

## Agenda – Health and Social Care Committee

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Meeting Venue:

Hybrid – Committee Room 4 and  
Conference Room A, Ty Hywel and  
video conference via Zoom

Meeting date: 10 July 2024

Meeting time: 09.00

For further information contact:

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At its meeting on 27 June, the Committee agreed a motion under Standing Order 17.42 (ix) to exclude the public from item 1 of today's meeting

**Private meeting (09.00 – 10.00)**

### **1 Health and Social Care (Wales) Bill: private discussion with care experienced young people**

(09.00–10.00)

(Pages 1 – 13)

The Committee will be holding a private discussion with care experienced young people .

Research brief

**Break (10.00–10.10)**

**Public meeting (10.10–12.25)**

### **2 Introductions, apologies, substitutions, and declarations of interest**

(10.10)



**Senedd Cymru  
Welsh Parliament**

**3 Health and Social Care (Wales) Bill: evidence session with young people from Voices from Care**

(10.10–10.30)

**Break (10.30–10.40)**

**4 Health and Social Care (Wales) Bill: evidence session with organisations supporting children in care**

(10.40–11.40)

(Pages 14 – 40)

Helen Mary Jones, Voices From Care Cymru

Sharon Lovell, Chief Executive – NYAS Cymru

Rachel Thomas, Head of Policy and Public Affairs – Children’s Commissioner for Wales

Rhiannon Beaumont-Walker, Chief Executive Officer – TGP Cymru

Paper 1 – NYAS Cymru

Paper 2 – Children’s Commissioner for Wales

Paper 3 – TGP Cymru

**Break (11.40–11.45)**

**5 Health and Social Care (Wales) Bill: evidence session with representatives of local health boards**

(11.45–12.25)

(Pages 41 – 48)

Research brief

Jennifer Winslade, Executive Director of Nursing – Aneurin Bevan University Health Board

Gaynor Williams, National Director, Complex Care NHS Wales

## **6 Paper(s) to note**

(12.25)

- 6.1 Letter from the Chair to the Minister for Social Care following the general scrutiny session and evidence session on the Health and Social Care (Wales) Bill on 12 June 2024**

(Pages 49 – 55)

- 6.2 Response from the Minister for Social Care to the Chair following the general scrutiny session on 12 June 2024**

(Pages 56 – 62)

- 6.3 Response from the Minister for Social Care to the Chair following the evidence session on the Health and Social Care (Wales) Bill on 12 June 2024**

(Pages 63 – 84)

- 6.4 Letter from the Cabinet Secretary for Health and Social Care to the Chair regarding proposals to improve the health of food environments in Wales**

(Page 85)

- 6.5 Response from the Cabinet Secretary for Health and Social Care to the committee's report on Nurse Staffing Levels (Wales) Act 2016: Post-legislative scrutiny**

(Pages 86 – 94)

- 7 Motion under Standing Orders 17.42 (vi) and (ix) to resolve to exclude the public from the remainder of this meeting, and for items 1–3 at the meeting on 17 July 2024 to consider the committee's forward work programme, the latest draft NHS Waiting Times monitoring report, and the draft report on the general scrutiny session with the Welsh Ambulance Services University NHS Trust**

(11.40)

- 8 Health and Social Care (Wales) Bill: consideration of evidence**

(12.25–12.30)

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# Agenda Item 4

HSC(6) 37-24 Papur 1 | Paper 1 NYAS Cymru

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Senedd Cymru | Welsh Parliament

Y Pwyllgor Iechyd a Gofal Cymdeithasol | Health and Social Care Committee

Bil Iechyd a Gofal Cymdeithasol (Cymru) | Health and Social Care (Wales) Bill

Ymateb gan NYAS Cymru (National Youth Advocacy Service Wales), | Evidence from  
NYAS Cymru (National Youth Advocacy Service Wales),

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## General principles of the Bill

### 1. What are your views on the general principles of the Health and Social Care (Wales) Bill?

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NYAS (National Youth Advocacy Service) Cymru thanks the Health and Social Care Committee for the opportunity to contribute written and oral evidence to this consultation. NYAS Cymru's responses exclusively relate to Part 1 of the Bill, the elimination of private profit from the care of looked-after children in Wales.

NYAS Cymru, in principle, supports the Health and Social Care (Wales) Bill to eliminate private profit from the care of looked-after children in Wales. We remain committed to the view that no child or young person should ever feel like their experiences of care, or they themselves, are an opportunity for organisations to profit off.

Though we believe this legislation will lead to positive, long-term changes for children and young people in care, we are concerned with how Part 1 of the Bill is intended to be delivered in practice. We do not believe Welsh Government have fully considered every possible unintended negative consequence Part 1 of the Bill may have on children's lives, nor do we believe appropriate measures have been put in place to mitigate this.

NYAS Cymru is concerned that the introduction of this Bill is likely to disrupt the stability and day-to-day lives of a significant number of children in Wales. The private sector currently providing a notable proportion of all homes for children in care in Wales. According to the Competition & Markets Authority Children's Social Care Report (2022), 86% of children's homes places in Wales are within private provision, and 26% of fostering placements are through independent providers. It is estimated that the Bill will affect 500 children in residential care and 1,000 children in foster care, though this is based on current figures. With the number of children entering care in Wales continuing to rise, NYAS Cymru are concerned that an unprecedented number of

children in Wales, who already face instability in their day-to-day, are at risk of having their lives disrupted further.

NYAS Cymru strongly urges Welsh Government to consider the following points to ensure Part 1 of the Bill does not cause unnecessary harm or disruption to children currently living in private provision across Wales:

- How have the views, wishes and feelings of children and young people who will be affected by Bill, been reflected within Part 1?
- With the Bill now being in the public domain, what is Welsh Government's plan for communicating with children and young people who currently live in private provision on how the legislation will impact their lives, and when will this communication begin?
- What is Welsh Government's plan to ensure the introduction of the Bill will not result in a) siblings who currently live together in private provision being separated, and b) mothers and babies living together in private foster care being separated or moved?
- How will Welsh Government ensure no child or young person is moved out of Wales because of the legislation changes?
- Will Welsh Government commit to providing an active offer of advocacy for every child and young person in Wales who will be affected by the Bill?

