

## **Explanatory Memorandum to The National Health Service Joint Commissioning Committee (Wales) Regulations 2024.**

This Explanatory Memorandum has been prepared by the 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 National Health Service Joint Commissioning Committee (Wales) Regulations 2024. I am satisfied that the benefits justify the likely costs.

**Eluned Morgan MS**  
**Minister for Health and Social Services**

**09 February 2024**

## **PART 1**

### **1. Description**

- 1.1 These Regulations make provision for the constitution and membership of the NHS Wales Joint Commissioning Committee (the “Joint Committee”) including its procedures and administrative arrangements. The National Health Service Joint Commissioning Committee (Wales) Directions 2024 which were made on 5 February 2024 provide that the Local Health Boards in Wales will work jointly to exercise functions relating to the planning and securing services specified within the Directions or as identified by the Local Health Boards. The Regulations will make provision for the composition and membership, the tenure, appointment, suspension and removal of members, together with any requirements relating to their eligibility to take up their roles and the arrangements for meetings and proceedings.

The Local Health Boards will establish the Joint Committee on the 1 April 2024.

The Joint Committee will supersede the Welsh Health Specialised Services Committee and the Emergency Ambulance Services Committee.

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

- 2.1 None

### **3. Legislative background**

- 3.1 The regulations are being made under:  
Sections 11(6), 203(9) and (10) along with paragraphs 4 and 5 of Schedule 2 of the NHS (Wales) Act 2006. These powers allow the Welsh Ministers to make Regulations concerning the appointment and constitution of any committees of a Local Health Board (which may include or consist of persons who are not members of the Local Health Board).

- 3.2 The Regulations are subject to the negative procedure.

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

- 4.1 The purpose of the Regulations is to establish a new Joint Committee which will be responsible for the commissioning (including planning, securing and monitoring) of those services delegated to it by the Local Health Boards and/or as directed by the Welsh Ministers. The Regulations will only be applicable in Wales.

- 4.2 The current national commissioning arrangements for the Welsh Health Specialised Services Committee (WHSSC) and the Emergency Ambulance Services Committee (EASC) have been in place since they were established in 2010 and 2015 respectively, during this time there have been significant changes within the NHS in Wales and more recently the unprecedented challenges related to the pandemic.
- 4.3 In addition, whilst there is good evidence of evolution and growing maturity in both Joint Committees, there remain gaps and potentially lost opportunities in the current national commissioning arrangements in Wales. This was recognised in *A Healthier Wales* which contained a number of actions, including a commitment to review national commissioning functions, alongside the establishment of the NHS Executive.
- 4.4 An independent review was undertaken and concluded in May 2023 and put forward a number of recommendations. One of the recommendations was to combine WHSSC, EASC and the National Collaborative Commissioning Unit (NCCU) to form a single Joint Committee. This would simplify and streamline the current arrangements. It would also create one central point of NHS commissioning expertise in Wales. The Minister for Health and Social Services accepted the recommendations of the review in July 2023.
- 4.5 A establishment programme to implement the recommendations was put in place. This includes an NHS Implementation Team and Board and a Welsh Government Oversight Board, chaired by the Welsh Government Senior Responsible Officer.
- 4.6 The new Joint Commissioning Committee will have a wider remit than WHSSC and EASC, taking on an expert supportive role to health boards in developing national, regional and inter-health board commissioning. It will help build commissioning capacity across the health system in Wales, ensuring consistency in commissioning frameworks and better outcomes for patients. These frameworks will ensure the appropriate quality systems, quality assurance and controls are in place for commissioned services. It will also ensure, that, as far as is reasonably practicable equitable services are provided for the population of Wales.

There will also be increased public health input into the new national commissioning arrangements including around population needs, securing better population outcomes.

- 4.7 The status of the Joint Committee will be as a Joint Committee of the Local Health Boards and therefore will not be a new body with its own legal identity.

