

## **Explanatory Memorandum to the Carers Strategies (Wales) Regulations 2011**

This Explanatory Memorandum has been prepared by the Department for Health, Social Services and Children and is laid before the National Assembly for Wales 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 Carers Strategies (Wales) Measure 2010 Regulations and I am satisfied that the benefits outweigh any costs.

*Gwenda Thomas AM*

Deputy Minister for Children and Social Services under authority of the Minister for Health and Social Services, one of the Welsh Ministers

14 November 2011

## 1. Description

1.1 The Carers Strategies (Wales) Regulations 2011 are derived from the Carers Strategies (Wales) Measure 2010. The Measure was granted Royal Assent on 10 November 2010. The Measure provides for strategies to be prepared and published by certain public bodies about arrangements for the benefit of unpaid carers. These are carers that do not receive payment for their caring work. Throughout this Explanatory Memorandum these carers are referred to as 'carers' and 'unpaid carers'.

1.2 The Measure places a duty on a 'designated authority' or two or more 'designated authorities' to work together to prepare, publish and implement local information and consultation strategies for the benefit of carers. In this initial roll out of the Measure, the first 'designated authorities' are the seven Local Health Boards, Velindre NHS Trust, the Welsh Ambulance Service NHS Trust and local authorities. Local Health Boards are the 'lead authorities' charged with coordinating the development of the local strategies.

**1.3 The strategies will set out arrangements for the provision of information and guidance for carers to enable them to carry out their caring role effectively and set out arrangements for the full involvement of carers in decisions regarding the provision of services to them and the person(s) they care for.**

1.4 The Measure has Regulation making powers in respect of:

- the requirement to develop local strategies by a 'designated authority' or 'designated authorities';
- the provision of a description of appropriate information and advice that will be of benefit to carers;
- consulting carers before decisions are made regarding services for the person(s) cared for;
- consulting carers before decisions are made regarding services for them;
- the content of strategies in relation to the provision of information to carers;
- the content of strategies in relation to consultation with carers;
- how and when strategies should be published;
- the submission of draft strategies to Welsh Ministers; and
- arrangements for reviewing, monitoring, evaluating and implementing local strategies.

1.5 Amendments have been made to the version of the Regulations which went out to public consultation referred to in the Regulatory Impact Assessment at paragraph 3.1 and are provided for under the Measure. These relate to the involvement of the voluntary sector in the preparation of local strategies, the involvement of General Practitioners in the development of local strategies and the ways in which designated authorities must consult with carers.

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## **2. Matters of Special Interest to the Constitutional and Legislative Affairs Committee**

None.

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## **3. Legislative background**

3.1 The powers to make these Regulations are contained within the Carers Strategies (Wales) Measure 2010. Further information about the Measure and its associated scrutiny process can be found at:

[http://www.assemblywales.org/bus-home/bus-third-assembly/bus-legislation-third-assembly/bus-leg-measures/bus\\_legislation\\_meas-cs.htm](http://www.assemblywales.org/bus-home/bus-third-assembly/bus-legislation-third-assembly/bus-leg-measures/bus_legislation_meas-cs.htm)

The Regulation making powers within the Measure are contained in Sections 2(1), 3(2), 4, 5(1) and 6(4),

3.2 These Regulations are subject to the affirmative procedure and will be laid before the National Assembly for Wales on 15 November 2011. The affirmative procedure means that there will be a plenary debate. This is scheduled for 6 December 2011. This is in line with Section 10 (5)(b) which states that “A statutory instrument containing the first regulations made by the Welsh Ministers under each of sections 2(1), 3(2), 4, 5(1) and 6(4), ...must not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales”.

3.3 The previous Government’s commitment to carers via the ‘One Wales’ agreement is carried forward by the current administration in the Welsh Labour Manifesto and Programme for Government. Carers and the Measure also feature prominently within the Welsh Government’s Social Services Strategy ‘Sustainable Social Services for Wales: A Framework for Action’.

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## **4. Purpose & intended effect of the legislation**

4.1 The 2001 Census across England and Wales revealed that Wales has a higher proportion of carers than any English region (11.7 per cent or 341,000 carers) and the highest proportion of people with limiting long-term illness (23.3 per cent). The Census also showed that the economically inactive population aged 16-74 who are permanently sick or disabled in Wales is 9.2 per cent, higher than any region of England. Further research published in May 2011 by Carers UK estimates that the number of unpaid carers in Wales has increased by 8% to approximately 370,000.