## **2. Is there a need for legislation to deliver the Welsh Government's stated policy intention?**

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Yes

### **Please outline your reasons for your answer to question 2**

NYAS Cymru agrees that there is a need for legislation to deliver Welsh Government's policy intention, specifically relating to the elimination of private profit from the care of looked after children in Wales. However, in its current form, we do not believe Part 1 of the Bill is currently in a position where it can be brought into legislation without causing unnecessary disruption to the lives of children living in private provision across Wales.

Transition, timeframe and funding

NYAS Cymru do not agree with Welsh's Government aim for all for-profit providers to be transitioned by 2027/ We do not think this timeframe is appropriate or realistic given

that private providers of children's social care currently make up the majority of all placements in Wales. We welcome that Welsh Government allocated £68 million to help local authorities build in-house capacity for non-for-profit provision to support this transition, however we do not believe this allocation is sufficient. It is unclear how much of this funding is specifically for the third sector and NYAS Cymru is concerned that the Bill has not put enough infrastructure in place to support these organisations who are key stakeholders within the transition period. Welsh Government have also only allocated funding until 2025, despite the Bill outlining that the transition period may last until 2027. It is unclear why Welsh Government have not allocated funding inline with this, nor what financial support will be available to local authorities if they require it after 2025.

Additionally, we do not believe that the transition plan outlined by Welsh Government is robust enough to support this timeframe, nor does it consider all the possible unintended consequences the Part 1 of the Bill may have. Without robust and clear funding allocations, delivery, and transitional plans, NYAS Cymru are concerned that the elimination of for-profits risks causing significant damage to children's social care services in Wales during a time where services are already stretched and face financial difficulties.

#### Voice of the child

In its current form, NYAS Cymru do not think that Part 1 of the Bill has fully considered the views, wishes and feelings of children and young people who will be directly impacted by the elimination of for-profit providers. It is unclear if and how children and young people have been consulted with to inform Welsh Government's transition plan to deliver Part 1 of the Bill.

NYAS Cymru strongly urge that within the next two months (no later than September 2024), Welsh Government must issue an accessible young person version of the legislation and consultation so all children and young people who are going to be impacted by the Bill have an opportunity to share their views, wishes and feelings about it.

### **3. What are your views on Part 1, Chapter 1 of the Bill (sections 1-13), which makes provision intended to restrict the extraction of profit by providers of children's care home services, secure accommodation services and fostering services**

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In principle, NYAS Cymru support Part 1, Chapter 1 of the Bill. However, are concerned with the following sections:

## Section 10

NYAS Cymru are concerned the introduction of the Bill could result in an increase in out of area placements across Wales. We do not agree with Section 10 of the Bill which is intending to amend the wording of Section 75, subsection (1)(a) of the 2014 Act to include ‘accommodation that is near to the local authority’s area’ in place of the current requirement that it “is within the authority’s area”. NYAS Cymru do not believe this new wording is strong enough to ensure that placing children and young people out of area does not become the ‘default’ option for local authorities. The use of the language ‘near to’ is unclear and may be interpreted differently by local authorities, which could lead to inconsistent practice across Wales. NYAS Cymru urge Welsh Government to define the term ‘near to’ in section 10 of the Bill to make clear what is the appropriate maximum distance a child or young person can be moved to away from their local area.

## Section 13

NYAS Cymru do not agree that under section 13, local authorities will have to ‘make an application to Welsh Ministers for approval to place a looked-after child somewhere other than a ‘not-for-profit’ entity’. We do not believe this is an appropriate duty to place on Welsh Ministers and we have several concerns over the practicality of this process including:

- Which specific Ministers will have this responsibility?
- How will local authorities contact Ministers and their officials?
- What happens if a Minister is unavailable?
- How long do Ministers have to approve this application?
- What happens in cases of emergency placements?
- How will consistency be monitored?
- Will third sector organisations who work with children and young people affected by the Bill be able to contact Welsh Ministers if there are concerns over a placement?

NYAS Cymru do not believe this duty should be placed on Welsh Ministers. Instead, we would recommend for local authorities to set up an ‘on call’ panel to make this decision. This would be more achievable in practice and could be monitored as part of wider local authority inspections. A duty could be placed on local authorities to report



all applications to designated Ministers monthly so Welsh Government is kept informed and can intervene when required.

**4. What are your views on Part 1, Chapter 2 of the Bill (sections 14-22 and schedule 1), which makes a number of amendments in relation to social care services, social care workers and local authority social services, intended to ensure that the 2014 and 2016 Acts can operate fully and effectively**

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NYAS Cymru mostly agree with Part 1, Chapter 2 of the Bill. As referenced in Question 3, we remained concerned with the responsibilities the Bill is giving to Welsh Ministers and the practicalities of this in day-to-day scenarios.

Should Welsh Government wish to give Ministers responsibilities regarding the accommodation of children and young people, NYAS Cymru believe this could be a good opportunity to appoint a dedicated Minister for Babies, Children and Young people. The Ministerial responsibilities outlined within the Bill could sit within this Minister's portfolio. We would also recommend that any Minister holding responsibilities regarding the accommodation of children and young people should also have a mandatory corporate parenting duty placed on them.

**5. What are your views on Part 2 of the Bill (sections 23-26 and schedule 2), which relates to health care, and makes amendments to the National Health Service (Wales) Act 2006 in order to enable the introduction of direct payments within NHS Continuing Healthcare**

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N/A

**6. What are your views on Part 3 of the Bill (sections 27-30) which contains a number of general provisions, including in relation to regulations, interpretation, consequential and transitional provisions, and coming into force provisions**

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N/A

**Implementation and impact of the Bill**

**7. Are there any potential barriers to the implementation of the Bill's provisions? If so, what are they, and are they adequately taken into account in the Bill and the accompanying Explanatory Memorandum and Regulatory Impact Assessment?**

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NYAS Cymru believe there are barriers to the implementation of Part 1 of the Bill's provision. Our main concern is that the transition plan outlined in Part 1 of the Bill is not comprehensive enough in comparison to the scale of impact this legislation will have on children's social care in Wales. We believe there are a significant amount of 'unknowns' surrounding the transition period, which have not been adequately addressed by Welsh Government such as an accurate dataset on the number of children and young people who will be impacted by the Bill, or contingency plans should there be a placement shortage in Wales.

