

# Agenda – Legislation, Justice and Constitution Committee

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Meeting Venue:	For further information contact:
Hybrid – Committee Room 2, Senedd and Video Conference via Zoom	P Gareth Williams Committee Clerk
Meeting date: 16 July 2024	0300 200 6565
Meeting time: 09.30	<a href="mailto:SeneddLJC@senedd.wales">SeneddLJC@senedd.wales</a>

## Hybrid

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### Public meeting

(09.30 – 09.55)

**1 Introduction, apologies, substitutions and declarations of interest**  
(09.30)

**2 Instruments that raise no reporting issues under Standing Order  
21.2 or 21.3**

(09.30 – 09.35)

(Page 1)

Attached Documents:

LJC(6)-24-24 – Paper 1 – Draft report

**Made Negative Resolution Instruments**

**2.1 SL(6)502 – The Cancellation of Student Loans for Living Costs Liability (Wales)  
Regulations 2024**

**3 Instruments that raise issues to be reported to the Senedd under  
Standing Order 21.2 or 21.3**

(09.35 – 09.40)

**3.1 SL(6)503 – The Cockle Fishing Management and Permitting (Specified Area) (Wales) Order 2024**

(Pages 2 – 12)

[Order](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-24-24 – Paper 2 – Draft report

LJC(6)-24-24 – Paper 3 – Letter from the Cabinet Secretary for Climate Change and Rural Affairs, 26 June 2024

LJC(6)-24-24 – Paper 4 – Written Statement by the Cabinet Secretary for Climate Change and Rural Affairs, 10 July 2024

**3.2 SL(6)504 – The National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc.) (Wales) (Amendment) Regulations 2024**

(Pages 13 – 15)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-24-24 – Paper 5 – Draft report

**4 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3 – previously considered**

(09.40 – 09.45)

**4.1 SL(6)501 – The Digital Government (Welsh Bodies) Regulations 2024**

(Pages 16 – 18)

Attached Documents:

LJC(6)-24-24 – Paper 6 – Report

LJC(6)-24-24 – Paper 7 – Welsh Government response

**5 Inter-Institutional Relations Agreement**

(09.45 – 09.50)

## **5.1 Correspondence from the Welsh Government: Inter-Ministerial Group meetings**

(Pages 19 – 20)

Attached Documents:

LJC(6)-24-24 – Paper 8 – Letter from the Cabinet Secretary for Culture and Social Justice: Interministerial Group for Culture and Creative Industries, 9 July 2024

## **6 Papers to note**

(09.50 – 09.55)

### **6.1 Correspondence in relation to the Health and Social Care (Wales) Bill**

(Pages 21 – 101)

Attached Documents:

LJC(6)-24-24 – Paper 9 – Letter from the Minister for Social Care, 9 July 2024

LJC(6)-24-24 – Paper 10 – Letter from the Minister for Social Care, 28 June 2024

LJC(6)-24-24 – Paper 11 – Letter to the Minister for Social Care, 18 June 2024

LJC(6)-24-24 – Paper 12 – Letter from the Minister for Social Care to the Health and Social Care Committee, 28 June 2024

LJC(6)-24-24 – Paper 13 – Letter from the Health and Social Care Committee to the Minister for Social Care, 12 June 2024

LJC(6)-24-24 – Paper 14 – Letter from the Minister for Social Care to the Health and Social Care Committee: Statement of Policy Intent, 19 June 2024

### **6.2 Correspondence from the Cabinet Secretary for Economy, Energy and Welsh Language: The Welsh Government's response to the Committee's report on the Energy Act 2023 (Consequential Amendments) Regulations 2024**

(Pages 102 – 104)

Attached Documents:

LJC(6)-24-24 – Paper 15 – Letter from the Cabinet Secretary for Economy, Energy and Welsh Language, 9 July 2024

**6.3 Statement by the First Minister: The Welsh Government's Legislative Programme**

(Pages 105 – 108)

Attached Documents:

LJC(6)-24-24 – Paper 16 – Statement by the First Minister, 9 July 2024

**6.4 Correspondence from the Trefnydd and Chief Whip: The Senedd Cymru (Electoral Candidate Lists) Bill**

(Pages 109 – 135)

Attached Documents:

LJC(6)-24-24 – Paper 17 – Letter from the Trefnydd and Chief Whip, 10 July 2024

LJC(6)-24-24 – Paper 18 – Letter from the Trefnydd and Chief Whip to the Reform Bill Committee, 10 July 2024

**6.5 Correspondence from the Finance Committee to the Cabinet Secretary for Finance, Constitution and Cabinet Office: The Welsh Government Budget Timetable 2025–26**

(Pages 136 – 138)

Attached Documents:

LJC(6)-24-24 – Paper 19 – Letter from the Finance Committee to the Cabinet Secretary for Finance, Constitution and Cabinet Office, 11 July 2024

**Private meeting**

(09.55 – 10.45)

**7 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting**

(09.55)

**8 Themes emerging from the LJC Committee's reports on legislative consent memoranda for UK Bills**

(09.55 – 10.05)

(Pages 139 – 143)

Attached Documents:

LJC(6)-24-24 – Paper 20 – Draft letter

**9 Trade and Co-operation Agreement consultation: Further consideration**

(10.05 – 10.15)

(Pages 144 – 147)

Attached Documents:

LJC(6)-24-24 – Paper 21 – Paper

**10 The legislative consent process: Further consideration**

(10.15 – 10.25)

(Pages 148 – 153)

Attached Documents:

LJC(6)-24-24 – Paper 22 – Paper from Adam Price MS

LJC(6)-24-24 – Paper 23 – Draft letter

**11 Annual report: Key issues**

(10.25 – 10.35)

(Pages 154 – 160)

Attached Documents:

LJC(6)-24-24 – Paper 24 – Annual report key issues paper

**12 Forward Work Planning**

(10.35 – 10.45)

(Pages 161 – 168)

Attached Documents:

LJC(6)-24-24 – Paper 25 – Forward Work Programme

## Statutory Instruments with Clear Reports 16 July 2024

### **SL(6)502 – The Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2024**

#### **Procedure: Made Negative**

The Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2024 (“these Regulations”) provide for up to £1,500 of a full-time undergraduate student’s living costs loan (also known as a maintenance loan) for academic year 2024/25 to be cancelled in certain circumstances.

The cancellation will take effect from the day after the date on which the student’s first loan repayment is received. It will not be in the form of a cash lump sum; rather the balance of an individual’s loan will be reduced by the appropriate amount the day after a borrower’s first repayment is made.

A student can only receive a partial cancellation once; they cannot receive a partial cancellation in respect of academic year 2024/25 if they have already received a cancellation in respect of any previous academic year. A student will not be entitled to a partial cancellation if there are any outstanding charges or penalties or they are in breach of their loan agreement or any regulations made under section 22 of the Teaching and Higher Education Act 1998.

A technical clarification is also made in these Regulations to exclude overpayments from the meaning of Outstanding Liability (the total amount considered to be repayable by the borrower on the repayment date). The Explanatory Memorandum explains (at paragraph 4.5) that this is to *“make it clear that any overpayment of a maintenance loan will be treated separately from the principal loan amount to which a borrower is entitled, and therefore will not form part of the total amount to which a partial cancellation is applied.”*

**Parent Act:** Teaching and Higher Education Act 1998

**Date Made:** 24 June 2024

**Date Laid:** 26 June 2024

**Coming into force date:** 01 August 2024



# Agenda Item 3.1

## **SL(6)503 – The Cockle Fishing Management and Permitting (Specified Area) (Wales) Order 2024**

### **Background and Purpose**

This Order introduces management measures and a permitting regime for the management of the exploitation of cockles from cockle beds within the specified area in Wales.

The Order, which applies in relation to Wales, amends or revokes and replaces the Byelaws of the former North Western and North Wales Sea Fisheries Committee and the former South Wales Sea Fisheries Committee and provisions of the Cockles and Mussels (Specified Areas) (Wales) Order 2011 in so far as they regulate cockle fishing.

The Sea Fisheries Committees were abolished in relation to Wales on 1 April 2010 when the Sea Fisheries Regulation Act 1966 was repealed by section 187 of the Marine and Coastal Access Act 2009.

The Byelaws of the former North Western and North Wales Sea Fisheries Committee and former South Wales Sea Fisheries Committee have had effect since 1 April 2010 as if made by the Welsh Ministers in a statutory instrument by virtue of article 13(1) and (3) and Schedules 3 and 4 to the Marine and Coastal Access Act 2009 (Commencement No. 1, Consequential, Transitional and Savings Provisions) (England and Wales) Order 2010.

Part 1 of this Order (articles 1 and 2) deals with introductory matters.

Part 2 of this Order (articles 3 to 7) makes provision for the management of cockle beds within the specified area. Fishing for and taking cockles from cockle beds which are closed and without a permit is prohibited under article 3. Articles 5 to 7 provide for the assessment and the opening and closing of cockle beds within the specified area.

The specified area is described in Schedule 1.

Part 3 of this Order (articles 8 to 13 and Schedule 2) makes provision for a new cockle permitting regime setting out the requirement for a permit to fish and making provision about eligibility, the duration of a permit and fees. Article 9 and Schedule 2 provide for conditions to be attached to permits.

Part 4 of this Order (articles 14 to 18 and Schedule 3) makes provision for exemptions from the provisions of this Order, the re-deposit of cockles and for the revocation and amendment of various Byelaws of the former North Western and North Wales and the former South Wales Sea Fisheries Committees and the amendment of the Cockles and Mussels (Specified Area) (Wales) Order 2011.

### **Procedure**



Negative

The Order was made by the Welsh Ministers before it was laid before the Senedd. The Senedd can annul the Order within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date it was laid before the Senedd.

## Technical Scrutiny

The following seventeen points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### 1. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In article 2, there is a difference between the English and Welsh text. In the Welsh text, there is an additional definition “manteisio ar” (“exploitation”) which is not found in the English text. The term is not used in this Order; therefore, the English text appears to be correct.

### 2. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In article 2, in the English text, the definition of “cockles” is not listed according to alphabetical order as is the convention. It should appear after the definition of “cockle bed” in the English text of this Order.

### 3. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In article 2, in the definition of “harvestable surplus”, there are several differences between the English and Welsh text as follows—

- a) in the English text, the corresponding Welsh definition that usually appears in brackets afterwards is incomplete because the word “cynaeafu” is missing along with the closing brackets; it should also be formatted in italics rather than regular font;
- b) in addition, in the Welsh text, it states that ““harvestable surplus” ... **is the live weight of the cockles that can** be fished for or taken...”. Therefore, there are additional words in the Welsh text that are not found in the English text of the definition.

### 4. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

In article 2, in the English text, the definition of “Wales” is not listed according to alphabetical order as is the convention. It should appear after the definition of “vessel”.



The definition is noted in single quotation marks rather than double quotation marks, and the words "of the" are missing from the reference "section 158(1) **of the** Government of Wales Act 2006" in the English text.

Finally, this defined term only appears to be used on a single occasion in the application provision found in article 1(2) of this Order. If a defined term is only used on a single occasion in a statutory instrument it should appear in the same provision and only be defined for that provision -see WLW 4.3(1).

**5. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In article 8(3), there is a difference between the English and Welsh text. In the English text, the term "the permit period" has been used which is not the defined term "a single permit period" found in article 2.

In addition, the Welsh text differs from the English text in this provision as it states, "between 1 June in a calendar year and the end of 31 May in the following year" rather than "during the permit period".

**6. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

In article 9(1)(b), the term "specified cockle bed" has been used but it has not been defined and given a meaning by article 2 of the Order. The defined term in article 2 is "cockle bed" which is found within the specified area described by Schedule 1 to this Order.

**7. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In article 10(1)(a), there is a difference between the English and Welsh text. In the English text, it states "are 16 years of age or over" but the Welsh text includes some additional words so that it means "are 16 years of age or over at the time the permit is issued".

**8. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

In article 10(2), in the definition of "relevant offence" for that article, in sub-paragraph (c)(i), it states that a relevant offence includes an offence under "section 139 (**contravention of orders under sections 134, 134A, 134B or 136**)". However, the words in parentheses suggest that an offence under section 139 of the 2009 Act is limited to a contravention of orders made under those listed sections of the 2009 Act.

However, offences under section 139 include contraventions of both byelaws and orders made under other sections of the 2009 Act. Therefore, the words in parentheses are potentially misleading and confusing for the reader as it is unclear whether there is any intention to limit the relevant offences under section 139 of the 2009 Act for article 10 of this Order.



### **9. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

In article 12(1)(c) of, and paragraph 5 of Schedule 2 to, this Order the terms “a permit period” and “the permit period” are used in the Order. But the term has been defined in article 2 as “single permit period” which has been used elsewhere in this Order.

### **10. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In Schedule 1, in paragraph 1(1)(c), there is a difference between the English and Welsh text. In the English text, it states “High Water Mark or Ordinary Tides”, but the meaning given by the Welsh text is “High Water Mark **of** Ordinary Tides”.

### **11. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In Schedule 2, in paragraph 7, in the Welsh text, the word “deemed” has been expressed as “ystyriir” which means “considered”. The Glossary of the Welsh Government’s Legislative Translation Unit has standardised “barnu” as the recommended choice of word for “deem” in the Welsh text of legislation. Therefore, “bernir” should have been used in the Welsh text to express the meaning of “deemed”.

### **12. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

In Schedule 2, in paragraph 9, the heading refers to the “Requirement to carry **and produce** the permit” as one of the conditions which will apply to all permits. However, paragraph 9 only includes a requirement for the permit holder to carry their permit at all times while gathering cockles from a cockle bed.

There does not appear to be a requirement to produce a permit included in paragraph 9 of Schedule 2. Therefore, the heading is confusing and potentially misleading to the reader of the Order.

### **13. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In Schedule 3, in paragraph 2(6)(b), there is a difference between the English and Welsh text. Both paragraphs (a) and (b) of paragraph 2(6) attempt to introduce amendments to article 8(1) of the Cockles and Mussels (Specified Area) (Wales) Order 2011.

In the English text, the amendment in paragraph 2(6)(b) does not succeed to clearly identify the existing text in article 8(1) for amendment because the word “shellfish” also occurs in the phrase “specified shellfish” which is amended by paragraph 2(6)(a).

In the Welsh text, the amendment made by paragraph 2(6)(b) does clearly identify the existing text for amendment by adding some additional words so that it states for “**those** shellfish”



substitute “**those** mussels””. This is sufficient to identify the existing text in article 8(1) that is amended by paragraph 2(6)(b) of Schedule 3, and to distinguish it from the text amended by paragraph 2(6)(a) of that Schedule.

#### **14. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

In Schedule 3, in paragraph 3(3), the amendment inserts a new sentence that includes a reference to this Order at the end of Byelaw 13 of the Byelaws of the former North Western and North Wales Sea Fisheries Committee.

However, the title of the Order is incorrectly noted in the new insertion as the word “**Fishing**” is missing. It should be cited as “the Cockle **Fishing** Management and Permitting (Specified Area) (Wales) Order 2024”.

#### **15. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

In Schedule 3, in paragraph 3(4), a series of amendments are made to omit any references to “cockle” and phrases where it is used from Byelaw 13A of the Byelaws of the former North Western and North Wales Sea Fisheries Committee.

The amendment made by paragraph 3(4)(c) omits a reference to “cockle or” from paragraph 2 of Byelaw 13A in those Byelaws. However, there is also a reference to “cockle or” found in paragraph 3 of Byelaw 13A in those Byelaws which is not omitted following these amendments. Therefore, these amendments have not succeeded in removing all the references to “cockle” from Byelaw 13A of those Byelaws.

#### **16. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In Schedule 3, in paragraph 6(1), there is a difference between the English and Welsh text. In the English text, it states that “The Byelaws of the former South Wales Sea Fisheries Committee” are amended. But the meaning given by the Welsh text is that “The Byelaws of the former North Western and North Wales Sea Fisheries Committee” are amended as follows.

#### **17. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

In this Order, the verb “will” is found in several provisions but it is unclear whether it is being used as a future tense or to impose an obligation. For example, in article 9(4), it states that “the Welsh Ministers **will** consult with permit holders and other relevant stakeholders before varying or removing additional conditions”.

Also, in article 16(2), it states “Declarations and notifications made under the Order **will** be published on the Welsh Government website and, whenever practicable, declarations **will** be placed in clearly visible locations...”.



If these provisions are imposing obligations, they should use a phrase such as “must” or possibly “are to be” – see the Welsh Government’s drafting guidelines WLW 3.14(4) and (5).

In addition, there are other examples of the use of “will” in the Order such as in article 12(1)(b) and (c) where it is also unclear whether it is being used as a future tense, an obligation or as a declaration.

## Merits Scrutiny

The following three points are identified for reporting under Standing Order 21.3 in respect of this instrument.

### **18. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd**

We note the breach of the 21-day convention (i.e. the convention that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Huw Irranca-Davies AS/MS and Cabinet Secretary for Climate Change & Rural Affairs in a letter to the Llywydd dated 26 June 2024.

In particular, we note the following paragraphs:

*“Public cockle fisheries in Wales have been managed by the Welsh Government since the dissolution of the former Sea Fisheries Committees in 2010. The first sale value of these fisheries is estimated to be between £3M and £10M per annum. They support approximately 350 commercial hand gatherers and 50 workers in processing plants.*

*The Cockle Fishing Management and Permitting (Specified Area) (Wales) Order 2024 will introduce the following measures to conserve cockle stocks and ensure the sustainability of the fishery:*

- a) An all-Wales cockle permit to gather on any cockle bed within a specified area.*
- b) Carrying out uniform eligibility checks for cockle permit applications*
- c) Charging an annual fee for cockle permits*
- d) Attaching a number of universal permit conditions to all cockle permits*
- e) Making provision to allow for additional local conditions specific to individual named fisheries for the purposes of adaptive cockle fishery management. Any additional conditions will also be attached to all permits.*
- f) Standardising the daily personal recreational allowance within the specified areas.*

*Finalisation of the Order took longer than anticipated to ensure the Order delivered the changes required to establish the new permitting system. Contravention of the convention is thought necessary and justifiable to avoid delaying the opening of the Three Rivers Fishery to ensure cockle gatherers do not lose out on valuable income. Any*



*delay in opening the fishery on 17 July would penalise those cockle gatherers who rely on this income alone and could lead to cockle 'die off' as summer temperatures increase."*

**19. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd**

We note from the Explanatory Memorandum that a 12-week public consultation on proposals for new cockle fishery management measures was launched on 11 February 2022 and closed on 6 May 2022.

The letter to the Llywydd dated 26 June 2024 states that the finalisation of the Order took longer than anticipated to ensure the Order delivered the changes required to establish the new permitting system.

Can clarification be provided as to the justification for the delay from the consultation in 2022 and to laying the Order in June 2024?

**20. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd**

The specified area is the area described in Schedule 1 to this Order. The Explanatory Memorandum at paragraph 4.3 and 4.4 states that *"Maps of the specified area will be provided to permit holders when permits are issued to permit holders under the Order. A programme of work is underway to produce new mapping of the whole of the specified area. The updated mapping will be made available on [www.GOV.WALES](http://www.GOV.WALES) when the Order comes into force."* It would be helpful for the reader to be referred to the maps of the specified area in this Order.

## Welsh Government response

A Welsh Government response is required to all the reporting points.

### Legal Advisers

Legislation, Justice and Constitution Committee

10 July 2024





Ein cyf/Our ref: MA/HIDCC/25418/24

Rt Hon Elin Jones MS  
Llywydd  
Senedd Cymru

[Llywydd@senedd.wales](mailto:Llywydd@senedd.wales)

26 June 2024

Dear Elin

### **The Cockle Fishing Management and Permitting (Specified Area) (Wales) Order 2024**

In accordance with section 11A(4) of the Statutory Instruments Act 1946, I am notifying you this Statutory Instrument will come into force on 10 July 2024, less than 21 days after it has been laid. A copy of the instrument and Explanatory Memorandum for this Order are attached for your information. An Explanatory Memorandum and Regulatory Impact Assessment has been prepared and this has been laid, together with the 2024 Order, in the Table Office.

### **Background**

Public cockle fisheries in Wales have been managed by the Welsh Government since the dissolution of the former Sea Fisheries Committees in 2010. The first sale value of these fisheries is estimated to be between £3M and £10M per annum. They support approximately 350 commercial hand gatherers and 50 workers in processing plants.

The Cockle Fishing Management and Permitting (Specified Area) (Wales) Order 2024 will introduce the following measures to conserve cockle stocks and ensure the sustainability of the fishery:

- a) An all-Wales cockle permit to gather on any cockle bed within a specified area.
- b) Carrying out uniform eligibility checks for cockle permit applications
- c) Charging an annual fee for cockle permits
- d) Attaching a number of universal permit conditions to all cockle permits

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

- e) Making provision to allow for additional local conditions specific to individual named fisheries for the purposes of adaptive cockle fishery management. Any additional conditions will also be attached to all permits.
- f) Standardising the daily personal recreational allowance within the specified areas.

Finalisation of the Order took longer than anticipated to ensure the Order delivered the changes required to establish the new permitting system.

Contravention of the convention is thought necessary and justifiable to avoid delaying the opening of the Three Rivers Fishery to ensure cockle gatherers do not lose out on valuable income. Any delay in opening the fishery on 17 July would penalise those cockle gatherers who rely on this income alone and could lead to cockle 'die off' as summer temperatures increase.

I am copying this letter to the Trefnydd and Chief Whip, Mike Hedges MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Bethan Davies, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,



**Huw Irranca-Davies AS/MS**

Ysgrifennydd y Cabinet dros Newid Hinsawdd a Materion Gwledig  
Cabinet Secretary for Climate Change & Rural Affairs



Llywodraeth Cymru  
Welsh Government

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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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<b>TITLE</b>	<b>The Cockle Fishing Management and Permitting (Specified Area) (Wales) Order 2024</b>
<b>DATE</b>	<b>10 July 2024</b>
<b>BY</b>	<b>Huw Irranca-Davies MS, Cabinet Secretary for Climate Change &amp; Rural Affairs</b>

The Welsh Government currently manages a number of permitted public cockle fisheries around the coastline of Wales. In response to calls for improvements in the way we manage our cockle fisheries, the Welsh Government launched a public consultation on proposals for change in 2022. The response was overwhelmingly in favour of the proposed measures and I am grateful to all those who took the time to respond.

Today I am pleased to announce the coming into force of The Cockle Fishing Management and Permitting (Specified Area) (Wales) Order 2024. This Order will, for the first time, introduce a cohesive and adaptive management system for all public cockle fisheries in Wales within specified areas. It will build on other initiatives brought forward by this government to introduce more flexible fisheries management to ensure sustainability.

The Order will help to protect cockle stocks and the sensitive intertidal habitats and species that live nearby. As a result, it will ensure the long term sustainability of cockle fisheries in Wales, so they continue to provide social and economic benefits to coastal communities in the future.

I am fully committed to introducing similar evidence based flexible management regimes for a range of other stocks to safeguard the marine environment and the fishing industry in Wales.

## **SL(6)504 – The National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc.) (Wales) (Amendment) Regulations 2024**

### **Background and Purpose**

The National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc.) (Wales) Regulations 2004 (**the principal Regulations**) make provision as to the drugs, medicines or other substances that may be ordered for patients in the provision of medical services under a general medical services contract.

These Regulations amend the principal Regulations by:

- placing restrictions on the prescribing of gonadotrophin releasing hormone (GnRH) analogues by NHS general practitioners in Wales when used to suppress puberty as part of treating gender incongruence or gender dysphoria in children and young people under 18 years of age.
- removing the current restriction on NHS general practitioners in Wales prescribing of vitamin B12 (cyanocobalamin) tablets.

### **Procedure**

Negative

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

### **Technical Scrutiny**

The following 3 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

#### **1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

Regulation 2(2)(a) to (c) inserts text into the table in Schedule 2 to the principal Regulations, doing so by inserting text “at the appropriate place”.

In this case, we believe the drafting should have pinpointed exactly where the new text should be inserted in each of the columns in Schedule 2. We note that [when the table was amended by the Welsh Ministers in 2005](#), a more precise approach was adopted which left no room for



confusion as to where the text should be inserted. We believe that approach should have been used in these Regulations.

## **2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

Regulation 2(3) defines “general medical practitioner” as a medical practitioner whose name is included in the General Practitioner Register kept by the General Medical Council under section 2 of the Medical Act 1983.

However, the requirement to keep the “General Practitioner Register” is set out in section 34C of the Medical Act 1983, not section 2. Section 2 provides for a different register, namely “the register of medical practitioners”.

Therefore, the definition of “general medical practitioner” in the Regulations is unclear.

## **3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

In regulation 2(4), there are several errors in the description of the existing text identified for amendment and in the new text that will replace that text—

- (a) in the description of the text identified for amendment in the definition of “patient”, there is a difference between the English and Welsh text. In the English text, the title of the instrument is noted as “National Health Service (General Medical Services Contracts) (Wales) Regulations 2004” but in the Welsh text it is noted as “National Health Services (General Medical Services Contracts) (Wales) Regulations 2004”. The Welsh text is correct as it cites the existing text including the error in the title of the instrument that was inserted by a previous amendment.
- (b) in the new text that will replace the existing text, the title of the instrument is incorrect—
  - (i) in both language texts, part of the title of the instrument is incorrect as they both note “National Health Services...” but the correct title of the instrument is “National Health Service...”;
  - (ii) there is a difference between the English and Welsh texts in the title of the instrument that will replace the existing reference. In the English text, part of the title is incorrectly noted as “(General Medical Service Contracts)” but in the Welsh text it is correctly noted as “(General Medical Services Contracts)”.

## **Merits Scrutiny**

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.



## Welsh Government response

A Welsh Government response is required to the second reporting point.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**9 July 2024**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—

Welsh Parliament

**Legislation, Justice and Constitution Committee**

Pack Page 15

# Agenda Item 4.1

## **SL(6)501 – The Digital Government (Welsh Bodies) Regulations 2024**

### **Background and Purpose**

Part 5 of the Digital Economy Act 2017 (“the 2017 Act”) allows persons listed in the Schedules to the Act to share information for specific purposes.

Section 56(1) of the 2017 Act allows information to be shared (by a specified person with certain other persons) for the purpose of preventing fraud against public authorities.

Part 2 of Schedule 8 contains a list of Welsh bodies who are specified for the purposes of section 56(1).

These Regulations remove the Higher Education Funding Council for Wales from the list in the 2017 Act and replace it with the Commission for Tertiary Education and Research.

### **Procedure**

Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

### **Technical Scrutiny**

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### **Merits Scrutiny**

Two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

#### **1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd**

The Explanatory Notes to the Regulations state as follows in relation to a Regulatory Impact Assessment:

*“The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations...”*

However, the Explanatory Memorandum accompanying the Regulations appears to be inconsistent. Section 6 (Regulatory Impact Assessment (RIA)) states as follows:



*“As these Regulations make factual amendments to update subordinate legislation and the amendments do not alter the policy (or its impact) in any significant way or how it is applied in a given situation, an RIA is not required. This is in line with the policy set out in the Welsh Ministers’ code of practice for carrying out regulatory impact assessments for subordinate legislation. However, the RIA to accompany TERA at its introduction to the Senedd assessed the potential costs and benefits associated with establishing the Commission.”*

## **2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd**

The Explanatory Memorandum accompanying the Regulations states the following in section 2 (Matters of special interest to the Legislation, Justice and Constitution Committee):

*“The Legislation, Justice and Constitution Committee will wish to note that these Regulations amend the 2017 Act.”*

### **Welsh Government response**

A Welsh Government response is required to point 1, above.

### **Committee Consideration**

The Committee considered the instrument at its meeting on 8 July 2024 and reports to the Senedd in line with the reporting points above.



## **Government Response: The Digital Government (Welsh Bodies) Regulations 2024**

**Merit Scrutiny point 1:** We acknowledge the Explanatory Note incorrectly states that an RIA has been prepared specifically in relation to these Regulations. The Explanatory Memorandum explains that whilst the Regulations would not require an RIA in their own right, they are within the scope of the RIA that accompanied the Tertiary Education and Research (Wales) Act 2022. We will amend the Explanatory Memorandum to make matters clearer.

