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Consultation – summary of response

Introduction of Medical Examiners in Wales Consultation Response Report

June 2018

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Ministerial foreword

The UK Government intends to introduce reforms to death certification in England and Wales and a new role of Medical Examiner to scrutinise all deaths not referred to a Coroner. This will ensure that all deaths in England and Wales will be independently scrutinised. I welcome these proposed changes as the death certification system in the UK has remained unchanged for over 60 years and various reports such as the Third Report of the Shipman Inquiry published in 2003 and the Francis Inquiry into Mid Staffordshire NHS Foundation Trust made recommendations for the independent scrutiny of deaths and the need to involve the families of the bereaved.

Whilst most of the area of death certification is currently not devolved to the Welsh Government, Welsh Ministers will be responsible for the practical implementation of the proposed arrangements in Wales

In November 2016, following on from the UK Government's overarching consultation on the proposed reforms to the Death Certification in England and Wales earlier that year, I published a consultation setting out the proposed arrangements for Wales. This sought views on the two distinct sets of regulations where Welsh Ministers have powers relating to the appointment of medical examiners and the fees to be charged for the scrutiny and confirmation of the medical cause of death by a Medical Examiner. I would like to thank the individuals and organisations who participated and gave us their views and suggestions. This report provides a summary of the main themes and views that emerged during the consultation in Wales.

I am mindful it is over 18 months since these consultations took place. During this time, the Department of Health and Social Care in England has considered the response to its own consultation; along with feedback from the Medical Examiner pilot sites and NHS Trusts that have adopted a Medical Examiner type approach to support their work on the Learning from Deaths initiative in England. This has resulted in revised plans in the way Medical Examiners will be introduced in England and Wales and hence the delay in publishing this consultation response.

The UK Government has recently published its response to its earlier consultation and how it proposes to take forward implementation. This report should therefore be read in conjunction with that. A link is attached here for ease of reference:

<https://www.gov.uk/government/consultations/death-certification-reforms>

Now that we have a clear direction of the proposed arrangements going forward we will establish an Implementation Board for Wales to facilitate the introduction of the interim measures and, in due course progress the legislative reforms required.

I look forward to working with the various stakeholders in Wales to shape and deliver the new arrangements, which will build on initiatives already in place in each health board in Wales, including our mortality review process. These additional measures will deliver an improvement to the service offered to the bereaved and, in the longer term, through the improved accuracy of information recorded on causes of death, bring improvements to the planning and delivery of quality health services and care.

Vaughan Gething AM
Cabinet Secretary for Health and Social Services

Introduction

The legislative basis for the new death certification and medical examiner arrangements was established by the Coroners and Justice Act 2009.

The UK Government consulted on detailed proposals for the new system of death certification in England and Wales from 10 March to 16 June 2016.

Whilst most of the area of death certification is currently not devolved to Welsh Government, Welsh Ministers will be responsible for ensuring the practical implementation of any new arrangements in Wales and will have powers to make regulations in two distinct areas:

- The terms of appointment, payment, training and additional functions of medical examiners; and
- The fees payable to a local health board for the medical examiner's certificate or a medical examiner's confirmation of the cause of death stated on an attending practitioner's certificate.

On 7 November 2016 the Welsh Government published its consultation on the "Introduction of Medical Examiners in Wales". The purpose of the consultation was to seek views on the proposed operational arrangements and draft regulations for Wales.

This report summarises the key themes arising from the consultation, including the written responses received, engagement at various meetings attended by Welsh Government officials and hosted events held in 2016/17. As with any summary document, it is not possible to convey every individual comment received but we have tried to present a balanced view and hope the majority of respondents will see at least some of their comments reflected in the themes set out in the document. There has been no attempt to weight the responses received in favour of any organisation or individual.

A detailed breakdown of the themes identified in response to the questions posed in the consultation document is provided within this report.

It is important to note, the changes now set out by the UK Government since the consultations ended. It has confirmed a two staged approach with an interim medical examiner arrangement being introduced from April 2019, preceding full statutory implementation at a later date.

In summary, the UK Government's response to its consultation sets out an approach to introduce a non-statutory medical examiner system where medical examiners are appointed within the NHS without the introduction of a new fee at this time. There will be two stages to the funding the medical examiner system to enable its introduction whilst legislation is in progress. Initially medical examiners will be funded through the existing fee for completing medical cremation forms in combination with central government funding for medical examiner work not covered by those fees.