#### Accessibility

We do not believe the information that has been provided by Welsh Government is accessible for all stakeholders who are going to be impacted by Part 1 of the Bill such as children and young people, staff working in for-profit homes, foster carers, and social workers. NYAS Cymru are concerned that without accessible versions of the Bill, it could become unclear to stakeholders how they might be impacted, and this could lead to unnecessary distress or worry. We strongly urge Welsh Government to publish accessible versions of this guidance, including an easy read for children and young people.

#### Local Authority Guidance

NYAS Cymru welcome that Welsh Government intend to publish guidance for local authorities to support the implementation of the Bill. However, we are disappointed that draft guidance has not been published alongside this legislation. We believe this was a missed opportunity for Welsh Government to clearly outline what this transition period will mean for local authorities and other key stakeholders.

NYAS Cymru recommend that guidance must not be completed by Welsh Government alone, and instead must be done alongside local authorities, third sector organisations, not-for-profit providers, and children and young people. This guidance should be produced in advance of 2026 and should be issued for public consultation.

### **8. Are any unintended consequences likely to arise from the Bill?**

(we would be grateful if you could keep your answer to around 500 words)

NYAS Cymru are concerned that the following unintended consequences may arise from the Bill:

Placement shortages

With private providers currently accounting for most children's homes places in Wales, we believe there are significant risks of placement shortages. We are concerned this could lead to children and young people being placed outside of their local area, outside of Wales entirely or in unregistered accommodation. This may disproportionately impact children and young people requiring specialist homes or care, including:

- Siblings living together
- Mother and babies in private foster placements
- Children with additional physical, learning, communication, emotional or behavioural needs
- Older children
- Children subjected to Deprivation of Liberties Orders
- Unaccompanied Asylum-Seeking Children
- Children at high risk of missing or exploitation

NYAS Cymru do not think Welsh Government have sufficiently outlined what they will do to ensure the Bill does not negatively impact these groups of children and young people. While we welcome that the Bill will prevent children and young people being placed in for-profit homes in England, we believe Welsh Government must go further to make sure no child or young person is placed in homes that are not suitable to their needs. The most appropriate way to address this is through extending the transition period until 2030.

#### Social Care Workforce

NYAS Cymru are concerned that ongoing shortages within the social care workforce could be exacerbated further by the Bill. We do not think the Bill has addressed what measures Welsh Government will put in place to retain staff during the transition from for-profit providers. We are worried that the transition could lead to further shortages if the needs and views of staff are not listened to. NYAS Cymru urges Welsh Government to develop a plan to support the workforce and retain staff during this transition. As an initial action, Welsh Government should fully accept the CYPE Committee's 'If not now, then when' report recommendations 1 and 2 which address social care workforce shortages.

#### Mother and babies

It is unclear how the introduction of the Bill may impact mothers and babies living in private foster placements across Wales. NYAS Cymru are concerned that if there is a shortage of placements, mothers and their babies could be placed in unsuitable homes or far away from their support networks. This would have a negative impact on both mum and baby's wellbeing, and it is unclear what provision Welsh Government will put in place to prevent this happening.

From NYAS Cymru's Project Unity service, we know that care-experienced young mothers can require additional support during and after their pregnancies to help them and their babies thrive. We also know that too often, care-experienced young mothers face discrimination and bias from professionals and are disproportionately more likely to have their own child taken into care. We are concerned that the Bill could unintentionally lead to care-experienced mothers being separated from their babies if there is a shortage of appropriate placements. We recommend for Welsh Government to provide assurance to care-experienced young mothers that this will not happen, and to implement an offer of support to any women who will be impacted by the Bill, in partnership with NYAS Cymru through our Project Unity service.

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**9. What are your views on the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum?)**

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NYAS Cymru do not agree with the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation. As there are uncertainties surrounding the transition period for Part 1 of the Bill, NYAS Cymru do not think it is appropriate at this stage for Welsh Ministers to determine the end of the transition period until there is a better understanding of what this may look like. This decision must be made in consultation with other key stakeholders rather than solely by Welsh Ministers to ensure the transition period is not determined too soon. We believe the end of this period should only be determined once every child or young person currently living in for-profit homes has had a smooth and stable transition into a not-for-profit home.

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**10. What are your views on the Welsh Government's assessment of the financial and other impacts of the Bill as set out in Part 2 of the Explanatory Memorandum?**

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NYAS Cymru do not believe Part 2 of the Explanatory Memorandum is accessible nor has it appropriately considered all possible impacts of the Bill. We are concerned that the impact of the Bill on children and young people has not been fully considered in respect of their rights, views, wishes and feelings. NYAS Cymru urges Welsh

Government to publish an accessible version of each impact assessment, along with a complete and comprehensive Children's Rights Impact Assessment in line with Section 1 of the Rights of Children and Young Persons (Wales) Measure 2011.

**11. What are your views on the Welsh Government's integrated impact assessments (set out in Part 2 of the Explanatory Memorandum), including the Children's Rights Impact Assessment**

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NYAS Cymru do not believe Welsh Government have completed comprehensive impact assessments. We are concerned that the Children's Rights Impact Assessment (CRIA) and Equality Impact Assessment (EIA) have not fully considered how Part 1 of the Bill will impact children's rights, or what steps Welsh Government will take to ensure children's rights remain upheld. With Part 1 of the Bill going to have a significant impact on the lives of children and young people living in private provision, NYAS Cymru do not think it is good enough that Welsh Government have not appeared to have published standalone CRIA and EIA, and instead have partially incorporated them into the Explanatory Memorandum.