Mike Hedges MS  
Chair  
Legislation, Justice and Constitution Committee  
Senedd Cymru

[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

9<sup>th</sup> July 2024

Dear Mike

### **Outcome of the Interministerial Group (IMG) for Culture and Creative Industries**

In accordance with the inter-institutional relations agreement, the first meeting of the Culture and Creative Industries Inter-Ministerial Group (IMG) was held virtually on 2 May 2024. As lead Cabinet Secretary for this IMG I attended the meeting on behalf of the Welsh Government.

The Rt Hon Lucy Frazer KC, former Secretary of State for Culture, Media and Sport, attended for the former UKG and chaired the meeting. Gordon Lyons MLA, Minister for Communities, attended for the Northern Ireland Executive and Angus Robertson MSP, Cabinet Secretary for Constitution, External Affairs and Culture, attended for the Scottish Government.

The group agreed the Terms of Reference before discussing upcoming major cultural domestic and international events across the Devolved Governments. It was recognised securing visas for artists and performers smoothly would be essential to the success of many of these events.

The current funding pressures and financial challenges the cultural and creative sector is experiencing was discussed. Members reinforced with the UK Government the importance of respecting and applying out-of-London and out-of-England television production targets.

Members discussed published and upcoming culture strategies across the four nations, recognising the opportunities for sharing best practice.

Areas to celebrate were highlighted including the continued success of the screen industry in all four nations, increased tax relief for creative industries announced at the latest Budget, early successes across the UK from initiatives introduced under the Creative Industries Sector Vision, and the positive reception to adding screen studies to the Scottish school curriculum.

Members agreed to share best practice and learning to help the sector overcome the challenges it currently faces.

The Scottish Government offered to host the next meeting and officials will now work together to identify a specific date and suitable agenda items.

I am also copying this letter to Rebecca Evans MS, Cabinet Secretary for Finance, Constitution and Cabinet Office, the Rt Hon Elin Jones MS Llywydd and the Culture, Communications, Welsh Language, Sport, and International Relations Committee.

Yours sincerely,



**Lesley Griffiths AS/MS**  
**Ysgrifennydd y Cabinet dros Ddiwylliant a Chyfiawnder Cymdeithasol**  
**Cabinet Secretary for Culture and Social Justice**

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Dawn Bowden AS/MS  
Y Gweinidog Gofal Cymdeithasol  
Minister for Social Care

Agenda item 6.1



Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref DB-PO-0181-24

Mike Hedges MS  
Chair  
Legislation, Justice and Constitution Committee  
Senedd Cymru

[seneddLJC@senedd.wales](mailto:seneddLJC@senedd.wales)

09 July 2024

Dear Mike,

Thank you for your letter of 18 June following my appearance before the Legislation, Justice and Constitution Committee to discuss the Health and Social Care (Wales) Bill.

I offered to write with a more detailed explanation of the government's consideration of convention rights in relation to Part 1, Chapter 1 of the Bill (provision of social care services to children: restrictions on profit). I have already written to you about this topic. I am providing a response to the remaining points and questions you have raised in your letter of 18 June in the annex to this letter.

I am copying this letter to the chair of the Health and Social Care Committee.

Yours sincerely,

**Dawn Bowden AS/MS**  
Y Gweinidog Gofal Cymdeithasol  
Minister for Social Care

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

## **Points raised during Committee**

### **Full details of the Welsh Government's assessment of the Bill's impact on children and their families, with particular reference to Article 8 of the European Convention on Human Rights, and the impact on service providers, with particular reference to Article 1 of the First Protocol to the Convention**

The Minister has written separately to the chair of the committee to share some of the consideration and analysis, which sits behind Welsh Ministers' view that the provisions of the Bill dealing with the elimination of profit from children's services are compatible with Convention rights.

### **Further details on what you consider "public good" to mean in the context of new section 6A(3)(b) being inserted into the 2016 Act (via section 3 of the Bill).**

"Public good" could extend to any purpose, which is capable of being a charitable purpose or a purpose having a community benefit, and which is connected in some way to the promotion of the welfare of children who are looked after by local authorities. If there was evidence there was a wider range of not-for-profit bodies whose purposes encompassed the provision of fostering services or children's homes, but did not meet the test in section 6A(3) because their objects or purposes did not primarily relate to child welfare, then the power could be used to describe wider sorts of public good, which have an intersection with the promotion of the welfare of children who are looked after by local authorities. Examples could include objects or purposes which committed the provider organisation to the provision of literacy and numeracy services for a wider range of beneficiaries than children looked after. In these circumstances Welsh Ministers may wish to consider whether specifying a new public good could allow that, while still being consistent with the policy.

## **Further questions**

### **1. What discussions have you had with the other UK administrations regarding the provisions and policy objectives of the Bill?**

Welsh Government officials hold regular meetings with the UK Government's Department for Education to discuss our proposals to eliminate private profit from the care of looked after children, including around any implications of the proposed legislation on cross-border placements. A face-to-face meeting with the Director-General of the Department for Education was held in January 2024 and it was noted that the UK department is looking at profiteering in the sector and is concerned about rising costs and the increase in out-of-county provision.

Officials hold regular meetings about continuing healthcare (CHC) with policy counterparts from UK Government (Department for Health and Social Care) and more recently from the Northern Ireland Executive. Officials from England and Northern Ireland have been kept informed of policy objectives and progress regarding the Bill. Information and evidence shared with Welsh Government officials, as well as links to other stakeholders established as a result of these discussions,

has contributed to the development of the Integrated Impact Assessment and Regulatory Impact Assessment for this element of the Bill.

**2. Why have you decided to make reference to the elimination of private profit from the care of looked after children in the various explanatory documentation to the Bill, rather than referencing the fact that the Bill makes provision to restrict making a profit?**

The provisions are not intended to prevent a fostering service business or a children's home business from generating a trading surplus from their operation. In that sense, the Bill does not prevent providers of these services making a profit. However, the provisions of the Bill are intended to ensure that any trading surplus or profit is retained within the business to be re-invested in either growing the business or in improving the quality of the services which the business provides. The provisions of the Bill are intended to prevent a provider from extracting profit from the business in the way shareholders of a limited company, for example, are commonly rewarded. This is the sense in which the Bill is said to eliminate private profit from services providing care for looked after children.

**3. With regard to the restriction of profit-making for restricted children's services, the timelines for delivering this are not clear. The new Schedule 1A to the Regulation and Inspection of Social Care (Wales) Act 2016 ("the 2016 Act") provides that the transitional period begins with the day on which section 6A(1) of the 2016 Act comes into force. According to paragraph 3.42 of the Explanatory Memorandum, section 6A(1) will come into force on 1 April 2026, but paragraph 3.42 also states that existing "for profit" providers will be subject to transitional provisions from 1 April 2027. Can you provide clarification regarding the dates, please?**

The policy intention is that sections 3 and 4 of the Bill will be brought into force in April 2026 inserting new section 6A into the Regulation and Inspection of Social Care (Wales) Act 2016 along with the transitional regime set out in new Schedule 1A. New section 6A will have the effect of preventing any new bodies registering as providers of restricted children's services unless they are not-for-profit entities, which comply with the test in that section. However, under Schedule 1A existing for-profit bodies (that do not comply with the test in section 6A) will be able to continue to operate despite not meeting the not-for-profit test by virtue of the transitional regime (although they will not be able to vary their registration to provide new restricted children's services or to provide them at new places).

Sections 10, 11 and 12 of the Bill will also be brought into force in April 2026, making amendments to section 75 of the Social Services and Well-being (Wales) Act 2014 and inserting new sections 75A to 75D. Welsh local authorities will be subject to the duty to take all reasonable steps to secure that they have sufficient placements of their own or with not-for-profit providers. They will have to prepare their first annual sufficiency plan which they will need to submit to the Welsh Ministers for approval four months prior to the start of the 2027-28 financial year.

Section 13 of the Bill, inserting new sections 81A to 81D into the Social Services and Well-being (Wales) Act 2014, will be commenced in April 2027, requiring Welsh local authorities to seek authorisation from Welsh Ministers for all ongoing placements of children with for-profit providers. From April 2027, if a Welsh local authority is unable to identify a not-for-profit placement for a looked-after child and wishes to place a child using available placements with for-profit providers in Wales, it will need to seek approval from the Welsh Ministers.

With effect from April 2027, Welsh Ministers will make regulations under paragraph 3 of new Schedule 1A (as inserted by section 4 of the Bill, see above), which will prevent any remaining for-profit providers in Wales (those that are still operating under the transitional provision in paragraph 2 of that Schedule) from taking placements from English local authorities other than in limited circumstances. At this point in time, regulations will also be made under the Social Services and Well-being (Wales) Act 2014 to provide that for-profit fostering service providers in Wales will not be able to approve new foster carers.

**4. Section 2 of the Bill inserts definitions into the 2016 Act, one of which relates to a care home service that is provided wholly or mainly to children. To fall within the definition, a provider will need to show that it intends to provide more days of accommodation to children than adults over a set period, but the Bill does not provide any detail about how this intention is to be demonstrated or assessed in practice. It also doesn't make it clear whether the periods of time referred to must be continuous or not, i.e. if it is a 12 month period with the previous 24 months, does this mean 12 continuous months or any 12 individual months within the preceding 24 months? Do you have any concerns that this may lead to confusion about what constitutes a care home service in this context?**

Providers will know whether their intention is to come within the thresholds set out in the Bill (i.e. which will make a place from which they operate a care home service a place where a care home service is provided wholly or mainly for children). There will be some instances where the provider seeks a change to its registration status because it is certain it will meet the threshold and there will be other cases where the provider seeks a change to its registration status because it recognises that it *may* cross the threshold.

As far as calculating the number of days is concerned, the calculation depends on the provider having provided, at a particular place, more days of accommodation to children than to adults over a 12-month period within the last 24 months. This makes clear that the calculation of days must take place within a continuous period of 12 months. The provision would not make sense if the days making up the 12-month period could be randomly selected from within the 24 month period. However, we will give further consideration to the drafting of this provision prior to Stage 2.

In testing compliance with the requirement, the regulator will be able to inspect a provider's admission records to determine whether the threshold has been crossed such as to require the provider to be registered as the provider of a restricted children's service.

- 5. The new section 6A(3) of the 2016 Act, as inserted by section 3(3) of the Bill, refers to a person’s objects or purposes primarily relating to certain matters, however no information is provided as to how objects or purposes are to be determined. What is the reason for the omission of this detail? It appears from the wording of the new section 9A(1)(b), as inserted by section 6(3) of the Bill, that some form of determination method has been contemplated as that refers to “objects or purposes as determined in accordance with section 6A(3)”, but the method of determination is not apparent from the wording of the Bill.**

The task of determining whether a provider’s objects or purposes comply with the requirement in section 6A will fall to the Welsh Ministers as regulator for regulated social care services under Part 1 of the 2016 Act. Welsh Ministers’ functions as regulator are carried out by Care Inspectorate Wales. There is no detail about this on the face of the Bill.

All of the aspects of determining applications for registration, including elements which require the exercise of judgement about whether statutory tests are met are functions of the regulator. Examples of these are determinations of whether an applicant is a “fit and proper person” and whether a “responsible individual” is both “eligible” and “fit and proper”.

We do not think it necessary to include provision to set out how the regulator will apply the new “not-for-profit” test for restricted children’s services. We think it is clear from the context that judgements about the compatibility of a provider’s objects or purposes with the test will simply be an additional aspect of the regulator’s function of determining applications for registration.

This will be a judgement made on the basis of the regulator’s reading and analysis of the provider’s objects clauses and testing them for compatibility with the not-for-profit condition in section 6A(3).

However, we see from the question posed that the drafting was not understood in this way and we will look again at this prior to Stage 2.

- 6. The Bill defines some terms with reference to existing legislation, for example, “looked after children”, “company having share capital” and “substantial interest in a body corporate”. However, there is a risk of confusion as “looked after children” is defined with reference to section 74 of the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”), but section 74 does not use this term. Similarly, “company having share capital” and “substantial interest in a body corporate” are given specific meanings in the Bill, but the phrases are not used in such forms in the Bill. Can you explain why this approach has been taken and, on reflection, do you consider that the drafting of these provisions could be clearer?**

“*Looked after children*” is a term used in section 2 of the Bill inserting new section 2A and new paragraphs (3A) and (3B) into Schedule 1 to the 2016 Act. The term is defined in new paragraph (3B) by reference to section 74 of the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”). Section 74 of the 2014 Act defines the

term “*child who is looked after by a local authority*”. The Part heading for Part 6 of the 2014 Act (of which section 74 is the opening section) is “Looked after and accommodated children”. We believe the definition is reasonably clear but could be clarified and propose to introduce an amendment at Stage 2 to address this point.

We believe the drafting of “*company having a share capital*” is clear. The reason this phrase is defined by reference to a Companies Act definition (in new section 6B(6)(b), inserted by section 3(3) of the Bill) but is not used word-for-word elsewhere in the Bill is in the interests of brevity and ease of comprehension, the words “without a share capital” are used in the labels in new section 6A(4)(a) and (d); new section 6B(2)(b) and (5)(b) then set out that “without a share capital” means not having a share capital, and section 6B(6)(b) makes it clear that the concept of having or not having a share capital is to be understood as per section 545 of the Companies Act 2006.

“*Substantial interest in a body corporate*” is defined in new section 9B(3)(d) of the 2016 Act (inserted by section 6(3) of the Bill). New section 9B(2)(e)(i) refers to “*a body corporate in which ...[a person]...has a substantial interest*” and section 9B(2)(e)(ii) refers to “*a body corporate in which ...[persons]...have a substantial interest*”. We believe in the context the relationship between the term and the phrasing used in new sections 9B(2)(e)(i) and (ii) is clear.

**7. The new Schedule 1A to the 2016 Act, as inserted by section 4(3) of the Bill, refers to a service being “provided wholly or mainly to children”. This phrase is given a specific meaning in the new section 2A of the 2016 Act, as inserted by section 2(2) of the Bill, but this meaning is stated to only apply in section 2A(1). Is it intended that the phrase should have the same meaning in Schedule 1A as it does in section 2A(1), and if so, do you think that the drafting reflects this? The same issue applies in relation to section 75(4) of the 2014 Act, as amended by section 10(6) of the Bill, which uses the phrase “wholly or mainly to children” but offers no explanation as to how this is to be determined.**

The test for determining whether a service is provided wholly or mainly for children is set out in the new section 2A(2) and establishes the meaning of “children’s home” as a form of “restricted children’s service” in section 2A(1). The definition of “restricted children’s service” is stated in section 2A(1) to be for the purposes of Part 1 (of the 2016 Act). Although this extends to Schedule 1A which is introduced by section 6C the phrase “wholly or mainly to children” does not relate to a use of the term “restricted children’s service” in paragraph 2(1)(a). We propose to introduce an amendment at Stage 2 to address this point.

As far as the reference to “wholly or mainly for children” in section 75(4) of the 2014 Act is concerned, the definition directs the reader to interpret the phrase “children’s home” as a place in respect of which a person is registered under Part 1 of the 2016 Act. However, we believe greater clarity would be provided for the reader if this was signposted in a more explicit way and we will introduce an amendment at Stage 2 to address the point.

- 8. Section 4(3) inserts a proposed new paragraph 1(1)(b), in a new Schedule 1A to the 2016 Act. Paragraph 1(1)(b) specifies that the transitional period for a restricted children’s service ends with the day appointed by the Welsh Ministers by regulations. In the Statement of Policy Intent you state that “The power recognises that it will be necessary to consider the progress of local authority disengagement from the use of for-profit placements in order to determine the appropriate point at which to bring the transition period to a close”. If one local authority, for whatever reason, struggles to disengage from the use of for-profit placements, does this mean the transition period across Wales will continue for all local authorities until all are ready?**

Paragraph 1(3) of Schedule 1A makes clear that section 187 of the 2016 Act applies to the regulation-making power in paragraph 1(1). Section 187(1)(b) provides that regulation-making powers under the 2016 Act can be used to make different provision “for different purposes, for different cases and for different areas”. In the scenario described it would be open to Welsh Ministers to bring the transition period to an end in a staged way, allowing local authorities whose task of removing reliance on for-profit providers is more difficult to have more time but introducing full implementation for other areas sooner.

- 9. Section 4(3) of the Bill inserts a new regulation-making power which enables the Welsh Ministers to specify enactments for the purposes of which the new paragraph 2(3) of Schedule 1A does not apply. Why are these enactments not listed in the Bill? The Statement of Policy Intent also states that the new powers in paragraph 2(4)(a) of Schedule 1A allow the Welsh Ministers to specify other instances where a provider should be treated as not meeting the not-for-profit requirement; what instances are envisaged here?**

We believe the only circumstances when the effects of paragraph 2(3) need to be disapplied are in relation to aspects of the regulatory regime in Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016. One additional circumstance where paragraph 2(3) needs to be disapplied is for the purposes of an application by a service provider under section 11(1)(a)(ii). We will review the need for the regulation-making power in paragraph 2(4)(b) of Schedule 1A prior to stage 2.

- 10. Section 11 inserts new section 75A into the 2014 Act relating to the preparation and publication of local authority annual sufficiency plans. On the face of the Bill, it appears that the new section 75A(2)(d)(iii) and (vi) are two separate regulation-making powers. However, the Explanatory Memorandum and Statement of Policy Intent refer to them in the singular. Can you confirm our understanding that there are two powers in section 75A(2)(d)(iii) and (vi)?**

The drafting of the Bill creates two separate regulation-making powers in section 75A(2)(d)(iii) and (iv) though they are similar in nature: one relating to information about for-profit accommodation providers in Wales and the other to information about private providers in England. They present as a pair and for that reason have

been referred to in the Explanatory Memorandum in the singular. This is inaccurate and we will amend the Explanatory Memorandum at the next opportunity.

**11. The Statement of Policy Intent sets out the reasons why a regulation-making power is needed in section 14 to set a time limit for the publication of an annual return. What time frame do you anticipate setting for this, and why would such a time frame ever need to be changed? Is a flexible time frame appropriate for the publication of an annual return?**

It is proposed the service provider should be required to publish the annual return within 30 days of submitting the report to the Welsh Ministers. We do not anticipate at this stage that this timescale will change, and we are not intending to provide a flexible timeframe for the publication of an annual return.

However, prescribing the timeframe within regulations, rather than on the face of the Act, will give Welsh Ministers the flexibility to extend or reduce the timescale should CIW encounter any unforeseen issues in practice.

**12. Section 19 of the Bill permits interim orders to be extended by a panel in fitness to practise cases. Section 19(1) states that the power is to extend the order for up to 18 months, but section 19(2)(b) requires that “the extension does not result in the interim order having effect for a period of more than 18 months”. This wording implies that the interim order as a whole, not just the extension, cannot endure for more than 18 months, which is different to what section 19(1) says. Can you clarify the intention here?**

Section 144(6)(b) of the Regulation and Inspection of Social Care (Wales) Act 2016 provides a fitness to practise panel with the power to set an interim order for up to a maximum of 18 months. However, if that panel initially makes an order for a shorter period and then finds that their investigations take longer and that there is a need to extend it, the panel does not have the power to do so. Section 148(1) requires the panel to apply to the First Tier Tribunal (the Tribunal) for an extension or a further extension to an interim order.

This creates an incentive for panels to routinely set the maximum deadline on interim orders, to minimise the administrative and cost burden of repeated applications to the tribunal. The amendment will provide a panel with the power to set an interim order for a period less than 18 months and then, if necessary, extend that interim order up to a maximum of 18 months without the need to apply to the tribunal. Any request for an interim order to go beyond 18 months would require the panel to apply to the tribunal as is the case currently.

We accept that there is a degree of ambiguity in the wording of the overview in section 19(1) and will review this ahead of Stage 2.

**13. Paragraph 7 of the new Schedule A1 to the 2014 Act, as inserted by section 20(2)(d) of the Bill, requires regulations made under the Schedule to specifically provide that direct payments under section 117 of the Mental Health Act 1983 have to reflect the amount that the local authority estimates**

**would be required to pay for the service in question. The power to make these regulations is a discretionary power, so if this power is not exercised, how will paragraph 7 be given effect? Why would it not be more appropriate to include these requirements about the direct payments on the face of the Bill?**

The ability of health boards to offer direct payments for mental health after care services is entirely contingent on the making of the Regulations – health boards will not be able to offer direct payments without the Regulations being in place and the statutory framework must therefore include the restriction discussed.

Paragraph 1 of the substituted Schedule A1 gives the Welsh Ministers the power to make regulations that require or allow a local authority to make direct payments in lieu of providing services to meet an individual's need for after-care services following detention under the Mental Health Act 1983.

Paragraph 7 of that Schedule contains a limitation on the use of the regulation-making power in paragraph 1.

The effect of this limitation is that should the Welsh Ministers exercise the power in paragraph 1 to make regulations to enable the making of direct payments for local authority-funded after care services they must include a provision which specifies that a direct payment for after care services must be at the rate the local authority estimates to be equivalent to the reasonable cost of securing or providing services to meet the assessed needs.

The inclusion of the requirement in paragraph 7 will have the effect of ensuring that an individual who chooses to receive a direct payment to secure their own services to meet their needs for local authority after care services will not be required to contribute to the costs of their direct payment by way of contribution or reimbursement because after care services must be provided free of charge.

The requirement of paragraph 7 could have been included on the face of the Bill but we do not see that this would be any more appropriate, or give any greater advantage, than the drafting approach which has been taken.

**14. Section 20(2)(a), (d) and (e) insert new provisions with regulation-making powers into the 2014 Act. The Explanatory Memorandum states that these powers replace existing powers, but then later goes on to say that “the negative procedure would be more appropriate”. This gives the impression that the scrutiny procedure has changed for these powers, can you confirm whether this is the case and why the Explanatory Memorandum uses this wording?**

The phrase “the negative procedure would be more appropriate” is used to convey that procedure is more appropriate than the affirmative procedure in a general sense, rather than as a specific change to the procedure which applied to the provisions as drafted in the 2014 Act. As the explanation in the last column in the

relevant row of the table in Chapter 5 states, the procedure applied is the same one which applies to the existing powers in the 2014 Act.

- 15. Section 24(2) of the Bill inserts a new section 10B into the National Health Service (Wales) Act 2006 (“the 2006 Act”), which makes reference to a person lacking capacity. This term is given a meaning by the new section 10B(8)(b) of the 2006 Act, but it is defined with reference to the Mental Capacity Act 2005 as a whole. The phrase is given meaning by section 2 of that Act, so why is the reader not directed to that provision?**

Defining “mental capacity” by reference to the Mental Capacity Act 2005 generally as opposed to a more specific reference to section 2 is the more common practice in the statute book. It is the same formulation used in section 197(5) of the 2014 Act.

- 16. Section 24(2) of the Bill inserts a new section 10C into the 2006 Act, which allows the Welsh Ministers to make regulations relating to direct payments. Some of the matters that such regulations may cover, as indicated in the new section 10C(2), are detailed and potentially complex. Why do you consider that the negative scrutiny procedure is appropriate for such regulations?**

The regulations will set out technical matters relating to the administration and operation of the direct payments and so the negative procedure would be appropriate. The procedure set out in the Bill mirrors the use of the negative procedure for the existing powers to make regulations in relation to direct payments in social care. Although there is a level of complexity in the detail, the important points of principle are set out in the enabling powers.

- 17. Section 28(2)(a) of the Bill contains a Henry VIII power and it allows regulations to “amend, modify, repeal or revoke any enactment”. Section 28(3) sets the requirements for which delegated powers in the Bill, when exercised, will be subject to the draft affirmative procedure. This provision only refers to “amend, modify or repeal”. The Explanatory Memorandum further describes the draft affirmative scrutiny procedure applying when regulations “amend, repeal or otherwise modify”, while the Statement of Policy Intent uses the phrasing “amend or repeal”. Can you provide clarification as to whether you intended any difference in meaning or application of the provision in section 28(3), and explain the drafting inconsistencies.**

The reason that section 28(2)(a) refers to “amend, modify, repeal or revoke” and section 28(3) refers to “amend, modify or repeal” only is that “revoke” is the term which applies to the removal of provisions in secondary legislation and section 28(3) is only concerned with effects on primary legislation.

The omission of a reference to regulations which “modify” primary legislation is an inaccuracy in the Statement of Policy Intent but has no practical impact or implication.

The reference in the Explanatory Memorandum to regulations which “otherwise modify” is wording which acknowledges that, in non-legal parlance, amendment and repeal are ways in which legislation can be modified.

**Dawn Bowden AS/MS**  
Y Gweinidog Gofal Cymdeithasol  
Minister for Social Care



Llywodraeth Cymru  
Welsh Government

Mike Hedges MS  
Chair  
Legislation, Justice and Constitution Committee  
Senedd Cymru

[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

28 June 2024

Dear Mike,

When I attended the Committee to give evidence regarding the Health and Social Care (Wales) Bill earlier this month, I offered to write with a more detailed explanation of the government's consideration of Convention Rights in relation to Part 1, Chapter 1 of the Bill (provision of social care services to children: restrictions on profit). Please find attached a note on this topic. I am also sharing this note with the Chair of the Health and Social Care Committee.

I will respond to the other questions you have raised in your letter of 18 June in due course, but I wanted to provide this to you as soon as possible.

Yours sincerely

**Dawn Bowden AS/MS**  
Y Gweinidog Gofal Cymdeithasol  
Minister for Social Care

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Consideration of Convention Rights in relation to provision of social care services to children:  
restrictions on profit

Part 1, Chapter 1 of, and Schedule 1 to, the Health and Social Care (Wales) Bill introduce new eligibility requirements for registration under the Regulation and Inspection of Social Care (Wales) Act 2016 (RISCA) for those who wish to provide care home services or fostering services for children in Wales, and restrictions on the circumstances in which local authorities can place children with providers who do not meet the new requirements.

The requirements on providers of care home services for children and fostering service providers include being legally constituted as one of a certain type of legal entity specified in the Bill (that will prevent the extraction of private profit), having objects or purposes that primarily relate to the welfare of children or another prescribed public good, and complying with certain rules on financial arrangements.

The provisions of the Bill also pursue the aim of ensuring that children in the care of local authorities are looked after in services which have the primary purpose of improving the welfare of children, instead of the maximisation of profit.

The Welsh Government has carefully considered the impact of the Bill's provisions both on providers' businesses and on children looked after, including detailed consideration of Convention Rights:<sup>1</sup>

- Article 1 of Protocol 1 (A1P1) to the Convention Rights (the right to enjoyment of possessions);
- Article 8 of the Convention Rights (right to respect for family and private life, home and correspondence), and
- Article 14 of the Convention Rights (protection from discrimination in the enjoyment of Convention Rights).

The Welsh Government acknowledges that what is being proposed will interfere with the property rights of for-profit providers of children's home services and fostering services. It could potentially engage Article 8 if a child's placement is terminated by a provider. However, the transitional provisions in the Bill enable for-profit providers already providing a service to the child to continue to operate so as to not disturb a child's existing placement.<sup>2</sup> Even if there is an interference with Article 8 rights the Welsh Government is of the view that it would be justified and proportionate for the same reasons as under A1P1, as explored in more detail below.

As there are currently no registered for-profit providers of secure accommodation services in Wales, any impact on these services is a potential impact on future establishment and therefore is outside of the scope of Convention Rights which do not protect the right to future possessions.

The aim of the provisions of the Bill is a vitally important one: to achieve a more sustainable children's social care sector and to ensure improved services and life outcomes for children looked after by local authorities in Wales. The aim is to ensure

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<sup>1</sup> See sections 108A(2)(e) and 158(1) of the Government of Wales Act 2006 for the definition of "Convention Rights".

<sup>2</sup> See also the consideration of children's rights impacts in the Explanatory Memorandum to the Bill.

that public money invested in the care of children looked after does not profit individuals or corporate entities, but instead is spent on children's services to deliver better experiences and outcomes for children and young people. The aim is to eliminate private profit from the care of children looked after, in order to develop services that are locally based, locally designed and locally accountable, and that improve the care experience for young people.

The provisions are carefully designed to strike a fair balance between the need to achieve these important aims on the one hand and (a) avoiding disruption in the lives of children looked after and (b) managing the impact on providers, and the need to allow time for the business adjustments which they will have to make.

The current market is dysfunctional and, in the view of the Welsh Government, unsustainable in its current form. This dysfunction in the market has deleterious impacts on service provision in Wales and thereby, the well-being and life outcomes of children looked after by local authorities in Wales. The Welsh Government has concluded that the maintenance of the status quo is not, therefore, an option.

