consultation was undertaken due to the urgency required to introduce this change of policy in direct response to COVID-19 restrictions. However, officials have engaged with the Board of Community Health Councils in Wales on the changes. This included testing whether the proposed amendments will enable the Community Health Councils and the Board of Community Health Councils in Wales to operate during the COVID -19 response period in which the public appointments process in Wales is suspended and beyond into the transition period between now and when the new Citizen Voice Body for Health and Social Care is established.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

Two options have been considered:

Option 1: -Do nothing, retain the Community Health Councils (Constitution, Membership and Procedures)(Wales) Regulations 2010 (as amended) as currently in force.

Option 2: - Amend the Community Health Councils (Constitution, Membership and Procedures)(Wales) Regulations 2010 (as amended)

Option 1: Do nothing, retain the Community Health Councils (constitution, Membership and Procedures)(Wales) Regulations as currently in force

Without making amending Regulations, all CHC members who come to the end of their total period of 8 years' service will have to leave their CHC appointment. This will add to the existing number of vacancies across CHCs in Wales at a time when they are stretched due to work on the COVID-19 response.

Similarly, all chairs and vice chairs of local CHCs who have served 3 years, and chairs and vice chairs of CHC local committees who have served 2 years will be required to step down from their role.

All co-opted CHC members who have served two years will have to leave their appointment.

All public appointments are suspended until September 2020. The suspension will be reviewed at that point. The re-commencement of public appointments may need to be staggered. The public appointments process for CHC members takes approximately 4-6 months from start to finish. Therefore, any vacancies would have to be carried until, at the earliest, March 2021 and quite possibly later.

Option 1 would not achieve the policy objective of ensuring that CHCs can retain members who will be coming to the end of their 8 year maximum term of service during the public appointments suspension, which is important for CHCs' continued ability to be able to perform their functions during the COVID-19 response and beyond. Option 1 would also result in the loss of experienced CHC members, including chairs of local CHCs, which is a significant disadvantage as we move into the transitional period for the establishment of the new Citizen Voice Body for Health and Social Care. Nor would it allow experienced chairs and vice chairs of CHCs and chairs and vice chairs of local committees to stay in post if they chose to do so and if they were re-elected by their CHC. Equally, co-opted members would have to leave post after serving two years with no flexibility to allow for reappointment.

Option 2: Amend the Community Health Councils (constitution, Membership and Procedures)(Wales) Regulations as currently in force

Amending the Community Health Councils Regulations in the way described in Part 1, meets the policy objective of enabling experienced CHC members who wish to do so and who satisfy performance and attendance requirements to be reappointed. It also allows the CHCs the flexibility to reappoint co-opted members who reach the end of their two year maximum tenure.

Extensions to the length of time CHC members can serve as chair or vice chair of a CHC, or as chair or vice chair of a CHC local committee also enables CHC members who have experience in these key leadership roles to be re-elected so that they may serve a maximum of 5 years. This gives the opportunity for CHC members who are experienced in these leadership positions to continue in post during the COVID-19 response and during the transitional period when the Citizen Voice Body for Health and Social Care is being established.

7. Costs and benefits

Option 1: Do nothing, retain the Community Health Councils (constitution, Membership and Procedures)(Wales) Regulations as currently in force

There are no additional costs nor potential for costs savings associated with this option.

However, this option does not achieve any of the stated policy benefits associated with amending the Community Health Councils Regulations.

Option 2: Amend the Community Health Councils (constitution, Membership and Procedures)(Wales) Regulations as currently in force

Amending the Community Health Councils Regulations in the way proposed in Part 1 does have the potential to incur very minimal opportunity costs for the Public Appointments Commissioner's office as the Welsh Ministers will need to seek approval before appointing a CHC member to a third term. Such costs would be incurred in relation to a defined period between now and when the new Citizen Voice Body is established (projected April 2022).

No additional costs are foreseen for CHCs, the voluntary sector, business or public authorities.

There may be some costs savings to the Welsh Ministers if some CHC members are being reappointed, rather than wholly new members being appointed. However, any such savings would be minimal.

8. Consultation

No public consultation was undertaken due to the urgency required to introduce this change of policy in direct response to COVID-19 restrictions.

9. Competition Assessment

On completion of the Competition Filter test it was determined that there are no effects on competition.

10. Post implementation review

It is normally recommended to review legislation 3 years after implementation. However, the effect of these Regulations is inherently time limited due to the projected establishment of the Citizen Voice Body from April 2022. Therefore, there are no proposals for a formal post implementation review.

However, officials are in regular contact with the Board of CHC in Wales and will receive ongoing informal feedback on the impact of the Regulations.