

Agenda – Equality and Social Justice Committee

Meeting Venue:	For further information contact:
Committee Room 3 (Senedd)	Rhys Morgan
Meeting date: 29 April 2024	Committee Clerk
Meeting time: 14.00	0300 200 6565
	SeneddEquality@senedd.wales

Pre-meeting registration: 13:30–14:00

1 Introductions, apologies, substitutions and declarations of interest

(14:00)

2 Childcare follow up inquiry: evidence session three

(14:00–15:15)

(Pages 1 – 34)

Jane Malcolm, National Operations Manager, National Day Nurseries Association Scotland

Martha Friendly, Executive Director, Childcare Research and Resource Unit, Toronto, Canada

Maria Jürimäe, University of Tartu, Estonia

Break: 15:15 – 15:30

3 Childcare follow up inquiry: evidence session four

(15:30–16:30)

Naomi Eisenstadt, Chair NHS Northamptonshire Integrated Care Board

Christine Pascal, Director, Centre for Research in Early Childhood, Birmingham



Natalie MacDonald, Assistant Academic Director for Childhood, Youth and Education, University of Wales Trinity Saint David

- 4 Motion under SO17.42 (vi) to exclude the public from the remainder of today's meeting**
(16:30)
- 5 Childcare follow up inquiry: consideration of evidence**
(16:30–16:50)
- 6 Legislative consent consideration of Supplementary Legal Consent Memorandum: Victims and Prisoners Bill**
(16:50–17:00) (Pages 35 – 50)

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Scotland
National Day Nurseries Association

*Brighter thinking
for early years

Briefing Paper – Welsh Parliament Equality and Social Justice Committee 4 March 2024

Inquiry into childcare and parental employment in February/March 2024

About NDNA

National Day Nurseries Association (NDNA) is the national charity representing private, voluntary and independent (PVI) children's nurseries across the UK. We are the voice of the 21,000-strong nursery sector, an integral part of the lives of more than a million young children and their families. NDNA Scotland is the national representative body for PVI nurseries in Scotland with six networks covering 17 local authority areas.

NDNA provides information, training and advice that support nurseries and their 250,000 employees to deliver world-class early learning and childcare. Working closely with local and national government, we advise and campaign on the cost, choice and quality of childcare to benefit children, nurseries, families and the economy. NDNA Scotland support 324 PVI nurseries from our Edinburgh Office.

It is our understanding that the Equality and Social Justice Committee are undertaking inquiry into childcare and parental employment: the pandemic and beyond. The COVID-19 pandemic brought issues around gender equality, childcare and employment to the fore. This inquiry seeks to address these issues by focussing on the barriers that childcare provision can present for parents, particularly women, entering and progressing in the labour market.

Funded Early Learning and Childcare (ELC) in Scotland

In 2016 the Scottish Government committed to a vision for a universal offer, regardless of financial circumstances, of funded childcare that would almost double the entitlement to funded ELC to 1140 hours per year (30 hours if taken term time, 22 hours if take over a full year) by 2020 for all three and four year olds and eligible two year olds. The criteria for funded early learning and childcare for 2 year olds is based on receipt of one of these benefits: Income support. Income-based Job Seeker's Allowance. Income-related Employment and Support Allowance. That vision continues to be underpinned by the principles of Quality, Flexibility, Accessibility and Affordability. The expansion of funded ELC, was originally intended for August 2020, was paused in April 2020 to give local authorities the flexibility to focus on responding to the COVID-19 pandemic. It was rescheduled for August 2021 and has now been in place for just over 2 years. The Scottish Government also published a joint

implementation plan for funded early learning and childcare places for all children who defer their primary one start in December 2020.

The main aims of the expansion in ELC are to:

- improve children's outcomes and help close the poverty-related attainment gap
- increase family resilience through improved health and wellbeing of children and parents
- support parents into work, study or training

The Committee may be aware that there are ongoing plans to expand funded childcare to 1 and 2 year olds to a wider criteria than is currently offered starting in this Parliament with children from low-income households. This plan was set out in the Program for Government in 2021/22. NDNA Scotland agree with the premise of the current 1140 hours funded childcare policy (high quality, flexible, accessible and affordable). However, NDNA Scotland have warned of the dangers of rushing into expanding the provision as there remain significant challenges with the current offer of universal childcare for 3 and 4 year olds.

Approach Scotland takes to childcare provision in relation to child development

Those who wish to work in childcare in Scotland must register with the [Scottish Social Services Council](#) as a support worker (equivalent qualification in Wales Level 2), practitioner (equivalent level 3 – 5) or lead practitioner (equivalent level graduate – level 6). This ensures that the workforce is qualified to the required standard for the role that they are in. At each level of registration child development is part of the qualification.

New staff into the sector must (if they work in a funded partner provider nursery) complete the [National Induction Resource](#) which encourages self-reflection and draws upon the national practice non-statutory guidance [Realising the Ambition: Being Me](#). (for children Pre-Birth – 8 years) which has a focus on early child development and learning and also the [Curriculum for Excellence](#) which provides a broad general education from the age of 3 to 18. The CfE builds upon the child's development from the early stages to the senior phase of education.

The extent to which the approach taken to pay of childcare workers has helped/not helped with recruitment issues within the sector

In our sustainability survey we asked what the expected increase in staffing budgets would be between last year and this once statutory minimum wages increases, the Real Living Wage and other staffing considerations had been put in place. The average reported increase was 10%.

Also, 55% of providers cited that the funding rates they received was a challenge to meeting the Real Living Wage (RLW) Requirement with 10% reporting that maintaining pay differentials for more experienced staff was a problem. This need to reward staff at levels above the RLW may add to the 10.4% increase reported in staffing budgets.