The Bill, however, is one important part of an overall package of measures the Welsh Government is taking forward to deliver a new vision for Children's Social Care, focussed on values and needs. It is about fundamentally changing how it provides services to children and their families through community-based services that safeguard and promote the welfare of the young person.

The Welsh Government wants to see fewer children and young people entering care and improvement in the services provided to those that do enter care. For those young people looked after by their local authority, we want a system-wide approach so they remain close to home, can continue to be part of their community and for any stay in care to be as short as possible; consistent with best meeting their needs and supporting better outcomes.

The Welsh Government has concluded that although the potential for profit has an effect of drawing private capital and private enterprise into the area, the ability of for-profit providers to extract profit from the system puts the sustainability of the children's social care sector at risk and has an adverse effect on outcomes for children.

The impact of profit extraction in children's residential and foster care is an under-researched area.<sup>3</sup> However, whilst there is no categorical evidence that the policy will provide guaranteed better outcomes for children or that residential care would be cheaper, there is evidence that for-profit services are more likely to be rated as low quality when compared with not-for-profit and local authority service providers,<sup>4</sup> that

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<sup>3</sup> Ablitt, Jonathan, Jimenez, Patricia & Holland, Sally (2024). *Eliminating Profit from Children's Residential and Foster Care Evidence Review*, available at [Eliminating profit from children's residential and foster care: evidence review | GOV.WALES](#)

<sup>4</sup> Bach-Mortensen, A.M., Goodair, B. and Barlow, J., (2022). Outsourcing and children's social care: A longitudinal analysis of inspection outcomes among English children's homes and local authorities. *Social Science & Medicine*, 313, 115323, <https://doi.org/10.1016/j.socscimed.2022.115323> .

for-profit fostering agencies are more likely to use inexperienced foster carers,<sup>5</sup> and that greater use of outsourcing to for-profit providers of residential care is associated with greater levels of placement instability<sup>6</sup> and higher levels of out of area placements.<sup>7</sup> There is evidence that the cost of placements with independent fostering agencies is higher than local authority fostering services.<sup>8</sup>

There is also evidence that the provisions in the Bill (coupled with the investment of £68 million in developing local authority/not for profit/third sector provision) are likely to lead to better outcomes for children in residential care homes, based on a reduction in out of area placements and better local commissioning to meet needs. The planning and design of residential care placements will be driven by the needs of children, and not by the overarching requirement to make a profit.

The Competition and Markets Authority found in its market study of the supply of children's social care in England, Wales and Scotland that a highly fragmented, complex and dysfunctional market means individual local authorities find it hard to plan for and provide their own residential and foster care. The report found that a lack of placements of the right kind, in the right places, means that children are not consistently getting access to care and accommodation that meets their need. The report concluded that the largest private providers of placements are making materially higher profits, and charging materially higher prices, than would be expected if the market were functioning effectively.

All these factors have been amplified by the rise in the number of children being looked after by local authorities in Wales. The Welsh Government's reform of the arrangements for the provision of these services goes hand in hand with the steps taken to bring these numbers down and to enable local authorities to apply greater resources to the task of helping families stay together.

The Welsh Government understands the concern that care provided to children who are unable to be safely cared for by their birth families by providers that extract private profit from those services can be viewed as the commoditisation of those children. The Welsh Government has been told by children and young people in care, and by Voices from Care and the Children's Commissioner for Wales that children and young people have strong feelings about being cared for by privately owned organisations that extract a private profit from their experience of being in care.

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<sup>5</sup> Sellick, C. and Connolly, J. (2002). Independent fostering agencies uncovered: The findings of a national study. *Child and Family Social Work*. 7(2): 107-120, <https://doi.org/10.1046/j.1365-2206.2002.00235.x> ; and Steen, J. and Smith, S. (2012). An organizational view of privatization: Is the private foster care agency superior to the public foster care agency? *Children and Youth Services Review*. 34: 851-858, <https://doi.org/10.1016/j.childyouth.2012.01.016> .

<sup>6</sup> Bach-Mortensen, A.M., Goodair, B. and Barlow, J., (2023). For-profit outsourcing and its effects on placement stability and locality for children in care in England, 2011–2022: A longitudinal ecological analysis. *Child Abuse & Neglect*, 144, 106245, <https://doi.org/10.1016/j.chiabu.2023.106245> .

<sup>7</sup> See note 6 above.

<sup>8</sup> See Sellick and Connolly 2002 at note 5 above; Narey, M. and Owers, M. (2018). *Foster Care in England*, available at [Foster Care in England: Review \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744442/foster-care-in-england-review-2018.pdf), and Competition and Markets Authority, (2022). *Children's social care market study final report*, available at [Children's social care market study final report - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/111111/childrens-social-care-market-study-final-report-2022.pdf) .

Consideration of Convention Rights in relation to provision of social care services to children:  
restrictions on profit

Despite the impact on the rights of for-profit providers, the Welsh Government considers that provisions of the Bill are proportionate in their overall effect. The aims being pursued are of vital importance, and the Welsh Government considers that the provisions in the Bill will advance those aims. The Welsh Government considered alternatives to the elimination of profit, such as capping fees and/or profit, limiting dividends or setting a percentage of profit that must be reinvested in the service provided by the provider. However, such alternatives would either be administratively complex and would cost considerable sums to operate (thereby reducing the funding available for meeting the needs of children) or would not deliver the fundamental change which the Welsh Government considers is required.

The Bill's provisions provide for a transition period to avoid disruption for children already placed with providers who will become ineligible to provide the service(s) and to allow local authorities to use available capacity in that sector during the period while local authorities are building up sufficient numbers of placements themselves and with not-for-profit providers.

During this transition period local authorities in Wales can apply to the Welsh Ministers for approval to place a child with a for-profit provider that does not meet the new requirements, subject to certain conditions and safeguards. This ensures that the rights of children are protected and that the impact on placement-choice is limited while the sector transitions to the new model of care. It also provides time for for-profit providers to convert to an eligible not-for-profit business model or make other business adjustments.

In conclusion, we are confident that these provisions of the Health and Social Care (Wales) Bill are compatible with Convention Rights and will bring about positive change for children and families in Wales. We look forward to working with the Senedd and stakeholders to ensure its successful implementation.

Dawn Bowden MS  
Minister for Social Care

18 June 2024

Dear Dawn

**Health and Social Care (Wales) Bill**

Thank you for attending our meeting on Monday 17 June 2024 to discuss the Health and Social Care (Wales) Bill. We have a number of additional queries relating to the Bill. As such, I would be grateful if you would respond to the questions in the Annex to this letter by Tuesday 9 July 2024.

Thank you also for agreeing to provide:

- I. Full details of the Welsh Government's assessment of the Bill's impact on children and their families, with particular reference to Article 8 of the European Convention on Human Rights, and the impact on service providers, with particular reference to Article 1 of the First Protocol to the Convention.
- II. Further details on what you consider "public good" to mean in the context of new section 6A(3)(b) being inserted into the 2016 Act (via section 3 of the Bill).

I am copying this letter to the Health and Social Care Committee.

Yours sincerely,



Mike Hedges  
Chair

## ANNEX

**Question 1** - What discussions have you had with the other UK administrations regarding the provisions and policy objectives of the Bill?

**Question 2** – Why have you decided to make reference to the elimination of private profit from the care of looked after children in the various explanatory documentation to the Bill, rather than referencing the fact that the Bill makes provision to restrict making a profit?

**Question 3** - With regard to the restriction of profit-making for restricted children's services, the timelines for delivering this are not clear. The new Schedule 1A to the *Regulation and Inspection of Social Care (Wales) Act 2016* ("the 2016 Act") provides that the transitional period begins with the day on which section 6A(1) of the 2016 Act comes into force. According to paragraph 3.42 of the Explanatory Memorandum, section 6A(1) will come into force on 1 April 2026, but paragraph 3.42 also states that existing "for profit" providers will be subject to transitional provisions from 1 April 2027. Can you provide clarification regarding the dates, please?

**Question 4** - Section 2 of the Bill inserts definitions into the 2016 Act, one of which relates to a care home service that is provided wholly or mainly to children. To fall within the definition, a provider will need to show that it intends to provide more days of accommodation to children than adults over a set period, but the Bill does not provide any detail about how this intention is to be demonstrated or assessed in practice. It also doesn't make it clear whether the periods of time referred to must be continuous or not, i.e. if it is a 12 month period with the previous 24 months, does this mean 12 continuous months or any 12 individual months within the preceding 24 months? Do you have any concerns that this may lead to confusion about what constitutes a care home service in this context?

**Question 5** - The new section 6A(3) of the 2016 Act, as inserted by section 3(3) of the Bill, refers to a person's objects or purposes primarily relating to certain matters, however no information is provided as to how objects or purposes are to be determined. What is the reason for the omission of this detail? It appears from the wording of the new section 9A(1)(b), as inserted by section 6(3) of the Bill, that some form of determination method has been contemplated as that refers to "objects or purposes as determined in accordance with section 6A(3)", but the method of determination is not apparent from the wording of the Bill.

**Question 6** - The Bill defines some terms with reference to existing legislation, for example, "looked after children", "company having share capital" and "substantial interest in a body corporate". However, there is a risk of confusion as "looked after children" is defined with reference to section 74 of the *Social Services and Well-being (Wales) Act 2014* ("the 2014 Act"), but section 74 does not use this term. Similarly, "company having share capital" and "substantial interest in a body corporate" are given specific meanings in the Bill, but the phrases are not used in such forms in the Bill. Can you

explain why this approach has been taken and, on reflection, do you consider that the drafting of these provisions could be clearer?

**Question 7** - The new Schedule 1A to the 2016 Act, as inserted by section 4(3) of the Bill, refers to a service being “provided wholly or mainly to children”. This phrase is given a specific meaning in the new section 2A of the 2016 Act, as inserted by section 2(2) of the Bill, but this meaning is stated to only apply in section 2A(1). Is it intended that the phrase should have the same meaning in Schedule 1A as it does in section 2A(1), and if so, do you think that the drafting reflects this? The same issue applies in relation to section 75(4) of the 2014 Act, as amended by section 10(6) of the Bill, which uses the phrase “wholly or mainly to children” but offers no explanation as to how this is to be determined.

**Question 8** - Section 4(3) inserts a proposed new paragraph 1(1)(b), in a new Schedule 1A to the 2016 Act. Paragraph 1(1)(b) specifies that the transitional period for a restricted children’s service ends with the day appointed by the Welsh Ministers by regulations. In the Statement of Policy Intent you state that “The power recognises that it will be necessary to consider the progress of local authority disengagement from the use of for-profit placements in order to determine the appropriate point at which to bring the transition period to a close”. If one local authority, for whatever reason, struggles to disengage from the use of for-profit placements, does this mean the transition period across Wales will continue for all local authorities until all are ready?

**Question 9** – Section 4(3) of the Bill inserts a new regulation-making power which enables the Welsh Ministers to specify enactments for the purposes of which the new paragraph 2(3) of Schedule 1A does not apply. Why are these enactments not listed in the Bill? The Statement of Policy Intent also states that the new powers in paragraph 2(4)(a) of Schedule 1A allow the Welsh Ministers to specify other instances where a provider should be treated as not meeting the not-for-profit requirement; what instances are envisaged here?

**Question 10** – Section 11 inserts new section 75A into the 2014 Act relating to the preparation and publication of local authority annual sufficiency plans. On the face of the Bill, it appears that the new section 75A(2)(d)(iii) and (vi) are two separate regulation-making powers. However, the Explanatory Memorandum and Statement of Policy Intent refer to them in the singular. Can you confirm our understanding that there are two powers in section 75A(2)(d)(iii) and (vi)?

**Question 11** – The Statement of Policy Intent sets out the reasons why a regulation-making power is needed in section 14 to set a time limit for the publication of an annual return. What time frame do you anticipate setting for this, and why would such a time frame ever need to be changed? Is a flexible time frame appropriate for the publication of an annual return?

**Question 12** - Section 19 of the Bill permits interim orders to be extended by a panel in fitness to practise cases. Section 19(1) states that the power is to extend the order for up to 18 months, but section 19(2)(b) requires that “the extension does not result in the interim order having effect for a

period of more than 18 months". This wording implies that the interim order as a whole, not just the extension, cannot endure for more than 18 months, which is different to what section 19(1) says. Can you clarify the intention here?

**Question 13** - Paragraph 7 of the new Schedule A1 to the 2014 Act, as inserted by section 20(2)(d) of the Bill, requires regulations made under the Schedule to specifically provide that direct payments under section 117 of the *Mental Health Act 1983* have to reflect the amount that the local authority estimates would be required to pay for the service in question. The power to make these regulations is a discretionary power, so if this power is not exercised, how will paragraph 7 be given effect? Why would it not be more appropriate to include these requirements about the direct payments on the face of the Bill?

**Question 14** - Section 20(2)(a), (d) and (e) insert new provisions with regulation-making powers into the 2014 Act. The Explanatory Memorandum states that these powers replace existing powers, but then later goes on to say that "the negative procedure would be more appropriate". This gives the impression that the scrutiny procedure has changed for these powers, can you confirm whether this is the case and why the Explanatory Memorandum uses this wording?

**Question 15** - Section 24(2) of the Bill inserts a new section 10B into the *National Health Service (Wales) Act 2006* ("the 2006 Act"), which makes reference to a person lacking capacity. This term is given a meaning by the new section 10B(8)(b) of the 2006 Act, but it is defined with reference to the *Mental Capacity Act 2005* as a whole. The phrase is given meaning by section 2 of that Act, so why is the reader not directed to that provision?

**Question 16** – Section 24(2) of the Bill inserts a new section 10C into the 2006 Act, which allows the Welsh Ministers to make regulations relating to direct payments. Some of the matters that such regulations may cover, as indicated in the new section 10C(2), are detailed and potentially complex. Why do you consider that the negative scrutiny procedure is appropriate for such regulations?

**Question 17** - Section 28(2)(a) of the Bill contains a Henry VIII power and it allows regulations to "amend, modify, repeal or revoke any enactment". Section 28(3) sets the requirements for which delegated powers in the Bill, when exercised, will be subject to the draft affirmative procedure. This provision only refers to "amend, modify or repeal". The Explanatory Memorandum further describes the draft affirmative scrutiny procedure applying when regulations "amend, repeal or otherwise modify", while the Statement of Policy Intent uses the phrasing "amend or repeal". Can you provide clarification as to whether you intended any difference in meaning or application of the provision in section 28(3), and explain the drafting inconsistencies.

**Dawn Bowden AS/MS**  
Y Gweinidog Gofal Cymdeithasol  
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28 June 2024

Dear Russell

Thank you for your letter of 12 June following my appearance before the Health and Social Care Committee on 6 June to discuss the Health and Social Care (Wales) Bill. I look forward to coming back to the Committee on 17 July to discuss the Bill further.

During the Committee session I committed to provide further information on a number of issues. This, along with responses to the additional questions included in your letter, is attached at Annex A.

Please note that this letter is focused on the queries relating to the Bill. I am writing separately to you on identified priorities, as well as some broader matters that were discussed throughout the session.

I am copying this letter to the Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely

**Dawn Bowden AS/MS**  
Y Gweinidog Gofal Cymdeithasol  
Minister for Social Care

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

## Human rights considerations

- 1. What is your assessment of the human rights considerations in relation to this Bill, particularly as to whether the provisions of the Bill restricting the ability to make profit could engage the rights under Article 8, and the right to peaceful enjoyment of possessions under Article 1 of the First Protocol to the European Convention on Human Rights? Have any other rights been considered?**

We have carefully considered the impact of the Bill's provisions including the impact on Convention Rights in relation to Part 1, Chapter 1 of the Bill, dealing with the provision of social care services to children: restrictions on profit. I am providing a note on this jointly to the Health and Social Care Committee and the Legislation, Justice and Constitution Committee. The note is attached at Annex B.

## Principle behind legislation

- 2. In your statement on introducing the Bill, you said the starting point for this legislation was the principle of not making profit from the care of vulnerable people. There is also reference to children and young people's views on profit being a key driver for the Bill. What consideration has the Welsh Government given to removing profit from children's social work agency staff, given the latest figures suggest 17.5% of children's social workers in Wales are employed by an agency.**

In line with our Programme for Government commitment, our focus is on the provision of care and support to children looked after and the acute challenges associated with the extraction of profit within that sector. There are no plans to broaden the parameters of our proposals.

Focussing on consistency in the workforce, our aim is to reduce the number of agency staff. The Association of Directors of Social Services Cymru (ADSSC) is leading the "All-Wales Pledge – Stabilising Children's Recruitment Agencies" bringing local authorities together in 2023 to develop a Memorandum of Co-operation for Wales. This looks at setting consistent agency pay rates across Wales, and a set of principles local authorities will adapt in engaging their agency workforce.

The ADSSC annual report demonstrates a reduction in the use of agency workers within local authority services between 1 July 2023 and 1 January 2024, (from 320 in October 2023 to 280 in January 2024). Positively, there has been an increase in agency staff transitioning into permanent roles - in the same timeframe, 27 agency workers transitioned to permanent social workers. Local authorities have committed to working with ADSSC to continue the programme in to 2024-25.

More generally, we recognise that in order to help achieve our ambitions for the children's social care sector we need a robust and sustainable approach to recruitment and retention of the workforce.

Social Care Wales (SCW) has embedded "We Care Wales" the first national profile-raising campaign for careers in social care, early years, childcare and play, into all aspects of its work to help attract, recruit and retain workers into the sector.

In the coming months, SCW will work with the sector to improve sector recruitment and retention practices, including the development of a retention framework and resources to support good employment practice – i.e. retention and exit interviews, succession planning guidance and safer recruitment guidance.

We also continue supporting employers interested in recruiting international social workers ethically and sustainably. 116 internationally qualified social workers have applied to register with SCW since December 2022. This upward trend is continuing.

### **Unreasonable or inappropriate payments**

**3. Section 6 of the Bill requires the Welsh Ministers to consider whether, amongst other matters, a provider of a restricted children’s service has entered into a financial arrangement with a relevant person which is unreasonable or disproportionate in all the circumstances. Other key phrases in this provision have been given a specific meaning in the Bill, but “unreasonable or disproportionate” has not. What do you consider would constitute an unreasonable or disproportionate financial arrangement for the purposes of the Bill, and why have you chosen not to define this term on the face of the Bill?**

New section 9A(2) of the Regulation and Inspection of Social Care (Wales) Act 2016, as inserted by the Bill, sets out a range of matters to which regard must be had when determining whether an unreasonable or disproportionate financial arrangement has been entered into. These include:

- (a) the size or value of the arrangement and its purpose (including the extent to which it relates to the provision of the restricted children’s service);
- (b) the size or value of the arrangement relative to the amount of income the service provider receives from providing the restricted children's service;
- (c) the proportion of the service provider’s total income that comes from providing the restricted children's service;
- (d) the well-being of children who receive care and support (in the provision of the restricted children's service).

The other element of the test, alongside consideration of whether a payment is unreasonable or disproportionate, is whether it is likely to undermine the provider’s pursuit of its objects or purposes. A provider of a restricted children’s service must have objects or purposes which primarily relate to the welfare of children (or such other public good as may be specified in regulations). Making disproportionate payments to directors or connected persons is not likely to be consistent with the pursuit of the provider’s objects or purposes.

Whether a payment is unreasonable or disproportionate will therefore be a matter of judgement, taking into account a variety of different factors and circumstances. It would not therefore have been appropriate to try to define the term on the face of the Bill and payments and other financial arrangements will need to be consistent with a provider’s pursuit of its objects or purposes.

### **Regulation making powers**

**4. The provisions relating to the restriction of profit-making include a number of regulation making powers.**

- a) **Why has this approach been taken rather than including more information on the face of the Bill, for example, why can “public good” not be defined on the face of the Bill?**
- b) **Table 5.1 says this approach permits “future-proofing”. What aspects do you consider may need potential changes in the future?**
- c) **Why have you chosen to apply the negative procedure to the majority of the regulation making powers relating to restricting profit, with the result that the Senedd has limited opportunity to scrutinise them?**
- d) **How did you decide which powers would be subject to the draft affirmative procedure, and why have you chosen to apply a different procedure on some occasions to the first time a power is exercised, as opposed to any other time?**

The Bill strikes an appropriate balance between the detail included on its face and the detail to be included in subordinate legislation. The Welsh Government’s starting point is always that as much detail as possible should be placed on the face of the Bill. This Bill includes a significant amount of detail on the face of the legislation.

Where there are powers to make subordinate legislation, these powers are aligned with the existing statutory frameworks and procedures into which they are being incorporated. Many of the new powers mirror existing powers, as outlined in Chapter 5 of the Explanatory Memorandum.

With regard to the specific example about why public good has not been defined on the face of the Bill, the power under section 6A(3)(b) will allow Welsh Ministers to prescribe what is an additional acceptable “public good” to which the objectives or purposes of a person proposing to provide a restricted children’s service must primarily relate, thus permitting Ministers to review the operation of the not-for-profit test and to broaden the range of permitted objects and purposes if there are indications that “welfare of children” alone is too narrow and is excluding organisations whose objects or purposes are wider in scope but which include promotion of the welfare of children.

In terms of considering which powers would be subject to the draft affirmative procedure, and which would be subject to the negative procedure, the Welsh Government has guidelines on factors which should inform its consideration and choice of procedure: [Subordinate legislation: guidelines on choice of affirmative and negative procedure | GOV.WALES](#) . Chapter 5 of the Explanatory Memorandum sets out some of these factors as they have been identified in relation to individual subordinate legislation making powers in the Bill.

Regarding the reasons for applying the negative procedure to many of the regulation-making powers in Part 1, Chapter 1, of the Bill, there are a number of powers to specify information that will be required from providers or local authorities for certain purposes, or for that information to be provided in a prescribed form. These are administrative, technical matters for which the negative procedure is more appropriate. The powers in relation to requiring information from providers also, in several cases, mirror existing powers in the Regulation and Inspection of Social Care (Wales) Act 2016 (the 2016 Act), and the procedure reflects that in the corresponding power already in the 2016 Act.

There are three powers in the Bill where the draft affirmative procedure would be followed when the power is first exercised, and the negative procedure would be followed on subsequent occasions. The reasons for each of these is set out in Chapter 5 of the

Explanatory Memorandum. In relation to the powers at section 7(a) and section 7(b) of the Bill, these mirror existing powers in the 2016 Act, where some powers to specify information included in the annual return are subject to the draft affirmative procedure when first exercised and afterwards are subject to the negative procedure. Making the first set of those regulations subject to the draft affirmative procedure was an amendment made to the Regulation and Inspection of Social Care (Wales) Bill during scrutiny of the Bill, in response to a point raised by the Assembly's Constitutional and Legislative Affairs Committee.

In relation to the power at section 24 of the Bill, where it inserts new section 10B(5) into the National Health Service (Wales) Act 2006, as explained in Chapter 5 of the Explanatory Memorandum, it is our view that the first exercise of the power, which would enable the discharge of Local Health Board (LHB) duties under the Mental Health Act 1983 in a new way, merits a different type of scrutiny than would be appropriate in relation to any subsequent exercise of the power, which would not involve the consideration of the principle of enabling the discharge of an LHB duty to provide care in a different way.

## Reference to Unregistered Placements

**5. Section 13 sets out the ways in which looked after children are to be accommodated in “the most appropriate placement”. The Explanatory Notes state that a placement can be in “unregistered accommodation (on a temporary basis or in cases of urgency)”, a reference not in the 2014 Act and not on the face of this Bill. The Bill uses the same terminology as the definition of placements in the existing s81(6)(d), which states that a placement can be made in accordance with arrangements that comply with regulations made for the purposes of that section (currently the Care Planning, Placement and Case Review (Wales) Regulations 2015). Can you clarify what has changed, if anything, in respect of unregistered placements?**

The intention was to refer to accommodation where there is no requirement to register because the placement is not with a foster carer and the arrangements fall outside the definition of “a care home service”. There are a variety of circumstances where a local authority can decide to place a child in a setting other than foster care or a children's home. The most common example of this is where a local authority places an older child aged 16 or 17 in supported accommodation as preparation for independent living.

We are aware that more recently usage of the terms “unregistered accommodation” and “unregulated accommodation” have tended to distinguish the two things, the term *unregistered accommodation* being used to refer to arrangements which fall within the scope of activity where there is a requirement to register but where the provider is not in fact registered and *unregulated accommodation* being used to refer to arrangements which fall outside the scope of regulated activity and therefore where registration is not required. That is not the sense in which “unregistered” is used here.

## Risks of undermining practices

**6. What have you identified as the full range of risks that could mean that the policy aims of the Bill are undermined by practices which go against its spirit and intention, such as the charging of excessive fees by parent companies of not-for-profit services, which could amount to the taking out of profit by other means. How have all of these risks been mitigated in the Bill?**

Ensuring the policy is not undermined by practices which go against its spirit and intention was an area of concern expressed in responses to our consultation on the Bill. This is a new policy and it is not possible at this stage to anticipate the full range of ways in which an organisation, registered as a restricted children's service, may seek to extract profit.

The provisions in the Bill relating to new section 9A have been drafted in the way they have to allow Welsh Ministers to have regard to a range of different factors and circumstances in determining whether a financial arrangement is one which undermines the policy intention, thereby giving flexibility to mitigate any risks that may arise.

## **Wales wide/regional commissioning**

**7. The Competition and Markets Authority's assessment of the position in Wales is that "a ban or profit cap is not necessary to deliver a well-functioning placements market". It emphasises the need for improved commissioning and refers to procurement collaboration occurring nationally, saying "we are clear that excessive fragmentation in the processes of forecasting, market-shaping and procurement are key drivers of poor outcomes in this market, and must therefore be addressed if we are to see significant improvement in the outcomes." What consideration did you give to changing the current local authority-based arrangements, and why did you not pursue the option of regional or national forecasting and commissioning?**

There is a growing evidence base regarding for-profit provision for looked after children. It supports the view that the existing arrangements in Wales (and in other parts of the UK) are not working. They do not lend themselves to creating a landscape of care and support provision that best meets needs, is locally based and provides value for money.

This evidence base is set out in detail in the Explanatory Memorandum, but in essence what this shows is:

- both placement stability and proximity to home has deteriorated over the past decade, in part due to problems around supply and access.
- private providers can choose to work across borders and set up homes unannounced particularly in areas where property prices are lower. New providers can also set up in parts of Wales and fill places with children from outside Wales.
- some for-profit providers carry remarkably prominent levels of debt, creating a risk of disorderly failure which could further threaten the placements of those in care.
- higher staff turnover and changing hierarchies in larger companies meaning that young people lose continuity in relationships with staff and management.

It could be argued that better regional and national commissioning, planning, forecasting around provision may improve the effectiveness of for-profit provision.

The Welsh Government recognises the importance of improving commissioning practice for social care in Wales and is taking a range of actions, including the inclusion of commissioning within the responsibilities of the recently established National Social Care Office and the development of a dedicated code of practice under the 2014 Act in relation to commissioning.

However, the CMA report concluded this arrangement can only work well when the various conditions perform optimally which they rarely do. Those conditions include new providers

being able to enter the market and grow, active competition, providers being able to exit the market easily, that people can make informed choices about their care, and that there are sufficient levels of funding to achieve those aims.

A 2020 ADSSC report into rebalancing of children's social care found that provider dominance is such that, even when a local authority has robust commissioning practices in place there is a risk of a placement being ended if a provider is challenged about the quality of care or outcomes. Providers know demand is such they can always fill a place and pick and choose the type and location of services they offer.

The conclusion of the CMA is that the inability of local authorities to consistently and effectively oversee and engage with the market in the face of an insufficient supply of appropriate placements is one of the root causes of the inefficient functioning of the market. This conclusion is a strong indicator that successful change in this regard requires the outside stimulus of legislation to provide the sector with the requirements and controls to deliver a sustainable system of care with a greater emphasis placed on what is needed rather than what is profitable.

### **Investment in the Bill to date**

#### **8. How many new 'not for profit' placements have been created to date as a result of the £68 million allocated by the Welsh Government. What percentage does this represent in the forecast need for placements. What will be the annual financial commitment from Welsh Government going forward to develop the not-for-profit provision?**

The investment of £68m in revenue funding over three years should be seen as enabling our approach, not a substitute for legislation. It is being used to bolster the ability of both the local authority and third sector to provide residential and foster care services, by developing workforce capacity, recruitment and skills.

Investment in beds and homes will require capital investment, not just revenue and we want to build on our broader capital investments across care and support for children's services.