The UK Government proposes to amend the Coroner and Justice Act 2009, when opportunity arises to put the medical examiner system on a statutory footing.

Sections 18 of the Coroners and Justice Act regulations will be commenced, requiring medical practitioners to report deaths to the coroner for which the coroner has a duty to

investigate, together with Section 21 to enable the appointment of a National Medical Examiner for England and Wales.

Consultation period

The consultation was held over a 10 week period and ended on 13 January 2017. The standard consultation period of 12 weeks was reduced by two weeks due to the Department of Health having consulted on the main overarching proposals. The Department of Health's earlier England and Wales' consultation, which had taken place over three months, had also stimulated discussions about what would happen in Wales.

A total of 39 written responses were received. Certain categories of respondents submitted common responses which set out a standard line. A table of respondents is at Annex A.

Respondents were informed that the response would be published, together with the identity of the respondent, unless they contacted the Welsh Government requesting anonymity. The full text of all responses is published can be made available on request.

In addition to analysing the written responses received, Welsh Government officials gave presentations to professional groups and meetings during the consultation period. The list of meetings attended is at Annex B. Officials also hosted a process mapping workshop for the NHS and key stakeholders on 13 January. A total of 50 people attended the event. These meetings and events helped many individuals and organisations formulate their written responses. The comments made by participants in the process mapping workshop were captured and themed.

Wider messages

As well as addressing the questions posed in the consultation, many of those who responded to the consultation commented on areas outside of the scope of the consultation in Wales, while some revisited issues which had previously been determined. These comments related to those areas not devolved to Welsh Ministers, but covered by the Department of Health's consultation "Introduction of Medical Examiners and Reform of the Death Certification in England and Wales", which took place between 10 March and 16 June 2016.

Comments on these wider aspects of the reforms have been forwarded to the Department of Health for their information.

Areas of broad agreement identified in the responses

A detailed breakdown of all the issues identified, by question, appears in the next section. Overall there was broad support for all the general principles of the consultation.

- A once for Wales approach which included a single approach was regarded as sensible , cost effective and would ensure proper planning and coordination of the new service;
- To ensure a transparent system which fits within the existing clinical governance arrangements for NHS Wales;
- To support service development and quality improvement; and

- To align the new arrangements with existing systems, minimising the potential for duplication and the need for new initiatives particularly in the field of data and information.

The following key areas have emerged as those where most comments and support were given which will be useful in helping us develop our proposals further:

- The proposal for a joint committee for the management of the ME service;
- That the medical examiner service should be seen to be independent in order to ensure public confidence and an effective service;
- The ME service and documentation should be bilingual.

Future work on these areas will be taken forward through the development of an operational and in time a legislative framework. The many detailed and practical responses received regarding the implementation of the new arrangements in Wales will serve to inform an NHS led Medical Examiner Implementation Board.

As previously, and until the new interim system becomes operational, we will continue to work in partnership with the Department of Health and Social Care in England on issues requiring an England and Wales solutions such as documentation, training and recruitment, IT arrangements and cross border collaboration.

Detailed breakdown of consultation response themes

Chapter 1 of the consultation document provided the background to the reforms and the particular context in Wales in relation to the programme for Mortality Reviews and the Welsh language. It sought views on what effects the introduction of the reforms would have on the opportunities for people in Wales to use the Welsh language and to receive the service in their language of choice.

Question 1 asked:

Are there any issues in relation to the use of the Welsh Language which you feel should be considered as we take forward the implementation of the scheme with the NHS in Wales?

Response themes were:

- Families should have a choice of their preferred language
- Bilingual MEs and MEOs should be available and/or have access to translation services.
- Documentation, for use by the public, should be available bilingually
- The advice of the Welsh Language Commissioner should be sought to establish what standards should be applicable to the new roles.

- There was also a belief that in the interests of equality forms should be available in languages other than Welsh and English.

Discussions are already in progress with the Department of Health and Social Care in relation to the need for bilingual forms. The statutory requirements and the need for a bilingual service will be among the aims considered by the Implementation Board for Wales.

Question 2 asked:

Can you think of any other measures which could be taken to safeguard the independence of medical examiners, other than those described?