**CRIA**

The introduction of Part 1 of the Bill runs the risk of compromising children's rights in Wales, and we are disappointed that Welsh Government have not published a full or comprehensive CRIA that truly considers this. We do not think point 9.7 on page 133 in the Explanatory Memorandum is an acceptable acknowledgement of this from Welsh Government and we are concerned that no provision has been put in place within the CRIA to prevent children's rights being compromised. We are disappointed to see that only 3 out of 54 UNCRC articles have been referenced, rather than every right being considered individually. NYAS Cymru strongly urge Welsh Government to publish a comprehensive CRIA as a priority to ensure that full consideration has been made to how Part 1 of the Bill could comprise children's rights, and what can be done to mitigate this.

**EIA**

NYAS Cymru are extremely concerned with the appropriateness of the EIA and in its current form, we do not think the EIA produced by Welsh Government is acceptable.

Although care experience is not a protected characteristic under the Equality Act, the introduction of the Bill is going to impact care-experienced children and young people who are disproportionately more likely to face vulnerabilities and discrimination than their peers. With this in mind, we are disappointed to see that Welsh Government have

not made more considerations to this within the EIA. Additionally, as care experience is not a homogenous group, we are disappointed that the EIA has not addressed the how the Bill may impact care-experience children and young people with other protected characteristics including children and young people from the LGBTQ+ community; children from Black, Asian and other Ethnic Minority groups; children with additional needs, care-experienced young mothers, and unaccompanied asylum-seeking children. NYAS Cymru strongly recommend for Welsh Government to urgently revise the EIA and issue a new comprehensive assessment for consultation. The revised assessment must make direct reference to each protected characteristic and what Welsh Government will do to ensure the Bill does not negatively impact children and young people in these groups.

## **Development of the policy and legislative proposals**

### **12. What are your views on the approach taken by the Welsh Government to the development of the policy and legislative proposals reflected in the Bill.**

**Among any other issues, please consider in particular the approach to engaging and consulting with stakeholders**

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NYAS Cymru does not agree with the approach taken by Welsh Government to develop this policy and legislative proposals reflected in the Bill. We are concerned that the Bill has not appropriately placed children and young people at the centre of policy proposals or transitional plans. We believe that within the Bill there is an absence of the voice of the child, and it is unclear where children's and young people views have been reflected in policy proposals. NYAS Cymru firmly believe that no policy or legislation should be made about children and young people, without them. We are therefore disappointed that Welsh Government have not issued a children's or easy read version of the Bill, Explanatory Memorandum, or this consultation.

We are concerned that Welsh Government have not yet communicated with children and young people living under private providers about what this Bill will mean for them, their homes, and their future. While we hope that the transitional period does not cause any disruption to children's and young people's lives, this cannot be guaranteed and must be communicated to children and young people appropriately. We are concerned that with the Bill now being in the public domain, children and young people will find out about it through the internet or social media rather than a trusted adult. This could cause significant distress and worry for children and young people living in private providers who might not understand how they will be impacted.

NYAS Cymru believe that children, young people, and their views, wishes and feelings must remain at the forefront of this legislation. We strongly recommend Welsh Government to action the following points to ensure children and young people remain the absolute priority within this Bill.

#### Communication

Welsh Government should develop and issue a clear plan for children and young people currently living in for-profit homes about the Bill and what this will mean for them now and in the future. This plan should detail information on their rights, entitlements and who they can contact if they need support, including advocacy services. Similarly, a clear communication plan must be delivered for the professionals and the wider sector.

#### Consultation

Welsh Government must issue a children's version of the Bill and all accompanying documents. A children's and young person's consultation must also be issued.

#### Advocacy

Every child or young person who is going to be impacted by the Bill must be offered an advocate through the active offer. Care-experienced mothers in mother and baby foster placements should also be offered support from NYAS Cymru's Project Unity service.

### **Any other issues**

#### **13. Are there any other issues that you would like to raise about the Bill, the accompanying Explanatory Memorandum and Regulatory Impact Assessment, or any related matters?**

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To improve the delivery of Part 1 of the Bill NYAS Cymru recommend Welsh Government to address the following:

#### Timescales

NYAS Cymru welcome that Welsh Government have set clear timescales in Part 1 of the Bill, however we do not believe they are appropriate and risk the transition from for-profit to not-for-profit being rushed. We recommend for this to be revisited to allow local authorities more time to adjust their services.

#### Funding

NYAS Cymru welcomes that Welsh Government allocated £68 million to help local authorities during this transition. However, we do not believe this allocation is sufficient as it is only offered until 2025, despite the transition period being until at least 2027. We recommend for Welsh Government to commit to providing local authorities with annual ringfenced funding to implement the Bill beyond 2025 until all for-profit providers have smoothly transitioned to non-for-profit.

### Advocacy

The views, wishes and feelings of children who will be impacted by this Bill must be the top priority for Welsh Government. NYAS Cymru strongly supports wider sector calls for a national offer of advocacy to be provided to every child who is going to be impacted by the Bill. NYAS Cymru would welcome working with Welsh Government to deliver this offer.

### Support for mothers and babies

It is unclear how this Bill is going to impact mothers and babies living in private foster placements across Wales, nor how Welsh Government will mitigate any negative impacts. NYAS Cymru urge Welsh Government to commit to guaranteeing that no mother and child will be separated because of this Bill. We also wish to work with Welsh Government to provide a national offer of Project Unity support to any mothers and their children who are impacted by this Bill.

### ‘My Things Matter’ Pledge

NYAS Cymru are concerned that the transition from for-profit to not-for-profit provision could mean a significant number of children and young people in Wales could face a negative moving experience. We recommend for Welsh Government to encourage every local authority in Wales to sign NYAS Cymru’s ‘My Things Matter’ pledge to make sure the moving experience of any child, because of the Bill, is as positive as possible. NYAS Cymru can provide local authorities with a toolkit to support a positive move and assist them with accessing travel bags via our partnership with Madlug to make sure no child’s or young person’s belongings are placed in big bags, lost, or damaged.