The Scottish Government recently committed to fully funding support for partner providers to pay at least £12 per hour (the Scottish Real Living Wage) to those staff who are delivering funded childcare.

However, the UK Government at the same time increased the national living wage to £11.44 from April 2024 meaning all staff in the setting will earn almost the same. This causes significant issues for funded providers as £12 per hour often takes practitioners up to the same level of wage as more senior practitioners. The extra funding from the Scottish Government will not be enough to make up the shortfalls.

[NDNA reported](#) that in its [Financial Sustainability Health Check of the Childcare Sector in Scotland](#) published last year, the Scottish Government found that providers costs were going up by 14% this year. However, in an Freedom of Information investigation, [NDNA Scotland found](#) that only three local authorities reported that their 'sustainable rates' will increase by a similar amount, Clackmannanshire (14.9%), Fife (14.38%) and Shetland Islands (15.48%).

Examples of good practice in addressing issues in access to childcare for particular demographic groups

Rural and Island communities

A new partnership project was launched in April 2022 to support the recruitment and training of more than 100 professional childminders across Scotland. The Scottish Rural Childminding Partnership pilot focused on ten areas across Scotland which were identified as in urgent need of high quality, flexible childcare.

Led by the Scottish Childminding Association (SCMA) aimed to support economic and community development through the creation of more than 100 new professional childminding jobs and up to 900 much-needed childcare spaces for families in remote and rural areas.

This project was so successful that the Scottish Government committed further funding to roll out the project to wider local authority areas.

<https://www.childminding.org/childminder-recruitment>

Access to Childcare Fund

The purpose of this fund was to support childcare solutions that enable more accessible and affordable childcare for families and to help to reduce the barriers parents and carers experience in accessing childcare. These barriers include the cost of childcare, the hours available and accessibility for children with additional support needs.

Grants were awarded to fifteen services and projects in 2020 to seek to address the challenges and barriers encountered and allow parents and carers to have time around the school day and in holidays safe in the knowledge that their child(ren) is being looked after and given opportunities to take part in activities, play or youth work experiences.

They aimed to make services more accessible and affordable for low-income families, particularly the six identified priority family groups most at risk from living in poverty and set out in the [Tackling Child Poverty Delivery Plan](#)

NDNA Childcare Works – East Ayrshire

Following the huge success of Childcare Works in Wales (since 2014) we have recently secured funding to begin a Childcare Works project in East Ayrshire Scotland.

Childcare Works is a supported employment programme for individuals wanting to pursue a career working in childcare. The project supports the development of knowledge, skills and confidence to work in the early years and childcare sector with the aim of participants entering employment following completion of the programme. The project also supports childcare settings with recruitment and retention by providing them with a Trainee Support Worker for 12 weeks, at no cost to the setting, with the opportunity to employ the trainee as a member of staff by the end of the programme.

We hope that this programme will go some way to reducing the workforce issues and support PVI nurseries to be able to provide high quality care and learning to children and families.

Examples of good practice in relation to integrated childcare provision.

Throughout Scotland those working with children and young people work with an approach which is set out in [Getting it Right for Every Child](#). GIRFEC, is a strengths-based approach, that seeks to realise children's rights on a day to day basis and is therefore underpinned by key values and principles. The following values and principles (refreshed in 2021) were developed together with stakeholders including children and young people from across Scotland:

- placing the child or young person and their family at the heart, and promoting choice, with full participation in decisions that affect them
- working together with families to enable a rights respecting, strengths based, inclusive approach
- understanding wellbeing as being about all areas of life including family, community and society
- valuing difference and ensuring everyone is treated fairly
- considering and addressing inequalities
- providing support for children, young people and families when they need it, until things get better, to help them to reach their full potential
- everyone working together in local areas and across Scotland to improve outcomes for children, young people and their families

ELC Professionals work with the [National Practice Model](#) which sets out a shared framework and approach to identification, assessment and analysis of a child or young person's wellbeing needs. The model provides a consistent way for practitioners to work with children, young people and their families to understand the child or young person's individual growth and development in the context of their rights, unique family circumstances and wider world, exploring strengths, resilience, adversities and vulnerabilities.

It is intended to provide a structure to support practitioners, working together with children, young people and families, to make effective use of assessment information. This information will likely have been gathered from multiple sources including regular information gathering processes on the progress of a child or young person with full participation from the child or young person.

(information from [Scottish Government GIRFEC webpage](#))

Scottish local authorities – early adopters

Since October 2022 the Scottish Government have been funding four local authorities to deliver Early Adopter Community (EAC) projects on school age childcare in Port Glasgow (Inverclyde), Drumchapel and Carntyne (Glasgow), South and East Alloa (Clackmannanshire) and Linlathen (Dundee).

There are 2 key drivers of this work – tackling poverty, by helping parents to access and sustain employment, and improving children’s outcomes, by reducing barriers to a range of activities round about the school day and in the holidays, contributing to reducing the poverty related outcomes gap.

The Scottish Government’s new Programme for Government commitment builds on the existing school age childcare work to design all-age childcare offers for families in six early adopter communities. The PfG announced two additional EACs – Fife and Shetland

Scottish Government know that funding childcare alone won’t lead to improved outcomes for low income families or contribute effectively to tackling poverty so the childcare projects are aligned with wider tackling poverty initiatives to combine funded childcare with employability and family wellbeing support

Scottish Childminding Association Early Adopter School Age Childcare Project.

