

**Explanatory Memorandum to the Health Education and Improvement Wales (Establishment and Constitution) Order 2017; and the Health Education and Improvement Wales Regulations 2017.**

This Explanatory Memorandum has been prepared by the Department for Health and Social Services and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

**Cabinet Secretary/Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Education and Improvement Wales (Establishment and Constitution) Order 2017; and the Health Education and Improvement Wales Regulations 2017. I am satisfied that the benefits justify the likely costs.

**Vaughan Gething**

Cabinet Secretary for Health, Well-being and Sport

13 September 2017

## **1. Description**

- 1.1. This legislation establishes a new Special Health Authority called Health Education and Improvement Wales.

### **The Health Education and Improvement Wales (Establishment and Constitution) Order 2017**

- 1.2. This Order provides for the establishment of Health Education and Improvement Wales (“HEIW”) and makes provision about its constitution and overarching functions

### **The Health Education and Improvement Wales Regulations 2017**

- 1.3. The Regulations make provision about the membership and procedures of HEIW. They provide for the appointment, eligibility and disqualification of members and HEIW’s meetings, proceedings and committees.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

- 2.1. The two statutory instruments being brought forward to establish HEIW are being made together, are inextricably linked, and would be difficult to understand if read in isolation. It is therefore considered beneficial to bring forward a single composite Explanatory Memorandum and Regulatory Impact Assessment.

## **3. Legislative background**

- 3.1. The Welsh Ministers have power to establish a Special Health Authority under section 22 of the National Health Service (Wales) Act 2006 (“the 2006 Act”). The power is exercisable by Order. Under section 24 of the 2006 Act the Welsh Ministers may direct a Special Health Authority to exercise functions of the Welsh Ministers relating to the health service. The Welsh Ministers may also, under section 23, give directions to a Special Health Authority about its exercise of any functions.
- 3.2. Under powers conferred by Schedule 5 to the 2006 Act, the Welsh Ministers have power to make regulations in respect of the members and officers of a Special Health Authority. They may also make provision in relation to matters such as the appointment and tenure of members, the appointment of committees, the procedures of the Authority and other matters.

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

- 4.1. In 2014 the Welsh Government commissioned a review into the way in which the current investment in the planning, development and commissioning of health professional education and workforce development in Wales achieved its intentions and whether any improvements could be made, both in terms of value and output.
- 4.2. The review was undertaken by an independent panel chaired by Mel Evans OBE, previously Chair of Powys Teaching Health Board. It considered the commissioning arrangements and models of operation and systems in other countries, as well as discussions with stakeholders involved in the commissioning and provision of education and training.
- 4.3. The panel's report was published in April 2015 with the following recommendations:
  - the need for a clear, refreshed strategic vision for NHS Wales for 2015-2030, based on the prudent healthcare agenda, and which should inform the strategy for the workforce within the same period;
  - a single body for workforce planning, development and commissioning of education and training must be established; and,
  - the NHS in Wales should be the vehicle for developing Wales as a learning culture.
- 4.4. Following a six week period of engagement the Welsh Government agreed the need for change and accepted the report's recommendations. In the case of the single body recommendation, the Welsh Government subsequently commissioned a further report surrounding options for that new body.
- 4.5. Professor Robin Williams' report was published in November 2016, which, following extensive engagement in consideration of the options, recommended the establishment of an 'arms length single body'; underpinned by a single flexible funding stream; bringing together, as a minimum, the functions of WEDS and the Wales Deanery, including strategic workforce planning, development and commissioning of education and training. The recommendation was that a single body would ensure investment and planning decisions are based on evidence of need and not taken about individual professions in isolation.
- 4.6. The overarching purpose and intended effect of the Order and Regulations is to address and achieve the objectives and changes set out above, by enabling the transition to a new single body for education, training and workforce planning for the NHS in Wales.
- 4.7. The Establishment and Constitution Order makes provision for the establishment of Health Education and Improvement Wales and provides for the constitution of the new body in relation to its board. It also sets out the overarching functions of that new body, which are in relation to the planning, commissioning and delivery of education and training for the health sector

workforce in Wales, in addition to other functions that may be prescribed by the Welsh Ministers through Directions. The Welsh Ministers also have the power to direct HEIW as to the exercise of any functions.