### Corporate Parenting

Welsh Government should place a statutory corporate parenting responsibility on all not-for-profit providers and local authorities in Wales. This would support all children and young people impacted by the Bill being appropriately safeguarded and supported to thrive during and after the transition period.



### Accessibility and communication

Welsh Government should publish an accessible and children's version of the Bill as a priority. NYAS Cymru also strongly urge Welsh Government to develop a communication strategy for informing all children and young people currently living in for-profit homes about this legislation and how it will impact them.

## HSC(6) 37-24 Paper 2 - Children's Commissioner for Wales

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Senedd Cymru | Welsh Parliament

Y Pwyllgor Iechyd a Gofal Cymdeithasol | Health and Social Care Committee

Bil Iechyd a Gofal Cymdeithasol (Cymru) | Health and Social Care (Wales) Bill

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You do not need to answer every question, only those on which you wish to share information or have a view.

### General principles of the Bill

#### 1. What are your views on the general principles of the Health and Social Care (Wales) Bill?

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(we would be grateful if you could keep your answer to around 500 words)

I welcome the introduction of legislation to phase out profit making from children's residential, fostering and secure care in Wales. My office has long called for the safe reduction of profit in children's care services as a direct result of representations made to us from care experienced young people themselves, and this Bill brings forward the necessary provisions to make this shift.

I am unclear from the face of the Bill about the provisions relating to Continuing Healthcare and would welcome clarity around this during the passage of the Bill. I will cover this further in my answer to question 5.

I would also like to note my disappointment that Welsh Government has not taken the opportunity to legislate on outstanding areas relating to children's social care when bringing forward this Bill. In particular, the extension of personal advisor support to all care experienced young people, the application of the 'When I'm Ready' principles to young people leaving residential care at age 18, and strengthened provisions in respect of Corporate Parenting. I will cover these points in more detail within this response.

I also note that mandatory reporting was included in the pre-legislative consultation but not in the Bill, with the Government's response to the consultation indicating instead that there would be work to strengthen compliance with existing regulatory frameworks. I would like to hear more detail about what that work consists of, and would highlight the case of the headteacher from North Wales recently convicted of sexual offences involving pupils as an example of where it appears that compliance with the existing frameworks may have been significantly lacking, leading directly to harm to these young women.

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**2. Is there a need for legislation to deliver the Welsh Government's stated policy intention?**

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- ☒ Yes
- ☐ No
- ☐ Don't know
- ☐ Don't have a view

**Please outline your reasons for your answer to question 1**

(we would be grateful if you could keep your answer to around 500 words)

The current system for finding and securing suitable placements for children in care is not working. Multiple reports including from the Competitions and Markets Authority (CMA) indicate that the current marketised system is dysfunctional and not serving children's best interests

<https://www.gov.uk/government/publications/childrens-social-care-market-study-final-report>. There are several factors behind this, including the rise in overall numbers of children looked after, requiring more placements to be available, and what is noted in the CMA report in terms of placements springing up in clusters, in more affordable areas. This has led to children being placed further away from home, with placement costs escalating due to continued demand.

Amending the primary legislation is the only viable way to secure changes to the way that the market is operating, as far as we are aware, so it is necessary to bring these provisions forward in order to meet the Programme for Government Commitment. And that commitment is important to reshape the market, with the primary driver being young people being placed closer to home, and having access to ongoing support for their health and wellbeing. This will also support

with transitions out of care for young people, into communities they are familiar with and where they have built support networks and connections.

What is also required, however, is ongoing support for local authorities to ensure that they can shift towards having more sustainable provision within their areas. There are some local authorities who will be better placed than others to meet current and future demand, and this will, in part, be affected by the size of the area and its population of children looked after.

**3. What are your views on Part 1, Chapter 1 of the Bill (sections 1-13), which makes provision intended to restrict the extraction of profit by providers of children's care home services, secure accommodation services and fostering services**

(we would be grateful if you could keep your answer to around 500 words)

I have provided views relevant to this question in my previous answer.

**4. What are your views on Part 1, Chapter 2 of the Bill (sections 14-22 and schedule 1), which makes a number of amendments in relation to social care services, social care workers and local authority social services, intended to ensure that the 2014 and 2016 Acts can operate fully and effectively**

(we would be grateful if you could keep your answer to around 500 words)

**5. What are your views on Part 2 of the Bill (sections 23-26 and schedule 2), which relates to health care, and makes amendments to the National Health Service (Wales) Act 2006 in order to enable the introduction of direct payments within NHS Continuing Healthcare**

(we would be grateful if you could keep your answer to around 500 words)

My understanding of the terminology related to Continuing Healthcare is that this is for complex healthcare needs for over 18s, as provided by the NHS. Children and Young People's Continuing Care also provides for complex needs for those aged under 18, but importantly this is subject to statutory guidance mandating joint working and funding between health, social care, education and others, as required. The reason for raising the above point is to ensure that there is greater clarity around the provisions of the Bill to ensure that it is only intended to cover over 18s, as the provision of healthcare services is different to complex needs provision for under 18s. The Bill, as drafted, reflects the needs of adults,

children, and carers, so it is important that this point is clarified.

Direct Payments for Complex medical needs holds a greater risk associated with the employment of care givers as opposed to clinicians or medically trained practitioners. There is also the potential issue around the availability of people to fill these roles; this is already a known pressure in Social Care provision.

These pressures on families were reflected in my office's 2019 'Don't Hold Back' report on transitions to adulthood for young people with learning disabilities, noting that just co-ordinating a child's appointments is a "big job" and sees parents acting as "a secretary and administrator" just to keep track of everything, particularly where there are changes or missed appointments

<https://www.childcomwales.org.uk/wp-content/uploads/2019/10/Dont-Hold-Back.pdf>

There may also be a lack of robust safeguarding controls if services were being commissioned through methods other than formal registered and regulated services.