The Scottish Childminding Association (SCMA) Early Adopter School Age Childcare (SACC) project includes a focus on child poverty via funded, accessible, quality SACC placements in childminding settings. It also addresses the challenge of the declining childminding workforce, and how it impacts on the availability of childminders for SACC, by incorporating the recruitment of childminders linked to our wider dedicated childminding recruitment programme. SCMA are actively working with 4 Early Adopter local authorities, supporting them to ensure that childminders are included in the delivery of SACC and guiding them to develop processes and procedures to take into account childminder requirements, as part of the ongoing Scottish Government’s SACC framework and delivery plans.

SCMA - Family Childminding Partnership

This SCMA service is designed to test the impact and outcomes of a model which supports whole family wellbeing, is targeted at families in need and supports the key commitments of The Promise, through the provision of preventative family support within enhanced, nurturing childminding placements targeted towards 1 year-olds and their siblings. It will also provide key learning for the future Scottish Government Programme for Government ambition to expand ELC funded hours to 2 and 1 year-olds.

What parents say about 1140 hours of funded childcare

According to a Scottish Government survey (Scot Govt, 2022) 98% of Parents were accessing some form of funded childcare, and 73% of parents with a 3 to 5 year old and 52% of those with a 2 year old using funded childcare. This survey does appear to show that parents find the 1140 hours policy useful to them which shows that it has been a success in terms of meeting the needs of parents returning to work, going into training and having financial support. However, this report also shows that 23% of parents were not taking up the full 1140 hours funded childcare as they could not get the sessions that they wanted at their preferred settings.

Parents also reported being dissatisfied with flexibility to match funded hours to their own working patterns to minimise the cost of top-up childcare. The Scottish Government report highlights that the majority of parents are happy with ELC however, there are still issues around flexibility, affordability, and access to places that Scottish Government need to address (Scot Govt, 2022).

The parents' campaign group, Pregnant then Screwed, Scotland say that *"the major issue for many families in Scotland, and across the UK, is the accessibility and affordability of childcare. The increase in funded hours has been hugely beneficial to many parents but there still remains huge issues over costs, particularly for under 3s, and there is a growing problem with accessibility"* (Pregnant then Screwed, Scotland, 2024).

The Scottish Women's Budget Group (SWBG) reported in 2023 that 22% found it difficult to access childcare in their area, with the situation being more acute in rural areas. One respondent said *"So many rural schools in Aberdeenshire miles away from nursery provision so I have to drive to two disparate places and no after school provision"*. Their survey also revealed that 16% were unable to access funded hours due to a lack of flexibility in provision with one respondent saying *"The 30 hours does not fully cover the cost of year-round (private) nursery, and council nurseries offer term time only"*. When it comes to affordability the SWBG survey showed that 30% of women did not find childcare costs manageable, this increased to 47% for single parents, 38% for women from ethnic minorities and 36% for disabled women. 74 % of women said that increase in household costs were making childcare costs more difficult. The report concludes stating that there is a long-standing problem of lack of flexibility and affordability of childcare which has been exacerbated by the cost of living crisis and is putting family finances under pressure.

NDNA Scotland are aware that throughout the UK nursery settings are closing down due to sustainability issues. Scotland is no different, as nurseries close, parental access to funded places becomes more difficult. Parents are beginning to find it difficult to find suitable places to match their childcare needs.

NDNA Scotland – Challenges remaining with 1140 hours policy

It is generally accepted that the aims of the policy are good and will benefit children and families. However, there is also concern that the delivery of the policy is leading to closures due to unsustainable funding and workforce pressures.

For many years now we have heard from members that:

1. Funding does not cover costs
2. Local Authorities have recruited their experienced staff leaving them with either no or inexperienced staff – [NDNA reported](#) that a [SSSC report in 2023](#) found that the staff turnover rate is 29% in private nurseries, 21% in voluntary settings and 11% in public sector nurseries with 26% of managers leaving private sector settings go on to work at a practitioner level in public settings
3. Recruitment and retention is extremely difficult because PVI settings cannot compete with local authority pay and conditions of service due to unsustainable funding rates
4. Many local authorities make it challenging for settings to have cross border or blended places
5. Parents can't always get the nursery of their choice – despite the policy being provider neutral
6. Provision of Additional Support Needs and support for nurseries is sporadic across Scotland

NDNA Scotland continue to urge the Scottish Government to address these issues (and many others), particularly before any further expansion to one and two year olds takes place. The current model of funding is unsustainable and must be addressed going forward as this is often at the heart of many of the challenges the sector are facing.



Written submission to the follow-up inquiry into
child care and parental employment
by the Equality and Social Justice Committee,
Government of Wales
April 21, 2024

Martha Friendly
Executive Director
Childcare Resource and Research Unit
Toronto, Ontario, Canada

<https://childcarecanada.org/>

Thank you for inviting me to contribute to the work the Equality and Social Justice Committee of the Senedd Cymru is undertaking. I congratulate you for following up the 2022 child care inquiry “to see what progress has been made and what work there is still to do to improve child care provision in Wales”. This important step of assessing progress and making adjustments for improvement is too frequently left out of policy-making.

My written comments include:

- For context, an introduction to myself and my organization, the Childcare Resource and Research Unit;
- For context and understanding, a bit about Canada and its approach to social programs, especially early childhood education and care (ECEC);
- Five key points relevant to Canada and its newest social program, early learning and child care, that may be of interest for Wales.

The Childcare Resource and Research Unit

To situate myself in the child care (early childhood education and care or “early learning and child care” (which is the current Canadian term): I’m a social policy researcher, leading a small NGO ECEC policy institute, which I founded in the early 1980s. The Childcare Resource and Research Unit (CRRU) was originally part of the University of Toronto and is now an independent non-partisan ECEC policy research institute with a mandate to work towards an equitable, high quality, publicly funded, inclusive early learning and child care system for all.

