



**ADSS Cymru**

Yn arwain Gwasanaethau  
Cymdeithasol yng Nghymru  
Leading Social Services in Wales

## **ASSOCIATION OF DIRECTORS OF SOCIAL SERVICES CYMRU**

### **Delivering Transformation Grant (DTG) Programme 2018-19**

#### **Advice Note 2 – Policy and Legislation**

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## Introduction

1. This chapter describes the policy and legislative measures taken to stimulate more effective partnership working and the development of integrated services designed to improve outcomes for individuals and carers in need of care and support and make better use of resources.
2. There has been a long-term commitment towards improving partnership working and developing an integrated approach to service delivery going back to legislation in the 1970s. The most up to date ambitions of the Welsh Government are expressed in its policy, ‘*A Healthier Wales*’,<sup>i</sup> which was drafted in response to the *Parliamentary Review of Health and Social Care in Wales*,<sup>ii</sup> commissioned by Welsh Government.
3. Part of the vision outlined includes:

*“When people need support, care or treatment, they will be able to access a range of services which are made seamless and delivered as close to home as possible. Services will be designed around the individual and around groups of people, based on their unique needs and what matters to them, as well as quality and safety outcomes.”*
4. It proposes whole system values which include:

*“Co-ordinating health and social care services seamlessly, wrapped around the needs and preferences of the individual, so that it makes no difference who is providing individual services...” and*

*“New models of seamless health and social care will integrate services at the local and regional level. Our future vision is of a single whole system approach in which services delivered by different providers are co-ordinated seamlessly for and around the individual. Everything should be presented as a single package of support, care or treatment, tailored to the needs or preferences of that person, even if it is made up of services delivered by several different providers.”*
5. The vision places an emphasis on wellbeing, prevention and early intervention, and on using technology to support high quality services.
6. The policy identifies regional partnership working as being at the heart of how high models of integrated health and social care are developed, which will be promoted for wider adoption across Wales. It states:

*“We see a key role for the Regional Partnership Boards in driving the development at local level of local models of health and social care, including primary and secondary care. Local cluster needs assessment and service plans should feed into regional assessments and Area Plans developed by Regional Partnership Boards. Early models of care may focus on priority groups identified by the Parliamentary Review (i.e. the Welsh language, older people, children, people with mental ill-health and people with disabilities), but we expect to see clusters and Regional Partnership Boards working together to interpret the national Design Principles for themselves and aligning them to their own priorities.”*

*“We want to encourage all localities to think carefully about their current arrangements, and to work together, across boundaries, to design and deliver seamless care at the community level.”*

*“We are clear that there is no locality in Wales where further progress cannot be made. In particular, this will mean partners challenging each other to ensure that changes in individual services or professions are introduced as part of a shared agenda designed to create the very best whole health, social care and wellbeing system.”*

7. ‘A Healthier Wales’ expresses real ambition and includes some important design principles; but it is not heavily prescriptive and enables Regional Partnership Boards (RPBs) considerable scope to design and implement integrated models of service delivery.
8. The importance of improving cooperation and partnership was also expressed in Part 9 of the Social Services & Well-being (Wales) Act 2014<sup>iii</sup>. The Statutory Guidance on Partnership Arrangements<sup>iv</sup> issued in relation to Part 9 of the Act noted that individuals, their families and carers may require care and support from more than one professional or organisation. Where this is the case, the care and support should be effectively co-ordinated and delivered to meet their specific needs. In relation to people needing care and support, this should mean:

*“My care is planned me with people working together to understand me, my family, and carer(s) giving me control, and bringing together services to achieve outcomes important to me.”*

9. Once again, this legislation is not heavily prescriptive in terms of partnership working. It requires the establishment of (RPBs) which will have an essential role in taking forward the integration agenda and designing appropriate local and regional approaches. It requires a Population Needs Assessment and an Area Plan, together with the consolidation of work in relation to Integrated Family Support Services (IFSS).
10. It also requires the development of formal partnerships and pooled budgets for the integrated commissioning of services from care homes for older people as a means to shape the market to become more responsive to local needs. This is also an area where many placements are already joint funded and where many others funded by the NHS (cases eligible for Continuing Health Care) use the same nursing homes demonstrating a clear interdependency between commissioners. Although the legislation gives powers to Welsh Ministers to direct partnerships and pooled funds, in general it is left to RPBs and partner organisations to pursue the design and development of appropriate effective and efficient solutions.
11. This paper explores the legislative basis for partnership working. It describes the legislation as it was developed in chronological order, which will help to understand how the legislation has evolved overtime.