If these provisions are intended to include Children and Young People's Continuing Care, shifting towards commissioned services being accessed via direct payments could put enormous pressure on families of children with complex needs. I would welcome clarity from the Government on this and, if it is to include children's continuing care, how the issues and pressures identified here would be mitigated and protected against.

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**6. What are your views on Part 3 of the Bill (sections 27-30) which contains a number of general provisions, including in relation to regulations, interpretation, consequential and transitional provisions, and coming into force provisions**

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(we would be grateful if you could keep your answer to around 500 words)

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## **Implementation and impact of the Bill**

**7. Are there any potential barriers to the implementation of the Bill's provisions? If so, what are they, and are they adequately taken into account in the Bill and the accompanying Explanatory Memorandum and Regulatory Impact Assessment?**

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(we would be grateful if you could keep your answer to around 500 words)

## 8. Are any unintended consequences likely to arise from the Bill?

(we would be grateful if you could keep your answer to around 500 words)

I am concerned at the potential for the provisions requiring Welsh Ministers' approval for certain placement decisions related to profit making services. Whilst I recognise the need to have close scrutiny over the transitional arrangements and to ensure that the principles and aims of the Bill are implemented fully, there is already a layer of scrutiny built in with the requirement for Local Authority annual reporting on sufficiency, and placement usage and commissioning. I think that is an important provision to provide sufficient oversight of the placements landscape and to hold local authorities to account in delivering their important duties as contained in the Bill. There are three reasons why I'm concerned about Welsh Ministers having to approve placements:

1. This may introduce delay into the decision making, which can ill be afforded given the current competition for suitable placements. I would not want suitable placements for children to be lost simply because of delays arising from an additional layer of scrutiny, which as I'll set out in the other reasons I think is unnecessary/potentially detrimental;
2. This potentially introduces decision making that may not be in children and young people's best interests and well-being; who is better placed and trusted to make those decisions than their appointed social worker and associated team and management? The Bill itself allows placement in a profit making setting where another placement would otherwise be inconsistent with a child's wellbeing. There is unlikely to be a decision of this magnitude made without Head of Service approval, and local authorities have their own scrutiny arrangements in place to keep decisions such as this under review; and
3. The annual reporting mechanism within the Bill allows for public and Governmental scrutiny of local authorities in any event, so I don't think a further layer of scrutiny/intervention is proportionate.

I do not intend to criticise Welsh Ministers or their intentions here, but aim simply to look at this proposal from a practical basis, based on the current placement landscape and the pressure to find suitable placements.

In addition, if Ministers refuse to sanction a placement, the legislation is silent as to what happens then beyond one appeal process. So if Ministers refuse to

sanction the placement after sharing reasons with the local authority and the local authority still requires this placement for a particular young person, what is the local authority to do instead? There is the potential to drive further use of unregulated placements as an alternative; there needs to be more discussion about what is the most acceptable way of delivering care and how to make this as safe and supported as possible for young people needing these provisions.

I note that there is provision for Regulations to set out a final date for placements within profit making provision in Wales, although there is currently no detail on a timescale in this regard. One potential unintended consequence with a longer transition period would be if local authorities were being asked to pay for multiple beds to continue to secure a single placement in a home which formerly would have offered two, three or four beds. In other words, it would not be desirable nor within keeping to the provisions of this Bill to see local authorities paying four-fold for a single placement to continue, when a key driver of this Bill is about ensuring money spent on placements is reinvested in care and support provision and facilities. This would not be a sustainable longer term position and needs to be considered when setting out the medium term timeline for actions associated with the Bill.

Noting that secure accommodation is also contained within this Bill, I wish to just highlight here the lack of suitable secure placements in England and Wales currently. I do not think this is related to profit making as far as Wales is concerned, as the only approved secure accommodation is owned and run by a local authority, but I wish to take the opportunity to highlight the need for other steps to be taken alongside this Bill to address this particularly acute need for our most vulnerable children and young people. This includes secure accommodation provision itself, but also step down or move on accommodation that is suitable to meet children's needs. In keeping with my earlier comments around 'When I'm Ready', I would like to see this accommodation being developed close to and in conjunction with secure accommodation facilities to ensure continuity of care and support and access to trusted adult relationships. It is likely that provision in North Wales is going to be required to be developed in this space as at present young people from North Wales are always required to travel significant distances for placements.

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**9. What are your views on the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum?)**

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(we would be grateful if you could keep your answer to around 500 words)

Whilst I think it may be appropriate for Regulations to set out more detail around the transitional provisions, I would welcome more detail around this to be in the public domain to provide clarity and certainty for providers, commissioners, and most importantly children and young people.

Aligned to this point, better and more proactive communication is required to ensure the success of the Bill. This is a point I have repeatedly raised with the Welsh Government. I would particularly like to see more direct communication with and for young people. I had asked the Minister to produce a letter and/or video to young people to provide reassurances to them around the Bill's instruction but I am unsure whether or not this has been done. I have not been asked to publicise or circulate any such materials for young people.

I suspect that there may be concern about the ability to make regulations that could in future restrict how businesses are operating, as this won't provide clarity and certainty and could then cause further placement disruption if any unexpected changes are introduced via secondary legislation.

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**10. What are your views on the Welsh Government's assessment of the financial and other impacts of the Bill as set out in Part 2 of the Explanatory Memorandum?**

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(we would be grateful if you could keep your answer to around 500 words)

I am aware of funding that has been made available to local authorities to expand their provision of in-house and within area provision. However, I understand that there may be barriers to third sector organisations accessing any funding of this nature at present. If this is correct, I think this is a missed opportunity, as the third sector will have a valuable role in supporting this policy. There may be considerable experience already within some third sector providers in residential care provision, so it would be welcome to include them in any funding provision going forward to ensure that they can play a role in this space, either as part of local authorities' bids or alongside, to supplement what local authorities will be able to deliver themselves. Government oversight of this funding would be able to ensure that provision is being opened in the areas with most need and not just, as may have been the case previously, where housing options may be cheaper or easier to obtain.