4.2 Welsh Government figures show that unpaid carers provide around 70% of care in the community. The 'Care at Home' research published in 2010 by the Care Council for Wales however, reports that 96% of annual care hours in Wales are provided by unpaid carers, with the remaining 4% provided by local authorities and independent providers. Carers are of all ages and come from all social and economic backgrounds. It is clear then that unpaid carers are a significant presence in society providing vital assistance to families and friends.

4.3 Research has highlighted the need for Carers to have the right information at the right time to support them in their caring role. In particular, information for carers needs to be easily accessible, relevant and factually correct. The kind of information carers are likely to need will vary and may include prognosis and care planning for the person cared for, medicines management, safe lifting and handling, rights, including the right to a carers assessment, what social services or NHS support could be available, what financial support could be available, employment provisions, including flexible working and support groups. The Regulations list these and a range of other provisions in relation to information and guidance. Consulting with carers in relation to decisions regarding services for them and the person(s) they care for is the other key issue addressed by these Regulations and Guidance.

4.4 The current framework of legislation in relation to carers focuses mainly on statutory authorities' powers and duties. It includes:

- **Carers (Recognition and Services) Act 1995**

This was the first piece of legislation that gave rights to Carers of all ages who provide regular and substantial care. This contains the core statutory responsibilities and requires local authorities to carry out an assessment of a carer's ability to provide and to continue to provide care, if the carer requests this, at the time of the assessment of the person they care for.

<http://www.legislation.gov.uk/ukpga/1995/12/contents>

- **Carers and Disabled Children's Act 2000**

This Act gave Carers a right to ask for an assessment even when the person they were caring for refused an assessment. It also gave Local Authorities the power to provide services directly to Carers and to provide Direct Payments to Carers.

<http://www.legislation.gov.uk/ukpga/2000/16/contents>

- **Carers (Equal Opportunities) Act 2004**

This places a duty on Local Authorities to inform Carers of their right to a Carers assessment. It also ensures that Carers leisure, lifelong learning and employment opportunities must be taken into account when carrying out an assessment. It gives Local Authorities the power to enlist the help of Housing, Education and Health in providing support to Carers.

<http://www.legislation.gov.uk/ukpga/2004/15/contents>

- **Community Care (Delayed Discharges) Act 2000**

It states that when a Carers asks for an assessment, Social Services in consultation with their partners in the NHS, must determine what service it will provide for the Carer when the cared for is ready for discharge.

<http://www.legislation.gov.uk/ukpga/2003/5/contents>

- **Disabled Persons (Services, Consultation and Representation) Act 1986**

This requires local authorities to have regard to the ability of the carer to provide or continue to provide care when deciding what services to provide to the disabled person.

<http://www.legislation.gov.uk/ukpga/1986/33>

- **Work and Families Act 2006**

This came into force in Wales in April 2007. It requires employers to consider requests from people with caring responsibilities to work flexibly.

<http://www.legislation.gov.uk/ukpga/2006/18/contents>

- **Children and Young Persons Act 2008**

This requires local authorities to make adequate arrangements for short break provision for Disabled Children.

<http://www.legislation.gov.uk/ukpga/2008/23/contents>

- **Children Act 1989**

Young Carers can be identified as a 'child in need'.

<http://www.legislation.gov.uk/ukpga/1989/41/contents>

- **Education Act 2002, Section 175**

Section 175 concerns the duties of Local Education Authorities and governing bodies in relation to the welfare of children.

<http://www.legislation.gov.uk/ukpga/2002/32/contents>

4.5 In addition the Welsh Government has a range of powers to inspect, regulate and issue statutory guidance in respect of local authority services under the Local Authority Social Services Act 1970, the Care Standards Act 2000 and the Health and Social Care (Community Health and Standards) Act 2003. It also has powers to direct the NHS under the National Health Services (Wales) Act 2006.

4.6 Despite this existing framework of legislation and guidance, consultations with carers, carers' organisations and others identified gaps in provision that

are addressed via this Measure, associated Regulations and Guidance. The gaps were mainly concerned with the contribution of health services to improving provision for carers. Thus this Measure for the first time places a duty on the NHS to carry out functions for their benefit.

4.7 As can be seen from paragraph 3.1, there are significant number of carers providing care to families and friends. Many of these carers provide care for more than 40 hours a week but even those that care for fewer hours find that their lives are impacted upon in a range of ways. These include a reduced or removed ability to work, less time for leisure and recreational activities and poorer health. Thus, carers can be considered as excluded from full participation in society. The Welsh Government's legislative intention for carers via this Measure and associated Regulations and Guidance is clear: by providing the right information and guidance at the right time and by involving carers in decisions regarding services for them and the person(s) they care for, carers will be better equipped and prepared to care.