## **5. Consultation**

- 5.1 There is no statutory duty to consult on regulations made under Sections 11(6), 203(9) and (10) along with paragraphs 4 and 5 of Schedule 2 to the

NHS (Wales) Act 2006. However, the Local Health Boards and teams impacted by the establishment of the new Joint Committee are all engaged and represented throughout the programme structure. There is also representation at the Oversight Board. Engagement with affected staff has commenced and consultation through an Organisational Change Programme has been established, informed by the requirements of the NHS Wales Organisational Change Policy and any relevant legislation.

## PART 2 – REGULATORY IMPACT ASSESSMENT

### 6. Options

Options considered:

- a) The baseline option would be to retain the status quo and retain the current national commissioning arrangements and structures.
- b) Implement the recommendations of the independent review into commissioning functions. The review put forward a number of actions that should be taken in the short term to improve the national commissioning arrangements. The review did not recommend improvements to commissioning arrangements whilst retaining existing structures. One of the key actions was to establish a new Joint Committee, which is the purpose of these Regulations.

### 7. Costs and benefits

- a) Retaining the current status quo is not an option. *A Healthier Wales* committed to a review of national commissioning functions which was undertaken and concluded in May 2023. The independent review reported there were some fundamental flaws in the current commissioning functions as accountabilities and overall assurance arrangements as well as roles and responsibilities between the Joint Committees and Local Health Boards, lacked clarity. One of the key recommendations of the review was to create a new single entity as one central point of commissioning expertise in Wales. It was acknowledged that this would require subordinate legislation to enact. The financial implications of the recommendations were not outlined in the report. However, existing resources will be used to take forward work in implementing the recommendation.
- b) There are a number of benefits in establishing a new single commissioning body with stronger commissioning arrangements. These include:
  - simplifying and streamlining the current arrangements with expertise in one Joint Committee
  - strengthened scrutiny and assurance arrangements
  - helping to build commissioning capacity across the health system by developing stronger Regional and Inter Health Board commissioning
  - helping address and mitigate any risk of inequalities in access to services
  - opportunity to address gaps and lost opportunities in the current commissioning processes

- opportunity costs in commissioning via a single new joint committee
- avoid overlap of work
- opportunity to increase public health input into commissioning

There is not expected to be an additional cost as costs associated with the establishment of the new NHS Wales Joint Commissioning Committee will be borne out of existing budgets of WHSSC, EASC, NCCU and costs relating to any other commissioning functions transferred into the new Joint Committee.

The annual budget of WHSSC is £800m and there are 88.35 WTE staff.  
 The annual budget of EASC is £239m and there are 5.4WTE staff.  
 The annual budget of NCCU is £2.1m and there are 26.4 WTE staff, within this 2.1m is the budget for 5.40 EASC staff.

The budget allocations of the existing organisations will be transferred to the Local Health Boards and the new committee will invoice the Health Boards for services procured on their behalf. The details are currently being developed.

The current commissioning bodies will be dissolved and this legislation will establish in its stead a new Joint Commissioning Committee effective from 1 April 2024. There are associated costs in recruiting the Chair and Lay Members for the new Joint Committee, in accordance with public appointments process, however they will be absorbed within current resources and budgets.

The most significant cost is likely to be linked to an Organisation Development programme for the Joint Committee teams which will also be borne within the existing resources and budgets.

The existing Joint Committees and their teams are already responsible for developing guidance, policies and procedures and this is being reviewed and revised as appropriate as part of the establishment programme and will also be borne from within existing budgets.

There is no intention of moving into alternative new office accommodation as existing accommodation will continue to be utilised.

There is a formal Organisational Change Programme in place to consult, engage and communicate with affected staff. In addition, health boards and teams impacted by the establishment of the new Committee are all engaged and represented throughout the programme structure as well as at the Oversight Board.

## **8. Competition Assessment**

Not applicable.

## **9. Post implementation review**

The effectiveness of these new arrangements will be kept under review with the Joint Committee undertaking a self-assessment to inform the annual reporting of the Local Health Boards.

Welsh Government will review the effectiveness of the actions taken in response to the recommendations of the independent review and A Healthier Wales.