Regional Partnership Boards have been allocated £25.4m from the Integrated Care Fund and Housing with Care Fund to deliver 40 residential accommodation schemes for children across Wales. Half of these are residential schemes for children with complex needs that will deliver 96 beds in total; of these, 5 are already operating with 15 beds.

Local authorities have an existing duty under the Social Services and Well-being (Wales) Act 2014 (the 2014 Act) to take steps to secure, so far as reasonably practicable, that they can provide accommodation within their own area. The statutory responsibility for forecasting needs therefore rests with them. We have been proactive in this area by asking local authorities to develop Placement Commissioning Strategies. All local authorities in Wales have been revising their Placement Commissioning Strategies for 2024-27, and looking at how they strengthen commissioning and forecasting, based on current and future need. A dynamic gap analysis is also underway and through the programme governance structures we have put in place local authorities will be developing a national implementation plan on how to achieve sufficiency of provision by April 2027.

We are still three years away from our intended implementation date of April 2027, with many providers having waited to see the provisions in the Bill before determining their futures. We will continue to work closely with all parts of the sector as we move closer to

April 2027 so as to ensure we have as accurate a picture as possible of local authority forecasting and modelling alongside provider intentions.

I recognise that local government finances are under pressure and whilst there is not an agreed budget beyond this financial year, these proposals are a high priority for Government and will be considered as part of the forthcoming budget round.

## **Regional variation**

### **9. What is the estimated percentage of private sector placements/not-for-profit placements by Welsh local authority?**

Please see the table at Annex C which has been provided by the Children's Commissioning Consortium Cymru.

## **Cross border implications for children placed from England and Scotland**

### **10. How many children do you estimate are currently placed in private placements in Wales by local authorities outside of Wales? How do you envisage their circumstances will be covered by the transitional arrangements within the Bill?**

The number of cross border placements into Wales is hard to reliably report as there is no requirement currently for the placing authority in England to inform the host authority in Wales. Data as at 14<sup>th</sup> June indicates 276 children were placed by English local authorities in Wales. Officials are working on a four nations basis in order to collectively improve data on this issue.

Under the transitional arrangements, existing for-profit providers will be able to continue operating in Wales after the provisions have come into force, subject to conditions imposed by Welsh Ministers. This means that any child placed by a Welsh or an English local authority will be able to remain in an existing placement with a for-profit provider in Wales if that is consistent with their well-being and if the provider chooses to remain in the market.

## **End date of the transition period**

### **11. The Bill as currently drafted allows for the end date of transition to be specified in regulations. What is the estimated range of dates you have considered and what is the latest date you would think is reasonable for transitional arrangements to end? Have you considered specifying the end on the face of the Bill with powers to amend that by regulation as a means of mitigating a lengthy transitional period which undermines the aims of the Bill?**

The length of the transitional period will be determined by a range of factors including the level of demand for placements in restricted services, and the speed of replacement of for-profit by not-for-profit provision. Any decision to bring the transitional arrangements to a close will need to be done in a manner and at a time which is compatible with Convention rights.

Given the many variables and the potential impact upon vulnerable children if their permanent placements were cut unduly short, it would not be prudent at this time to project and set on the face of the Bill when this optimum point will be reached.

The approach of specifying an end date on the face of the Bill with powers to amend it would have meant that children settled in placements with for-profit providers might be

aware of a date approaching by which their placement will automatically be ended, unless the date was extended by subordinate legislation. The end date could potentially be subject to multiple extensions to avoid disruption to children, but this could, in itself, be distressing for children who may be aware of the deadlines approaching and then being extended.

The requirements in the Bill in respect of sufficiency plans give robust direction to local authorities about putting in place a sufficiency of placement capacity and utilising the right type of provision and provider.

The Bill also lays out a structure and process that will require a local authority that considers any placement in for-profit provision is necessary to robustly justify that within its sufficiency planning; such placements (if to be made) would form part of the overall context of the local authority's sufficiency plan, to be approved (or not as the case may be) by the Welsh Ministers, and it would be necessary for the local authority to robustly justify its proposals to continue to utilise for profit provision.

Taken together these provisions will drive the development of local authority provision and ensure that progress is made year on year in order to achieve the aims of the Bill.

It is also worth noting that we are not relying solely on local authorities stopping their use of for-profit providers. We will also be placing restrictions on those providers which do continue to operate so that they will only be able to take new placements from Welsh and English local authorities in certain circumstances. The impact of these restrictions will over time create a business operating environment which will lead to such providers disappearing from the market in Wales so that ultimately, they only exist outside our borders.

## **Annual sufficiency plan**

**12. Section 11 places a new duty on local authorities to prepare and publish an annual sufficiency plan for accommodation for looked after children. Can you outline the sorts of reasons why the Welsh Government might anticipate rejecting a sufficiency plan? What will happen in the event that the second draft of a sufficiency plan is rejected, and why is the Bill silent on this?**

The Bill requires local authorities to prepare and publish an annual sufficiency plan before the beginning of each financial year. The plan must detail the steps the local authority will take in that year to fulfil its sufficiency duty and must include, for the financial year to which it relates certain information.

This information includes the estimated number of children the local authority will be looking after who it will be unable to place in not-for-profit provision; an assessment of the available accommodation as well as the extent to which that accommodation is within, or near to, the local authority's area.

The plan must also include prescribed information about for-profit and private providers who are likely to be named in applications for approval of supplementary placements, an estimate of the number of such applications that are anticipated and the reasons why that number of applications are likely to be made.

The requirements in the Bill in respect of the sufficiency plan therefore give robust direction to local authorities about putting in place sufficient placement capacity and utilising the right type of provision and provider.

These annual sufficiency plans will be reviewed by Welsh Ministers and carefully scrutinised to check that all the required information has been included and to consider whether what is set out in terms of progress towards not-for-profit provision is satisfactory. If not, Welsh Ministers may decline to approve the plan.

If the Welsh Ministers decide not to approve a plan they must notify the local authority of their decision and provide the reasons for it. They must also specify a period within which the local authority must submit a further draft of the plan.

The local authority must then submit a further draft of the plan, along with a report explaining how the authority has taken into account the reasons provided by the Welsh Ministers.

Subsection (4) of new section 75C of the 2014 Act (inserted by section 11 of the Bill) provides that the same process applies where the Welsh Ministers decide not to approve a further draft, and therefore it is clear that the Welsh Ministers may continue to withhold approval for successive iterations of a local authority's sufficiency plan. Whilst we do not anticipate that this is likely to happen, subsection (4) does make provision for this scenario.

It is envisaged this will be a structured and iterative process in which local authorities will need to robustly demonstrate satisfactory progress towards achieving their sufficiency duty. We anticipate that local authorities will respond positively to the feedback that comes from the Welsh Ministers when giving the reasons for decisions to withhold approval and any recourse to enforcement using the intervention powers under Part 8 of the 2014 Act is unlikely to be required.

### **Accommodation 'near to' the local authority**

**13. The Bill amends existing legislation so that local authorities will be required to take all reasonable steps to secure accommodation "near to" the child's local authority rather than "within" it. The EM suggests this is a more pragmatic approach that will allow for placements just over the local authority border.**

**What is your assessment of the potential unintended consequences arising from this, for example if local authorities are under pressure, children could be more likely to be placed further away from their home area because of placement availability rather than their 'best interest'?**

Our intention is not to change what is in the best interest of the child. If the professional view is that the child should be within the local authority area, then the references to "near" in the sufficiency plan provisions are not intended to change that.

Local authorities are best placed to identify, commission and deliver the services children and young people need, either within their area or by pooling resources regionally, as is the case with broader health and social care provision in Wales through our Regional Partnership Boards. There may be opportunities to make placements near to children's communities that are across a local authority boundary but are closer to a child's home community than an alternative placement at the other end of a local authority area, our pragmatic approach allows for this and facilitates greater partnership working to create new provision regionally.

As I have stated, I expect local authorities to use the next three years to rapidly accelerate their care reduction policies and programmes as well as to develop sufficient alternative placements.

## Supplementary placements

### **14. Can you confirm that supplementary placements will have to be outside of Wales after the end of the transition period, given that not for-profit-providers cannot legally register here under the Bill's provisions?**

Yes. Once all transitional arrangements have ended, any placement of a child in for-profit provision would need to be outside of Wales as it would not be possible to be registered as a for-profit provider in Wales. However, given sufficiency of not-for-profit provision will be a dominant factor in determining whether to bring the transitional arrangements to an end, we anticipate the need for a Welsh local authority to place a child in for-profit provision in England after that point will only arise in exceptional circumstances.

### **15. Section 13(3) of the Bill amends the 2014 Act to insert a new section 81B: Ways in which looked after children are to be accommodated and maintained: application for approval of a supplementary placement. Is the intention that the function of approval and rejection of supplementary placements under this new section be undertaken directly by Welsh Ministers or by Care Inspectorate Wales on their behalf?**

The intention is that the function of approving supplementary placements will not be undertaken by Care Inspectorate Wales. It will be undertaken by Welsh Government on behalf of Welsh Ministers.

### **16. How would the procedure for requesting a supplementary placement function in the case of an emergency, for example, a short notice same-day need to place a child? Is this provided for on the face of the Bill?**

The wording of the requirement for a local authority to seek an approval from Welsh Ministers in order to place a child in a supplementary placement does not preclude a local authority placing a child in such a placement prior to the approval being granted. Welsh Ministers may issue a Code of Practice under section 145 of the Social Services and Well-being (Wales) Act 2014 to clarify expectations on practice in this area.

### **17. What is the criteria for Welsh Ministers to assess / approve / reject a local authority application for a "supplementary placement" (other than the 'catch all' provision in the Bill that it would be inconsistent with the local authority's principal duty in relation to looked after children under section 78 of the 2014 Act)?**

Welsh Ministers will comply with section 81B(4) which requires them to grant an approval where they are satisfied that the conditions of that subsection are met. They will need to be satisfied that the application has been made in accordance with the requirements and that the local authority has done enough to show that there is no alternative placement with a not-for-profit provider which meets the child's needs and that the proposed placement is reasonable in all the circumstances.

### **18. Linked to question 17, table 5.1 of the EM refers to regulations issued under section 13(3) relating to prescribing other information to be contained in an application for a supplementary placement to be 'administrative in nature'. Can you clarify they would therefore not include any criteria for approval / rejection of supplementary placements.**

The criteria for the approval/rejection of supplementary placements is set out in new section 81B(4). Although the power in new section 81B(3)(g) allows the Welsh Ministers to make regulations to add additional items to the information which must be contained in an

application for a supplementary placement, this power cannot be used to modify the criteria as set out in s81B(4)) and furthermore, cannot be used to prescribe additional items of information that would not be relevant to the criteria set out in new section 81B(4).

**19. The Explanatory Note says a placement can be in “unregistered accommodation (on a temporary basis or in cases of urgency)”. This reference is not in the 2014 Act nor in the Bill. Can you clarify why this term has been specified in the Explanatory Notes?**

Please see my response to Question 5.

## **Direct Payments**

**20. In England, the equivalent to direct payments (Personal Health Budgets) have been permitted for both adults and children’s Continuing Healthcare (CHC) since 2014. Could you explain why the Welsh Government has focused this Bill on adult CHC only, and whether there is an intention to extend this to children’s continuing care in the future?**

Section 24 of the Bill will insert new provision into Part 1 of the National Health Service (Wales) Act 2006 (the 2006 Act) to allow the Welsh Ministers to make direct payments to individuals in lieu of the provision of services to meet their assessed needs under the 2006 Act.

Continuing healthcare (CHC) is a package of NHS funded support which is provided to adults aged 18 and over who have been assessed as having a primary health need. The policy intent behind the Bill has focussed on these adults because this is where the demand for direct payments in lieu of the provision of NHS services has been greatest. This led to our Programme for Government commitment to “improve the interface between continuing health care and direct payments”.

Only adults assessed as have a primary health need are entitled to receive CHC; our policy intention is that only adults who are eligible to receive CHC will be able to seek a direct payment to secure services to meet their eligible health needs.

Although adults will be the initial focus of the implementation, the legislation as drafted would allow direct payments for the eligible health care needs of children assessed as being entitled to receive Children and Young Person’s Continuing Care (CYPCC) should that be deemed desirable in the future. There are, however, differences between CHC and CYPCC. In CYPCC a Local Health Board and a Local Authority routinely jointly fund care to meet a child or young person’s needs as part of a joint health, education and social care package.

**21. The Welsh Government’s consultation proposed to give a power to local health boards to give assistance in connection with direct payments. However the wording of the Bill gives a power to the Welsh Ministers to make regulations about the arrangements a local health board can make. Why did you decide not to give the power to local health boards on the face of the Bill as originally proposed?**

It has always been the intention that Local Health Boards (LHBs) would exercise the functions of the Welsh Ministers in relation to the making of direct payments. This is because the Part 1 of the 2006 Act confers a general power on the Welsh Ministers to provide services under the Act. As you know, the Welsh Ministers currently delegate the

exercise of many of these functions to LHBs under the Local Health Boards (Directed Functions) (Wales) Regulations 2009.

The policy intention remains that the Welsh Ministers will exercise existing powers under section 12 of the 2006 Act to make amending regulations so that the new power (contained in section 10B) for the Welsh Ministers to make direct payments in lieu of the provision of relevant services under the 2006 Act will be included in the Directed Functions Regulations to enable LHBs to exercise those functions on behalf of the Welsh Ministers.

This latter step was not included in the explanatory text within the consultation document because the regulations would be made under existing powers.

**22. Given the existing issues with direct payments (low take-up and a lack of consistency in supporting people), is there an argument for strengthening the legal provisions to provide information and advice to promote direct payments, and to provide support to help people manage them?**

**Further, during our meeting, you offered to provide additional information on the take-up of direct payments in social care, including potential incentives/disincentives for health boards in promoting the use of direct payments for CHC. We would be pleased to receive this.**

I am providing information on take-up of direct payments in social care in my response regarding broader issues relating to social care.

In terms of incentives/disincentives to promote the use of direct payments for CHC, the LHBs will have to exercise any delegated functions in accordance with the policy imperative of the Welsh Ministers which will be set out in the regulations made under section 10C of the 2006 Act.

Further to this, potential incentives for LHBs to promote direct payments include the positive model that has been in place in England for 10 years. This has seen improved outcomes for some people including being cared for in their home rather than a care home; families being able to stay together; more consistent care at times better suited to the individual; as well as cost advantages. The Welsh Government will work with LHBs to explain the benefits and support with this new area of delivery, including utilising expertise from LAs in Wales in relation to social care direct payments; ICBs in England, and others, to share knowledge and experiences as CHC direct payments are implemented in Wales.

**23. How do you plan to raise public awareness about service users' new entitlement to direct payments for CHC (this will be a significant new option in CHC which the public won't be aware of)?**

Activity to promote public awareness and understanding of direct payments for CHC will be key. The Hub model that has been proposed will allow for a standardised 'all Wales' approach. This will include the delivery of a national communications strategy to heighten public awareness. Hub staff will learn from the most successful approaches across Wales.

The intention is to then develop an implementation plan whereby local authorities or third sector bodies supporting CHC direct payments will be able to do so effectively. Possible options for this are under consideration with stakeholders.

Third sector organisations in Wales could also provide a valuable role in providing information and support. We will continue to work with a wide range of disabled people's organisations alongside LHBs to communicate key messages, as well as the established Disability Rights Taskforce with its vast range of members, to increase the reach of information to individuals across Wales.

**24. It is expected that the numbers of people using CHC will increase if direct payments are permitted (and fewer people will refuse CHC assessments). How are you supporting services to prepare for and manage this increased demand?**

It is envisaged, from information gleaned from Integrated Care Boards in England and from ADSS Cymru, that the numbers choosing to move across from social care to access direct payments for CHC in the early stages will be small and will grow gradually. A figure of 110 individuals, which makes up just 1% of the current total CHC cohort, has been forecast and used in the Regulatory Impact Assessment.

The proposed all-Wales Hub structure involves much of the management of new administrative and support elements for Direct Payments being organised centrally.

Welsh Government proposes to fund the initial three-year transition costs for the Hub which will be a significant support to LHBs at the outset of implementation. After the transition period, when LHBs will collectively become responsible for the costs of the Hub, the anticipated cost savings from the introduction of direct payments will begin to be realised.

These factors should allow demand to be managed and support an effective roll-out process.

**25. Given the lack of capacity in social care, could an unintended consequence be that some families could feel pressured to take on direct payments (and family members become carers/PAs) due to a lack of available care services rather than out of choice?**

Whilst Direct Payments for CHC will be an option which many may choose to take up, they are voluntary, not obligatory.

For older people, there are many advantages of a care package being delivered at home by trusted carers under direct payments, but only where this is the option chosen by the person and/or their family.

For individuals currently in receipt of social care direct payments, local authorities have a continuing responsibility, as they do when commissioning care and support on behalf of the individual directly from providers, to ensure that the arrangements for the provision of that care and support are meeting the assessed, eligible needs of the individual. That will include ensuring as part of statutory reviews the direct payment remains suitable and appropriate for those needs to be met.

Existing guidance for direct payments for social care will be drawn upon to develop guidance for CHC direct payments, as part of implementation.

An independent evaluation of the implementation and the impact of the introducing direct payments for CHC will be undertaken. This evaluation will explore any barriers or issues

which may have an impact on the effectiveness of the final implementation; help to shape future delivery and will ensure the direct payments for CHC are being delivered as intended.

**26. Can you explain more about the savings you expect to be made which will offset the costs. Where did the savings come from in England and what was the timescale for them to be realised?**

The savings incurred as a result of CHC direct payments are cited in an NHS England report on Personal Health Budgets (PHBs). The aggregate cost reduction for all PHB care package was 11% and the average saving for PHB direct payment packages of care was 16%. Assuming the same reduction is achieved in Wales then the average cost per CHC direct payment package would be between £42,000 and £44,500 (a reduction of between £5,500 and £8,000 per package).

The NHS England report did not provide a timescale for savings to be realised as they were looking at the costs of packages per person in isolation (e.g. how much money would be saved by a person being on a PHB direct payment over the previous package they received.)

The evidence suggests that in the longer term, direct payments for CHC will be less expensive than conventional packages and will result in savings to the NHS, which can be offset against the costs that will be incurred. After a transitional phase evidence suggests there will be savings to local health boards for delivering CHC as direct payments.

An Integrated Care Board (ICB) in England told us that individuals managing their own CHC care through direct payments were typically very motivated to obtain better value for their direct payments budget than might be possible under traditional CHC. Being far closer to the care being purchased than an in-house LHB commissioning service, they are also able to monitor the full service is provided and pick up on any issues in terms of delivery.

Apart from financial considerations, evaluations from England report that direct payments for CHC are highly valued by those in receipt of them, and there are many case studies available demonstrating positive outcomes for both the CHC recipient and their families.

**27. According to local authorities, the eligibility bar for access to Continuing Healthcare has continued to increase over time, meaning fewer and fewer people are granted access. Could this apparent “gatekeeping” approach be a barrier to achieving the aims of this Bill (i.e. is there a risk people will be wrongly denied CHC following assessments meaning they cannot benefit from the legislation)?**

The Welsh Government gives a commitment to review the current CHC Framework (operational as of 1 April 2022) within five years of implementation. The next review is anticipated to take place in 2026/27, at which point there would be an opportunity to consider incorporating additional guidance or clarification around eligibility for CHC, if this was deemed necessary by the review process.

A Complex Care Joint Forum was established in 2023 with the aim of supporting implementation of the revised Continuing NHS Healthcare (CHC) Framework 2021, in particular the interface between social care and healthcare and partnership working between Local Health Boards (LHBs) and Local Authorities (LAs). The Forum, chaired by a senior Welsh Government official, brings together representatives from LAs and LHBs, to share knowledge and good practice and strengthen cross organisational working.

As well as policy updates and issues relating to CHC, the group discuss possible solutions to shared challenges. A recent example of sharing good practice came from a joint presentation by Hywel Dda UHB and Carmarthenshire CC who highlighted their positive collaboration on Multi-Disciplinary Team (MDT) decision making with the Forum.

It is worth noting that the introduction of direct payments for CHC recipients is intended to better align CHC and social care. This in turn should reduce disputes at the margin of LA and LHB care including those around eligibility.

In the event where an individual is assessed and the outcome concludes they are not eligible for CHC and hence feel they have been denied CHC, there is a formal appeals mechanism in place.

**28. Paragraph 7.144 of the RIA says the average cost for Personal Health Budgets in England ranges from £46,000 to £120,000, with a median of £80,000. It notes there is “likely to be a similar variation across packages in Wales”. However, you have used an “exemplar cost at the lower end of this scale” for Local Health Board projected expenditure on Continuing Healthcare direct payments. Why is this, given the likely complexity of cases?**

To calculate an illustrative figure for Wales, which was necessary to work through the costs and savings relevant to the introduction of direct payments, the most recent annual expenditure for CHC (£448m in FY 2022-23) was used, divided by the total number of people who received CHC during that year (over 10,000). This information – which was caveated because some cases related to people receiving equipment, some to retrospective claims and some to costs joint-funded with local authorities – was combined with advice sought from the National Care Commissioning Unit for Wales to arrive at an illustrative average package cost of £50,000.

**29. Whilst not using the range of the average cost of Personal Health Budgets in England, you have applied the percentage cost reduction reported by NHS England following their introduction: 11% for all Personal Health Budgets and 16% for Personal Health Budgets direct payments. In which document did NHS England report these cost reductions, and why do you think it is a reasonable basis for the reduction in outturn for Local Health Board Continuing Healthcare direct payments?**

NHS England report these cost reductions in a 2018-19 analysis, shared with Welsh Government, of the impact of personal health budgets on spending on people eligible for NHS Continuing Healthcare. As a reliable and most up to date source, this information was used as an estimate for reductions in Wales.

**30. You seem to have applied the cost reduction reported by NHS England to arrive at a net cost of Continuing Healthcare direct payments for Local Health Boards. Why is this cost reduction not reported as a potential benefit of the Bill, as you’ve done for existing CHC recipients who transfer to direct payments and new CHC packages which are delivered via direct payments?**

Although applying the NHS England cost reduction means the cost of providing CHC direct payments to an individual who currently receives traditionally commissioned CHC is lower than it would otherwise have been (i.e. there is a cost-saving or benefit relative to the baseline), in the initial years of the appraisal period, the additional cost to LHBs of providing

CHC to people moving across from social care outweighs this cost-saving and so there is a net cost increase to LHBs. In the latter years of the appraisal period, those moving across from social care 'drop out' of the calculation and this leaves only a net cost-saving or benefit to LHBs. It is the costs of the combination of these impacts of the Bill that has been shown. This is explained in the Regulatory Impact Assessment.

## **Other social care provisions**

**31. Section 18 of the Bill adds childcare workers to the definition of a 'social care worker'. The original consultation also proposed adding play workers, to “clarify the statutory role which Social Care Wales plays” for all childcare and play workers. What is the rationale for not including play workers in the Bill as drafted?**

The proposed amendments in the Bill to the definition of social care workers as it pertains to childcare would also apply to playworkers.

Section 18 of the Bill provides a power to specify that a person who is employed by, or works for, a person registered as a daycare provider under Part 2 of the Children and Families (Wales) Measure 2010, to provide care and supervision for children can be treated as a social care worker. This includes both childcare workers and play workers because both types of worker could be employed or could work for a person registered to provide 'daycare for children' for the purpose of providing care and supervision for children under the age of 12.

**32. The Bill makes amendments to the Social Services and Well-being Act. This Committee has previously heard evidence about the omission of the UN Convention of the Rights of Persons with Disabilities on the face of the Act, in contrast with the rights of the child and the UN principles for older persons. Would the Welsh Government be willing to take this opportunity to rectify this, to ensure the rights of disabled people have equal prominence in the legislation?**

This Bill is about delivering on pressing priorities, particularly removing private profit from the care of looked after children and enabling direct payments within Continuing Healthcare. Local authorities in Wales are already subject to a duty to have due regard to the UN Convention on the Rights of Persons with Disabilities (UNCRPD). This is specifically dealt with in paragraph 65 of the Social Services and Well-being (Wales) Act 2014 [Part 2 Code of Practice: General Functions](#). Adding a further due regard duty into the 2014 Act would not add anything further.

Consideration of Convention Rights in relation to provision of social care services to children:  
restrictions on profit

Part 1, Chapter 1 of, and Schedule 1 to, the Health and Social Care (Wales) Bill introduce new eligibility requirements for registration under the Regulation and Inspection of Social Care (Wales) Act 2016 (RISCA) for those who wish to provide care home services or fostering services for children in Wales, and restrictions on the circumstances in which local authorities can place children with providers who do not meet the new requirements.

The requirements on providers of care home services for children and fostering service providers include being legally constituted as one of a certain type of legal entity specified in the Bill (that will prevent the extraction of private profit), having objects or purposes that primarily relate to the welfare of children or another prescribed public good, and complying with certain rules on financial arrangements.

The provisions of the Bill also pursue the aim of ensuring that children in the care of local authorities are looked after in services which have the primary purpose of improving the welfare of children, instead of the maximisation of profit.

The Welsh Government has carefully considered the impact of the Bill's provisions both on providers' businesses and on children looked after, including detailed consideration of Convention Rights:<sup>1</sup>

- Article 1 of Protocol 1 (A1P1) to the Convention Rights (the right to enjoyment of possessions);
- Article 8 of the Convention Rights (right to respect for family and private life, home and correspondence), and
- Article 14 of the Convention Rights (protection from discrimination in the enjoyment of Convention Rights).

The Welsh Government acknowledges that what is being proposed will interfere with the property rights of for-profit providers of children's home services and fostering services. It could potentially engage Article 8 if a child's placement is terminated by a provider. However, the transitional provisions in the Bill enable for-profit providers already providing a service to the child to continue to operate so as to not disturb a child's existing placement.<sup>2</sup> Even if there is an interference with Article 8 rights the Welsh Government is of the view that it would be justified and proportionate for the same reasons as under A1P1, as explored in more detail below.

As there are currently no registered for-profit providers of secure accommodation services in Wales, any impact on these services is a potential impact on future establishment and therefore is outside of the scope of Convention Rights which do not protect the right to future possessions.

The aim of the provisions of the Bill is a vitally important one: to achieve a more sustainable children's social care sector and to ensure improved services and life outcomes for children looked after by local authorities in Wales. The aim is to ensure

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<sup>1</sup> See sections 108A(2)(e) and 158(1) of the Government of Wales Act 2006 for the definition of "Convention Rights".

<sup>2</sup> See also the consideration of children's rights impacts in the Explanatory Memorandum to the Bill.

Consideration of Convention Rights in relation to provision of social care services to children:  
restrictions on profit

that public money invested in the care of children looked after does not profit individuals or corporate entities, but instead is spent on children's services to deliver better experiences and outcomes for children and young people. The aim is to eliminate private profit from the care of children looked after, in order to develop services that are locally based, locally designed and locally accountable, and that improve the care experience for young people.

The provisions are carefully designed to strike a fair balance between the need to achieve these important aims on the one hand and (a) avoiding disruption in the lives of children looked after and (b) managing the impact on providers, and the need to allow time for the business adjustments which they will have to make.

The current market is dysfunctional and, in the view of the Welsh Government, unsustainable in its current form. This dysfunction in the market has deleterious impacts on service provision in Wales and thereby, the well-being and life outcomes of children looked after by local authorities in Wales. The Welsh Government has concluded that the maintenance of the status quo is not, therefore, an option.

The Bill, however, is one important part of an overall package of measures the Welsh Government is taking forward to deliver a new vision for Children's Social Care, focussed on values and needs. It is about fundamentally changing how it provides services to children and their families through community-based services that safeguard and promote the welfare of the young person.

The Welsh Government wants to see fewer children and young people entering care and improvement in the services provided to those that do enter care. For those young people looked after by their local authority, we want a system-wide approach so they remain close to home, can continue to be part of their community and for any stay in care to be as short as possible; consistent with best meeting their needs and supporting better outcomes.

The Welsh Government has concluded that although the potential for profit has an effect of drawing private capital and private enterprise into the area, the ability of for-profit providers to extract profit from the system puts the sustainability of the children's social care sector at risk and has an adverse effect on outcomes for children.