**Key Message – Always seek legal advice**

This and other advice notes in the series, together with any attachments, should not be used as an alternative to obtaining independent legal advice as appropriate. The advice notes are intended as aids to the consideration of what might be required.

## NHS (Wales) Act 2006

12. This legislation was originally introduced with the Health Act 1999<sup>v</sup> and the measures were consolidated into the 2006 Act<sup>vi</sup> alongside others – see ‘GRANTS’ below. This Act provided a legal underpinning for partnership working enabling NHS and local authorities to delegate functions to one another, together with the ability to pool budgets. The arrangements were referred to as ‘Health Act Flexibilities’. To deliver effective partnerships may require more

defined partnerships using flexibilities under Section 33 of the 2006 Act. The partnership arrangements that can incorporate such flexibilities are: pooled funds, the delegation of functions i.e. lead commissioning and integrated provision.

13. Section 33 (1) of the National Health Service (Wales) Act 2006 – allows local authorities and NHS bodies to enter into prescribed arrangements in relation to the functions of NHS bodies and health related functions of local authorities if such an arrangement leads to an improvement in the exercise of those functions.
14. Section 33 (2), allows local authorities and NHS bodies to pool funds, staff, goods and services through those arrangements.
15. It is possible for an NHS body to delegate certain functions to a local authority and vice versa without establishing a pooled budget. In such instances the lead body would be managing two separate budgets – the local authority budget and the local health board budget. An agreement to establish a pooled budget would bring these budgets together.
16. Section 33 arrangements are similar to Section 75 arrangements (NHS Act 2006) in England<sup>vii</sup>. Colleagues may wish to examine some Section 75 partnership agreements in England.
17. The NHS Bodies and Local Authority Partnership Arrangements (Wales) Regulations 2000<sup>viii</sup>, set out the detail on how pooled budgets should operate. They were drafted to underpin the Health Act 1999 and apply to the NHS (Wales) Act 2006. An excellent summary has been produced jointly by the Chartered Institute of Public Finance and Accounting (CIPFA) and Healthcare Financial Management Association (HFMA) Wales Branch, entitled: '*Pooled Budgets and the Integration Agenda in Wales*'.<sup>ix</sup>
18. RPBs have the option of using Section 33 Agreements to help fulfil their Part 9 obligations in relation to the Social Services & Well-being (Wales) Act 2014. However, the preference of the Welsh Government is for RPBs to develop any formal partnership arrangements under the provisions made by the 2014 Act and its subsequent regulations.<sup>xxi</sup> See the section on the Act below.

## Grants

19. The NHS (Wales) Act 2006, consolidated measures from other legislation – namely sections 28(a) and section 28(b) from the National Health Service Act 1977<sup>xii</sup>, were consolidated into the 2006 Act as sections 194 and 34 respectively. Section 194 of the 2006 Act, allows health boards to make such payments to local authorities to support or enhance specific council services. Section 34 allows local authorities to make payments (service, revenue or capital contributions) to NHS bodies to support specific additional NHS services, where this ensures a more efficient use of resources.
20. These measures are to assist the recipient in providing additional services in the fulfilment of their own duties and responsibilities, where this offers a more effective use of resources. It is not a transfer of functions.
21. The reason for referring to this previous legislation (1977) is that there may be some long-standing arrangements still in place, made under this former legislation, which partners may wish to review.
22. This legislation was used to facilitate the closure of former long-stay institutions. It would not be wise to use these measures for long-term agreements in the future, which would be more effectively addressed with a more formal Part 9 Partnership Agreement under the Social Services and Well-being (Wales) Act 2014 or a Section 33 Agreement under the NHS (Wales) Act 2006.