CRRU has long been engaged in policy research and in raising awareness that well-designed high quality ELCC can serve multiple groups simultaneously – women, children, families, the broader society and the economy. Our perspective is that solid data, research, information, policy analysis and specialized knowledge are important tools for policy-making, advocacy and

public education. I work across disciplines and across Canada, and have been involved in international ECEC work over the years. As one of the feminist activists at the core of the diverse social movement that has been advocating for a Canada-wide universal, public, equitable child care system for almost 50 years, I'm also engaged with social justice, feminist, anti-poverty groups, unions and child care sector organizations, with other researchers, with advocates and with policy makers at all levels of government.

The context for Canadian social programs

Canada, with a population of 40 million occupies a land mass of almost 10 million square kilometers. Canada is a country of immigrants; the latest Census (2021) shows that 23% of the population was born outside Canada (now mostly from Asia, the Middle East and Africa), with the Indigenous population making up 5%. Canada, like the UK, is considered to be a liberal-democratic state ideologically. This, and that Canada is a decentralized federation of ten provinces and three territories, which are primarily the responsibility of provinces/territories, is especially significant for its social programs, with the federal government's role often contested politically. There is no federal role in education, not even a national department of education.

Early childhood education and care across Canada and a new approach

Before 2021, several successive federal governments had attempted to initiate a national, or Canada-wide child care plan but none was successful. As there was no earmarked Canada-wide child care funding or program, the market-driven patchwork of mostly parent fee-funded child care services were too costly for most parents. Child care programs were in short supply and inequitably distributed, and too often did not provide programs of high enough quality to be reliably developmentally beneficial to children. Kindergarten, under education ministries, was introduced in a few parts of Canada before 1900 but although kindergarten grew to become widespread before the 1960s, it remained part-time (2.5 hrs a day), with provision only for five - year-olds (the year before compulsory school begins) until about 15 years ago. In 1997, Quebec began to shift its child care approach to a more universal, publicly funded model but persistent

shortages of places and concerns about poor quality mean that today Quebec child care [illustrates](#) “what not to do” as much as modelling “what to do”.

As early as the 1970s, universal provision of publicly funded child care became a key issue for feminists and their allies such as labour unions and social justice organizations. Over the years, this loose coalition developed a consolidated policy position that child care services should be publicly funded, accessible to all children, developed as not-for-profit and public services and that decent jobs and working conditions for the mostly all-female child care workforce were a priority. When the federal government – motivated by the pandemic-created child care crisis and parallel drop in women’s labour force participation – decided to fund and shape a Canada-wide approach to building a child care system, a number of the key elements of the child care movement’s position became part of the public policy agenda.

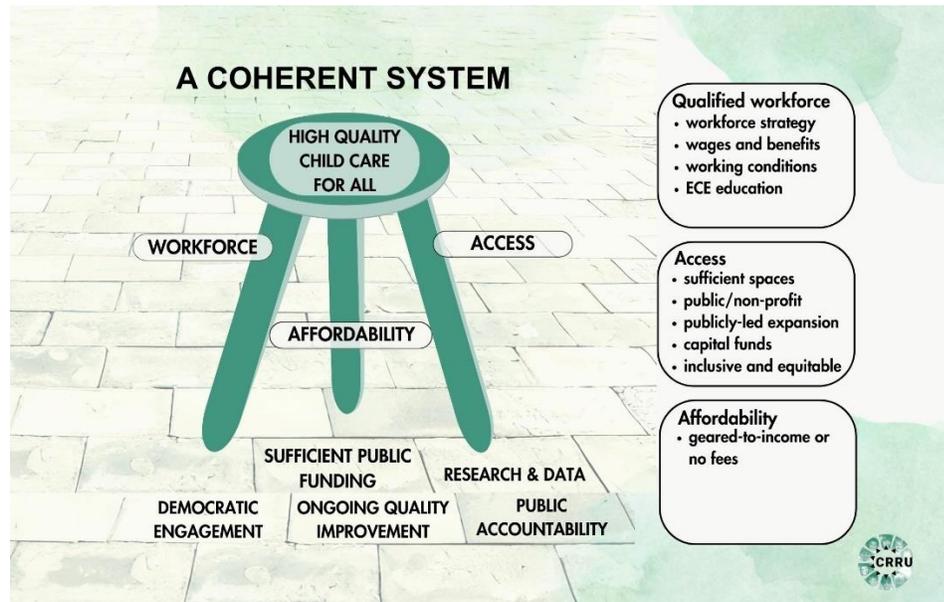
It is three years since the April 2021 federal commitment of substantial public money was made available to each province and territory with some conditions for implementation. Thus far, there have been significant advances as well as substantial bottle necks. Of these, the biggest success has been that [all parent fees](#) were (approximately) cut in half in the first year, and then further reduced to an average of \$10 a day (per child). This was accomplished by the federal government requirement that provinces/territories each set up a mechanism for using federal funds to cover services’ operations that had been funded with parent fees. While this is been uneven in execution (especially as there are two levels of government involved and some provinces/territories are more enthusiastic than others), overall, parents are paying very significantly reduced fees for regulated child care. Eight provinces/territories have already moved to a maximum fee of \$10 a day, with fees further subsidized for lower income families. Some provinces/territories stipulate that parents must be employed or studying but the federal government does not require this despite its primary focus on mothers’ employment.

While this to a large extent (not entirely) addressed what had been one of the key barriers to child care access – unaffordable fees— there are still only enough regulated child care centre¹ spaces to cover 28% of 0 - 5 year olds. As well, the lack of sufficient numbers of qualified early childhood educators is not only holding back expansion of services but is impeding full operation of already-existing spaces and is a barrier to improving child care quality.