The impact of profit extraction in children's residential and foster care is an under-researched area.<sup>3</sup> However, whilst there is no categorical evidence that the policy will provide guaranteed better outcomes for children or that residential care would be cheaper, there is evidence that for-profit services are more likely to be rated as low quality when compared with not-for-profit and local authority service providers,<sup>4</sup> that

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<sup>3</sup> Ablitt, Jonathan, Jimenez, Patricia & Holland, Sally (2024). *Eliminating Profit from Children's Residential and Foster Care Evidence Review*, available at [Eliminating profit from children's residential and foster care: evidence review | GOV.WALES](#)

<sup>4</sup> Bach-Mortensen, A.M., Goodair, B. and Barlow, J., (2022). Outsourcing and children's social care: A longitudinal analysis of inspection outcomes among English children's homes and local authorities. *Social Science & Medicine*, 313, 115323, <https://doi.org/10.1016/j.socscimed.2022.115323> .

for-profit fostering agencies are more likely to use inexperienced foster carers,<sup>5</sup> and that greater use of outsourcing to for-profit providers of residential care is associated with greater levels of placement instability<sup>6</sup> and higher levels of out of area placements.<sup>7</sup> There is evidence that the cost of placements with independent fostering agencies is higher than local authority fostering services.<sup>8</sup>

There is also evidence that the provisions in the Bill (coupled with the investment of £68 million in developing local authority/not for profit/third sector provision) are likely to lead to better outcomes for children in residential care homes, based on a reduction in out of area placements and better local commissioning to meet needs. The planning and design of residential care placements will be driven by the needs of children, and not by the overarching requirement to make a profit.

The Competition and Markets Authority found in its market study of the supply of children's social care in England, Wales and Scotland that a highly fragmented, complex and dysfunctional market means individual local authorities find it hard to plan for and provide their own residential and foster care. The report found that a lack of placements of the right kind, in the right places, means that children are not consistently getting access to care and accommodation that meets their need. The report concluded that the largest private providers of placements are making materially higher profits, and charging materially higher prices, than would be expected if the market were functioning effectively.

All these factors have been amplified by the rise in the number of children being looked after by local authorities in Wales. The Welsh Government's reform of the arrangements for the provision of these services goes hand in hand with the steps taken to bring these numbers down and to enable local authorities to apply greater resources to the task of helping families stay together.

The Welsh Government understands the concern that care provided to children who are unable to be safely cared for by their birth families by providers that extract private profit from those services can be viewed as the commoditisation of those children. The Welsh Government has been told by children and young people in care, and by Voices from Care and the Children's Commissioner for Wales that children and young people have strong feelings about being cared for by privately owned organisations that extract a private profit from their experience of being in care.

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<sup>5</sup> Sellick, C. and Connolly, J. (2002). Independent fostering agencies uncovered: The findings of a national study. *Child and Family Social Work*. 7(2): 107-120, <https://doi.org/10.1046/j.1365-2206.2002.00235.x> ; and Steen, J. and Smith, S. (2012). An organizational view of privatization: Is the private foster care agency superior to the public foster care agency? *Children and Youth Services Review*. 34: 851-858, <https://doi.org/10.1016/j.childyouth.2012.01.016> .

<sup>6</sup> Bach-Mortensen, A.M., Goodair, B. and Barlow, J., (2023). For-profit outsourcing and its effects on placement stability and locality for children in care in England, 2011–2022: A longitudinal ecological analysis. *Child Abuse & Neglect*, 144, 106245, <https://doi.org/10.1016/j.chiabu.2023.106245> .

<sup>7</sup> See note 6 above.

<sup>8</sup> See Sellick and Connolly 2002 at note 5 above; Narey, M. and Owers, M. (2018). *Foster Care in England*, available at [Foster Care in England: Review \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748482/foster-care-in-england-review.pdf), and Competition and Markets Authority, (2022). *Children's social care market study final report*, available at [Children's social care market study final report - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/1144447/childrens-social-care-market-study-final-report.pdf) .

Consideration of Convention Rights in relation to provision of social care services to children:  
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Despite the impact on the rights of for-profit providers, the Welsh Government considers that provisions of the Bill are proportionate in their overall effect. The aims being pursued are of vital importance, and the Welsh Government considers that the provisions in the Bill will advance those aims. The Welsh Government considered alternatives to the elimination of profit, such as capping fees and/or profit, limiting dividends or setting a percentage of profit that must be reinvested in the service provided by the provider. However, such alternatives would either be administratively complex and would cost considerable sums to operate (thereby reducing the funding available for meeting the needs of children) or would not deliver the fundamental change which the Welsh Government considers is required.

The Bill's provisions provide for a transition period to avoid disruption for children already placed with providers who will become ineligible to provide the service(s) and to allow local authorities to use available capacity in that sector during the period while local authorities are building up sufficient numbers of placements themselves and with not-for-profit providers.

During this transition period local authorities in Wales can apply to the Welsh Ministers for approval to place a child with a for-profit provider that does not meet the new requirements, subject to certain conditions and safeguards. This ensures that the rights of children are protected and that the impact on placement-choice is limited while the sector transitions to the new model of care. It also provides time for for-profit providers to convert to an eligible not-for-profit business model or make other business adjustments.

In conclusion, we are confident that these provisions of the Health and Social Care (Wales) Bill are compatible with Convention Rights and will bring about positive change for children and families in Wales. We look forward to working with the Senedd and stakeholders to ensure its successful implementation.

## Fostering

Local Authority	FP (%)	NFP (%)	LA (%)
Blaenau Gwent	21%	5%	74%
Bridgend	21%	5%	73%
Caerphilly	25%	6%	70%
Cardiff	49%	19%	31%
Carmarthenshire	9%	1%	90%
Ceredigion	39%	7%	55%
Conwy	43%	5%	52%
Denbighshire	29%	1%	70%
Flintshire	55%	2%	43%
Gwynedd	8%	4%	87%
Isle of Anglesey	23%		77%
Merthyr Tydfil	30%	9%	61%
Monmouthshire	44%	10%	46%
Neath Port Talbot	8%	4%	87%
Newport	27%	11%	62%
Pembrokeshire	45%	3%	52%
Powys	25%	7%	68%
Rhondda Cynon Taf	17%	6%	77%
Swansea	31%	6%	63%
The Vale of Glamorgan	44%	13%	44%
Torfaen	12%	4%	84%
Wrexham	69%	3%	28%
<b>Total</b>	<b>31%</b>	<b>7%</b>	<b>61%</b>

## Residential

Local Authority	FP %	NFP %	LA %
Blaenau Gwent	100%		0%
Bridgend	69%		31%
Caerphilly	74%		26%
Cardiff	86%		14%
Carmarthenshire	60%		40%
Ceredigion	100%		0%
Conwy	78%	22%	0%
Denbighshire	100%		0%
Flintshire	84%		16%
Gwynedd	100%		0%
Isle of Anglesey	57%		43%
Merthyr Tydfil	95%	5%	0%
Monmouthshire	100%		0%
Neath Port Talbot	95%	5%	0%
Newport	72%		28%
Pembrokeshire	95%	5%	0%
Powys	56%		44%
Rhondda Cynon Taf	75%	1%	24%
Swansea	91%		9%
The Vale of Glamorgan	100%		0%
Torfaen	100%		0%
Wrexham	53%	5%	42%
<b>Total</b>	<b>83%</b>	<b>1%</b>	<b>16%</b>

FP and NFP = CCSR placements data at 31/05/24

LA = QBDR placements data at Q4 31/03/24 (Conwy and Denbighshire = Q3)

Please note: the external market for Fostering is over-reported (meaning that the in-house market is probably larger) and the external market for Residential is under-reported (meaning that the in-house market is probably smaller)

Dawn Bowden MS  
Minister for Social Care

12 June 2024

Dear Dawn

### Health and Social Care (Wales) Bill and general scrutiny session

Thank you for attending our evidence session on 6 June, along with your officials, to discuss the Health and Social Care (Wales) Bill and for a general scrutiny session.

During those sessions, there were a number of areas where you agreed to provide further information. We also have a number of additional questions that we would like to put to you. For convenience, I have included all of these matters in the annex to this letter.

You have agreed to come back to the Committee on 17 July to discuss the Bill further. It would be helpful to have your response to this letter in advance of that, by **Friday 28 June**, so that we can take full account of it.

A copy of this letter goes to Mike Hedges MS, Chair of the Legislation, Justice and Constitution Committee, and Peredur Owen Griffiths MS, Chair of the Finance Committee.

Yours sincerely



Russell George MS  
Chair, Health and Social Care Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg. We welcome correspondence in Welsh or English.

# Health and Social Care (Wales) Bill

## Restricting profit

### Human rights considerations

1. What is your assessment of the human rights considerations in relation to this Bill, particularly as to whether the provisions of the Bill restricting the ability to make profit could engage the rights under Article 8, and the right to peaceful enjoyment of possessions under Article 1 of the First Protocol to the European Convention on Human Rights? Have any other rights been considered?

### Principle behind legislation

2. In your statement on introducing the Bill, you said the starting point for this legislation was the principle of not making profit from the care of vulnerable people. There is also reference to children and young people's views on profit being a key driver for the Bill. What consideration has the Welsh Government given to removing profit from children's social work agency staff, given the latest figures suggest 17.5% of children's social workers in Wales are employed by an agency.

### Unreasonable or inappropriate payment

3. Section 6 of the Bill requires the Welsh Ministers to consider whether, amongst other matters, a provider of a restricted children's service has entered into a financial arrangement with a relevant person which is unreasonable or disproportionate in all the circumstances. Other key phrases in this provision have been given a specific meaning in the Bill, but "unreasonable or disproportionate" has not. What do you consider would constitute an unreasonable or disproportionate financial arrangement for the purposes of the Bill, and why have you chosen not to define this term on the face of the Bill?

### Regulation making powers

4. The provisions relating to the restriction of profit-making include a number of regulation-making powers.
  - a) Why this approach has been taken rather than including more information on the face of the Bill, for example, why can "public good" not be defined on the face of the Bill?
  - b) Table 5.1 says this approach permits "future-proofing". What aspects do you consider may need potential changes in the future?
  - c) Why have you chosen to apply the negative procedure to the majority of the regulation-making powers relating to restricting profit, with the result that the Senedd has limited opportunity to scrutinise them?

- d) How did you decide which powers would be subject to the draft affirmative procedure, and why have you chosen to apply a different procedure on some occasions to the first time a power is exercised, as opposed to any other time?

### **Reference to Unregistered Placements**

5. Section 13 sets out the ways in which looked after children are to be accommodated in “the most appropriate placement”. The Explanatory Notes state that a placement can be in “unregistered accommodation (on a temporary basis or in cases of urgency)”, a reference not in the 2014 Act and not on the face of this Bill. The Bill uses the same terminology as the definition of placements in the existing s81(6)(d), which states that a placement can be made in accordance with arrangements that comply with regulations made for the purposes of that section (currently the Care Planning, Placement and Case Review (Wales) Regulations 2015). Can you clarify what has changed, if anything, in respect of unregistered placements?

### **Risks of undermining practices**

6. What have you identified as the full range of risks that could mean that the policy aims of the Bill are undermined by practices which go against its spirit and intention, such as the charging of excessive fees by parent companies of not-for-profit services, which could amount to the taking out of profit by other means. How have all of these risks been mitigated in the Bill?

### **Wales wide/regional commissioning**

7. The Competition and Markets Authority’s assessment of the position in Wales is that “a ban or profit cap is not necessary to deliver a well-functioning placements market”. It emphasises the need for improved commissioning and refers to procurement collaboration occurring nationally, saying “we are clear that excessive fragmentation in the processes of forecasting, market shaping and procurement are key drivers of poor outcomes in this market, and must therefore be addressed if we are to see significant improvement in the outcomes.” What consideration did you give to changing the current local authority based arrangements, and why did you not pursue the option of regional or national forecasting and commissioning?

### **Investment in the Bill to date**

8. How many new ‘not for profit’ placements have been created to date as a result of the £68 million allocated by the Welsh Government. What percentage does this represent in the forecast need for placements. What will be the annual financial commitment from Welsh Government going forward to develop the not-for-profit provision?

## **Regional variation**

9. What is the estimated percentage of private sector placements/not-for-profit placements by Welsh local authority?

## **Cross border implications for children placed from England and Scotland**

10. How many children do you estimate are currently placed in private placements in Wales by local authorities outside of Wales? How do you envisage their circumstances will be covered by the transitional arrangements within the Bill?

## **End date of the transition period**

11. The Bill as currently drafted allows for the end date of transition to be specified in regulations. What is the estimated range of dates you have considered and what is the latest date you would think is reasonable for transitional arrangements to end. Have you considered specifying the end on the face of the Bill with powers to amend that by regulation as a means of mitigating a lengthy transitional period which undermines the aims of the Bill?

## **Annual sufficiency plan**

12. Section 11 places a new duty on local authorities to prepare and publish an annual sufficiency plan for accommodation for looked after children. Can you outline the sorts of reasons why the Welsh Government might anticipate rejecting a sufficiency plan? What will happen in the event that the second draft of a sufficiency plan is rejected, and why is the Bill silent on this?

## **Accommodation 'near to' the local authority**

13. The Bill amends existing legislation so that local authorities will be required to take all reasonable steps to secure accommodation "near to" the child's local authority rather than "within" it. The EM suggests this is a more pragmatic approach that will allow for placements just over the local authority border. What is your assessment of the potential unintended consequences arising from this, for example if local authorities are under pressure, children could be more likely to be placed further away from their home area because of placement availability rather than their 'best interest'.

## **Supplementary placements**

14. Can you confirm that supplementary placements will have to be outside of Wales after the end of the transition period, given that not for-profit-providers cannot legally register here under the Bill's provisions.
15. Section 13(3) of the Bill amends the 2014 Act to insert a new section 81B: Ways in which looked after children are to be accommodated and maintained: application for approval of a supplementary placement. Is the intention that the function of approval and rejection of

supplementary placements under this new section be undertaken directly by Welsh Ministers or by Care Inspectorate Wales on their behalf?

16. How would the procedure for requesting a supplementary placement function in the case of an emergency, for example, a short notice same-day need to place a child? Is this provided for on the face of the Bill?
17. What is the criteria for Welsh Ministers to assess / approve / reject a local authority application for a "supplementary placement" (other than the 'catch all' provision in the Bill that it would be inconsistent with the local authority's principal duty in relation to looked after children under section 78 of the 2014 Act)?
18. Linked to question 17, table 5.1 of the EM refers to regulations issued under section 13(3) relating to prescribing other information to be contained in an application for a supplementary placement to be 'administrative in nature'. Can you clarify they would therefore not include any criteria for approval / rejection of supplementary placements.
19. The Explanatory Note says a placement can be in "unregistered accommodation (on a temporary basis or in cases of urgency)". This reference is not in the 2014 Act nor in the Bill. Can you clarify why this term has been specified in the Explanatory Notes?

## **Direct Payments**

20. In England, the equivalent to direct payments (Personal Health Budgets) have been permitted for both adults and children's Continuing Healthcare (CHC) since 2014. Could you explain why the Welsh Government has focused this Bill on adult CHC only, and whether there is an intention to extend this to children's continuing care in the future?
21. The Welsh Government's consultation proposed to give a power to local health boards to give assistance in connection with direct payments. However the wording of the Bill gives a power to the Welsh Ministers to make regulations about the arrangements a local health board can make. Why did you decide not to give the power to local health boards on the face of the Bill as originally proposed?
22. Given the existing issues with direct payments (low take-up and a lack of consistency in supporting people), is there an argument for strengthening the legal provisions to provide information and advice to promote direct payments, and to provide support to help people manage them? Further, during our meeting, you offered to provide additional information on the take-up of direct payments in social care, including potential incentives/disincentives for health boards in promoting the use of direct payments for CHC. We would be pleased to receive this.

23. How do you plan to raise public awareness about service users' new entitlement to direct payments for CHC (this will be a significant new option in CHC which the public won't be aware of)?
24. It is expected that the numbers of people using CHC will increase if direct payments are permitted (and fewer people will refuse CHC assessments). How are you supporting services to prepare for and manage this increased demand?
25. Given the lack of capacity in social care, could an unintended consequence be that some families could feel pressured to take on direct payments (and family members become carers/PAs) due to a lack of available care services rather than out of choice?
26. Can you explain more about the savings you expect to be made which will offset the costs. Where did the savings come from in England and what was the timescale for them to be realised?
27. According to local authorities, the eligibility bar for access to Continuing Healthcare has continued to increase over time, meaning fewer and fewer people are granted access. Could this apparent "gatekeeping" approach be a barrier to achieving the aims of this Bill (i.e. is there a risk people will be wrongly denied CHC following assessments meaning they cannot benefit from the legislation)?
28. Paragraph 7.144 of the RIA says the average cost for Personal Health Budgets in England ranges from £46,000 to £120,000, with a median of £80,000. It notes there is "likely to be a similar variation across packages in Wales". However, you have used an "exemplar cost at the lower end of this scale" for Local Health Board projected expenditure on Continuing Healthcare direct payments. Why is this, given the likely complexity of cases?
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31. Section 18 of the Bill adds childcare workers to the definition of a 'social care worker'. The [original consultation](#) also proposed adding play workers, to “clarify the statutory role which Social Care Wales plays” for all childcare and play workers. What is the rationale for not including play workers in the Bill as drafted?
32. The Bill makes amendments to the Social Services and Well-being Act. This Committee has previously heard evidence about the omission of the UN Convention of the Rights of Persons with Disabilities on the face of the Act, in contrast with the rights of the child and the UN principles for older persons. Would the Welsh Government be willing to take this opportunity to rectify this, to ensure the rights of disabled people have equal prominence in the legislation?

## Follow-up actions from the general scrutiny session

During the general scrutiny session that immediately followed the session on the Bill, you agreed to write to the Committee with the following information:

33. To confirm the number of vacancies currently across social care, including the equivalent percentage of the workforce that number represents.
34. To provide an update on the work being undertaken to support unpaid carers, including young carers.

**Dawn Bowden AS/MS**  
Y Gweinidog Gofal Cymdeithasol  
Minister for Social Care



Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref DB-PO-0167-24

Russell George MS  
Chair  
Health and Social Care Committee  
Welsh Parliament  
Cardiff Bay  
Cardiff  
CF99 1SN

19 June 2024

Dear Russell,

Following the introduction of the Health and Social Care (Wales) Bill into the Senedd on 20 May 2024, please find attached a copy of the Statement of Policy Intent on the powers to make subordinate legislation under the Bill. This document is provided to support scrutiny of the Bill by the Senedd.

I look forward to providing further evidence to the Committee in due course.

I am copying this letter to the Chair of the Legislation, Justice and Constitution Committee and the Chair of the Finance Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Dawn Bowden', written in a cursive style.

**Dawn Bowden AS/MS**  
Y Gweinidog Gofal Cymdeithasol  
Minister for Social Care

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
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Llywodraeth Cymru  
Welsh Government

# **HEALTH AND SOCIAL CARE (WALES) BILL**

## Statement of Policy Intent for Subordinate Legislation

June 2024

## **HEALTH AND SOCIAL CARE (WALES) BILL**

### **STATEMENT OF POLICY INTENT FOR SUBORDINATE LEGISLATION**

This document provides an indication of the current policy intention for the subordinate legislation that Welsh Ministers would be empowered or required to make under the provisions of the Health and Social Care (Wales) Bill ('the Bill'). It has been prepared in order to assist committees during the scrutiny of the Bill and should be read in conjunction with the Explanatory Memorandum and Explanatory Notes.

The key purpose of the Bill is to introduce changes that:

- eliminate private profit from the care of looked after children;
- enable introduction of Direct Payments for NHS Continuing Healthcare (CHC); and
- make amendments to ensure that the Regulation and Inspection of Social Care (Wales) Act 2016 (the 2016 Act) and Social Services and Well-being (Wales) Act 2014 (the 2014 Act) are able to operate fully and effectively.

For ease of reference, this document includes separate information for each provision in the Bill which involves subordinate legislation. However, in reality a number of these areas would be likely to be combined and dealt with, for example, within a set of regulations. The contents of this document correspond to the information provided in Chapter 5 of the Explanatory Memorandum.

In developing subordinate legislation, the Welsh Government will work closely with stakeholders, consulting where appropriate, in order to ensure the provisions are relevant, valid and proportionate.



## PART 1: SOCIAL CARE

### CHAPTER 1 – PROVISION OF SOCIAL CARE SERVICES TO CHILDREN: RESTRICTIONS ON PROFIT

<b>REGULATIONS RELATING TO</b>	Allowing Welsh Ministers to prescribe information required in an application to be registered to become a provider of a restricted children's service
<b>BILL PART</b>	Part 1, Chapter 1
<b>SECTION</b>	3(2)
<b>METHOD OF BRINGING INTO FORCE</b>	Negative
<b>DESCRIPTION OF THE REGULATIONS</b>	
<p>Section 3(2) inserts a new subsection 6(1A) in the 2016 Act which contains the power to make regulations.</p> <p>The power will allow Welsh Ministers to prescribe information required in an application to be registered to become a provider of a restricted children's service, in order for them to be satisfied that the person applying to become a provider meets the necessary requirements.</p>	
<b>REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS</b>	
<p>The 2016 Act already sets out (at section 6(1)(a)-(c)) some information that must be included in an application to the Welsh Ministers when a person who wants to provide a regulated service applies to the Welsh Ministers for registration. There are existing powers at section 6(1)(d) and section 6(2) of the 2016 Act which enable Ministers to prescribe further information and the form in which an application must be made.</p> <p>This power mirrors the approach already taken in section 6(1)(d) of the 2016 Act (concerning applications for registration as a service provider), and ensures that the Welsh Ministers can prescribe information that needs to be provided in the case of an application to provide a restricted children's service, to satisfy the Welsh Ministers that the organisation which is applying meets the requirement in section 6A(1) that they are a not-for-profit entity. This is expected to include information on the organisation's objects or purposes, and the type of organisation which is applying (e.g. a charitable company limited by guarantee without a share capital).</p> <p>By conferring a power on Welsh Ministers to prescribe information that needs to be provided in the case of an application to provide a restricted children's service, the Bill allows for the application process to be reviewed from time to time and enables flexibility to adapt the process if necessary.</p>	

<b>REGULATIONS RELATING TO</b>	Allowing Welsh Ministers to prescribe what is an acceptable “public good” to which the objectives or purposes of a person proposing to provide a restricted children’s services must primarily relate
<b>BILL PART</b>	Chapter 1 of Part 1
<b>SECTION</b>	3(3)
<b>METHOD OF BRINGING INTO FORCE</b>	Negative
<b>DESCRIPTION OF THE REGULATIONS</b>	
<p>Section 3 inserts new sections - 6A and 6B - into the 2016 Act regarding registration in respect of a restricted children's service and definitions. Section 6A(3) deals with requirements in relation to the objects and purposes of a person seeking registration to provide restricted children’s services. Proposed new section 6A(3)(a) specifies “the welfare of children” as an acceptable ‘public good’ to which those objects or purposes must primarily relate. Section 6A(3)(b) specifies that Welsh Ministers may also prescribe other such public good(s).</p> <p>This power allows Welsh Ministers to prescribe what is an acceptable “public good” to which the objectives or purposes of a person proposing to provide a restricted children’s service must primarily relate.</p>	
<b>REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS</b>	
<p>The power will allow Welsh Ministers to prescribe what is an additional acceptable “public good” to which the objectives or purposes of a person proposing to provide a restricted children’s service must primarily relate, thus permitting the ‘future-proofing’ of the provisions against the possibility of new public goods being identified.</p> <p>New forms of ‘public good’ may be identified in the future, for example if a not-for-profit entity for children also wished to pursue objects/purposes relating to the welfare of adults in need of care and/or support by providing services for adults. In a circumstance such as this Welsh Ministers may wish to consider whether specifying a new public good could allow that, while still being consistent with the policy.</p>	

<b>REGULATIONS RELATING TO</b>	Allowing Welsh Ministers to determine the end of the transition period for restricted children's services
<b>BILL PART</b>	Chapter 1 of Part 1
<b>SECTION</b>	4(3)
<b>METHOD OF BRINGING INTO FORCE</b>	Draft Affirmative
<b>DESCRIPTION OF THE REGULATIONS</b>	
Section 4(3) inserts a proposed new paragraph 1(1)(b), in a new Schedule 1A to the 2016 Act. Paragraph 1(1)(b) specifies that the transitional period for a restricted children's service ends with the day appointed by the Welsh Ministers by regulations.	
<b>REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS</b>	
<p>The power will allow Welsh Ministers to determine the end of the transition period for restricted children's services, including the ability to respond to the potential need to determine different days in relation to different types of service and different descriptions of service provider; for example, if the achievement of not-for-profit placement sufficiency is uneven across service types.</p> <p>The power recognises that it will be necessary to consider the progress of local authority disengagement from the use of for-profit placements in order to determine the appropriate point at which to bring the transition period to a close (i.e. the time at which placement disruption for children and service providers can be avoided or minimised).</p>	

<b>REGULATIONS RELATING TO</b>	Allowing Welsh Ministers to prescribe enactments for the purposes of which sub-paragraph (3) of paragraph 2 does not apply.
<b>BILL PART</b>	Chapter 1 of Part 1
<b>SECTION</b>	4(3)
<b>METHOD OF BRINGING INTO FORCE</b>	Negative
<b>DESCRIPTION OF THE REGULATIONS</b>	
<p>Section 4(3) inserts proposed new paragraph 2(4)(b), in new Schedule 1A to the 2016 Act relating to transitional registration arrangements for existing service providers. Paragraph 2(4)(a) sets out that the requirements in sub-paragraph (3) – that the registration of the service provider is not subject to the requirement in section 6A(1) and the entry on the register maintained under section 38 must show that the provider does not meet the requirement of being a not-for-profit entity – do not apply for the purposes of an application made under section 6(1) and 11(1)(a)(i) of the 2016 Act.</p> <p>Paragraph 2(4)(b) sets out that the requirements in sub-paragraph (3) also do not apply for the purposes of any other enactments Welsh Ministers may prescribe.</p>	
<b>REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS</b>	
<p>The power will allow Welsh Ministers to prescribe enactments for the purposes of which sub-paragraph (3) of paragraph 2 does not apply. It complements paragraph 2(4)(a).</p> <p>Sub-paragraphs 2(4)(a)(i) and (ii) operate so that although for most purposes an ineligible provider of a restricted service is treated as if it met the not-for-profit requirements whilst the transitional period lasts, this is not the case where that provider is making an application to provide an additional regulated service (or vary its registration to do so). This power allows Welsh Ministers to specify other instances where such a provider should be treated as not meeting the not-for-profit requirement.</p>	

<b>REGULATIONS RELATING TO</b>	Allowing Welsh Ministers to impose conditions on existing providers of restricted children's services.
<b>BILL PART</b>	Chapter 1 of Part 1
<b>SECTION</b>	4(3)
<b>METHOD OF BRINGING INTO FORCE</b>	Draft affirmative
<b>DESCRIPTION OF THE REGULATIONS</b>	
Section 4(3) inserts proposed new paragraph 3(1), in new Schedule 1A to the 2016 Act. 3(1) sets out that Welsh Ministers may by regulations make provision imposing conditions on a service provider to whom paragraph 2 applies (an existing provider of restricted children's services during the transitional period).	
<b>REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS</b>	
<p>The power will allow Welsh Ministers to impose conditions on existing providers of restricted children's services during the transitional period, including restrictions on the type of service they may provide and the description of looked after children they may accommodate.</p> <p>This may include imposing conditions to restrict providers who are subject to the transitional provisions to only providing places for children whose placement has been approved by Welsh Ministers under section 81B of the Social Services and Well-being (Wales) Act 2014, or to limit the circumstances in which such providers may accept placements from local authorities in England (for example to circumstances where the placement is necessary to allow siblings to be accommodated together). The power could also be used to prevent providers who are subject to the transitional provisions from providing a place for any new child after a certain date. The draft affirmative procedure will support scrutiny of the proposed conditions.</p>	