## Children Act 2004

23. Section 10 of the Children Act 2004<sup>xiii</sup>, in addition to placing a duty to cooperate on key partners, also provides the flexibility for them to pool funds with the local authority. Section 10 enables any of the named 'relevant partners' to make contributions to a fund out of which relevant payments may be made and which can be managed by one of them. See Section 162 on similar measures extended to adults and carers under the Social Services & Well-being (Wales) Act 2014.
24. It does not enable the delegation of functions. Instead it provides an opportunity to agree joint objectives and contribute towards the cost of meeting these through whichever partner generally has responsibility for service delivery.
25. The Children Act 2004 does not make provision for the functions of one relevant partner to be undertaken by another, such as allowing one to act for another by managing their functions, employing staff to carry out their functions, or to deliver their functions. If local partners wish to delegate functions to one another, then an agreement under Part 9 (see below) or a Section 33 Agreement, provides for this power for NHS bodies and local authorities only.
26. Partners, could, for example, agree to contribute to the costs of employing additional social workers to specialise in working with domestic abuse cases. Domestic abuse is no one agency's responsibility but many agencies have an interest in addressing these problems and the appointment of additional social workers or police officers etc. may be the best means of addressing it.

27. Partners can agree to make differing levels of contribution towards a plan for expenditure, which draws down against their respective budgets to meet the costs involved in delivering a joint plan.
28. This is the pooled fund of 'individual contributions, budgets and spending towards mutually agreed aims' set out in the plan. Money from this fund may be used to meet the costs incurred by a 'Relevant Partner' when it discharges a statutory function for which it is responsible. The relevant partners able to pool using this power include the local authority, health board, police, probation and youth offending teams, schools, colleges and Job Centre Plus.
29. We are not aware that any of the Regional Partnerships in Wales have ever made use of the opportunities created by Section 10 of the Children Act. The Welsh Government did commission the development of an advice note specifically in relation to a pooled fund arrangement and a template for such an agreement under the Children Act several years ago, although it has yet to be tested.<sup>xiv</sup>
30. Section 163 of the Social Services & Well-being (Wales) Act 2014, makes amendments to section 25 of the Children Act 2004 (Cooperation to Improve Well-being: Wales). This is to ensure that the existing duty of the 2004 Act to make arrangements to promote cooperation to improve the well-being of children is aligned with that of the new duty in Section 162 of the 2014 Act for adults i.e. to promote cooperation for those with needs for care and support and their carers.

## Social Services and Well-being (Wales) Act 2014

31. Section 162 of the Social Services and Well-being (Wales) Act 2014, extends the provision above (for children) for the funding of services for adults and carers.
32. The Act requires local authorities to promote cooperation between its officers and with its 'Relevant Partners' in order to assist in securing the necessary services to Adults in Need of Care and Support and their Carers. Arrangements also need to focus on improving the quality of care and support and protecting adults who are experiencing or at risk of abuse or neglect.
33. 'Relevant Partners' for the purposes of this section on Adults and Carers within the Act are listed as:
  - The police
  - Any other local authority with which the authority agrees that it would be appropriate to cooperate with under this section.
  - The Secretary of State to the extent that the Secretary of State is discharging functions under Sections 2 and 3 of the Offender Management Act 2007 in relation to Wales.
  - Any provider of probation services required under section 3(2) of the Offender Management Act 2007.
  - A Local Health Board for an area any part of which falls within the area of the authority.
  - An NHS Trust providing services in the area of the authority.
  - The Welsh Ministers in relation to functions discharged under Part 2 of the Learning and Skills Act 2000.
  - And any other person which regulations may specify.
34. The Relevant Partners for Adults and their Carers may provide staff, goods, services, accommodation; establish and maintain a pooled fund to support arrangements for Adults and their Carers; and share information with each other.
35. A pooled fund under section 162 of the Act is defined as being made up of contributions from the local authority and the relevant partner or partners concerned, out of which payments may be made towards expenditure incurred in the discharge of functions of the authority and functions of the relevant partner or partners. It is not an arrangement for Relevant Partners to delegate duties to each other.
36. It may be possible to adapt the template above for Children's Services to cover arrangements for adults and carers in relation to section 162.
37. Section 162 does not make provision for the functions of one Relevant Partner to be undertaken by another, such as allowing one to act for another by managing or delivering their functions. So, for example, where a local authority, a local health board and other Relevant Partners agree to establish a pooled fund under Section 162, which is a fund to be managed by one of them, they may agree that an item of expenditure from the fund is to cover the cost of the local authority service manager. This does not mean that the local authority's manager is then empowered to manage services of the other Relevant Partners. Neither would the other Relevant Partners be able to undertake any other pooled fund partner's functions simply because they were contributing to the cost of the service through a pooled fund for that partner and others.