Observations

Based on my observations, work that I’ve done and learning from experience and research inside and outside Canada’s borders, there are at least five points that emerge as of possible interest for the Senedd Cymru inquiry:

1. Moving what has always been a child care market to a mature child care system is a multi-year and multi-faceted process, with most parts best developed through coherent public policy for success. Though building the system will be – by its nature –incremental, key parts (such as incrementally but urgently beginning to grow the supply of services, as well as addressing critical child care workforce issues) must all be attended to simultaneously. As the below diagram shows, for ECEC, the whole is demonstrably greater than the sum of the parts.



¹ Note that all provinces/territories also provide regulated family (home) child care but these play a relatively minor role. Data breaking enrolment in these is usually not available by age group.

Thus, primarily addressing parent fees, or costs (usually through demand-side mechanisms such as vouchers or parent benefits) while assuming that the supply of services will emerge in response to market forces with little public management beyond regulation, has generally been the pattern in the UK, the USA, Australia, New Zealand, the Netherlands and – until now, Canada. Based on what we have seen – and in contrast to more mature well-developed ECEC systems such as, for example, [Denmark](#) – we are convinced that development of a sufficient supply of public and non-profit services must be publicly led and managed if child care provision is to be inclusive, equitable and responsive to parents’ and children’s needs. Together with this, a qualified workforce must be supported and nurtured through such strategic policy tools as wage grids, unionization, public management of working conditions and ECE pre-service and in-service education.

2. Your question: “does child care provision in Canada support child development, tackle child poverty, and parental employment”? is a good one. The *intention* in Canada is that child care provision can and should do all these (and in Canada, enhancing women’s equality would be added to the list of goals), as the principles for the program and the new [federal legislation](#) suggest. But – as building the system is still in the early stages – the intention is still too often not met. Indeed, this is one of the key arguments for moving from the market to a universal system, as these kinds of goals are less likely to be accomplished without specifically designed public policy. An important lesson we have learned is that well-designed public policy in multiple areas is fundamental to building a quality child care system.

For example, we know from research that child care programs that are high quality can benefit children’s development and well-being, and that poor quality programs may even be harmful, especially for lower income children. Although we lack sufficient research on quality in Canada, we believe that our child care provision is generally not of consistently high quality, in part from such research as is available and in part because our requirements for educator training are too low. A wealth of best practice considerations that contribute to quality have emerged, much of it coming from [work](#) in the [European Union](#). Although the Canadian child care plan is to build a

system that “gives children the best start in life”, we are not yet meeting or heeding many of the best practice concepts identified. Thus, before we can say that child care provision is supporting children’s development, we would need to know where that quality of our child care programs falls. What is clear, however, many of the elements of quality are known and well researched and amenable to public policy.

Similarly, the idea that high quality child care is part of a package of policies to ameliorate child poverty has long been a Canadian consideration, both for governments and advocates. Our main anti-child poverty organization, [Campaign 2000](#), has long advocated for universal child care along with affordable housing, better employment standards, child benefits and other policies. While Canada lacks the data to understand in a granular way how and why racialized/lower income/newcomer/more marginalized families are less likely to use regulated child care, [research](#) CRRU carried out last year shows that the supposition that these families are under-represented appears to be correct. As the research report discusses, there are likely multiple reasons for this, ranging from poor information or knowledge, not speaking the language, to the inequitable distribution of services through market means that fails to locate them in lower income marginalized neighbourhoods. Again, public planning and policy is shown to be the best practice for solving these issues of exclusion.

Finally, with regard to parents’ employment: if child care is to permit or encourage parents to be employed it has to be set up to support their employment schedules. This is why part-day early childhood education programs – while nice for the children who attend – are unlikely to support mothers’ employment. Similarly, [non-standard hours child care](#) – whether it is child care that is open only a few hours longer than normal or child care until midnight – is sometimes needed to support parents’ employment schedules. But again, understanding the specifics so as to provide responsive program development requires [public processes](#) including research and program development, rather than waiting for individuals or voluntary organizations to decide to set up services.

3. An issue that has always been prominent in Canadian considerations of child care is ownership of the services. Based on research and experience in [Canada](#), especially in [Quebec](#), and in other countries such as the [UK](#), the [US](#), [New Zealand](#), Australia and others, the new Canada-wide child care program is predicated on the federal condition that expansion of services will be “primarily public and non-profit” and clear “accountability frameworks” would be applied to the public spending so it is not syphoned off by owners or stakeholders. The “primarily public and non-profit” condition is included in the new federal legislation and in all the agreements for use of the federal funds by provinces and territories but the language is not very specific. As a result, and given the concern that private equity firms are likely to try to exploit Canada’s new public funding as they have in child care and other care sectors in many countries, discussion and debate about the role of for-profit child care in the new system are active and ongoing.

4. Another key Canadian issue that may be of interest for the inquiry is that of the child care workforce. We know from research that – to a large extent – the quality of early childhood education and care rests on the training and education of the child care workforce as well as on their wages and working conditions. Additionally, it is not possible to expand child care supply without qualified workers to staff quality programs, so the current child care workforce crisis that Canada is experiencing is significant.

Difficulty recruiting and retaining qualified childcare staff has long been a feature of Canadian child care but these issues were exacerbated by the pandemic. All regions of Canada are now struggling with staff shortages as we attempt to transform child care, and have introduced a diversity of remedies. However, the issues such as low wages, benefits, poor working conditions and weak support not yet been addressed with sufficient breadth and depth to yield results. As virtually all the key goals for ECEC – high quality, greater coverage, inclusion – hinge on the presumption that a sufficient number of qualified staff will be available to provide quality child care for a diversity of families and children, solutions – including adequate publicly funded wages and benefits – merit serious attention.