- 4.8. The effect of the Order will be a new organisation within the NHS in Wales, sitting alongside the current 7 Health Boards and 3 NHS Trusts; with the overarching responsibility for the education and training of the health workforce.
- 4.9. The new body will have a board consisting of 12 members, split between independent and officer members, with the majority being independent. Seven of those members will be independent, and will include within that number, a Chair. The remaining five members will be officer members (future employees), and will include within that number, a Chief Executive.
- 4.10. The purpose of the Regulations is to set out the procedural matters and detail in relation to members, including their appointment, eligibility and tenure, as well as disqualification. They also provide for the appointment of the Chief Executive and the remaining officer members of the board. In addition, the Regulations set out requirements and powers in relation to the exercise of the board's business, for matters such as meetings and proceedings, the appointment of committees, and duties in relation to reporting.
- 4.11. The effect of the Regulations will be that independent members will be appointed by the Welsh Ministers. Their terms of office will be specified upon appointment, but must not exceed 4 years. Those members will be eligible for re-appointment but may not serve for a period of more than 8 years in total. Provision about eligibility is made in the Regulations and grounds for disqualification, including criminal convictions, bankruptcy, or dismissal from other relevant bodies are set out under Schedule 1.
- 4.12. In relation to the Chief Executive, the Welsh Ministers will make the first appointment, with subsequent appointments made by the board. Other officer members will be appointed to the board by the independent members.
- 4.13. The regulations also provide powers for a vice-chair. The board of HEIW will be able to appoint a vice-chair should it wish to do so, ensuring that in the event of the Chair being unavailable, the board may continue to operate effectively.
- 4.14. Regulation 15 and Schedule 2 to the regulations provide for the detail underpinning meetings and proceedings of the board. The effect of this is that all decisions must be made with a vote during a meeting; a meeting cannot take place, nor a decision made, unless a minimum of 6 members are present, which must include representation from both independent and officer members, with a majority of independent, unless specified within Directions made by the Welsh Ministers. This is to ensure that no business is transacted, or decisions made, without fair representation and appropriate governance in place.

4.15. As set out above, taken together, the Order and Regulations will provide the legal framework necessary to allow the implementation of the establishment of Health Education and Improvement Wales.

## **5. Consultation**

5.1 Details of the consultation undertaken are included in the RIA below.

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

### **6. Options**

#### **Option 1 – Do Nothing – Leave current arrangements to continue**

6.1 This option would require the functions of WEDS and the Deanery to remain within the respective organisations. It would also require the current funding and commissioning arrangements across the health workforce education and training sector to continue as they currently are. Whilst it is recognised that current arrangements are sufficient, this option would not meet the policy objective of improving those arrangements and the value for money against the investment made.

#### **Option 2 – Do Minimum – A concentration of functions within NHS Wales Shared Services (NWSSP) or the Wales Deanery**

6.2 Currently, WEDS sits within a larger organisation (NHS Wales Shared Services Partnership), which offers a range of services to NHS organisations. This, however, presents certain frictions around WEDS' accountability when work is commissioned by the NHS or Welsh Government. The Wales Deanery provides a specific and worthwhile function, but undertakes medical staff planning outside of the wider context of workforce planning.

#### **Option 3 – The establishment of a new body**

6.3 A new body would have responsibility for the education and training for the health workforce across Wales, as well as overarching workforce planning for the NHS in Wales. It would undertake the functions currently undertaken by WEDS and the Deanery, allowing strategic planning and commissioning activity through one organisation which is able to take independent decisions to provide education and training for the health workforce to meet the specific geographical needs of Wales.

### **7. Costs & benefits**

#### **Option 1**

##### **Costs**

7.1 There would be no costs attached to this option. It would continue with the status quo. The current organisations would remain as they are, as would the current systems for workforce planning and education and training of the health workforce.

##### **Benefits**

7.2 Given that current systems would continue, there would also be no benefits to this option in terms of value for money against the investment made into

this area of the system. However, there would be a benefit in that no additional establishment or transitional costs would be required, as with option 3. There would be no policy benefit in relation to improvements in strategic workforce planning across the NHS in Wales. There could however, be an unquantifiable potential benefit for the staff involved, in that they would continue within their current roles, organisations and locations.

## **Option 2**

### **Costs**

7.3 This option would result in a small proportion of the costs identified under option 3, specifically in relation to the people aspect, given that those staff in the Wales Deanery would be required to transfer to the NHS from Cardiff University, or vice versa for those staff currently working within WEDS in Shared Services. There could also be potential costs in relation to accommodation and ICT as a result of moving staff. The costs of transferring WEDS staff into the Deanery would, however, potentially be significantly less than if the move was reversed, given the difference in staff numbers in each organisation. Any costs as a result of this option would need to be met by the Welsh Government.