<b>REGULATIONS RELATING TO</b>	Allowing Welsh Ministers to specify the information contained within, and the form of, an application by a provider of restricted services for a variation of that provider's registration.
<b>BILL PART</b>	Chapter 1 of Part 1
<b>SECTION</b>	4(3)
<b>METHOD OF BRINGING INTO FORCE</b>	Negative
<b>DESCRIPTION OF THE REGULATIONS</b>	
<p>Section 4(3) inserts proposed new paragraph 4(3), in Schedule 1A to the 2016 Act). This sets out that a provider of a restricted children's service applying for variation of registration and being a not-for-profit entity (as per the requirement in section 6A(1)) must include in their application such information as may be prescribed to satisfy Welsh Ministers that the person meets the requirements of being a not-for-profit entity, and that an application be in the prescribed form.</p> <p>The power relates to a task which is administrative in nature and the procedure mirrors that in relation to applications for variation under s.11(3)(a)(iii) and (3)(b) of the 2016 Act.</p>	
<b>REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS</b>	
<p>The power will allow Welsh Ministers to specify the information contained within, and the form of, an application by a provider of restricted services for a variation of that provider's registration. This ensures that Welsh Ministers have access to the information they require in order to determine an application for variation of registration from a provider of restricted children's services.</p> <p>Such information is more properly contained within Regulations. The rationale is consistent with that set out above for the power inserted by section 3(2) to require the equivalent information for applications for registration.</p>	

<b>REGULATIONS RELATING TO</b>	Allowing Welsh Ministers to prescribe information about evidence relevant to the fit and proper person test which must be included in the annual return.
<b>BILL PART</b>	Chapter 1 of Part 1
<b>SECTION</b>	7(a)
<b>METHOD OF BRINGING INTO FORCE</b>	Draft affirmative on the first use, and subsequently negative (see section 10(6) of the 2016 Act, and section 7(c)(ii) of the Bill)
<b>DESCRIPTION OF THE REGULATIONS</b>	
<p>Section 7(a) inserts a proposed paragraph (viiiia) into section 10, subsection (2)(a) of the 2016 Act relating to the annual return. This sets out that an annual return must contain such information about evidence relevant to the fit and proper person test as may be prescribed.</p> <p>The power mirrors that in relation to annual returns under s.10(2)(a)(ix) of the 2016 Act.</p>	
<b>REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS</b>	
<p>The power will allow Welsh Ministers to prescribe information about evidence relevant to the fit and proper person test which must be included in the annual return. The purpose of this is to form part of the evidential basis for judgements about fitness of those who are operating restricted children's services (for example in relation to payments in excess of specified amounts or to particular persons or for particular sorts of services which may have been made by a not-for-profit entity).</p> <p>This information is appropriate for stipulation in Regulations and would be the basis for Welsh Ministers as regulator to inquire as to whether the payments contravened section 9A because they were unreasonable or disproportionate. The policy intention is that regulations will be used to ensure that the information contained within the annual return and used in relation to the fit and proper person test will be proportionate, factually-based, current and consistent.</p>	

<b>REGULATIONS RELATING TO</b>	Allowing Welsh Ministers to prescribe information to be included in an annual return in order to satisfy Welsh Ministers that the provider meets the requirements of section 6A(1) (concerning requirements in order to be registered as a provider of a restricted children's services).
<b>BILL PART</b>	Chapter 1 of Part 1
<b>SECTION</b>	7(b)
<b>METHOD OF BRINGING INTO FORCE</b>	Draft affirmative on the first use, and subsequently negative (see section 10 of the 2016 Act, and section 7(c)(iv) of the Bill)
<b>DESCRIPTION OF THE REGULATIONS</b>	
<p>Section 7(b) inserts a proposed new section 2A after subsection (2) into section 10 of the 2016 Act relating to the annual return. This sets out that an annual return for a provider, other than a local authority, of a restricted children's service must also contain such information as may be prescribed to satisfy Welsh Ministers that the person meets the requirements of being a not-for-profit entity.</p> <p>The power relates to a task which is administrative in nature and the procedure mirrors that in relation to annual returns under s.10(2)(a)(ix) of the 2016 Act.</p>	
<b>REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS</b>	
<p>The power will allow Welsh Ministers to prescribe information to be included in an annual return in order to satisfy Welsh Ministers that the provider meets the requirements of section 6A(1) (concerning being a not-for-profit entity). The purpose of this is to form part of the evidential basis for judgements about adherence to requirements on the part of those who are operating restricted children's services in relation to the type of undertaking set out in section 3(3)(4) or the person's objects or purposes.</p>	

<b>REGULATIONS RELATING TO</b>	Allowing Welsh Ministers to prescribe information to be included in an application to vary a provider's registration to be able to provide a restricted children's service.
<b>BILL PART</b>	Chapter 1 of Part 1
<b>SECTION</b>	8(2)
<b>METHOD OF BRINGING INTO FORCE</b>	Negative
<b>DESCRIPTION OF THE REGULATIONS</b>	
<p>Section 8(2) inserts a proposed new subsection (4) after subsection (3) into section 11 of the 2016 Act relating to an application for variation of registration as a service provider. This sets out that a restricted children's service provider wanting to provide a regulated service which it is not already registered to provide, must, in its application to vary its registration, also contain such information as may be prescribed to satisfy Welsh Ministers that the person meets the requirements of being a not-for-profit entity.</p> <p>The power relates to a task which is administrative in nature and the procedure mirrors that in relation to application for variation to registration as a service provider under s.11(3)(a)(iii) of the Act.</p>	
<b>REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS</b>	
<p>The power will allow Welsh Ministers to prescribe information to be included in an application to vary a provider's registration to be able to provide a restricted children's service, in order to satisfy Welsh Ministers that the provider meets the requirements of section 6A(1) (concerning being a not-for-profit entity). The purpose of this is to form part of the evidential basis for judgements about whether a provider is eligible to provide a restricted children's service.</p> <p>The rationale is consistent with that set out above for the power inserted by section 3(2) to require the equivalent information for applications for registration.</p>	

<b>REGULATIONS RELATING TO</b>	Allowing Welsh Ministers to prescribe information to be contained in local authority sufficiency plans, about for-profit providers who provide accommodation in Wales or England, respectively, and who are likely to be named in applications for approval of supplementary placements
<b>BILL PART</b>	Chapter 1 of Part 1
<b>SECTION</b>	11
<b>METHOD OF BRINGING INTO FORCE</b>	Negative
<b>DESCRIPTION OF THE REGULATIONS</b>	
Section 11 inserts new section 75A into the 2014 Act relating to preparation and publication of local authority annual sufficiency plans. Subsection (2)(d)(iii) and (iv) of new section 75A provides that annual sufficiency plans must include, in relation to applications for approval of supplementary placements, information to be prescribed in regulations about for-profit providers who provide accommodation in Wales (subsection (2)(d)(iii)), and information to be prescribed in regulations about for-profit providers who provide accommodation in England (subsection (2)(d)(iv)).	
<b>REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS</b>	
<p>The power will allow Welsh Ministers to prescribe information to be contained in local authority sufficiency plans, about for-profit providers who provide accommodation in Wales or private providers who provide accommodation in England, and who are likely to be named in applications for approval of supplementary placements. Given that private providers in England are expected to be both for-profit and not-for-profit, Welsh Ministers may wish to have specific information about the type of entity in those cases.</p> <p>Sufficiency plans will promote a coherent approach to the planning and provision of not-for-profit services according to local needs and the rebalancing of care and support provision more widely. The power to prescribe information about for-profit providers in Wales and private providers in England who are likely to be named in applications for approval of supplementary placements allows a dynamic approach to sufficiency plan requirements which can be adapted to the evolving position in relation to sufficiency of not-for-profit provision in Wales.</p>	

<b>REGULATIONS RELATING TO</b>	Allowing Welsh Ministers to prescribe other information to be contained in local authority sufficiency plans.
<b>BILL PART</b>	Chapter 1 of Part 1
<b>SECTION</b>	11
<b>METHOD OF BRINGING INTO FORCE</b>	Negative
<b>DESCRIPTION OF THE REGULATIONS</b>	
Section 11 (subsection (2)(f) of new section 75A to be inserted into the 2014 Act relating to preparation and publication of local authority annual sufficiency plans) sets out that annual sufficiency plans must include such other information as may be prescribed by regulations.	
<b>REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS</b>	
<p>The power will allow Welsh Ministers to prescribe other information to be contained in local authority sufficiency plans.</p> <p>As with other regulation-making powers in relation to sufficiency plans more broadly these plans will promote a coherent approach to the planning and provision of not-for-profit services according to local needs and the rebalancing of care and support provision more widely. The power to prescribe information to be included in local authority sufficiency plans allows a dynamic approach to sufficiency plan requirements which can be adapted to the evolving position in relation to sufficiency of not-for-profit provision in Wales.</p>	

<b>REGULATIONS RELATING TO</b>	Allowing Welsh Ministers to prescribe the form of local authority sufficiency plans.
<b>BILL PART</b>	Chapter 1 of Part 1
<b>SECTION</b>	11
<b>METHOD OF BRINGING INTO FORCE</b>	Negative
<b>DESCRIPTION OF THE REGULATIONS</b>	
<p>Section 11 (subsection (3) of new section 75A to be inserted into the 2014 Act relating to preparation and publication of local authority annual sufficiency plans) sets out that annual sufficiency plans must be in a form as may be prescribed by regulations.</p> <p>The power relates to a task which is administrative in nature.</p>	
<b>REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS</b>	
<p>The power will allow Welsh Ministers to prescribe the form of local authority sufficiency plans, a task which is administrative in nature.</p> <p>As per other regulation powers in relation to sufficiency plans, these plans will promote a coherent approach to the planning and provision of not-for-profit services according to local needs and the rebalancing of care and support provision more widely.</p>	

<b>REGULATIONS RELATING TO</b>	Allowing Welsh Ministers to prescribe other information to be contained in an application by a local authority for a supplementary placement.
<b>BILL PART</b>	Chapter 1 of Part 1
<b>SECTION</b>	13(3)
<b>METHOD OF BRINGING INTO FORCE</b>	Negative
<b>DESCRIPTION OF THE REGULATIONS</b>	
<p>Section13(3) (subsection (3)(g) of new section 81B to be inserted into the 2014 Act relating to ways in which looked after children are to be accommodated and maintained, specifically in relation to an application for approval of a supplementary placement) sets out that applications from local authorities applying for a supplementary placement must include such other information as the Welsh Ministers may prescribe in regulations.</p> <p>The power relates to a task which is administrative in nature.</p>	
<b>REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS</b>	
<p>The power will allow Welsh Ministers to prescribe other information to be contained in an application by a local authority for a supplementary placement. This will enable the application process to be reviewed from time to time and adapted if necessary.</p>	

<b>REGULATIONS RELATING TO</b>	Duty to submit and publish annual return
<b>BILL PART</b>	Chapter 2 of Part 1
<b>SECTION</b>	14
<b>METHOD OF BRINGING INTO FORCE</b>	Negative
<b>DESCRIPTION OF THE REGULATIONS</b>	
<p>Section 14 inserts a new subsection (4A) into section 10 of the 2016 Act. Subsection (4A) is a power to allow the Welsh Ministers to prescribe the time limit within which an annual return must be published.</p>	
<b>REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS</b>	
<p>The Regulations will allow the Welsh Ministers to prescribe the time limit within which an annual return must be published by a service provider.</p> <p>The intention is to use the regulations to prescribe a reasonable timescale for the publication of annual returns by service providers. This will ensure that timely and consistent information is available to the public.</p> <p>Using regulations rather than specifying a timescale on the face of the Act provides flexibility to adjust the timescale should it prove necessary in practice.</p>	

<b>REGULATIONS RELATING TO</b>	Application for cancellation of service provider's registration: information to be provided
<b>BILL PART</b>	Chapter 2 of Part 1
<b>SECTION</b>	15
<b>METHOD OF BRINGING INTO FORCE</b>	Negative
<b>DESCRIPTION OF THE REGULATIONS</b>	
<p>Section 15 inserts a new subsection, (1A), into section 14 of the 2016 Act. Subsection (1A)(a) is a power to allow the Welsh Ministers to prescribe the information required from a service provider applying to cancel their registration. Subsection (1A)(b) is a power to allow the Welsh Ministers to prescribe the form of an application for cancellation.</p>	
<b>REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS</b>	
<p>The Regulations will allow the Welsh Ministers to require specific information in a suitable format as part of an application to cancel a service provider's registration. It is envisaged these regulations will be used to require information from service providers seeking to cancel their registration setting out how they will continue to comply with the requirements in the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 until the service ceases to be provided. This will ensure the regulator has relevant information about the operation of the service and the care of individuals using or living at the service to carry out its duties effectively during the closure period.</p> <p>Using regulations rather than specifying information requirements on the face of the Act will provide the flexibility to vary the information requirements according to the type of regulated service and will future proof the requirements, ensuring they remain fit for purpose.</p> <p>These regulations will complement the regulation-making powers in sections 11(3) of the 2016 Act which provides an equivalent regulation-making power to require prescribed information when an application is made for variation of a service provider's registration.</p> <p>It has become apparent during the operation of the 2016 Act that there is a disparity in the information requirements between service providers who are applying to vary their registration (by removing one or more services from the registration) and those who are seeking to cancel their registration in its entirety and exit the market. This hinders the regulator's ability to be assured about the provider's intentions to support the ongoing safety and well-being of individuals using the service until it closes. The regulation-making power allowing the Welsh Ministers to require information from a service provider applying to cancel their registration will address this gap in the regulatory framework. It will align the approach for service providers exiting the market with that of those who are varying their registration.</p>	

Prescribing the information required in regulations will provide clarity and certainty for service providers.

The power to prescribe the form of an application for cancellation is a technical matter and simply ensures such applications are fit for purpose and include the necessary level of detail for the regulator to make a decision.

<b>REGULATIONS RELATING TO</b>	Enabling Welsh Ministers to provide that childcare workers (persons employed/working to provide care and supervision to children by a person registered under Part 2 of the Children and Families (Wales) Measure 2010) are to be treated as social care workers.
<b>BILL PART</b>	Chapter 2 of Part 1
<b>SECTION</b>	18
<b>METHOD OF BRINGING INTO FORCE</b>	Negative
<b>DESCRIPTION OF THE REGULATIONS</b>	
<p>Section 18 will amend section 79 of the 2016 Act, to provide Welsh Ministers with the power, by regulation, to extend the definition of social care workers for the purpose of the Act to include childcare workers.</p> <p>The power will allow the Welsh Ministers to provide that childcare workers (persons employed/working (including agency workers) to provide care and supervision to children by a person registered under Part 2 of the Children and Families (Wales) Measure 2010) are to be treated as social care workers.</p>	
<b>REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS</b>	
<p>Regulations would specify that childcare workers are to be treated as social care workers, this will provide a formal basis for the support Social Care Wales (SCW) currently provides to the childcare workforce and enable SCW to carry out further functions to support the sector as a whole. .</p> <p>The ultimate goal is to ensure that all those who make up the childcare workforce can be offered ongoing support by an expert body. This will take place on many fronts, through attraction, entry, recruitment, induction, and career progression. At all times the aim of SCW is to develop a highly skilled qualified workforce with a child centred approach at the heart of all they do. Whilst historically SCW has provided support to the sector and received funding for doing so, the making of regulations will provide a legal basis for this.</p> <p>Regulations would specify that childcare workers are to be treated as social care workers and provide a legal basis for the support SCW provide to the childcare workforce.</p> <p>Whilst legally there is no distinction between persons who work/are employed within daycare and play settings (play settings being included within the meaning of day care in section 19 of the Measure) in practice the support provided by SCW has not extended to persons working within play settings (play workers). It is</p>	

proposed that any regulations made in accordance with the amendment will formalise the support currently provided by SCW to the sector and ensure that this is provided to the sector as a whole (including play workers).

<b>REGULATIONS RELATING TO</b>	Enabling Welsh Ministers to make regulations to require or allow local authorities to make direct payments towards meeting the needs of adults, children, or carers, replacing the existing powers in sections 50 to 52 and 53(11) of, and Schedule A1 to, the 2014 Act.
<b>BILL PART</b>	Chapter 2 of Part 1
<b>SECTION</b>	20
<b>METHOD OF BRINGING INTO FORCE</b>	Negative
<b>DESCRIPTION OF THE REGULATIONS</b>	
This power replaces existing powers in sections 50 to 52 and 53(11) of, and Schedule A1 to, the 2014 Act allowing the Welsh Ministers to make regulations to require or allow local authorities to make direct payments towards meeting the needs of adults, children, or unpaid carers.	
<b>WHAT CAN THE REGULATIONS ACHIEVE?</b>	
<p>Section 50 of the 2014 Act (direct payments to meet an adult's needs) contains a regulation-making power for Welsh Ministers to require or allow a local authority to make direct payments to a person towards the costs of meeting the needs of an adult for care and support under section 35 or 36 of the Act. Currently section 50 permits the local authority to make a direct payment in respect of an adult's needs to either an adult with mental capacity, or a "suitable person" if the adult lacks mental capacity.</p> <p>Regulations made under the new section 49A and the substituted section 50 will also allow local authorities to make direct payments to a nominated person (individual or body) where an eligible adult has mental capacity, provided that both the adult and the person nominated give consent.</p> <p>Regulations made under the new section 49A and the substituted section 51 of the 2014 Act will enable direct payments to be made to nominated persons in similar circumstances in respect of a child's needs for care and support under sections 37, 38, or 39.</p> <p>Regulations under the new section 49A and substituted section 52 of the Act, will enable direct payments to be made to a nominated person in respect of the provision of support for a carer (unpaid)</p>	
<b>REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS</b>	
The regulations are required to allow local authorities to make direct payments to nominated people so that they can manage direct payments on behalf of adults with capacity, children, and unpaid carers where both the individual entitled to the payments and the person nominated to receive have given consent.	



<b>REGULATIONS RELATING TO</b>	Enabling Welsh Ministers to make regulations under powers in a substituted Schedule A1 to the 2014 Act (which is introduced by a new section 53A) to require or allow local authorities to make direct payments in respect of a person to whom section 117 of the Mental Health Act 1983 (after-care) applies, in lieu of providing or arranging for the provision of after-care services. This replaces equivalent powers in the existing Schedule A1 of the 2014 Act and sections 50, 51 and 53(11) of the 2014 Act.
<b>BILL PART</b>	Chapter 2 of Part 1
<b>SECTION</b>	20
<b>METHOD OF BRINGING INTO FORCE</b>	Negative
<b>DESCRIPTION OF THE REGULATIONS</b>	
The power to make regulations in a substituted Schedule A1 to the 2014 Act (which is introduced by a new section 53A) enables the Welsh Ministers to make regulations to require or allow local authorities to make direct payments in respect of a person to whom section 117 of the Mental Health Act 1983 (after-care) applies, in lieu of providing or arranging for the provision of after-care services. This replaces equivalent powers in the existing Schedule A1 to, and sections 50, 51 and 53(11) of the 2014 Act.	
<b>REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS</b>	
The regulations will enable local authorities to make direct payments in lieu of after-care services to people who are eligible to receive after-care under section 117 of the Mental Health Act 1983, or to a person nominated by the person eligible to receive after-care under section 117 of the Act, whether or not the person eligible to receive after-care has capacity to consent to the making of the payments.	

<b>REGULATIONS RELATING TO</b>	Enabling Welsh Ministers to make provision that will require or enable LHBs to make direct payments under section 117 of the Mental Health Act 1983
<b>BILL PART</b>	Part 2
<b>SECTION</b>	24
<b>METHOD OF BRINGING INTO FORCE</b>	Draft affirmative on the first use, and subsequently negative
<b>DESCRIPTION OF THE REGULATIONS</b>	
<p>Section 24(2) inserts new section 10B “Direct payments for healthcare” into the National Health Service (Wales) Act 2006 (the 2006 Act) which gives the Welsh Ministers the power to make direct payments in lieu of the provision of services under that Act.</p> <p>The new section 10B(5) enables the Welsh Ministers to make regulations that will require or enable Local Health Boards to make direct payments to individuals or to a person nominated by them, in lieu of the provision of after-care services they have a duty to provide under section 117 of the Mental Health Act 1983 (the 1983 Act).</p>	
<b>REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS</b>	
<p>The regulations would enable Local Health Boards to make direct payments to individuals, or to a person nominated by them, in lieu of after-care services required and that would be arranged for by the Local Health Board following the individual being discharged from hospital in instances when they have been detained under sections 3, 37, 45A, 47 or 48 of the 1983 Act. Section 117 of the 1983 Act places a duty on Local Health Boards to provide after-care services to individuals who are eligible if they have been detained under the specified sections of the 1983 Act. Without this power, Local Health Boards would not be able to make direct payments to individuals who have been discharged from hospital following detention under the specified sections of the 1983 Act, in lieu of the Local Health Board arranging or providing services to meet that person’s needs for after-care services . The powers ensure consistency between individuals who are entitled to after-care services under the 1983 Act and those who receive NHS services under the 2006 Act.</p> <p>The 1983 Act also makes provision for individuals to receive after-care services funded by a local authority; such individuals are currently able to receive direct payments funded by the local authority in lieu of provision of care and support under the 2014 Act by virtue of regulations made under that Act.</p> <p>Regulations made under the new section 10B(5) of the 2006 Act will enable such a person to receive direct payments in lieu of services to meet their assessed needs for after-care, whether they are for care and support under the 2014 Act, or health care under the 2006 Act.</p>	



<b>REGULATIONS RELATING TO</b>	Enabling Welsh Ministers to make provision to set out the detail of how direct payments made in lieu of the provision of NHS services will need to operate.
<b>BILL PART</b>	Chapter 2
<b>SECTION</b>	24
<b>METHOD OF BRINGING INTO FORCE</b>	Negative
<b>DESCRIPTION OF THE REGULATIONS</b>	
Section 24(2) inserts new section 10C (regulations about direct payments) into the 2006 Act. The power would enable Welsh Ministers to make regulations to set out the detail of how direct payments made in lieu of the provision of NHS services will operate.	
<b>REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS</b>	
<p>Direct payments will provide an alternative way of meeting the needs of adults who are eligible for Continuing NHS Health Care (CHC). Rather than providing or arranging for their needs to be met directly, a direct payment would enable the recipient, or a nominated person acting on their behalf, to arrange the care themselves. This gives the recipient greater choice and control over how their needs are met.</p> <p>The regulations are required to ensure that Local Health Boards, on behalf of the Welsh Ministers, are able to make a direct payment to recipients or their representatives within a clear framework, which is detailed, and may need to be changed as wider circumstances change. The regulations will make provision about who may be eligible to receive direct payments, set out the circumstances when direct payments may be available, the services for which they may or may not be used and details of the arrangements required to administer such payments.</p> <p>Section 10C contains the regulation-making power and includes an inexhaustive list of the sort of provision that may be made using this power.</p> <p>It is intended that the Welsh Ministers will make regulations under existing powers in the 2006 Act to direct Local Health Boards to exercise functions in relation to the making of direct payments on their behalf.</p>	

<b>REGULATIONS RELATING TO</b>	Enabling Welsh Ministers to make provision that is incidental or supplementary to, or consequential on, any provision of this Act and to make transitional or saving provision in connection with any provision of this Act.
<b>BILL PART</b>	Part 3
<b>SECTION</b>	28
<b>METHOD OF BRINGING INTO FORCE</b>	Negative if amending or revoking subordinate legislation. Draft affirmative if amending or repealing primary legislation.
<b>DESCRIPTION OF THE REGULATIONS</b>	
This is a power to allow the Welsh Ministers to make provision that is incidental or supplementary to, or consequential on, any provision of this Act and to make transitional or saving provision in connection with any provision of this Act.	
<b>REASON FOR AND POLICY INTENT OF THE POWER TO MAKE REGULATIONS</b>	
<p>This power is required to ensure that any new provision made in or by virtue of the Act will be able fit into the existing legislative framework.</p> <p>These regulations are required to allow the Welsh Ministers to make supplementary, incidental, consequential, transitional, or saving provisions if it is considered necessary for the purposes of giving full effect to the provisions of the Bill. It is likely that such changes would be relatively minor, and making them through regulations will provide appropriate flexibility for such provisions to be made without the need to amend primary legislation on each occasion.</p> <p>If the regulations amend or repeal any provision of primary legislation, then they will be subject to the draft affirmative procedure. Otherwise, they will be subject to the negative procedure.</p>	

# Agenda Item 6.2

Ysgrifennydd y Cabinet dros yr Economi, Ynni a'r Gymraeg  
Cabinet Secretary for Economy, Energy and Welsh Language



Llywodraeth Cymru  
Welsh Government

Mike Hedges MS  
Chair of the Legislation, Justice and Constitution Committee  
Senedd Cymru  
Cardiff Bay  
CF99 1SN

9 July 2024

Dear Mike,

I am writing in response to the Legislation, Justice and Constitution Committee's (LJCC) report on the 12 June in respect of the Energy Act 2023 (Consequential Amendments) Regulations 2024 (the Regulations).

The Regulations were laid before the UK Parliament on 13 May 2024. Standing Order 30A prescribes that a Statutory Instrument Consent Memorandum (SICM) must be laid and a Statutory Instrument Consent Motion may be tabled before Senedd Cymru if a UK Statutory Instrument makes provision in relation to Wales amending primary legislation within the legislative competence of the Senedd. On 14 May I laid a SICM in relation the Regulations before the Senedd in accordance with Standing Order 30A.

My intention was to hold a motion debate for the Senedd to consider the SICM laid on 14 May. However, as part of the expedited consideration of legislation by the UK Parliament due to the calling of the General Election, also known as 'wash-up', the Energy Act 2023 (Consequential Amendments) Regulations 2024 were debated and approved by both houses on Friday 24 May. It is regrettable that the expedited passage of the UKSI meant that it was approved without the opportunity for the Senedd to consider legislative consent.

Despite this, I would like to thank the Committee for their detailed consideration of the SICM. I have considered the conclusions set out in the report and have responded to the recommendation below.

Bae Caerdydd • Cardiff Bay  
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

## Recommendation

### Recommendation 1

The Welsh Government should clarify:

- its interpretation of “within the legislative competence of the Senedd” in Standing Order 30A”;
- how its interpretation of Standing Order 30A compares with its interpretation of “for any purpose within the legislative competence of the Senedd” in Standing Order 29;
- whether it believes changing the functions of a reserved authority without consent is within legislative competence for the purposes of Standing Order 30A;
- to what extent does it rely on the carve-out in Standing Orders 29 and 30 regarding “incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the legislative competence of the Senedd”

### Response: Accept

The Welsh Government should clarify:

- its interpretation of “within the legislative competence of the Senedd” in Standing Order 30A”

‘Within the legislative competence of the Senedd’ has its ordinary meaning by reference to the legislative competence tests in section 108A of the Government of Wales Act 2006 (“GoWA”).

- how its interpretation of Standing Order 30A compares with its interpretation of “for any purpose within the legislative competence of the Senedd” in Standing Order 29;

The wording in SO30A relates to amendments to primary legislation within legislative competence which, again, we would consider by reference to the wording of section 108A of GoWA. The wording in SO29 in speaking of a ‘purpose’ within legislative competence does not squarely align with the wording in section 108A of GoWA.

- whether it believes changing the functions of a reserved authority without consent is within legislative competence for the purposes of Standing Order 30A;

This will depend on the circumstances of each case, and in particular whether there is a provision of a UK statutory instrument which amends primary legislation within the legislative competence of the Senedd.

- to what extent does it rely on the carve-out in Standing Orders 29 and 30 regarding “incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the legislative competence of the Senedd”

There is no record of provisions not considered to meet the requirements of Standing Orders.

I am copying this letter to the Chair of the Climate Change, Environment and Infrastructure Committee.

Yours sincerely,



**Jeremy Miles AS/MS**

Ysgrifennydd y Cabinet dros yr Economi, Ynni a'r Gymraeg  
Cabinet Secretary for Economy, Energy and Welsh Language

# Agenda Item 6.3

## Y Cyfarfod Llawn

### Plenary

09/07/2024

*Mae hon yn fersiwn ddrafft o'r Cofnod sy'n cynnwys yr iaith a lefarwyd a'r cyfieithiad ar y pryd.*

*This is a draft version of the Record that includes the floor language and the simultaneous interpretation.*

## 3. Datganiad gan y Prif Weinidog: Y Rhaglen Ddeddfwriaethol

### 3. Statement by the First Minister: The Legislative Programme

**Y Llywydd / The Llywydd** 15:01:25

141 Yr eitem nesaf fydd y datganiad gan y Prif Weinidog ar y rhaglen ddeddfwriaethol. Vaughan Gething.

The next item will be a statement by the First Minister on the legislative programme. Vaughan Gething.

**Vaughan Gething** 15:01:39

*First Minister of Wales*

142 Diolch, Llywydd. It is a pleasure to be able to set out today the legislative priorities for my Government. I have been clear that we must focus our resources on what matters most in people's daily lives. Both our record of delivery and our plans for the future reflect our commitment to radical, progressive and transformative change for every corner of Wales.