38. If staff, goods and services are being made available to another partner, it is to assist the receiving partner in carrying out their own function and not for them to manage the functions of the donating partner.
39. If partners wish to delegate functions to one another locally, then an agreement under Part 9 of the Social Services & Well-being (Wales) Act 2014 can be used or, alternatively, a Section 33 Agreement can be used.
40. The Social Services & Well-being (Wales) Act 2014, also sets out how a local authority must exercise its Social Services functions, with a view to integrating care and support provision with health provision and health related provision, where it would promote the wellbeing of children, adults with needs for care and support and carers with needs for support; contribute to the prevention and delay of care and support needs and improve the quality of care and support, including the outcomes to be achieved.
41. It should be noted that ‘health related provision’ is defined as:  
*“...provision of services which have an effect on the health of individuals but which are not -  
(a) Health services provided as part of the health service, or,  
(b) Services provided in the exercise of social services functions.”*
42. Section 166 enables the establishment of partnership arrangements which allow for the delegation of functions between local health boards and local authorities. The Guidance published in relation to Part 9, requires a written agreement between the partners but is less specific about its content in comparison to a Section 33 Agreement referred to below. The contents required of a Section 33 Agreement can be used to develop an Agreement under Part 9 of the Social Services & Well-being (Wales) Act 2014. The advantage of this approach is that Section 33 Agreements are ‘tried and tested vehicles’ used across England and Wales and partners, such as HMRC and audit bodies, are already familiar with them. The preference of the Welsh Government is to develop partnership arrangements using Part 9 of the Social Services & Wellbeing (Wales) Act 2014.
43. Section 167 of the Social Services and Wellbeing (Wales) Act 2014, makes provision for a local authority and a local health board to pay towards the expenditure incurred for the purpose of, or in connection with, partnership arrangements, either by making payments directly or by contributing to a pooled fund. A local authority and a local health board may provide staff, goods, services, accommodation or other resources for the purpose of, or in connection with, partnership arrangements.
44. This opportunity for other health related bodies may be limited by the nature of functions that can reasonably be carried out by each partner, but the scope now emphasised within the Act should be seen as reinforcing delivery of single integrated pathways and design models for prevention, care and support in Wales.
45. The Act enables Welsh Ministers to make regulations which specify partnership arrangements that are to be made by two or more local authorities; one or more local authorities and one or more health boards.

The specified partnership arrangements can include:

- Social Service functions
- Functions deemed to have an effect on, or which are affected by, a local authority’s Social Services functions.
- Local health board or NHS Trust functions.

46. Such directions which are to be issued through regulations may include, for example:
- A requirement to establish a partnership for the delivery of services.
  - National designation of the host partner which is to carry out the functions of both partners.
  - Designated construction of teams to deliver the services of both of the partners and review cases.
  - The cost for team members and managers.
  - The management arrangements for such services and teams.
47. Here a local authority and local health board may pay towards the expenditure incurred by making payments directly for such services, or may provide staff, goods, services, accommodation, plus establish a pooled fund to support such arrangements.
48. Where the partners establish a pooled fund in these circumstances, it might be described as, 'a national direction – local pooled fund' i.e. a local pooled fund for a directed scheme.
49. However, the partners may be nationally directed to maintain a pooled fund for such directed services and with the amounts they contribute possibly also determined nationally. This might be described as, 'a nationally directed pooled fund' for a directed scheme.
50. Where such arrangements are directed, those involved in the delivery and management of the arrangements, including any directed Partnership Board, must still always have regard to the national 'statement' on the outcomes and measures for assessing performance published in line with Part 7 of the Act.
51. National direction may be used to require and specify establishment of Partnership Boards in respect of directed partnership arrangements as described in the preceding section on nationally directed partnership services.
52. Such directions may also specify for example:
- Membership of the Partnership Boards.
  - Payments for remuneration and allowances to members of Partnership Boards.
  - Objectives and functions of the Partnership Boards.
  - Procedures to be followed by the Partnership Boards.
  - Reporting by the Partnership Boards.