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**11. What are your views on the Welsh Government's integrated impact assessments (set out in Part 2 of the Explanatory Memorandum), including the Children's Rights Impact Assessment**

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(we would be grateful if you could keep your answer to around 500 words)

As a member of a Government working group, and as a relevant organisation representing children and young people, I have had sight prior to the introduction of the Bill of a more detailed children's rights impact assessment. It remains my view that the publication of a summary only of the Children's Rights Impact Assessment (CRIA) is insufficient to demonstrate compliance with the due regard duty in the Rights of Children and Young Persons (Wales) Measure 2011. My office was able to provide commentary on the draft CRIA and I believe that the suggestions made were incorporated but I think it is a missed opportunity not to publish this assessment in full.

I understand that the Welsh Government is reviewing its use and publication of impact assessments through the different integrated assessments, so this Committee or others in the Senedd may wish to pursue that point further through their wider scrutiny of relevant ministers.

## **Development of the policy and legislative proposals**

**12. What are your views on the approach taken by the Welsh Government to the development of the policy and legislative proposals reflected in the Bill.**

**Among any other issues, please consider in particular the approach to engaging and consulting with stakeholders**

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(we would be grateful if you could keep your answer to around 500 words)

As an organisation we have been consulted throughout the Bill's development including through stakeholder working groups, and research work. We welcome that the policy development has also involved children and young people; as noted previously I would like to see continued and strengthened communication with and towards young people throughout the passage of the Bill and beyond.

## **Any other issues**

**13. Are there any other issues that you would like to raise about the Bill, the accompanying Explanatory Memorandum and Regulatory Impact Assessment, or any related matters?**

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(we would be grateful if you could keep your answer to around 500 words)

The Bill is described by Welsh Government as forming part of the wider Transformation of children's services. When we look at the issues that children and young people and their families bring to our office, this Bill represents something of a missed opportunity in addressing their particular priorities and concerns.

These include the extension of Personal Advisor support for all care leavers up to the age of 25, regardless of education or employment status, embedding Corporate Parenting duties and responsibilities across the public sector, and the extension of the principles of the 'When I'm Ready' provisions to those living in residential care.

Welsh Government has, in response to reports from my office from 2016 and 2017 respectively, agreed to provide the 'When I'm Ready' protections and safeguards to young people in residential care and extend Personal Advisor support up to the age of 25. Both commitments are important ways to ensure there is no discrimination between different groups of care experienced children, and ensure that young people continue to be supported without a 'cliff edge' exit at 18 or 21.

For personal advisor support, I understand that the Government may now be of the view that primary legislation is not required. I have not seen formal advice to this effect and my office had always been told to expect this to be legislated on when a social care Bill came forward in the Senedd. If secondary legislation is suitable to achieve this aim, I would like to see a timeline for the introduction of this long overdue commitment to be secured. It does also raise a question as to why it has had to wait this long if it was not necessary to wait for primary social care legislation to make this change.

In relation to Corporate Parenting, the Welsh Government has introduced a voluntary charter but there are significant limits to what a voluntary arrangement can achieve. It is ten months since the introduction of the Charter and as yet not even every local authority and health board are signed up to its principles. As one care experienced young person in a recent meeting reflected, if even those statutory agencies are not demonstrating the importance and value of the Charter in their work how can we expect other organisations to do so?

The reason this is so important is apparent when you listen to young people themselves. For example, I recently met with an articulate group of care experienced young mothers, and I was particularly struck and saddened by what I heard in relation to housing organisations, to give just one example. One young

woman told me that personnel she encountered from her local housing association had never heard of corporate parenting, let alone what this might mean for them in practice.

Several of the young women spoke about how their housing situation had had a direct impact and negative outcome in assessments of their ability to care for their children. They spoke about being housed in unsuitable temporary accommodation such as hostels or hotels, and then being judged negatively in a parenting assessment for lacking suitable and stable housing arrangements.

These are children who have been or, in some cases, were still in the care of the state. They are reliant upon support from the state to gain access to suitable housing as they move to independent living, in some cases there is even an ongoing duty to provide them with accommodation depending on their age. And yet, not only is that duty not being met but that failure is then impacting on the human rights of both them and their children to remain living together as a family unit.

A stronger, enforceable corporate parenting commitment is required in order to ensure that all parts of the public sector are playing a role in supporting care experienced young people and understanding their needs from a trauma informed perspective.

It is disappointing that the opportunity has not been taken to secure these legislative changes and there is no indication how or when these actions will be taken forward.

Senedd Cymru | Welsh Parliament

Y Pwyllgor Iechyd a Gofal Cymdeithasol | Health and Social Care Committee

Bil Iechyd a Gofal Cymdeithasol (Cymru) | Health and Social Care (Wales) Bill

Ymateb gan TGP Cymru, | Evidence from TGP Cymru,

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## General principles of the Bill

**1. What are your views on the general principles of the Health and Social Care (Wales) Bill?**

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**2. Is there a need for legislation to deliver the Welsh Government's stated policy intention?**

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Yes

**Please outline your reasons for your answer to question 2**

It is often better to enshrine objectives of this nature in legislation to ensure they are achieved. If not enshrined in legislation, the policy intention may be misinterpreted or overlooked, and with the best will in the world, intentions and agreements, can waiver or become forgotten over time, especially when changes to leadership/ personnel occur.

**3. What are your views on Part 1, Chapter 1 of the Bill (sections 1-13), which makes provision intended to restrict the extraction of profit by providers of children's care home services, secure accommodation services and fostering services**

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We fully support the intention to eliminate profit from care., However, we have some concerns around the practicalities and the tight timescale of this. In particular we would like to raise the need for a comprehensive and consistent message to those children and young people who will be affected by the change and feel this needs to take place soon.

We recognise a role for advocacy in both the communications plan and the need for support once the information has been shared and would encourage Welsh

Government to include the offer of advocacy in their communication plan, along with details regarding the two advocacy providers.