5. A final point of which we are well aware in Canada is that good data and research are integral to good policy making, understanding what (or if) progress is being made, or what the scope and details of problems are. This is not new: this point has long been made about ECEC policy (for example, by the [OECD](#), in particular Chapter 4, pgs. 133 - 135) but Canada has not yet come close to addressing this issue. From my perspective, the lack of good data and research is a barrier to building and improving an effective early learning and child care system.

Agenda Item 6

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (NUMBER 2)

VICTIMS AND PRISONERS BILL

1. The supplementary legislative consent memorandum (LCM) is laid under Standing Order (“SO”) 29.2. SO 29.2 requires a LCM to be laid before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Victims and Prisoners Bill (“the Bill”) was introduced in the House of Commons on 29 March 2023. An LCM was laid on 19 May 2023 and can be found at [LEGISLATIVE CONSENT MEMORANDUM \(senedd.wales\)](https://www.senedd.wales/legislative-consent-memorandum)
3. On 4 December 2023, during House of Commons Report stage, 119 government amendments and 1 non-government amendment were agreed. The UK Government proposed a further round of amendments on 15 January 2024 for consideration during House of Lords Committee Stage, and one of these amendments requires the consent of the Senedd. The supplementary LCM (No 2) sets out the Welsh Government’s position on these amended clauses, covering the relevant amendments made at both the House of Commons Report and House of Lords Committee Stages.
4. On 22 December 2023, the then Minister for Social Justice and Chief Whip wrote to the Llywydd explaining that it had not been possible to lay a supplementary legislative consent memorandum (SLCM) within the normal two week SO29 deadline at House of Commons Report Stage. Welsh Government officials only had final sight of the 119 government and 1 non-governmental amendments once they had been tabled, and it was not possible for them to analyse these within the two-week period.
5. The clauses referred to in the SLCM are as set out in the Bill as published on 6 December 2023, which can be found at: [Victims and Prisoners Bill \(parliament.uk\)](https://www.parliament.uk/bills/2023/victims-and-prisoners-bill)

Policy Objective(s)

6. The UK Government’s stated policy objectives are to deliver on three key manifesto commitments; to pass and implement a Victims’ Code into law, to reform the parole system, and to establish an Independent Public Advocate to support victims of a major incident. Additionally, the Bill seeks to introduce changes which aim to strengthen the operation of the Parole Board and ensure public confidence in the system. The Bill will prohibit prisoners who are serving a whole life order from entering a marriage or civil partnership while in prison; seeks to codify guidance for roles that support victims and establishes a body to administer the compensation scheme for victims of the infected blood scandal.

Summary of the Bill

7. The Bill is sponsored by the Ministry of Justice (the MoJ).
8. The Bill makes provision about victims of criminal conduct and others affected by criminal conduct; about the appointment and functions of individuals to act as independent public advocates for victims of major incidents; about reforms to the parole system; about the membership and functions of the Parole Board; to prohibit certain prisoners from forming a marriage or civil partnership; and for connected purposes.

Summary of key amendments made at the House of Commons and House of Lords Report stages

9. The House of Commons voted on a series of amendments at its Report stage on 4 December 2023, some of which related to matters within the competence of the Senedd. The amendments proposed by the UK Government on 15 January 2024 further amended one of these clauses.
10. This SLCM sets out the Welsh Government's position on the Bill, in line with the proposed amendments that fall within our competence, tabled by the UK Government on 4 December 2023 and 15 January 2024. Clause numbers are used where these are available.

Changes to the Bill since the laying of the LCM (Memorandum No 1) – amendments to existing clauses which engage the LCM process

Clauses 1 to 4, 11, 22 and 23 - Victims of Criminal conduct – Victims' code

11. The UK Government made several amendments to Part 1 of the Bill - Victims of Criminal conduct – Victims' code, during House of Commons Report Stage. Those relevant to the clauses are covered by this SLCM and outlined below.
12. An amendment was made to clause 1 to clarify that conduct which constitutes an offence may be "criminal conduct" for the purposes of Part 1 of the Bill, whether or not the offence has been reported. The amendment also amends section 52(3)(a) of the Domestic Violence, Crime and Victims Act 2004 for consistency.
13. An amendment was made to clause 11 which clarifies the meaning of "protected characteristics" for the purposes of guidance about reviewing victims' code compliance.
14. As stated in LCM (Memorandum No 1) these clauses require consent on the basis that safeguarding, support and information services to victims are areas within the Senedd's legislative competence. In addition, issuing guidance on the discharge of duties to devolved authorities in respect of the victims' code falls within competence.

Clause 15 – Victims of criminal conduct: Guidance about independent domestic violence and sexual violence advisors:

15. The UK Government laid an amendment to clause 15 at House of Commons Report Stage to clarify the meaning of “protected characteristics” for the purpose of the guidance about the independent domestic violence advisors and independent sexual violence advisors.
16. A further government amendment was laid to clause 15 during House of Lords Committee Stage and was agreed. The amendment changes the requirement for the Secretary of State to issue guidance to independent domestic violence and independent sexual violence advisors, to being a requirement to issue guidance to “victim support roles” of types specified in regulations.
17. As stated in LCM (Memorandum No 1) this clause requires consent on the basis that it makes provision with regard to welfare and safeguarding, which are devolved matters. It also requires devolved Welsh authorities with relevant functions to have regard to the Secretary of State’s guidance. As such these provisions are “relevant provisions” for the purposes of SO29