### **Benefits**

7.4 This option would not meet the policy intention and could create additional complexities. The current structures for both current organisations do not allow for the level of independence required to consider and take decisions on behalf of Wales. This option also does not allow for integrated, co-ordinated planning across the NHS workforce as a whole. As a result, there would be little to no benefit in terms of the policy objective. As with option 1, but not to the same degree, there would be some benefit in that this would be a less costly option; but would not reap the same benefits as options 1 or 3 for the affected staff, given that some would need to move organisations and others not, which could have a negative impact on all staff.

## **Option 3**

### **Costs**

7.5 The costs for this option are set out within the two tables contained at Appendix A; and are separated into programme costs and transitional costs. However, both sets of costs are non-recurring. They have been developed through the relevant workstreams under the Transition Programme and are based on an assumption of a future transfer of approximately 300 staff.

7.6 The programme costs relate to those required to undertake the programme of work to establish the new organisation, not including the costs directly related to the organisation itself. The transitional costs relate to the practical establishment of the new organisation; in addition to those required to cover the period of transition up to 1 April 2018. The total cost associated with this

option (£2,880,178) will need to be met by the Welsh Government. Any recurring costs after 1 April 2018, (e.g. salaries and remuneration) would transfer to the new organisation from that date as a normal running cost.

## **Benefits**

- 7.7 Whilst the costs for this option are significantly greater than those for options 1 and 2; as are the benefits. This option would fully meet the policy objective to create a single body, with a single funding stream, with responsibility for the education and training of the health workforce across Wales; allowing for strategic workforce planning across the NHS as a whole; providing consistency in standards of education and training; and a single, independent, strategic voice within NHS Wales. In the medium term it could provide a better experience for students and trainees, with improvements in their education and training, potentially resulting in an increase in Welsh students staying in the NHS to continue their careers after qualification. In the longer term, it could provide a higher quality workforce, and taken together with its workforce planning functions, a workforce that better meets the needs of the people of Wales. A more in-depth map of the potential policy benefits has been included at Appendix B.
- 7.8 In terms of any staff potentially affected by the proposed option, the benefits would be potentially greater under this option than that under option 3. This option would require all those affected within WEDS and the Deanery to transfer to a new organisation, in a new location, within a new structure. It would not result in a split of some staff moving and others not, meaning benefits for staff in some respects in that they would all be in a similar situation.
- 7.9 There are also benefits for the wider NHS, in that this would be a new organisation within the NHS Team Wales approach. It would be an equal partner and have the ability to provide an independent and impartial voice to the discussions and decisions in relation to education, training and workforce planning. There are also opportunities to further the 'once for Wales' approach in a similar way to that within Shared Services, but more in terms of leadership, development and improvement in relation to the workforce across the health sector in Wales.
- 7.10 It is considered that the implementation of this option would have little to no impact on either the local government, voluntary or business sectors.
- 7.11 The new body will focus on ensuring that the training and education requirements to ensure the sustainability of the NHS workforce in Wales are met, which in turn assists in ensuring an appropriate level of NHS service provision. The training and development opportunities will support employment opportunities in Wales and the new body will be able to explore greater opportunities for widening access to NHS careers.
- 7.12 The new body will be required to ensure all aspects of the work it carries out is measured in terms of equality and its annual report will need to identify



how the body has embraced the principles underpinning the equality legislation in carrying out its functions.

- 7.13 In terms of the Welsh language, one of the roles of the new body will be to consider the language requirements of NHS services provision and exploring opportunities for a greater number of education and training programmes to be provided through the medium of Welsh.
- 7.14 This option also takes account of the importance of balancing the short term needs of the NHS and the longer term ability to take forward issues relating to the planning and provision of appropriate education and training programmes to support NHS Service delivery. Officials have considered the feedback from both the Williams and Evans report and details of arrangements elsewhere within the UK. In particular, officials consider the establishment of this new body will enable the resources available for investment in the workforce will be maximised as a result of the proposed approach.