Response themes were:

- All those that responded to this question considered the independence of the Medical Examiner as a key principle of the reform and that the independence and transparency of the role was vital.
- Although many respondents considered that the guarantee of medical examiners' clinical independence in the 2009 Act and the draft regulations provided sufficient safeguards, some advocated additional measures such as that MEs should cover a hospital or health board other than where they were substantively employed and that they should have no connection to the team who had been involved in the care of the deceased.
- Some respondents thought that medical examiners' independence was a fundamental principle and the medical examiners should be separated from LHBs and that the role should come under the Coroner's Service or be overseen by local authorities as in England.

The comments received for this question will be given due consideration in the interim arrangements put in place in Wales and reflected in the final Medical Examiner regulations.

Question 3 asked:

Do you foresee any particular issues with setting up a joint committee of the health boards to manage the medical examiner service in Wales?

Response themes were:

- There were no objections to a joint committee of the health boards to manage the ME service. Most thought it was sensible to have an all Wales service that could allow for effective management of cover, deployment of staff and resources, standard processes for the recruitment and training of staff, and would ensure consistency, flexibility and economies of scale.
- The joint committee arrangement by separating the management and oversight of the medical examiner service from individual LHBs would increase the public's perception of the independence of the ME and the service.
- The Governance arrangements of the joint committee would need to be clarified as well as arrangements for monitoring and evaluation. For example, HIW suggested

that the recommendations of their governance review of WHSCC should be considered in developing the model. Other respondents believed that the joint committee should be overseen by a Board which included representatives from organisations outside of the NHS in order to emphasise the service's independence. The Funeral Directors' Associations specifically requested stakeholder representation on the proposed joint committee. There was a suggestion that the Chair of the Board should be independent with an independent appointment system.

- The question was asked as to whether the joint committee should also appoint MEOs.

Comments received in response to this question will be taken into consideration by the Implementation Board when developing the interim arrangements and in due course any separate legislation required.

Question 4 asked:

Do you have any comments on workforce issues, or any areas of concern you would wish to bring to our attention?

Response themes were:

- The need to ensure sufficient numbers of MEs to provide a 7 day service, to enable documents to be issued for registration to take place and funerals to go ahead in a timely manner when there are specific cultural or other requirements.
- Recruitment of sufficient numbers of MEs and MEOs with the relevant experience and seniority is crucial to the role and service. There was concern that the backfilling of sessions of those appointed as medical examiners could be difficult given current service pressures.
- Employment of the right individuals is crucial and they should be employed on the basis of their desire to provide a quality service.
- Timely access for public and other agencies with cover arrangements in place for leave, sickness, bank holidays, and out-of-hours.
- There needs to be a consistent level of service for rural and urban areas. More information is required in respect of the services to be provided in the rural parts of Wales.
- Good working relationships with Coroners and their staff will be important.
- There is a risk that the workload of Coroners will increase when MEs start referring cases to them.
- MEs and MEOs should have specialist training in palliative and end of life care, mental health, bereavement and communications skills.
- Appropriate remuneration for MEs is essential.
- Concerns that the new process, requiring the reporting of every death may create additional work for doctors. This will disproportionately affect GP practices serving high numbers of care homes. There is a risk that a large proportion of clinical time may be taken up in reporting and preparing notes for transfer unless MEs are provided with access to the Electronic GP medical record.

Comments received in response to this question will be taken into consideration by the both the appropriate work streams of the Implementation Board to inform the MEs' and MEOs' job descriptions.

Question 5 asked:

Can you think of any other terms of appointment which should be included in the regulations?

Response themes were:

- Medical examiners will need to maintain their registration, have appropriate qualifications and ongoing training and they must have an element of flexibility within their role to ensure the service is covered in all regions where issues may arise. It is vital to monitor performance levels as set out in the guidance to ensure that those appointed to the role are fit to carry out their duties.
- The GRO has asked to be involved in training to ensure that the documentation received by Registrars is consistent with national standards in England and Wales following the implementation of the new regulations.
- To be clear about the lines of responsibility between the Coroner and ME and the way potential conflicts can be resolved.
- To introduce formal requirements for professional development and peer review that should be incorporated into contracts.
- The ME role should be subject to appraisal and revalidation.
- Adequate cover and contracts for a 7 day service.
- Succession planning and developing skills in more junior colleagues.

Comments received in response to this question will be taken into consideration by the relevant work stream of the Implementation Board to inform the interim Medical Examiner recruitment and appointment arrangements and the future appointment regulations.