Part 2 - Clauses 24-27 and 29-31 (as introduced) - Victims of major incidents:

18. The UK laid a number of Government amendments to Part 2 of the Bill at House of Commons Report Stage which require a supplementary LCM. These are outlined below.
 - New clause to be inserted after clause 25 that amends the meaning of ‘major incident’.
 - New clause, to be inserted before clause 25, requiring the Secretary of State to appoint a standing advocate to undertake general functions in relation to victims of major incidents and other advocates appointed in respect of major incidents.
 - An amendment to clause 25 to enable the Secretary of State to appoint the standing advocate as an advocate in respect of a specific major incident.
 - An amendment to clause 27 to require the Secretary of State to appoint a lead advocate where more than one advocate is appointed in respect of a major incident.
 - An amendment to clause 30 to require the standing advocate appointed to make annual reports and a further amendment to enable an advocate (or the lead advocate where multiple advocates are appointed in respect of the same incident) to report at their discretion.

- New clause to be inserted after clause 30 making provision about the publication by the Secretary of State of reports made by an advocate.
- A number of amendments to clause 31 that relate to information sharing requirements and permissions for advocates.
- Other amendments consequential on the above.

19. As stated in LCM (Memorandum No 1) these clauses require consent on the basis that they concern the devolved area of the provision of support services, signposting, advocating and dissemination of information. In addition, they put reporting requirements on the Independent Public Advocate and Secretary of State that could be replicated by the Welsh Ministers in relation to Wales.

Changes to the Bill since the laying of the LCM (Memorandum No 1) - New clauses which engage the LCM process

20. As well as making amendments to the Bill the UK Government introduced new clauses. The following are subject to the LCM process.

New Clause 20 - Domestic Homicide Reviews

21. New Clause 20 was inserted after clause 15 (as introduced) and relates to reviews of deaths in England and Wales that may be related to domestic abuse. It amends the Domestic Violence, Crime and Victims Act 2004, allowing the Secretary of State to direct a specified person or body to establish and participate in, a domestic abuse related death review. The provision also amends section 26 of the Police, Crime, Sentencing and Courts Act 2022 (relationship of offensive weapons homicide reviews with other review requirements).

22. Paragraph 34 of Devolution Guidance Note 'Parliamentary and Assembly Primary Legislation affecting Wales' suggests that the UK Government consider that Senedd consent is required to impose a "reserved function" on a Devolved Welsh Authority. Therefore, this provision is brought to the Senedd's attention, as the clause places responsibilities on Devolved Welsh Authorities to undertake reviews for the purpose of learning lessons about the services they provide to the deceased. It is the view that the Senedd could legislate in similar circumstances as the purpose is to learn lessons on the services they provide to the deceased, rather than being about the criminal conduct itself (which relate to reserved matters). The Senedd could not however place these functions on reserved authorities and therefore the scope of any equivalent provision would be limited.

23. The provision allows the Secretary of State to place functions/ requirements on Devolved Welsh Authorities such as local authorities, local health boards established under section 11 of the National Health Service

(Wales) Act 2006 and NHS trusts established under section 18 of the National Health Service (Wales) Act 2006. The clause includes a power to add to the list of bodies subject to the provision meaning further Devolved Welsh Authorities could be added by the Secretary of State.

New clause 37 – Prohibited steps order

24. New Clause 37 to be inserted after clause 15 amends the Children Act 1989 (to insert new sections 10A and 10B) and requires the Crown Court to make a “prohibited steps order” which prevents a parent from making a decision about a child’s upbringing without the express approval or permission of the court, when a parent is convicted of the murder or voluntary manslaughter of the other parent. It also provides for the order to be reviewed by the family courts.
25. Courts remain a reserved responsibility, however new section 10B of the provision relates to reviews of orders made under section 10A, and places duties on local authorities, including Welsh local authorities (i.e. Devolved Welsh Authorities) to review the orders once they are made.
26. As noted above, paragraph 34 of Devolution Guidance Note ‘Parliamentary and Assembly Primary Legislation affecting Wales’ suggests that the UK Government appear to consider that Senedd consent is required to impose a “reserved function” on a Devolved Welsh Authority.
27. The duties on Welsh local authorities relate to reviews of the orders made, rather than the nature of parental responsibility and how it is acquired and may be lost, as these matters are reserved matters. The LCM process is nevertheless engaged for this provision as noted above, due to the impact on Devolved Welsh Authorities.

Non-Government amendments

28. One non-government amendment was laid and accepted related to compensation for infected blood victims.

New Clause 40 – Compensation for Infected Blood victims

29. Clause 40 was introduced as a non-government amendment laid and accepted at House of Commons Report Stage. The amendment places a duty on the Secretary of State to establish a body to administer the compensation scheme for the victims of the infected blood scandal within 3 months of the Act passing. The clause mandates that the body must be chaired by a judge of the High Court or Court of Session as a sole decision-maker. The clause further outlines the functions of the body, provides the Secretary of State with a regulation making power to make further provision about the body and defines a victim of the infected blood scandal by reference to the Second Interim Report of the Infected Blood Inquiry.

30. The legislative competence analysis has considered the extent to which a Welsh compensation body could be established in relation to Wales. Therefore, it does not directly consider clause 40 of the Bill which establishes a body on a four nations basis as this would be outside competence; alternatively, it considers a provision which could achieve substantially the same effect in Wales i.e., one which establishes a Welsh compensation body. Clause 40 is considered to be within competence of the Senedd on the basis that it does not engage any of reservations in Schedule 7A to the Government of Wales Act 2006. In addition, it is considered that the provision relates to the devolved matter of health; further supported by the fact that the ex-gratia support scheme in Wales is run by the Welsh Infected Blood Support Scheme (WIBSS) and was set up using the Welsh Minister's health powers contained in the NHS (Wales) Act 2006. Therefore, the LCM process is engaged.