143 Our legislative achievements over the last 12 months reflect this commitment as we have passed laws crucial for the long-term future of Wales. The Environment (Air Quality and Soundscapes) (Wales) Act, which received Royal Assent earlier this year, shows our commitment to improve the air that we breathe and to promote healthy soundscapes. As we move towards net-zero emissions by 2050, we need to transform our economy to power green prosperity. The Infrastructure (Wales) Act, passed in April, will play a key role in delivering our renewable energy targets and will simplify the consenting process for major infrastructure projects.

- 144 We are committed to ensuring effective, high-quality and sustainable health and social care to deliver better outcomes. In May, we introduced the Health and Social Care (Wales) Bill, which will eliminate private profit from the care of looked-after children as part of our programme to transform children's services. The Health Service Procurement (Wales) Act, which received Royal Assent this year, will enhance efficiency and patient-centred healthcare. Together with regulations later this year, this will deliver a new regime for the procurement of NHS services to meet the needs of the sector and the people it serves. These are an example of the significant subordinate legislation that underpins our legislative programme, including regulations to implement Acts of the Senedd, such as the Environmental Protection (Single-use Plastic Products) (Wales) Act 2023.
- 145 Llywydd, the Bills we brought forward in the third year of the legislative programme will also make positive changes for democracy in Wales. The Senedd Cymru (Members and Elections) (Wales) Act, which received Royal Assent last month, will create a modern Senedd, better able to represent and serve the people of Wales. Further measures to reform the Senedd will be considered when we debate the general principles of the Senedd Cymru (Electoral Candidate Lists) Bill next week. We share an ambition across the Senedd to introduce a recall mechanism for Senedd Members and my Government stands ready to support that work. We have also committed to enable legislation for the Senedd to consider on the issue of deception by Members of the Senedd and candidates standing for election to the Senedd. We look forward to the recommendations of the Standards of Conduct Committee on both of these issues as part of its work on the accountability of individual Members.
- 146 Later this afternoon, we will consider Stage 4 of the Elections and Elected Bodies (Wales) Bill, which will develop an electoral system fit for the twenty-first century. Members will also consider amendments to the Local Government Finance (Wales) Bill at Stage 3 later today. The Bill forms part of our work to reform non-domestic rates and council tax. The final Bill of our year three programme, the Welsh language and education Bill, will be introduced next week. Our aim is to help pupils in Wales to become independent and confident Welsh speakers.
- 147 Llywydd, I now turn to those Bills that my Government will introduce in the rest of this Senedd term. We have a packed legislative agenda ahead as we continue to make laws that will deliver positive and progressive change. My Government is committed to improving transport networks, helping to tackle the climate emergency and restoring a sense of belonging, connection and community. We will radically reshape the public transport system, bringing forward a bus Bill to enable all levels of government in Wales to work together. We can then design bus networks that allow people to access reliable, sustainable services and to provide real options other than car journeys.

- 148 Llywydd, alongside this, we are committed to modernising taxi and private hire vehicle licensing to create a safer and fairer sector. So, we will consult on a draft taxi and private hire vehicles Bill this Senedd term, and we will continue to work with passengers, the trade and licensing authorities to take forward reforms through non-legislative means. Members may wish to note a declaration of interest concerning the company Veezu, in addition to my membership of the Unite and GMB trade unions.
- 149 We will continue to demonstrate our commitment to tackling the increasing threat to the environment by bringing forward an environmental principles and biodiversity Bill. This will establish a statutory environmental governance body for Wales, embed environmental principles into Welsh law and introduce a legal duty with targets to protect and restore biodiversity. The Bill signals our clear commitment that action and leadership to tackle the climate and nature emergency will remain as a top priority for this Welsh Government.
- 150 Coal tips are a legacy of Wales's mining past. The disused tips (mines and quarries) Bill will give greater security to the people living in their shadow. It will protect critical infrastructure and safeguard the environment by enshrining in law a sustainable, fit-for-purpose regulatory regime for disused tip safety.
- 151 Llywydd, I have been clear that we must focus our efforts on the issues that matter most to the people of Wales. Everyone should have somewhere to call home, and the safety of our residents is paramount. Our homelessness Bill will help people remain in their homes and focus on prevention and early intervention to significantly improve the homelessness and housing system. A suite of secondary legislation that brought in tighter building controls came into force in April. Our building safety Bill will extend this by establishing a new building safety regime. This will fundamentally reform the occupation and ongoing management of multi-occupied residential buildings and address fire safety issues.
- 152 We will introduce a Bill that will give local authorities powers to introduce a visitor levy. The money raised will support tourism, helping our communities and preserving the beauty of Wales for future generations. The visitor accommodation (regulation) Bill will enhance the visitor experience by ensuring visitor accommodation meets required standards. The Bill will establish a register of visitor accommodation and enable providers to demonstrate compliance with safety requirements.
- 153 Improving the accessibility of our law is another important facet of our legislative programme. Our next legislation Bill will remove obsolete and spent provisions from the statute book and formalise the system of making and publishing Welsh statutory instruments. I know that Members are keen to see the consolidation of planning law, which has become increasingly inaccessible and overly complex for operators and users of the planning system. We will bring forward a Bill towards the end of this Senedd that will simplify and modernise the law in this area.

- 154 The Welsh Government will seek to work in partnership with the UK Government in respect of UK legislation, and we will update the Senedd following the King's Speech later this month. There will also be a programme of subordinate legislation to implement UK Acts made in the previous parliamentary session. This includes the Leasehold and Freehold Reform Act 2024, which provided powers for Welsh Ministers to deliver reform in this area.
- 155 Llywydd, I would like to thank Senedd Members and committees, as well as our social partners and stakeholders, for the role that they play in developing and scrutinising legislation. Our legislative programme will make a real difference to people's lives, it will help to improve transport links across the country, protect people and our communities, and help us to tackle the climate emergency. I commend this programme to Members. I look forward to continuing to work together on these priorities to build an ambitious future for a fairer, stronger and greener Wales.

Jane Hutt AS/MS  
Y Trefnydd a'r Prif Chwip  
Trefnydd and Chief Whip

Mike Hedges MS  
Chair  
Legislation, Justice and Constitution Committee

10 July 2024

Dear Mike,

**Senedd Cymru (Electoral Candidate Lists) Bill**

Thank you for the Legislation, Justice and Constitution Committee's Report in relation to the Senedd Cymru (Electoral Candidate Lists) Bill published on 7 June 2024. I wrote to you on 14 June to explain that I was intending to defer the Stage 1 debate to 16 July in order to give due consideration to your report and that of the Reform Bill Committee, and to respond as fully and appropriately as possible ahead of the Stage 1 debate.

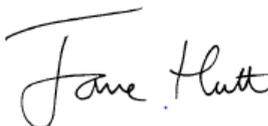
Please see my response to the set of recommendations within the report in Annex 1. I have also noted the Committee's conclusions. In responding to the 22 recommendations I have sought to address some of the concerns expressed by the Committee through these conclusions, particularly where these relate to legislative competence, the balance between primary and secondary legislation and the Bill's review provisions.

I am pleased to be in a position to publish my response earlier than that requested by the Committee (Recommendation 1) and trust that this will be helpful to both Committee members and Members of the Senedd participating in the general principles debate.

I would like to express my thanks to the Committee for scrutinising the Bill and its supporting documentation. I look forward to continuing to work with Members as the Bill progresses through the Senedd process.

I am copying this letter to the Chair of the Reform Bill Committee, the Chair of the Finance Committee and all Members of the Senedd for information.

Yours sincerely,



**Jane Hutt AS/MS**  
Y Trefnydd a'r Prif Chwip  
Trefnydd and Chief Whip

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

## Annex 1

Recommendation	Response
<p><b>Recommendation 1</b></p> <p>The Trefnydd should respond to the conclusions and recommendations we make in this report at least two working days before the Stage 1 general principles debate takes place. [page 8]</p>	<p><b>Accept</b></p> <p>This recommendation is accepted, and actioned through the response detailed below.</p>
<p><b>Recommendation 2</b></p> <p>The Welsh Government must undertake and publish, prior to Stage 4 (Final Stage) of the Senedd’s legislative process, a full risk assessment of the potential for disruption to the 2026 Senedd general election as a consequence of the potential for legal challenges to the Bill. [page 25]</p>	<p><b>Noted</b></p> <p>The Legislation, Justice and Constitution Committee and the Reform Bill Committee (in its recommendation 17, in particular) raise concerns about the risk of potential disruption to the outcome of the 2026 Senedd election.</p> <p>In light of the committees’ concerns set out in their Stage 1 reports, I accept that further steps now need to be taken to mitigate risks to the 2026 election.</p> <p>In order to protect the outcome and integrity of the 2026 Senedd election, including implementation of the Senedd Cymru (Members and Elections) Act, the Senedd Cymru (Electoral Candidate Lists) Bill will now be implemented in time for the scheduled 2030 Senedd election. This will ensure that the legislation is implemented in an orderly way and gives time for any potential legal challenges to the legislation to be resolved well in advance of the election.</p> <p>I will be bringing forward an amendment to the Bill to take commencement out of the hands of the Welsh Ministers and ensure that the Bill’s provisions (subject to Royal Assent) are commenced automatically and take effect for the scheduled 2030 Senedd election.</p> <p>I have also responded on this in relation to recommendation 15 and recommendation 17 of the Reform Bill Committee’s report.</p>
<p><b>Recommendation 3</b></p> <p>The risk assessment required by recommendation 2 should include the steps the Welsh Government will take to mitigate</p>	<p><b>Noted</b></p> <p>Please see my response to recommendation 2 and my detailed response to recommendation 17 of the Reform Bill Committee’s report.</p>

<p>the likelihood of legal challenges to the Bill to ensure that:</p> <ul style="list-style-type: none"> <li>i. the legislation is in force in good time for the 2026 Senedd general election to take place;</li> <li>ii. the integrity of the election process and the ensuing results in the 2026 Senedd general election are not placed in jeopardy. [page 25]</li> </ul>	
<p><b>Recommendation 4</b></p> <p>In the event that, following the UK general election on 4 July 2024, the Welsh Government holds discussions at the earliest available opportunity with the UK Government about whether the Bill is within the Senedd’s legislative competence, the Trefnydd must issue a statement notifying the Senedd of the outcome of the discussions. [page 25]</p>	<p><b>Noted</b></p> <p>On 22 April, the First Minister wrote to the then Secretary of State for Wales indicating that he would be content “for officials to meet to discuss the Bill at an appropriate time in the future, after the Committees have completed their Stage 1 scrutiny of the Bill”.</p> <p>As Member in Charge of the Bill, I am of the view, as stated in the Explanatory Memorandum and during Senedd scrutiny, that the Senedd Cymru (Electoral Candidate Lists) Bill is within the Senedd’s legislative competence.</p> <p>The committee will also wish to note my response to recommendation 5, and recommendation 18 of the Reform Bill Committee.</p>
<p><b>Recommendation 5</b></p> <p>The Welsh Government should work with the UK Government following the 2024 UK general election to deliver an Order in Council under section 109 of the Government of Wales Act 2006 to ensure and put beyond doubt that the Senedd has the power to make the Bill as currently drafted. [page 25]</p>	<p><b>Noted</b></p> <p>As Member in Charge of the Bill, I am of the view, as stated in the Explanatory Memorandum and during scrutiny, that the Senedd Cymru (Electoral Candidate Lists) Bill is within the Senedd’s legislative competence.</p> <p>I will consider this recommendation further as the Bill progresses.</p> <p>However, I have been advised that, even if a section 109 Order were pursued, it cannot put the question of competence beyond doubt. Only the ruling of the Supreme Court on a question of competence can put the matter beyond doubt and only in relation to the provisions which are the subject of the reference.</p>

<p><b>Recommendation 6</b></p> <p>The Welsh Government should issue a statement notifying the Senedd of any discussions that take place with the UK Government following the 2024 UK general election about such a section 109 Order in Council under the Government of Wales Act 2006. [page 25]</p>	<p><b>Noted</b></p> <p>As Member in Charge of the Bill, I am of the view, as stated in the Explanatory Memorandum and during scrutiny that the Senedd Cymru (Electoral Candidate Lists) Bill is within the Senedd’s legislative competence.</p> <p>The Committee will wish to note my response to recommendations 4 and 5. If relevant, I will consider this recommendation further.</p>
<p><b>Recommendation 7</b></p> <p>A motion that the Bill be passed at Stage 4 (Final Stage) of the Senedd’s legislative process should not be debated unless the Welsh Government has issued a statement setting out whether the Welsh and UK Governments have reached agreement on whether they believe the Bill is within, or will be brought within, the Senedd’s legislative competence (including by means of amendments to the Government of Wales Act 2006). If agreement has not been reached, the reasons for that disagreement must be clearly stated. [page 25]</p>	<p><b>Noted</b></p> <p>As Member in Charge of the Bill, I am of the view as stated in the Explanatory Memorandum and during scrutiny that the Senedd Cymru (Electoral Candidate Lists) Bill is within the Senedd’s legislative competence.</p> <p>As set out in relation to recommendation 5, a change to the devolution settlement by way of either a section 109 Order or an Act of Parliament cannot put the matter of competence beyond doubt.</p>
<p><b>Recommendation 8</b></p> <p>The Welsh Government must take full and appropriate action to minimise the risk of disruption to the 2026 Senedd general election caused by potential legal challenges to the Bill, including (if necessary) by means of the Counsel General referring the Bill to the Supreme Court using his powers under section 112 of the Government of Wales Act 2006. [page 26]</p>	<p><b>Accept in part</b></p> <p>Having considered the Stage 1 reports, I accept that further steps should now be taken to mitigate risks to the 2026 election. My more detailed responses to recommendations 2 and 3, and to recommendation 17 of the Reform Bill Committee’s report are relevant.</p> <p>This recommendation concerns a function of the Counsel General which is exercised independently of government and is only exercisable after the Bill has passed.</p>
<p><b>Recommendation 9</b></p> <p>The Welsh Government should work with the UK Government following the 2024 UK general election to expand the list of “devolution issues” in Schedule 9 to the Government of Wales Act 2006 that can be referred to the Supreme Court, so that proposed Senedd Bills can be referred to</p>	<p><b>Noted</b></p> <p>I will consider this recommendation further.</p> <p>Whilst the Welsh Government may wish to pursue this course of action following the UK general election, it would have implications for the devolution settlement more broadly, which are outside the remit of this Bill.</p>

<p>the Supreme Court at an early stage. [page 27]</p>	
<p><b>Recommendation 10</b></p> <p>The Trefnydd should table an amendment to the Bill setting out the functions of a national nominations compliance officer as a consequence of new section 7C of the Government of Wales Act 2006 (as inserted by section 1 of the Bill). [page 47]</p>	<p><b>Accept in principle (subject to further consideration)</b></p> <p>Please see the response to recommendation 14, regarding the balance the Bill strikes between what is in the Bill and what is left to subordinate legislation.</p> <p>Regarding this recommendation, I am considering further whether it is feasible and appropriate to bring forward an amendment providing more detail in the Bill related to the functions of the National Nominations Compliance Officer.</p>
<p><b>Recommendation 11</b></p> <p>The Trefnydd should table an amendment to the Bill setting out the functions of a constituency returning officer in relation to new section 7C of the Government of Wales Act 2006 (as inserted by section 1 of the Bill). [page 47]</p>	<p><b>Accept in principle (subject to further consideration)</b></p> <p>Please see the response to recommendation 14, regarding the balance the Bill strikes between what is in the Bill and what is left to subordinate legislation.</p> <p>Regarding this recommendation, I am considering further whether it is feasible and appropriate to bring forward an amendment providing more detail in the Bill related to the functions of a Constituency Returning Officer in ensuring compliance with section 7B.</p>
<p><b>Recommendation 12</b></p> <p>The Trefnydd should table an amendment to the Bill to provide more information related to candidate statements and how will they operate. [page 47]</p>	<p><b>Reject</b></p> <p>Please see the response to recommendation 14, regarding the balance the Bill strikes between what is in the Bill and what is left to subordinate legislation.</p> <p>Regarding this particular recommendation, I note that the Bill already provides for the terms of the candidate statement, which is whether the candidate is “a woman” or “not a woman”.</p> <p>Operational or administrative matters, such as where in the nomination papers the statement is to be made and any further details to be on the form containing the statement will be provided for in the subordinate legislation.</p>

	<p>These are matters that are appropriately dealt with in subordinate legislation. It may be desirable for them to align with other matters that are provided for in the subordinate legislation and for there to be flexibility to change them in future.</p>
<p><b>Recommendation 13</b></p> <p>The Trefnydd should table an amendment to the Bill to set out more information about how the provisions of the Bill will be enforced, including but not limited to section 7B of the Government of Wales Act 2006 (as inserted by section 1 of the Bill). [page 48]</p>	<p><b>Accept in principle (subject to further consideration)</b></p> <p>Please see the response to recommendation 14, regarding the balance the Bill strikes between what is in the Bill and what is left to subordinate legislation.</p> <p>Regarding this recommendation, I am considering further whether it is feasible and appropriate to bring forward an amendment providing more detail about the enforcement of section 7B.</p>
<p><b>Recommendation 14</b></p> <p>In considering our recommendations 10 to 13, the Trefnydd should take account of the Statement of Policy Intent for Subordinate Legislation and consider what detail from the information it includes about how the provisions in the Bill will operate, would be more appropriate to include on the face of the Bill. [page 48]</p>	<p><b>Accept in principle (subject to further consideration)</b></p> <p>The balance struck by the Bill between what is provided for on its face and what is left to be dealt with under subordinate legislation reflects:</p> <ul style="list-style-type: none"> <li>• the existing balance between the primary and subordinate legislation for Senedd elections provided for in the Government of Wales Act 2006 (including as it is amended by the Senedd Cymru (Members and Elections) Act 2024).</li> <li>• that it is appropriate that there is flexibility to change, by way of subordinate legislation, details of the nominations process and other detailed provisions related to the quota rules. For example, this could be to align with wider changes to the conduct of elections, which are given effect through subordinate legislation.</li> </ul> <p>As I said during Stage 1 scrutiny, there are practical barriers to putting more detail on the face of the Bill. For example, the functions of Constituency Returning Officers and the National Nominations Compliance officer related to the quota rules are to be integrated within the nominations process and their functions as part of it. Under the Government of Wales</p>

	<p>Act 2006, that process falls to be provided for in the subordinate legislation.</p> <p>However, I acknowledge the Committee's concerns regarding what is left to be provided for in the subordinate legislation. As a result, I am considering further what details it may be feasible and appropriate to provide for on the face of the Bill in some way. In undertaking this work, I have considered recommendations 10 to 13 and the details set out in the Statement of Policy Intent and is still considering recommendations 10, 11 and 13 (see the responses to those recommendations).</p>
<p><b>Recommendation 15</b></p> <p>The risk assessment we refer to in recommendations 2 and 3 should include an assessment of the risk of challenge to an Order to be made under section 13 of the Government of Wales Act 2006 in order to implement provisions of the Bill should it be enacted. [page 48]</p>	<p><b>Noted</b></p> <p>As Member in Charge of the Bill, I recognise the concerns which have been raised during Stage 1 scrutiny relating to the potential for disruption to the 2026 election as a result of the risk of legal challenges to both the primary and subordinate legislation.</p> <p>Earlier reports on Senedd reform have identified potential risks and challenges associated with seeking to legislate to introduce gender quotas for Senedd elections. The Welsh Government responded to this by bringing forward these measures in a separate Bill, and in planning for an amending Order under section 13 of the Government of Wales Act 2006.</p> <p>In light of the Stage 1 reports, I accept that further steps now need to be taken to mitigate risks to the 2026 election.</p> <p>In order to protect the outcome and integrity of the 2026 Senedd election, the Senedd Cymru (Electoral Candidate Lists) Bill will be implemented in time for the scheduled 2030 Senedd election. I will be bringing forward an amendment to the Bill to take commencement out of the hands of the Welsh Ministers and ensure that the Bill's provisions (subject to Royal Assent) are commenced automatically and take effect for that 2030 Senedd election.</p> <p>See also my response to recommendations 2 and 3, and recommendation 17 of the Reform Bill Committee.</p>

<p><b>Recommendation 16</b></p> <p>The Trefnydd should provide more detailed information about why definitions of ‘a woman’ and ‘not a woman’ have not been included in the Bill. [page 48]</p>	<p><b>Reject</b></p> <p>As explained during Stage 1 scrutiny, but for reference I have repeated here, a definition of ‘woman’ is not included in the Bill. The Bill is not about defining ‘a woman’ and it is not about gender recognition. The Bill’s purpose is to make the Senedd more effective, which will be achieved through aiming to ensure there is greater gender balance of its Members.</p> <p>It is not unusual for legislation to use the term ‘woman’ without a definition.</p> <p>It will be for individual candidates to be responsible for completing the statement, just as they are in respect of other information provided on their nomination forms.</p> <p>Political parties and candidates will have an interest in ensuring that accurate statements are made during the nominations process, as otherwise they run the risk of reputational damage and/or legal challenge.</p>
<p><b>Recommendation 17</b></p> <p>The Trefnydd and Counsel General should provide details of the timetable for consultation and making of an Order under section 13 of the Government of Wales Act 2006 required to implement the Senedd Cymru (Electoral Candidate Lists) Bill. [page 49]</p>	<p><b>Accept</b></p> <p>My response to recommendation 15 explains my intention to implement the legislation in time for the scheduled 2030 election. The consultation on the Order under section 13 of the Government of Wales Act 2006 to implement quota rules can only take place once the Bill has passed and the settled provisions and powers for the subordinate legislation are known. At the appropriate juncture, I will provide details of the timetable for the subordinate legislation.</p>
<p><b>Recommendation 18</b></p> <p>The Counsel General should explain what steps he will take to ensure that a consolidated, accessible version of Orders made under section 13 of the Government of Wales Act 2006 governing the conduct of the 2026 Senedd general election is available to candidates. [page 49]</p>	<p><b>Accept in principle</b></p> <p>This recommendation is directed at the Counsel General. The Counsel General and I have agreed to continue to keep political parties informed of progress in relation to any Orders under section 13 of the Government of Wales Act 2006, through the Senedd Political Parties Panel convened by the Electoral Commission. The Electoral Commission are responsible for producing guidance for candidates and</p>

	<p>agents on the rules for the election, enabling a more user-friendly engagement with the election rules.</p>
<p><b>Recommendation 19</b></p> <p>The Trefnydd must publish for consultation all Orders in draft format which are to be made under section 13 of the Government of Wales Act 2006 in readiness for the 2026 Senedd general election. [page 50]</p>	<p><b>Accept</b></p> <p>The Welsh Government will shortly begin the extensive consultation process on the main Order being made under section 13 of the Government of Wales Act 2006 in readiness for the 2026 Senedd general election. This includes statutory consultation with the Electoral Commission, and a public consultation later in the autumn.</p> <p>With specific reference to the Senedd Cymru (Electoral Candidate Lists) Bill, the Explanatory Memorandum accompanying the Bill states that “The Welsh Government will also undertake a public consultation on the Order that will be made under section 13 of GoWA ... which will provide the statutory basis for the 2026 election. This Order will implement many of the detailed aspects necessary to enforce the proposals, which are summarised in the Statement of Policy Intent that accompanies the Bill.”</p> <p>Although the intention is now to implement for the scheduled 2030 election, the Welsh Government remains committed to consulting publicly on the draft Order.</p>
<p><b>Recommendation 20</b></p> <p>In light of conclusion 7, the Trefnydd should consider whether section 2 is appropriate for inclusion in the Bill. [page 50]</p>	<p><b>Reject</b></p> <p>Section 2 of the Bill imposes a duty on the Presiding Officer to table a motion within a specific timescale proposing a review of the effect and operation of the Act.</p> <p>It is not unprecedented for duties to be placed on a Presiding Officer. An example of such a duty can be found in section 110(3) of the Government of Wales Act 2006 where a duty is placed on the Presiding Officer to make a decision on whether or not a Bill is within the Senedd’s legislative competence, and to state that decision.</p> <p>In accordance with Standing Order 12.22, the motion may be amended by any</p>

	<p>Member. The motion may also be rejected, resulting in no further action.</p> <p>On this basis, and considering the freedom which remains for the Senedd to determine how it responds to any such motion, it is not considered that the provisions in section 2 constrain the freedom of action of a future Parliament.</p> <p>As the Bill emanated from the recommendations of the Special Purpose Committee on Senedd Reform, it is appropriate that the Senedd is responsible for post-legislative review of the operation and effect of the legislation. Section 2 provides a mechanism for the Senedd to undertake such a review.</p> <p>Please also see my response to recommendations made by the Reform Bill Committee on section 2 of the Bill (recommendations 11, 12 and 13).</p>
<p><b>Recommendation 21</b></p> <p>The Trefnydd should state whether, in her view, the enabling powers in the Bill and/or the powers in section 13 of the Government of Wales Act 2006 as amended by the Bill, could be used to define ‘a woman’ or ‘not a woman’. [page 53]</p>	<p><b>Accept</b></p> <p>The Bill does not give any power for the meaning of ‘a woman’ within the Bill to be provided for in an order under section 13 of the Government of Wales Act 2006 or in any other subordinate legislation.</p>
<p><b>Recommendation 22</b></p> <p>The Trefnydd should state whether, in her view, defining ‘a woman’ or ‘not a woman’ would be within the legislative competence of the Senedd. [page 53]</p>	<p><b>Noted</b></p> <p>Competence for any provision can only be assessed against the precise terms of the proposed provision. Without that, it is neither possible nor relevant for me to give a view.</p>

Jane Hutt AS/MS  
Y Trefnydd a'r Prif Chwip  
Trefnydd and Chief Whip



Llywodraeth Cymru  
Welsh Government

David Rees MS  
Chair  
Reform Bill Committee

10 July 2024

Dear David,

### **Senedd Cymru (Electoral Candidate Lists) Bill**

Thank you for the Reform Bill Committee's Report in relation to the Senedd Cymru (Electoral Candidate Lists) Bill published on 7 June 2024. I wrote to you on 14 June to explain that I was intending to defer the Stage 1 debate to 16 July in order to give due consideration to your report and that of the Legislation, Justice and Constitution Committee and to respond as fully and appropriately as possible ahead of the Stage 1 debate.

Please see my response to the set of recommendations within the report in Annex 1.

You indicated that it would be helpful to receive my written response two days in advance of the Stage 1 debate to enable Members to reflect upon it before the debate, and I am pleased to be able to provide this response to the Committee well in advance of the debate next week. I trust that this will be helpful to both Committee members and Members of the Senedd participating in the general principles debate.

I would like to express my thanks to the Committee for scrutinising the Bill and its supporting documentation. I look forward to continuing to work with Members as the Bill progresses through the Senedd process.

I am copying this letter to the Chair of the Legislation, Justice and Constitution Committee, the Chair of the Finance Committee and all Members of the Senedd for information.