## Scope for Regional Partnership Boards to develop Partnership Arrangements

53. Although the Social Services & Well-being (Wales) Act 2014 gives Welsh Ministers powers to direct partnership arrangements, RPBs still have plenty of scope to design their own partnership arrangements using the measures described above.
54. The Welsh Government has not been very prescriptive; only directing formal partnership arrangements for Care Homes for Older People and for IFSS. In the case of the latter, this decision was taken to consolidate recent service developments. In the case of Care Homes for Older People, this was chosen as an example where it was thought that integrated commissioning arrangements through the use of a formal partnership and pooled budget(s) could achieve more direct influence in shaping provision. The challenge of deciding the contributions of partners to the pooled fund was also thought to be relatively straightforward given that many placements are already jointly funded by the local authority with a contribution for 'Funded Nursing Care' from the health board. Even in the cases eligible for NHS Continuing Health Care, funded 100% by health boards, placements are made in the same nursing homes.
55. The reason why the Welsh Government was not overly prescriptive in demanding or prescribing numerous partnership and pooled budget arrangements, is that it left scope for the RPBs to lead on designing the arrangements for integration, notwithstanding opportunities to share common approaches, where appropriate, to some of these arrangements. This is evidenced in the quotes from 'A Healthier Wales' stated above, and particularly:

*"We want to encourage all localities to think carefully about their current arrangements, and to work together, across boundaries, to design and deliver seamless care at the community level."*

RPBs, health boards and local authorities, can still decide to create their own partnerships and pooled fund arrangements without seeking the permission of Welsh Government; although they should register such arrangements with Welsh Government.

56. Promoting integration outside of any formal partnership agreement has a number of disadvantages. There is often nothing that binds the individual public bodies to follow a locally agreed plan along with a business delivery process. Unless we can evidence the supposed resources, staff and contracts for services in that plan and secure that plan through joint management of it within formal agreed governance, it is of little value. It is too easy for individual bodies to agree priorities and carry on in a 'business as usual' manner but also find that their internal organisational priorities are more important and more supported than implementing any jointly agreed plan.
57. In addition, partners may develop joint posts, joint managers and co-located teams but they need to ensure that these are operating within a clear structure of governance. A manager employed by one agency requires clear authority before they can manage staff of another agency. Where such arrangements exist outside of a Part 9 Agreement of the Social Services & Well-being (Wales) Act 2014 (or Section 33 of the NHS (Wales) Act 2006), or where functions have not been formally delegated, they may be illegal. The governance arrangements will need to be checked.

58. RPBs can take many steps towards improving integration, building upon their population needs analysis and their Area Plans. They can work together to identify opportunities for integration. The advantage of a formal partnership arrangement is that it should reduce unnecessary bureaucracy by operating with one system rather than imposing the requirements of integration with two or more systems continuing to operate.
59. There are no real barriers to formal partnerships other than perhaps:
- A genuine will towards working differently.
  - A lack of formally agreed business priorities and process, as opposed to long-term strategic objective, without the system needed to support their achievement.
  - A lack of transparent budgets often none openly shared on direct staff or services.
  - A lack of local Key Performance Indicators (KPIs) to measure progress on delivery.
  - Perceptions of:
    - Added risk
    - Loss of control
    - Loss of independence
    - Reduced status
    - Risk to employment