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## **5. The Regulations**

The Regulations clearly define and prescribe the range of duties placed on 'designated authorities'. These are:

Regulations 1 and 2 – concern the title of the Regulations and a description of the terminology used in the Regulations.

Regulation 3 – concerns the duty placed on 'designated authorities' to produce, publish and implement local strategies.

Regulation 4 – sets out the requirement for 'designated authorities' to consult with voluntary organisations in the development of local strategies.

Regulation 5 – sets out the requirement for the Local Health Board to engage with General Practitioners in the implementation of local strategies; how staff will be trained in delivering the requirements of local strategies and the languages and format by which local strategies will be made available to carers.

Regulation 6 – prescribes the appropriate information and advice which 'designated authorities' are required to provide to carers. The list is self explanatory.

Regulation 7 – concerns the steps which 'designated authorities' must take to ensure that carers are consulted with in a timely fashion, that their knowledge of the cared for person is treated with respect, that they are made aware of their rights to a needs assessment by the local authority, that assistance is provided to help carers understand decisions taken if required, that where decisions are taken in the absence of carers, that those decisions are promptly explained, that consultation occurs at regular intervals and includes

consideration of support needed at short notice, that due regard is taken of their age and any disability and cultural needs, that carers are made aware of support available from voluntary organisations and that training on consulting with carers is provided to staff.

Regulation 8 – concerns arrangements for the submission of draft local strategies to Welsh Ministers and the requirement for local strategies to be re-drafted if not approved.

Regulation 9 – sets out the requirement for local strategies to cover a three year period, for local strategies to be reviewed after 18 months, for local strategies that are substantially altered to be re-submitted to Welsh Ministers for approval, for annual reports to be submitted and for publication to be made in English and Welsh.

Regulation 10 – concerns the duty placed on Local Health Boards to lead and coordinate the work of preparing, publishing and implementing local strategies.

The Regulations only apply in part to the Welsh Ambulance Services NHS Trust. The Measure applies in some but not all respects to the work of this emergency service.

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## **6. The Guidance**

A comprehensive guidance document has been prepared for use by the 'designated authorities'. The Guidance is clearly sets out the expected content of local strategies and includes the following headings:

- Section 1 Purpose
  - Who are Carers?
  - Carer Statistics
  - Demographic Trends
  - Impact of Caring
- Section 2 Policy Context
  - Aims and Objectives
- Section 3 Format and Content
  - NHS Role in Supporting Carers
  - Local Authority Role in Supporting Carers
  - Joint Working and Strategy Development
  - Engaging Carers, Partners and Communities
  - Scope of Information and Consultation Strategies for Carers
  - Objectives of Information and Consultation Strategies for Carers

	General Principles of Information and Consultation Strategies for Carers
	Content of Information and Consultation Strategies for Carers
	Information - Suggested Content
	Communication and Consultation – Suggested Content
Section 4	Delivery
	Delivery of Information and Consultation Strategies for Carers
	Community Health Services and Social Care Services
	Acute/Hospital Services
	Training and Development for Health and Social Care Staff
	Training for Carers
Section 5	Reviewing, Monitoring and Submission
	Reviewing Information and Consultation Strategies for Carers
	Monitoring Information and Consultation Strategies for Carers
	Submission of Information and Consultation Strategies for Carers
Annex 1	Key Legislation, Strategy and Policy
Annex 2	Interpretation of Regular and Substantial Care
Annex 3	Examples of notable practice in the provision of services to Carers

The Guidance is not statutory.

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## **7. Territorial Extent**

The Measure and associated Regulations and Guidance apply only in relation to Wales. The limitation relating to functions other than in relation to Wales means that this Measure would not enable the Assembly to confer on the Welsh Ministers, Welsh local authorities or any other public authority any functions which did not relate to Wales.

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## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **1. Options**

#### Option 1 - Do nothing

1.1 Not introducing the Regulations will mean that the policy intention of the National Assembly for Wales in passing the Measure will not be given effect and carers will not benefit from having the duty placed upon the 'designated authorities' to meet their information and consultation needs. During the scrutiny process associated with the Measure, it was agreed that the detail of work to be taken forward would be provided for in the Regulations. The Measure simply describes the duties to be placed on 'relevant authorities' in relation to the development of local strategies and sets out the Regulation making powers under sections 2(1), 3(2), 4, 5(1) and 6(4).