## **Summary**

- 7.15 In considering each of the options, including the anticipated costs, benefits and risks of each, it is clear that Option 3, whilst the most costly, is the only option that would achieve the intended policy objectives and potential benefits and opportunities. It is for this reason that Option 3 has been chosen, and legislation developed to implement a new body in the form of a Special Health Authority.

## **8. Consultation**

- 8.1. As set out under section 4, work to develop the policy in this area started in 2014 when the Welsh Government commissioned a review into the investment in the planning, development and commissioning of health professional education and workforce development in Wales.
- 8.2 The review was undertaken by an independent panel chaired by Mel Evans OBE, previously Chair of Powys Teaching Health Board. The panel's report was published in April 2015 and, among other things, recommended a single body for workforce planning, development and commissioning of education and training. Following a six week period of engagement, the Welsh Government agreed the need for change and commissioned a further report surrounding options for that new body.
- 8.3 Professor Robin Williams' report was published in November 2016, which, following extensive engagement in consideration of the options, recommended the establishment of an 'arms length single body'; underpinned by a single flexible funding stream; bringing together the functions of WEDS and the Wales Deanery, including strategic workforce planning, development and commissioning of education and training.

- 8.4 Following these reports, the policy underpinning this legislation has been developed in conjunction with, and agreed by, groups of key stakeholders, including those from the organisations directly involved, through a series of workstream groups centred on key aspects of the transition.
- 8.5 The policies were also discussed with a wider group of key stakeholders from organisations across the sector potentially directly and indirectly affected by the proposed changes, through a stakeholder event held on 12 July; with comments fed back through discussions within the workstreams.
- 8.6 A targeted consultation has also been undertaken on the legislation in the form of a letter to potentially directly affected organisations, as well as Health Board and Trust senior managers. The letter set out the key policy points behind the legislation. It requested that they respond within a specified timeframe, should they have any comments or concerns. Given that the majority of those consulted were already involved in the development of the policies, or had been given the opportunity to feed into the discussions via other avenues, no responses were received.
- 8.7 It is intended that additional, consultation will take place prior to the making of the subsequent legislation that will make provision about the transfer of staff, liabilities and property.

## **9. Competition Assessment**

- 9.1 The competition assessment has been completed and is included at Appendix C.

## **10. Post implementation review**

- 10.1 The RIA sets out the anticipated potential costs of this legislation, in addition to the benefits and opportunities. There are three sets of benefits, set out in detail under appendix B, and it is in realising these benefits that success will be measured.
- 10.2 It is anticipated that a review will take place within 5 years of the full implementation of this legislation; with a further review at the 10 year point, whereby the longer term benefits will have had the opportunity to be realised.
- 10.3 The key factors in measuring whether those benefits have been realised are as follows:
- A higher proportion of Welsh professionals remaining in Wales after their training.
  - A reduction in vacancies across the health workforce across Wales.
  - A reduction in skills gaps across professions.
  - Improved satisfaction ratings from patients through the national survey.
  - Improved staff survey results in relation to education and training.

- Improved value for investment, measured by an increase in outputs and/or service provision for similar investment against that made under the current system.
- Improved satisfaction results from students and trainees both during and at the completion of their education and training.
- A reduction in locum and agency spend across the NHS in Wales.