Question 6 asked:

Do you have any comments about the remuneration of medical examiners?

Response themes were:

There were two broad views on how the remuneration of medical examiners should be set:

- The Joint Committee should set MEs' pay for Wales according to a specific national ME pay structure/framework with equity of remuneration and linked to the universal fee set for Wales.
- MEs' remuneration should be tied to and be consistent with current medical pay scales to attract the right candidates and underline independence.
- There was also a view that MEs' remuneration should be linked to workload and a retainer system.

Comments received in response to this question will be taken into consideration by the Implementation Board to inform the appointment of Medical Examiners in the interim period and later in regulations as to their remuneration, expenses and fees.

Question 7 asked:

Are there any other functions or areas we should consider adding to the draft appointment regulations?

Response themes were:

- The flexibility to add additional functions to the role of Medical Examiner in time
- For an independent lay person to be on the appointing panel.
- That the ME office staff should be bilingual.

Comments received in response to this question will be taken into consideration by the Implementation Board to support the development of operational guidance and to inform the Medical Examiner appointment process.

Question 8 asked:

Do you have any comments in relation to the charging and collection of a fee which you feel we should take into account?

Response themes were:

- The Joint Committee should set the single fee for Wales for consistency.
- Registrars strongly opposed the fees being collected at the point of registration on the grounds that the fee is not a registration fee and the danger that a fee could discourage the registration of deaths;
- The Funeral Directors' Associations despite the majority of their members voting against collecting the fee have indicated that they are open to negotiation on this point. We are grateful for their willingness to further consider the way ahead on this issue.
- NHS believes that the existing arrangement whereby funeral directors collect cremation fees should continue under the proposed new arrangements.
- Some third sector groups working with bereaved parents suggested that there should be no fee for child deaths.
- Need strong public engagement and consultation to inform and engage the public about the proposed changes.

During the interim period no new fees will be introduced. The UK Government is introducing two stages to funding the ME system to enable its introduction whilst legislation is in progress. Initially, medical examiners will be funded through the existing fee for completing medical cremation forms in combination with central government funding. When the process is put on a statutory footing, responses under this theme will be considered further.

In November 2017 the First Minister announced an exemption of local authority burial and cremation fees for child deaths. The UK Government has proposed that, going forward, all child deaths (up to age 18) should be exempt from the costs associated with the medical examiner system including the existing cremation form fees.

We asked for if you had any additional comments:

Response themes were:

- Need for the service to be electronic.
- The system must be fast and responsive.
- There were concerns that there would be increased delays in the release of bodies.
- Liaison between all stakeholders is vital.
- The appointment process for MEs must ensure public confidence.
- The link with mortality reviews should be clarified.
- Would MEs have access to indemnities provided by the Welsh Risk Pool or would they, or LHBs, be required to make their own arrangements.

The UK government is facilitating the development of electronic IT systems across England and Wales to support the medical examiner arrangements.

The additional comments put forward will inform the work of the various work streams of the Implementation Board.

Next steps

It is vital now to set up the Implementation Board for Wales and its working groups as referred to throughout this response report. This will enable all the helpful comments and suggestions received to inform the operational arrangements for putting this new system into place. The Implementation Board will be led by the NHS and it is hoped that all stakeholders will continue to play a constructive role in working together in introducing the new Medical Examiner service for the benefit of the people of Wales.

In Wales, the new arrangements will be introduced in tandem with England, beginning in April 2019

Annex A

Consultation Responses

Respondents	No
Individuals	4
Local Government	12
Universities and academic bodies	1
Political parties/union groups	1
Health professional groups and associations	6
NHS bodies	4
Government departments/agencies	1
Citizen voice/third sector/Commissioners	3
Social enterprise/business	5
Legal and other professionals	2
Total	39

Annex B

Professional Groups visited:

- 9 September 2017 - NHS Round Table meeting
- 20 October 2016 - 1,000 Lives Mortality Review Event
- 14 November 2016 - Bereavement Works Stream of Evans Review Group
- 2 December 2016 - All Wales Medical Directors Group
- 15 December 2016 - End of Life Board
- 16 December 2016 - Heads of Primary Care Group
- 12 January 2017 - National Quality and Safety Forum
- 20 January 2017 - All Wales Nurse Directors Group