Welsh Government Position on the Bill following Amendments tabled on 4 December 2023 and 15 January 2024 - Amendments to which I recommend the Senedd gives consent

New Clause 20 - Domestic Homicide Reviews

31. The Welsh Government believes amending the definition of domestic homicide reviews, to that of the Domestic Abuse Act 2021, is a positive step. The definition is wider, more comprehensive, and will improve understanding through consistency. In amending the definition, the number of reviews will no doubt increase. We believe that is more aligned to our Single Unified Safeguarding Review process that is currently in place in Wales.

32. Although we recommend the Senedd should give consent to the clause on the basis set out above, we would have liked to see the UK Government go further and undertake a wholesale review of the Domestic Homicide Guidance.

New clause 37 – Prohibited Steps Review

33. The core policy of Prohibited Steps Review is related to courts which is a reserved area and the LCM is being laid only with the respect to the impact that it has on local authorities.

34. Whilst the provision places duties on Devolved Welsh Local Authorities to undertake reviews of prohibited steps orders, the Senedd would not be able to legislate to replicate the provision of making the orders in the first instance because courts are reserved. The provision limits when Prohibited Steps orders are automatically made, to murder or involuntary manslaughter of the other parent. The Welsh Government believes that the provision supports the Violence Against Women and Girls Blueprint approach that we have in Wales as well as providing protection for children of perpetrators of serious crimes.

New clause 40 - Compensation for Infected Blood victims

35. The Welsh Government recognises the benefit in taking the clause forward so the provisions will apply at the same time across the UK. Whilst there is an existing scheme already set up in Wales, a four-nations approach is preferred to ensure there is equality of provision. I consider utilising the UK Bill to provide a pragmatic and efficient opportunity to ensure equal provision for all those living with the consequences of being treated with infected blood.
36. The Welsh Government understands that the UK Government has committed to bringing forward a government amendment at Lords Report Stage regarding the establishment of a compensation body for victims of the infected blood scandal, and the Welsh Government is working with the Cabinet Office on the drafting of that amendment.

Welsh Government Position on the Bill following Amendments tabled on 4 December 2023 and 15 January 2024 - Amendments where it is not yet possible to recommend the Senedd should give consent

Clauses 1 to 4, 11, 22 and 23 - Victims of Criminal conduct – Victims’ code

37. In the LCM laid on 19 May 2023 the then Minister for Social Justice and Chief Whip indicated that the UK Government had not provided a view on whether consent is required for clauses 1 to 4, 11, 22 and 23. The UK Government has since clarified its position. It is their view that these clauses are not within the competence of the Senedd as they relate to the detection and investigation of crime which is a reserved matter.
38. However, the Welsh Government’s position remains that the clauses are within the competence of the Senedd for the reasons set out in the earlier LCM laid for the Victims and Prisoners Bill. We remain concerned that the Victims Code could create constitutional issues. The amendments made to the clauses do not resolve any of the issues previously raised and we will continue to reserve our position whilst discussions with the UK Government continue on part one of the Bill.

Clause 15 – Victims of criminal conduct: Guidance about independent domestic violence and sexual violence advisors

39. The amendments made to clause 15 of the Bill do not resolve the areas of concerns set out in the LCM laid on 19 May 2023.
40. As stated in the LCM laid on 19 May 2023, our view is that any guidance in Wales should be issued by the Welsh Government rather than the UK Government, in line with our devolved responsibilities. The Violence Against Women, Domestic Abuse and Sexual Violence (VAWDASV) Blueprint partnership provides an opportunity to develop our own

definitions, and the existence of statutory guidance from the UK Government which applies in Wales could be confusing and restrictive.

41. The approach reflects our devolved competence on VAWDASV and ensures the specialist sector in Wales will be able to input into any guidance on the issue.
42. My officials are continuing discussions with UK Government counterparts with regards to clause 15. The purpose of these discussions is to broker a pragmatic solution that respects the National Partnership and Blueprint structure for delivering the aims of the Violence Against Women, Domestic Abuse and Sexual Violence (VAWDASV) (Wales) Act 2015. We welcome the engagement from the UK Government on clause 15 of the Bill so far, and we will continue to reserve our position on these clauses until these discussions have concluded.

Clauses 24-27 and 29-31 – Victims of major incidents: Appointment of independent public advocate

43. The latest Government amendments to the clauses do not include provisions for the consent of the Welsh Ministers to be required in the appointment and deployment of the advocate for victims of major incidents. Since any advocate will be working in a largely devolved area on which the Senedd can legislate, officials believe that its omission means the Senedd should not give consent to part two of Bill at this time.
44. Discussions are continuing between the Welsh Government and Ministry of Justice officials to strengthen the role of the Welsh Ministers while maintaining the legislative competence of the Senedd. We welcome the engagement from the UK Government on part two of the Bill so far, and we will continue to reserve our position on these clauses until these discussions have concluded.

Financial implications

45. There may be financial implications, but this will not be clear until the measures in the Bill are implemented.

Conclusion

46. There are provisions in the Bill which are welcomed and are in line with our policies. In respect of these clause, I am recommending the Senedd gives consent, as listed in paragraphs 31 to 36.
47. However, there are some provisions in the Bill where the Welsh Government is reserving its position whilst discussions continue with the UK Government, as listed in paragraphs 37 to 44.

Lesley Griffiths MS
Cabinet Secretary for Culture and Social Justice

By virtue of paragraph(s) vi of Standing Order 17.42

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