## APPENDIX A – Detailed Costs Related to Option 3

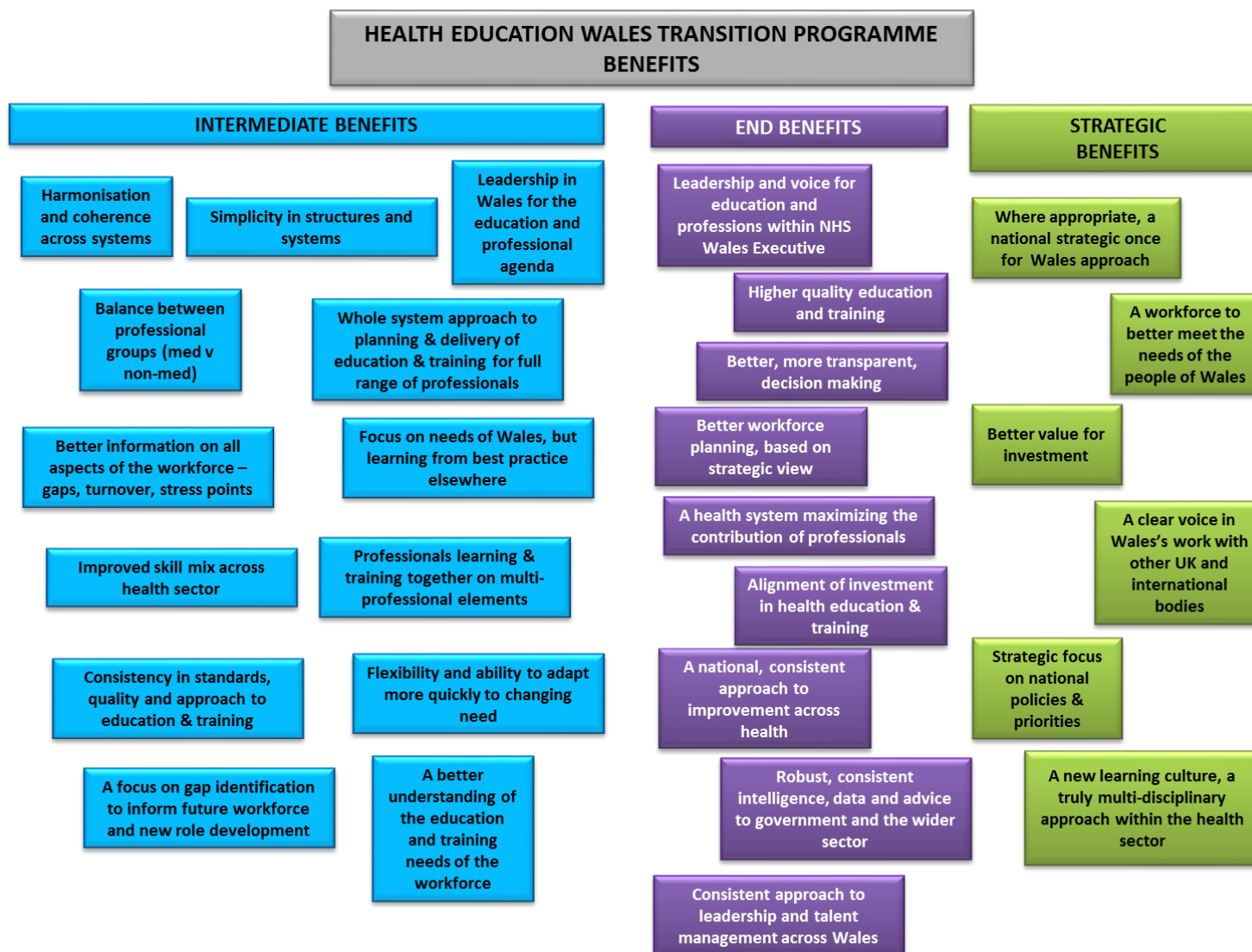
### Programme Costs

<b>Property</b>	Project Manager and Architect IT and systems Project Manager	£50,000 £73,000
<b>People</b>	Advertising Costs for the Chief Executive Advertising Costs for the Executive Directors Due diligence Independent Pension advice	£7,000 £6,000 £10,000 £40,000
<b>Governance</b>	Advertisement costs for Independent Board Members	£1,500
<b>Organisational Development</b>	Additional OD Consultancy work Delivery of Culture Analysis tool	£14,000 £14,000
<b>Communication &amp; Engagement</b>	Branding and Website development / hosting Staff and Stakeholder engagement and consultation events	£1,000 £27,000
<b>Legal</b>	External Employment Law advice	£20,000
<b>Other Costs</b>	Ad hoc programme costs	£10,000
<b>TOTAL</b>		<b>£273,500</b>

### Transitional Costs

<b>Property</b> (These costs are approximate. Actual costs will depend on the chosen location and final staff transfer numbers.)	Rent – 5 months Rates Service Charge Facilities Costs Office fit-out Contingency @15% IT Setup Costs (including hardware)	£229,166 £104,166 £67,708 £31,250 £1,045,000 £156,750 £861,400
<b>People</b>	Salary for Chief Executive - 3 months (This cost is approximate. Actual cost will depend on the successful candidate and their start date availability.)	£34,088
<b>Governance</b>	Salary costs for Chair - 6 months Salary costs for Independent Board Members - 2 months	£29,880 £17,270
<b>Organisational Development</b>	Delivery of colleague development programme Delivery of Executive Leadership programme	£10,000 £20,000
<b>TOTAL</b>		<b>£2,606,678</b>

## APPENDIX B – Benefits Map



## APPENDIX C –The Competition Assessment

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No