## Additional Legislative Requirements/Opportunities

### The Well-being of Future Generations (Wales) Act 2015

60. The Well-being of Future Generations (Wales) Act 2015<sup>xv</sup>, aims to improve social, economic, environmental and cultural wellbeing in Wales and supports a more joined up approach to be undertaken by public sector organisations in Wales.
61. Those public bodies listed in Section 6 of the Act are required to carry out sustainable development as defined at Section 2 of the Act.
62. The actions that a public body takes in carrying out sustainable development must include setting and publishing well-being objectives, which are designed to maximise the contribution of each public body towards achieving the seven well-being objectives set out in the Act.
63. Each public body listed in Section 6, is also required to take all reasonable steps to meet their respective well-being objectives and in turn work towards achieving the well-being goals. It is useful to examine the Technical Guidance<sup>xvi</sup> under the Act, to clearly understand how progress indicators are measured and monitored.

### Local Government Legislation

64. There is other legislation which enables local authorities to work together in partnership; but such arrangements lie outside the scope of this guidance.
65. Useful publications in this area include:
  - Welsh Local Government Association's *Legal Guidance for Collaboration* (2012)<sup>xvii</sup>
  - Local Government Association's *Shared Services and Management: A Guide for Councils* (2011).<sup>xviii</sup>

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## References

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- <sup>ii</sup> *A Parliamentary Review of Health and Social Care – A Revolution from Within: Transforming Health and Care in Wales*, 2018. <https://gov.wales/sites/default/files/publications/2018-01/Review-health-social-care-report-final.pdf>
- <sup>iii</sup> Social Services & Well-being (Wales) Act 2014. <https://www.legislation.gov.uk/anaw/2014/4/contents>
- <sup>iv</sup> Welsh Government, *Social Services and Well-being (Wales) Act 2014: Part 9 Statutory Guidance (Partnership Arrangements)*, 2015. <https://gweddiill.gov.wales/docs/dhss/publications/151218part9en.pdf>
- <sup>v</sup> The Health Act 1999. <https://www.legislation.gov.uk/ukpga/1999/8/contents>
- <sup>vi</sup> National Health Service (Wales) Act 2006. <https://www.legislation.gov.uk/ukpga/2006/42/contents>
- <sup>vii</sup> National Health Service Act 2006. <https://www.legislation.gov.uk/ukpga/2006/41/contents>
- <sup>viii</sup> The NHS Bodies and Local Authority Partnership Arrangements (Wales) Regulations 2000. <http://www.legislation.gov.uk/uksi/2000/617/made>
- <sup>ix</sup> Chartered Institute for Public Finance (CIPFA) and the Health Financial Management Association (HFMA), *Pooled Budgets and the Integration Agenda in Wales*, 2017. <https://www.hfma.org.uk/docs/default-source/publications/Briefings/pooled-budgets-briefing-wales-2017.pdf?sfvrsn=0>
- <sup>x</sup> The Partnership (Wales) Regulations 2015. <http://www.legislation.gov.uk/wsi/2015/1989/contents/made>
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- <sup>xii</sup> National Health Service Act 1977. <https://www.legislation.gov.uk/ukpga/1977/49/contents>
- <sup>xiii</sup> Children Act 2004. <https://www.legislation.gov.uk/ukpga/2004/31/contents>
- <sup>xiv</sup> Welsh Government, *Making the Connections (Advice Note 8): Pooled Budgets under S.25 of the Children Act 2004*, 2008. <https://www.wlga.wales/SharedFiles/Download.aspx?pageid=62&mid=665&fileid=1750>
- <sup>xv</sup> Well-being of Future Generations (Wales) Act 2015. <https://www.legislation.gov.uk/anaw/2015/2/contents>
- <sup>xvi</sup> Well-being of Future Generations (Wales) Act 2015 Technical Guidance: How to Measure A Nation's Progress, 2016. <http://gov.wales/topics/people-and-communities/people/future-generations-act/national-indicators/?lang=en>
- <sup>xvii</sup> Welsh Local Government Association, *Legal Guidance for Collaboration*, 2012. <https://www.wlga.wales/SharedFiles/Download.aspx?pageid=62&mid=665&fileid=854>
- <sup>xviii</sup> Local Government Association, *Shared Services and Management: A Guide for Councils*, 2011. <https://www.local.gov.uk/sites/default/files/documents/shared-services-and-manag-b7d.pdf>