#### Option 2 – Bring all of the Regulations into force

1.2 Introducing all of the Regulations will mean that the policy intention of the National Assembly for Wales in passing the Measure is given effect. It will mean that the seven Local Health Boards, Velindre NHS Trust, the Welsh Ambulance Service NHS Trust and local authorities will have clear, detailed requirements placed on them to prepare, publish and implement a local strategy that will meet the information and consultation needs of carers.

### **2. Costs and Benefits**

#### Option 1 - Do nothing

2.1 Not introducing the Regulations will mean that no additional financial costs are incurred by the 'designated authorities' but that no benefit will be brought to carers in relation to meeting their information and consultation needs. Another significant cost arising from not supporting carers in these ways include the possibility of increased numbers of admissions to hospital of cared for persons.

#### Option 2 – Bring all of the Regulations into force

2.2 Introducing all of the Regulations will mean that financial costs will be borne by the 'designated authorities'. The costs will be met by funding from the Welsh Government. The level of funding was agreed during the Measure's scrutiny process (£900,000 in 2012-13; £1.7m in 2013-14; £3.2m in 2014-15) and the formula for its allocation has been agreed by the Deputy Minister for Social Services and Children and Minister for Health and Social Services. The drafting of a specific Chapter that dealt with the information and consultation needs of young carers was also agreed during the scrutiny process and funding for that purpose is also provided: £80,000 in 2012-13; £150,000 in 2013-14 and £200,000 in 2014-15.

2.3 The funding is being allocated to LHBs in recognition of their role as 'lead authorities' and the Deputy Minister for Social Services and Children's clear

wish is for the NHS to be in the lead in taking forward this legislation. The formula for allocation is the standard LHB Hospital, Community and Health Services formula and the allocation for 2012-13 is set out below:

<u>LHB</u>	<u>Allocation</u>
Abertawe Bro Morgannwg	72,064
Aneurin Bevan	81,944
Betsi Cadwaladr	97,436
Cardiff and Vale	55,428
Cwm Taf	43,451
Hywel Dda	53,493
Powys	16,184
Velindre NHS Trust	20,000
Welsh Ambulance Service NHS Trust	10,000

This funding will be distributed in the first week of April 2012. Ministers will require a short joint Local Health Board/Social Services report by 1 September 2012 confirming how this funding has been spent and the good practice generated.

The second allocation will be made available to support the implementation of the Measure. The distribution for the second allocation will also include dedicated funding for delivering the Young Carers Chapter of local strategies and is detailed below:

<u>LHB</u>	<u>Main Allocation</u>	<u>Young Carers</u>
Abertawe Bro Morgannwg	72,064	13,726
Aneurin Bevan	81,944	15,608
Betsi Cadwaladr	97,436	18,559
Cardiff and Vale	55,428	10,558
Cwm Taf	43,451	8,276
Hywel Dda	53,493	10,189
Powys	16,184	3,083
Velindre NHS Trust	20,000	
Welsh Ambulance Service NHS Trust	10,000	

This funding will be allocated to organisations following Ministerial sign-off of the local strategies towards the close of 2012, as provided for in Regulation 8. Funding for subsequent financial years will be confirmed in due course.

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### **3. Consultation**

3.1 A public consultation on the draft Regulations and Guidance was held between 31 March 2011 and 30 June 2011. The documents can be found at this location and are available in English, Welsh, Everyday English and Easy Read English:

<http://wales.gov.uk/consultations/healthsocialcare/carers/?lang=en&status=closed>

64 responses were received from the following types of organisations:

Individual (including groups of individuals)	11
LHB/NHS Trust	8
Professional/Representative organisation	3
Social Services	12
Third sector organisation	27
Other organisation	3

3.2 A report of the consultation that sets out the main issues raised and whether they have been accepted or rejected for inclusion in the final Regulations and Guidance can be found through the above link.

3.3 A Carers Measure Stakeholder Advisory Group was established at the commencement of the legislative process to develop the Measure and have contributed advice throughout. The Group's membership included representation from the NHS, Social Services and the Third Sector.

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#### **4. Post implementation review**

4.1 The Regulations commit LHBs and Social Services to monitor the implementation of Strategies and set out what those arrangements will be. Paragraphs 5.1 to 5.6 of the Guidance provide further information in this regard.

4.2 The Regulations also commit LHBs and Social Services to review the implementation of the Strategies after an 18 month period and for them to be replaced every three years.

4.3 Welsh Ministers are also considering establishing a group which will be led by officials to oversee the implementation of the Measure. The group would include senior representatives from the NHS, Social Services and the Carers Third Sector.