Yours sincerely,

**Jane Hutt AS/MS**  
Y Trefnydd a'r Prif Chwip  
Trefnydd and Chief Whip

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

## Annex 1

Recommendation	Response
<p><b>Recommendation 1</b></p> <p>By majority, we recommend that the Senedd should agree the general principles of the Senedd Cymru (Electoral Candidate Lists) Bill, but, throughout their ongoing scrutiny of the Bill, Members of the Senedd should have regard to the issues highlighted in our report. [page 39]</p>	<p><b>Noted</b></p> <p>This recommendation is for the Senedd. As such, no specific response is provided, though the Welsh Government welcomes the recommendation.</p>
<p><b>Recommendation 2</b></p> <p>The Member in charge should clarify which situations involving the removal of a candidate from a list will be detailed in the Conduct Order in accordance with new section 7D(1)(a) (to be inserted into the Government of Wales Act 2006), and provide detail of the Welsh Government's policy intentions in relation to each circumstance. [page 62]</p>	<p><b>Accept in part</b></p> <p>Work by the Welsh Government to identify the full range of situations and circumstances, and the most appropriate potential policy solution in each case is ongoing.</p> <p>In taking this work forward, consideration is being given to situations where a candidate may withdraw after a candidate list has been submitted to the Constituency Returning Officer, with a view to ensuring that a party does have an opportunity to address any last-minute and unexpected changes that impact on their compliance with the quota rules.</p> <p>Consideration will also be given to situations involving the death of a candidate during the nominations process and up until the Statement of Persons Nominated is published. The impact of disqualification of a candidate during this period will also be considered. The power in section 7D(1)(a) to treat a non-compliant list as compliant, may be used where it is appropriate, although other solutions may be more appropriate in some situations.</p> <p>The policy will be addressed during the development of, and consultation on, the subordinate legislation. I continue to be mindful of the need for the provisions to be compatible with Convention rights, in particular the rights of parties and candidates to stand, giving consideration to the points raised during Stage 1 scrutiny of the Bill with regard to the potential impact of withdrawals on political parties.</p>

	<p>I would be content to provide further details to committees as part of our consultation on the subordinate legislation.</p>
<p><b>Recommendation 3</b></p> <p>The Member in charge should bring forward amendments at Stage 2 to change the “may” in new section 7D(1) (to be inserted into the Government of Wales Act 2006) to a “must” as it relates to provision to be made in the Conduct Order in relation to the effect of the removal of a candidate from a list of candidates on compliance with sections 7A and 7B. [page 62]</p>	<p><b>Reject</b></p> <p>As noted in the response to recommendation 2, policy work in this area is ongoing and continues to be informed by our collaboration with stakeholders and the evidence provided to the committees during Stage 1 scrutiny. There are a range of situations where a candidate may be removed from a list and they may potentially require bespoke solutions, for which the power in section 7D(1)(a) to treat a non-compliant list as compliant may or may not be required.</p> <p>I do not believe it is necessary or appropriate to place a duty on Ministers to make the provision described in section 7D(1) in the Conduct Order.</p> <p>I have noted the evidence provided by stakeholders with regards to the withdrawal of candidates and will consider this alongside the impact upon the right to stand for election for parties and candidates.</p> <p>The policy detail and its impacts will be addressed in the public consultation on the draft subordinate legislation.</p>
<p><b>Recommendation 4</b></p> <p>The Member in charge should confirm that provision made in the Conduct Order in relation to the effect of the removal of a candidate from a list of candidates on compliance with sections 7A and 7B will require that where a candidate withdraws after a list had been submitted, the remaining list must be reassessed against the quota rules. If that assessment finds that the list is no longer compliant, the party should be given an opportunity to reorder their candidates to achieve compliance. If the party’s view is that they wish to stand an additional candidate to replace the withdrawn candidate, that additional candidate must have made the same statement as the withdrawn candidate on whether they are a woman or not a woman. [page 63]</p>	<p><b>Accept in part</b></p> <p>Party lists will need to comply with the quota rules. If a party list candidate withdraws their nomination, resulting in the list no longer complying with the rules, then the list will be rejected by the Constituency Returning Officer. The party will however have an opportunity to submit a further list which complies with the rules, up until close of nominations.</p> <p>It is not the policy intention to require parties to replace a withdrawn candidate with a new candidate who has made the same gender statements as the withdrawn candidate. While it is anticipated that, in practice, this may be what a party would want to/need to do in the circumstances, there may also be scenarios where a party</p>

	<p>may want to change their list in other ways to make it compliant. I do not consider it appropriate for the legislation to prevent a party from taking whatever action it considers appropriate in the circumstances to achieve compliance. The Constituency Returning Officer's role when assessing the alternative list, will be to check that the list is compliant with the rules in the Bill about the placement and proportion of women.</p> <p>As stated in my response to recommendations 2 and 3, we will continue to work with stakeholders in developing the detail of the subordinate legislation, which will be subject to consultation.</p>
<p><b>Recommendation 5</b></p> <p>The Member in charge should bring forward amendments at Stage 2 to include provision that requires vacancies arising between elections to be filled by the next eligible and willing person on the list who made the same statement as the outgoing Member on whether they are a woman or not a woman. If no such candidates remain on the list, the vacancy may be filled by the next eligible and willing person on the list who did not make the same statement. [page 63]</p>	<p><b>Reject</b></p> <p>The Bill introduces a candidate quota, with the rules applying only in respect of the placement and proportion of women on party lists. The Bill does not include provisions which extend beyond the point at which party lists candidates stand nominated.</p> <p>I believe any intimidation or pressure placed on a candidate in any circumstances, including those set out in the committee's report, is unacceptable and would likely reflect negatively on the political party if their members behaved in this way. If this did occur, we would encourage the Member to raise the matter with their party through established complaints and grievance procedures, and for the party to act on any concerns raised.</p> <p>Candidates should be able to participate in public and political life free from harassment and intimidation. We are taking steps to address this as outlined in my response to recommendation 23.</p> <p>This recommendation would not necessarily further the Bill's purpose of a more effective Senedd achieved as a result of greater gender balance amongst its Members. Although I believe the provisions in the Bill offer a good chance of returning a gender-balanced Senedd, this cannot be guaranteed. If it were the case that there was an imbalance with women still in the</p>

	<p>minority, this recommendation could result in that gender imbalance being perpetuated: an outgoing man would be replaced by a man.</p> <p>Given this risk and the fact that vacancies are a rare occurrence, I consider it disproportionate to incorporate a gender-related element into the vacancies system.</p> <p>Should the concerns of the committee relating to this recommendation materialise as a result of implementing the provisions in the Bill, then I would be content to consider the matter, and the most appropriate solution, in further detail.</p>
<p><b>Recommendation 6</b></p> <p>When giving effect to our recommendations 4 and 5 in the Conduct Order, the Member in charge should undertake a data protection impact assessment to ensure that any appropriate steps are taken in respect of the retention of candidates' statements on whether they are a woman or not a woman for an appropriate period (which, for casual vacancies, would be the duration of the relevant Senedd term). [page 64]</p>	<p><b>Noted</b></p> <p>As I have not accepted recommendation 5 and only accept recommendation 4 in part, this recommendation is no longer relevant.</p> <p>The Bill does not currently give rise to a need to retain candidates' data as to whether or not they are a woman beyond the period within which an election petition may be brought or, if brought, when it is resolved. Where there are data protection impacts arising from the Bill, these have been assessed and reflected in the Data Protection Impact Assessment published alongside the legislation.</p> <p>We will undertake an assessment of the impacts (including data impacts) of the provisions of the subordinate legislation as part of its development and publish those as part of any supporting documentation. This will include consideration of the appropriateness of providing for further safeguards regarding candidate statements.</p>
<p><b>Recommendation 7</b></p> <p>The Member in charge should bring forward amendments at Stage 2 to include a requirement on the face of the Bill that the Welsh Ministers must make provision in the Conduct Order for the designation of a deputy National Nominations Compliance Officer. [page 74]</p>	<p><b>Accept in principle</b></p> <p>I accept the principle that there should be scope for a Deputy National Nominations Compliance Officer to whom functions of the National Nominations Compliance Officer may be delegated. Further consideration will be given to what, if any, amendments are needed to the Bill so that this can be provided for in the Conduct</p>

<p><b>Recommendation 8</b></p> <p>The Member in charge should provide assurances that the performance standards and offence of breach of official duty that apply to Constituency Returning Officers will be extended to the National Nominations Compliance Officer (and deputy National Nominations Compliance Officer). In her response to our report, she should outline whether any primary or secondary legislative changes will be required to achieve this. [page 74]</p>	<p><b>Accept</b></p> <p>I accept the recommendation and can confirm that we are discussing with the Electoral Commission extending its functions so that the performance standards regime applies to the National Nominations Compliance Officer in a similar way to how it applies to Constituency Returning Officers. This will require primary legislative changes and consideration will be given to appropriate amendments to the Bill to achieve this.</p> <p>As the Justice Impact Assessment for the Bill indicates, it remains my intention that the breach of official duty offence will apply to the National Nominations Compliance Officer (and any deputy), as it does currently to Returning Officers. The subordinate legislation will provide for this.</p>
<p><b>Recommendation 9</b></p> <p>The Member in charge should commit to making provision in the Conduct Order to extend the corrupt practice offence for providing false statements in nomination and other papers to include false statements made under section 7D(2) (to be inserted into the Government of Wales Act 2006). In her response to our report, she should outline whether any primary or secondary legislative changes will be required to achieve this. [page 93]</p>	<p><b>Reject</b></p> <p>As I stated during Stage 1 scrutiny of the Bill, I do not consider that the corrupt practice offence regarding false statements should apply in respect of a candidate's statement as to whether or not they are a woman.</p> <p>Candidates and their parties run the risk of reputational damage and legal challenge in the event of a false gender statement being made. I would expect parties to continue to take due care when undertaking checks during their candidate selection processes.</p>
<p><b>Recommendation 10</b></p> <p>The Member in charge should bring forward amendments at Stage 2 to require that if the Senedd decides to establish a committee pursuant to a motion under section 2(1) of the Senedd Cymru (Electoral Candidate Lists) Act 2024, the Welsh Ministers must collect and publish sufficient data about the diversity of candidates and elected Members to inform the committee's review. If the Bill is amended in accordance with our recommendation 11 to place responsibility for reviewing the effect and operation of the Act and related provision on the Welsh Ministers, the requirement to</p>	<p><b>Reject</b></p> <p>The Elections and Elected Bodies (Wales) Bill places a duty on the Welsh Ministers to issue guidance for the purpose of encouraging political parties to collect, collate and publish diversity information on candidates for Senedd elections. That Bill provides that this guidance must be published before 1 May 2025.</p> <p>If political parties respond positively to the guidance, information on the diversity of Senedd candidates and Members will be available in time to inform the review (envisaged by section 2 of this Bill) of the operation and effect of this Bill.</p>

<p>collect and publish data should be incorporated within that statutory review provision. [page 99]</p>	<p>The Senedd Commission also publishes information on some diversity aspects (including gender) relating to elected Members shortly after a Senedd election, which may be used to inform the committee's review.</p> <p>In response to recommendation 24, the Welsh Government will continue to make representations to the UK Government at the appropriate time regarding commencement of section 106 of the Equality Act 2010.</p> <p>I do not intend to amend the Bill in accordance with recommendation 11.</p>
<p><b>Recommendation 11</b></p> <p>The Member in charge should bring forward amendments at Stage 2 to:</p> <ul style="list-style-type: none"> <li>▪ Remove section 2 (review of operation and effect of the Act) from the Bill on the basis that the provision is constitutionally problematic and legally unnecessary.</li> <li>▪ Require the Welsh Ministers to review and report on the operation and effect of sections 7A to 7D of the Government of Wales Act 2006 and any related provision made under section 13 of that Act or under the Senedd Cymru (Electoral Candidate Lists) Act 2024. The outcomes of this review will inform decisions to be taken by future Seneddau and their committees whether, and if so, when and how, they consider it appropriate to conduct post-legislative scrutiny. [page 100]</li> </ul>	<p><b>Reject</b></p> <p>Section 2 of the Bill imposes a duty on the Llywydd to table a motion within a specific timescale on the issue of a review of the operation and effect of the legislation. Placing a duty on the Llywydd of a future Senedd is not unprecedented.</p> <p>The future Senedd, which would be asked to consider the motion brought by the Llywydd, could choose to amend or reject the motion. Therefore, it remains for the Senedd to determine how it responds to the motion. For this reason, I do not consider that the provisions in section 2 constrain the freedom of the action of a future Senedd. A similar provision is found in section 19 of the Senedd Cymru (Members and Elections) Act.</p> <p>As the Bill emanated from the recommendations of the Special Purpose Committee, it is appropriate in my view that the Senedd is responsible for post-legislative review of the operation and effect of the legislation. Section 2 provides a mechanism for the Senedd to give consideration to this in a timely way.</p> <p>The committee may also wish to note my response to recommendation 20 of the Legislation, Justice and Constitution Committee report.</p>

<p><b>Recommendation 12</b></p> <p>If the Member in charge does not accept our recommendation 11, she should bring forward amendments at Stage 2 to remove section 2(2)(b) (which requires the motion tabled by the Presiding Officer to propose that the committee established to review the operation and effect of sections 7A to 7D of the Government of Wales Act 2006 and any related provision made under section 13 of that Act or under the Senedd Cymru (Electoral Candidate Lists) Act 2024 must complete a report on the review no later than twelve months after the first meeting of the first Senedd to be elected after section 1 of the Senedd Cymru (Electoral Candidate Lists) Bill comes into force). [page 100]</p>	<p><b>Reject</b></p> <p>I am rejecting this recommendation on the basis that it is necessary for the review to be undertaken swiftly to provide sufficient time following publication of the report for the future Senedd, if it so wishes, to pursue any legislative changes arising from the review and for these changes to be implemented ahead of the following scheduled ordinary general election.</p>
<p><b>Recommendation 13</b></p> <p>If the Member in charge does not accept our recommendations 11 or 12, she should bring forward amendments at Stage 2 to section 2(2)(b) to replace the current requirement that the motion tabled by the Presiding Officer must specify that the committee's work is to be completed within twelve months of the first meeting of the first Senedd to be elected after section 1 of the Senedd Cymru (Electoral Candidate Lists) Bill comes into force with provision that the motion may include a proposed deadline by which the committee's report is to be completed. [page 101]</p>	<p><b>Reject</b></p> <p>As I have set out in my response to recommendation 12, I consider it important that the review be undertaken swiftly to provide sufficient time following publication of the report for the future Senedd, if it so wishes, to pursue any legislative changes arising from the review and for these changes to be implemented ahead of the following scheduled ordinary general election.</p> <p>I do not consider it necessary to accept this recommendation because should the future Senedd wish to provide for a different deadline for the review committee to report, this can be actioned by way of an amendment to the motion tabled by the Llywydd under section 2.</p>
<p><b>Recommendation 14</b></p> <p>As part of the development of and consultation on the Conduct Order, the Welsh Government should undertake, and publish, an equality impact assessment on the proposed election timetable. This should include assessment of any impacts on people from different socio-economic backgrounds. [page 114]</p>	<p><b>Accept</b></p> <p>In introducing the Bill, I published a full suite of impact assessments, including an Equality Impact Assessment and Integrated Impact Assessment. These impact assessments will be kept under review as the Bill progresses through the legislative process.</p> <p>Any further impacts arising out of provisions in the subordinate legislation, including those on people from different socio-economic backgrounds, will be considered</p>

	and published as part of the supporting documentation for that legislation and made available for scrutiny.
<p><b>Recommendation 15</b></p> <p>The Member in charge should detail all costs associated with implementing the Senedd Cymru (Electoral Candidate Lists) Bill discretely from the Senedd Cymru (Members and Elections) Bill in a revised Regulatory Impact Assessment. [page 114]</p>	<p><b>Accept in principle</b></p> <p>In response to the letter from the Finance Committee, I have committed to ensuring that the Regulatory Impact Assessment is revised at the appropriate time in accordance with established procedures and ensure the revised Regulatory Impact Assessment reflects any additional costs which may arise from amendments to this Bill.</p> <p>Further consideration will be given to the feasibility of isolating costs associated solely with the implementation of the Senedd Cymru (Electoral Candidate Lists) Bill from the wider implementation of Senedd reform.</p>
<p><b>Recommendation 16</b></p> <p>The Member in charge should clarify whether the additional £6,000 cost identified since publication of the Regulatory Impact Assessment will be borne by the Welsh Government or the Electoral Commission, and reflect the additional cost in a revised Regulatory Impact Assessment. [page 115]</p>	<p><b>Accept</b></p> <p>I can confirm the £6,000 costs (£2,000 per year for the initial three years, starting in 2024/25) incurred by the Electoral Commission reflect costs to the Welsh Consolidated Fund (WCF) as the Electoral Commission's budget is agreed by the Llywydd's committee.</p> <p>In response to the letter from the Finance Committee, I have committed to ensuring that the Regulatory Impact Assessment is revised at the appropriate time in accordance with established procedures and ensure the revised Regulatory Impact Assessment reflects any additional costs which may arise from amendments to this Bill.</p>
<p><b>Recommendation 17</b></p> <p>The Member in charge should work with the Llywydd, the Electoral Commission, electoral administrators, political parties and such other stakeholders as she considers appropriate to develop and publish a clear pathway for identifying, managing and mitigating any risks to the conduct and/or outcomes of the 2026 Senedd election that may result from the lack of consensus about whether the Senedd has legislative</p>	<p><b>Noted</b></p> <p>As Member in Charge, I recognise the concerns which have been raised during Stage 1 scrutiny relating to the potential for disruption to the 2026 election as a result of the risk of legal challenges to both the primary and secondary legislation. While steps have already been taken to manage potential risks to the 2026 election identified by earlier reports by bringing forward these measures in a separate Senedd Reform</p>

<p>competence to pass the Senedd Cymru (Electoral Candidate Lists) Bill. The pathway must be published prior to the Senedd being asked to pass the Bill at Stage 4 of the legislative process. [page 141]</p>	<p>Bill, I accept that further steps should now be taken to mitigate risks to the 2026 election in light of the committees' concerns set out in their Stage 1 reports.</p> <p>In order to protect the integrity of the 2026 Senedd election, including the implementation of the Senedd Cymru (Members and Elections) Act, the Senedd Cymru (Electoral Candidate Lists) Bill will be implemented in time for the scheduled 2030 Senedd election. This will ensure that the legislation is implemented in an orderly way and gives time for any potential legal challenges to the legislation to be resolved well in advance of the election.</p> <p>I will be bringing forward an amendment to the Bill to take commencement out of the hands of the Welsh Ministers and ensure that the Bill's provisions (subject to Royal Assent) are commenced automatically and take effect for the scheduled 2030 Senedd election.</p> <p>Please see also my response to recommendations 2, 3 and 15 of the Legislation, Justice and Constitution committee report.</p>
<p><b>Recommendation 18</b></p> <p>The Member in charge should, after the current UK general election period, discuss with the UK Government the mechanisms through which the question of whether the Senedd Cymru (Electoral Candidate Lists) Bill would be within the Senedd's legislative competence may be put beyond doubt, including any potential use of an Order in Council under section 109 of the Government of Wales Act 2006 or an Act of the UK Parliament with the objective of avoiding prolonged legal debate and ensuring that any uncertainty is resolved in advance of the 2026 Senedd election. The Member in charge must lay a statement before the Senedd providing an update on these discussions prior to the Senedd being asked to pass the Bill at Stage 4 of the legislative process. [page 142]</p>	<p><b>Noted</b></p> <p>I will consider this recommendation further.</p> <p>On 22 April, the First Minister wrote to the then Secretary of State for Wales indicating that he would be content "for officials to meet to discuss the Bill at an appropriate time in the future, after the Committees have completed their Stage 1 scrutiny of the Bill".</p> <p>As Member in Charge of the Bill, I am of the view, as stated in the Explanatory Memorandum and during scrutiny that the Senedd Cymru (Electoral Candidate Lists) Bill is within the Senedd's legislative competence.</p> <p>The committee will also wish to note my response to recommendations 4 and 5 of the Legislation, Justice and Constitution Committee report.</p>

<p><b>Recommendation 19</b></p> <p>If the Senedd Cymru (Electoral Candidate Lists) Bill is passed by the Senedd at Stage 4 of the legislative process, then, in order to put the question of whether the Bill would be within the Senedd's legislative competence beyond doubt, the Counsel General must exercise his power under section 112 of the Government of Wales Act 2006 to refer the Bill to the Supreme Court and request that the matter is considered, if possible, within an expedited timescale that would not, if the Bill is found to be within competence, prevent candidate quotas from being implemented for the 2026 Senedd election. [page 143]</p>	<p><b>Reject</b></p> <p>This recommendation concerns a function of the Counsel General which is exercised independently of government and is only exercisable after the Bill has passed.</p>
<p><b>Recommendation 20</b></p> <p>The Senedd Commission should commission a gender sensitive audit of the Senedd's culture, ways of working and facilities. The outcomes of the audit should be available in sufficient time to inform decisions on the Cardiff Bay 2032 project, and decisions to be taken by the Seventh Senedd about its ways of working. [page 161]</p>	<p><b>Noted</b></p> <p>This recommendation is for the Senedd Commission. As such, no specific response is provided here.</p>
<p><b>Recommendation 21</b></p> <p>The Senedd Commission should ensure that its Tŷ Hywel 2026, Siambr 2026 and Cardiff Bay 2032 projects are informed by engagement and consultation with diversity organisations to ensure that decisions are informed by best practice and are futureproofed in respect of the potential needs of currently underrepresented groups, in addition to the needs identified by current Members, support staff, Welsh Government staff, Commission staff and associated trade unions. Similar engagement and consultation should inform work to ensure that committees, their meetings and informal activities are fully accessible to Members, Commission staff and contributors to their work. [page 162]</p>	<p><b>Noted</b></p> <p>This recommendation is for the Senedd Commission. As such, no specific response is provided here.</p>
<p><b>Recommendation 22</b></p> <p>The Welsh Government should commission research on the best ways to provide financial support for women candidates</p>	<p><b>Accept in principle</b></p> <p>Research previously commissioned by the Welsh Government and others has shown there are a range of issues and barriers</p>

<p>from underrepresented groups. This should include consideration of how funding can be targeted and allocated, and the form that financial support should take. The research should be completed in time to ensure that new financial assistance schemes can be in place in sufficient time to enable potential candidates to make informed decisions about whether to put themselves forward for selection or election at the 2026 Senedd election. [page 162]</p>	<p>facing those who seek to represent others. While some of these issues and barriers are gender-based, others are not.</p> <p>These factors are complex, often intersectional and cover a range of areas, including financial, social and cultural.</p> <p>The Elections and Elected Bodies (Wales) Bill makes provision for financial and non-financial support to be put in place to promote diversity in the protected characteristics and socio-economic circumstances of candidates.</p> <p>The Welsh Government is currently building on the arrangements to support disabled people, including women, to stand for elected office informed by the evaluation of the Access to Elected Office Fund which was in place for the last elections.</p> <p>We are also finalising the scope of research to identify barriers that exist due to socio-economic circumstances to inform future support.</p>
<p><b>Recommendation 23</b></p> <p>The Welsh Government should work with the Electoral Commission and other partners to ensure that sufficient guidance and support is in place for candidates and elected Members on handling abuse and harassment, including how to report it and what support is available for those affected by it. [page 163]</p>	<p><b>Accept</b></p> <p>This is an important issue. We will continue to work with stakeholders to support candidates that may face abuse, including in terms of how they can raise their concerns and access services. The Cabinet Secretary for Housing, Local Government and Planning will continue the work of the former Minister for Local Government on this agenda and keep the Local Government and Housing Committee informed of progress.</p>
<p><b>Recommendation 24</b></p> <p>The Welsh Government should make further representations to the UK Government seeking information about how the UK Government has kept section 106 of the Equality Act 2010 under review since 2020, and what further consideration it has given to the commencement of the provision. The Welsh Government should also reiterate its call for section 106 to be commenced in relation to Senedd elections (and/or for the power to do so).</p>	<p><b>Accept</b></p> <p>Having previously engaged with the UK Government on this issue, the Welsh Government remains of the view that the section 106 provision should be commenced and accepts the recommendation to make further representations to the UK Government on this matter.</p>

<p>transferred to the Welsh Ministers). [page 163]</p>	
<p><b>Recommendation 25</b></p> <p>The Welsh Government should explain why section 30 of the Elections and Elected Bodies (Wales) Bill (as inserted by amendment at Stage 2) requires the guidance to be published by the Welsh Ministers in relation to the collection and publication of candidate diversity data by political parties to cover only Senedd elections, and not all devolved Welsh elections. [page 164]</p>	<p><b>Accept</b></p> <p>The Elections and Elected Bodies (Wales) Bill places a duty on the Welsh Ministers to issue guidance to encourage political parties to collect, collate and publish diversity information on Senedd candidates only.</p> <p>There are arrangements already in place for the collection and publication of diversity data at local government level. Under the Local Government (Wales) Measure 2011, local authorities are required to conduct a standardised survey of County and Town and Community Councillors and candidates. The Welsh Ministers take a lead role in providing guidance to local authorities in respect of the local government survey and in prescribing the survey questions.</p> <p>There is a distinction between local government and Senedd candidates, in that a significantly larger proportion of local government candidates are independent and would therefore not be captured by the provision in the Elections and Elected Bodies (Wales) Bill. This would result in an incomplete and potentially misleading dataset in respect of local government.</p> <p>In developing guidance for political parties, the Welsh Ministers will look to align the survey questions, where applicable and appropriate, with those included in the survey for local government candidates, so that the information which is published for all devolved elections is comparable.</p> <p>It is anticipated that political parties will draw on both the diversity information that they themselves collect and publish (for the Senedd) and the diversity information published by the Welsh Ministers (on behalf of local authorities in respect of local government) to inform their Diversity and Inclusion Strategies.</p>

Rebecca Evans MS

Cabinet Secretary for Finance, Constitution and Cabinet Office

11 July 2024

Dear Rebecca,

### Welsh Government Budget Timetable 2025-26

Thank you for your letter of 4 July inviting us to comment on the proposed timetable for consideration of the Draft Budget 2025-26.

I fully appreciate that the Welsh Government's budgetary position remains unclear until the UK Government confirms the date of its fiscal event. I also recognise that publishing a Draft Budget earlier, based on indicative figures only, would be problematic, and should only be done as a last resort.

Furthermore I welcome that the Draft Budget will be laid this year during term time. This is an important principle and ensures that Members of the Senedd have an opportunity to consider the Welsh Government's proposals in Plenary as soon as they are published.

However, I would like to challenge your assertion that there is "no better alternative in these current circumstances" to publishing the Draft Budget on 10 December 2024.

In particular, we believe that the proposed timetable does not sufficiently take into account the concerns raised by Committees following the scrutiny of last year's Draft Budget. These were shared



with you on 27 June 2024, and it is disappointing that you made no reference to them in your letter; the second year in a row which you have failed to do so.

In their responses, several Committees called for more time to be made available to scrutinise the Draft Budget. We agree that the shortened timescales last year made it extremely challenging for all Committees to meaningfully assess the impact the Draft Budget has on policy areas within their remit and, in particular, to incorporate views from stakeholders. We ask for further justification on why a longer scrutiny window was not considered, particularly as bringing forward the publication date of the Draft Budget to enable more evidence sessions to take place this side of the Christmas recess would be highly beneficial.

Calls were made for the Welsh Government to adhere to the two stage budget process, and we find it regrettable that you are proposing circumventing the process again this year; the sixth year in a row that this has happened. As a result, we call on you to prioritise facilitating a two stage approach this year, if there is time available after the UK Government's fiscal event takes place.

In addition, Committees requested that ministerial evidence papers should be published at the same time, or close to, the publication of the Draft Budget. Again, it is disappointing that you chose not to address this point your letter of 4 July, and we ask you to consider this when preparing the publication of the Draft Budget later in the year.

Flexible scheduling options in the Senedd was also suggested by Committees as a way to maximise scrutiny opportunities.

Whilst I understand that these are matters for the Business Committee, I would welcome your views on the following proposals relating to the scheduling of Senedd business, should the Draft Budget be laid before the Senedd on or later than 10 December:

- automatically enabling Finance Committee to hold additional meeting slots during Christmas recess, should the need arise;
- providing more meeting slots for Committees during the budget scrutiny window, including extending the business week and providing more slots for committees to take evidence from stakeholders and experts (which could be offset by cutting down on the length of Plenary meetings);
- allowing more time for the consideration of Committee reports during Plenary meetings to enable detailed policy discussions on each aspect of the Draft Budget.

I have raised similar issues in response to the Business Committee's letter consulting us on the budget timetable.

Finally, I would also like to challenge your views that “these arrangements are acceptable given the circumstances, which are driven, once again, by external factors beyond our immediate control”.

As Cabinet Secretary, you are ultimately responsible for setting the budget and the strategic management of the Welsh Government’s resources. I would also remind you that proposing the timing of the Draft Budget is within the Welsh Government’s gift.

Whilst the Committee has sympathy with the uncertainties faced by the Welsh Government in understanding its financial position, we strongly feel that this should be balanced by the need of the Senedd to scrutinise detailed proposals and that adequate time should be provided to reflect the magnitude of the tasks facing Committees. Detailed scrutiny which meets the needs and expectations of our stakeholders and the public at large cannot be achieved under the proposed timetable.

I welcome your willingness to revisit the proposed timetable once the date of the UK Government’s fiscal event is known. Given that the Chancellor has indicated her intention to announce this date before the end of this month, I ask you to provide an updated timetable as soon as possible.

A copy of this letter has been sent to the Business Committee, the Chairs of all Senedd Committees, , and the Trefnydd and Chief Whip.

Yours sincerely,



Peredur Owen Griffiths MS  
Chair, Finance Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



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# Agenda Item 9

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# Agenda Item 10

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# Agenda Item 11

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