We feel that advocacy should be actively offered to all affected children and young people as soon as possible once they have been informed. Currently, a very small percentage of young people placed in private accommodation access independent professional advocacy, despite meeting the eligibility criteria, and this is of concern to us.

We feel there should be some funding for third sector organisations to support the provision of not-for-profit care. Currently a sum of money has been made available for local authorities, but there are several third sector organisations who provide foster and residential services who may be able to assist with a potential decrease in provision, and additional funding would assist this.

We welcome the flexibility afforded by the Bill which enables local authorities the option of placing a child in a 'for profit' placement if it is considered to be in the child's best interests. However, we seek clarity around 'ministerial approval for this to take place. During the recent scrutiny of the Minister in relation to the Bill, we heard that in practice this decision could be taken by Welsh Government officials on behalf of the minister. However, we are concerned that this pathway to decision making may not be time efficient.

In these situations, decisions are needed quickly, and we are concerned that WG officials will not have the capacity to be as responsive as necessary. We suggest consideration be given to allow senior managers within Children' Services to make such decisions. Aware of the scope of the Bill, and associated responsibilities on them, we feel local authorities will make appropriate decisions.

In the long term, we are concerned about the impact on children and young people, should insufficient not for profit accommodation become available within the anticipated timeframe. We would welcome information about contingency planning to ensure minimum upheaval for children and young people.

**4. What are your views on Part 1, Chapter 2 of the Bill (sections 14-22 and schedule 1), which makes a number of amendments in relation to social care services, social care workers and local authority social services, intended to ensure that the 2014 and 2016 Acts can operate fully and effectively**

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**5. What are your views on Part 2 of the Bill (sections 23-26 and schedule 2), which relates to health care, and makes amendments to the National Health**

## **Service (Wales) Act 2006 in order to enable the introduction of direct payments within NHS Continuing Healthcare**

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**6. What are your views on Part 3 of the Bill (sections 27-30) which contains a number of general provisions, including in relation to regulations, interpretation, consequential and transitional provisions, and coming into force provisions**

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### **Implementation and impact of the Bill**

**7. Are there any potential barriers to the implementation of the Bill's provisions? If so, what are they, and are they adequately taken into account in the Bill and the accompanying Explanatory Memorandum and Regulatory Impact Assessment?**

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Time, funding, lack of providers willing to convert/ set up as not for profit providers, lack of human resource in local authorities to be able to meet in house demands are all potential barriers to the eliminate agenda.

**8. Are any unintended consequences likely to arise from the Bill?**

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In terms of eliminate, there is a risk that the number of care providers/ facilities will leave the market, and therefore provision will decrease. This in turn will increase the already significant challenges in identifying suitable placements for some children and young people.

**9. What are your views on the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum?)**

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**10. What are your views on the Welsh Government's assessment of the financial and other impacts of the Bill as set out in Part 2 of the Explanatory Memorandum?**

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**11. What are your views on the Welsh Government's integrated impact assessments (set out in Part 2 of the Explanatory Memorandum), including the Children's Rights Impact Assessment**

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## **Development of the policy and legislative proposals**

**12. What are your views on the approach taken by the Welsh Government to the development of the policy and legislative proposals reflected in the Bill.**

**Among any other issues, please consider in particular the approach to engaging and consulting with stakeholders**

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## **Any other issues**

**13. Are there any other issues that you would like to raise about the Bill, the accompanying Explanatory Memorandum and Regulatory Impact Assessment, or any related matters?**

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Document is Restricted



**Y Pwyllgor Iechyd a  
Gofal Cymdeithasol**

**Health and Social Care  
Committee**

**Agenda Item 6.1**

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Dawn Bowden MS  
Minister for Social Care

12 June 2024

Dear Dawn

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

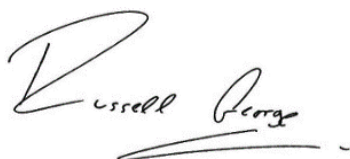
Thank you for attending our evidence session on 6 June, along with your officials, to discuss the Health and Social Care (Wales) Bill and for a general scrutiny session.

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?
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?
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?

## 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?
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.



Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref  
Ein cyf/Our ref MA/DB/0525

Russell George MS  
Chair  
Health and Social Care Committee  
Senedd Cymru

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

28 June 2024

Dear Russell

Following my recent attendance at the Health and Social Care Committee, and your subsequent letter of 12 June, I am pleased to provide the following information to the Committee relating to clarifying information I agreed to supply.

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

### **Level of social care vacancies**

*To confirm the number of vacancies currently across social care, including the equivalent percentage of the workforce that number represents.*

There are several data sources regarding vacancies in social care:

Welsh Government regularly collects data about the local authority workforce. There are just over 3,100 vacancies reported by local authorities for their own employed staff with their social services departments.

Social Care Wales have an annual data collection with all registered providers of social care. It was reported to them that approximately 5,300 vacancies exist across the whole sector. However, this is according to the collection which took place in 2022.

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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.



Lastly, Care Inspectorate Wales undertake an annual review process with all registered settings, and it was estimated that in 2023, there were 3,100 vacancies in care homes (adults and children) and 2,900 vacancies in domiciliary care.

Each of these sources will collect and report data in different ways, and so are not directly comparable. However, they do all provide useful information when considering the landscape of the social care workforce.

## **Carers**

*To provide an update on the work being undertaken to support unpaid carers, including young carers.*

### **Pressures and action to support unpaid and young carers**

We recognise the enormous and vital contribution made by unpaid carers and the need to include unpaid carers in the strategic planning of health and social care services. Analysis by Carers UK and the University of Sheffield found the value of the contribution made by unpaid carers in Wales is £10.7bn annually<sup>1</sup>.

Our [Strategy for Unpaid Carers](#) represents our commitment to improve the support to unpaid carers and is underpinned by a delivery plan and [annual report](#). The Ministerial Advisory Group for Unpaid Carers oversees the delivery of our strategic priorities, and we are reviewing the strategy over the next 12 months to ensure we focus our efforts where improvement is most needed, and where we can have maximum impact on the daily experiences of carers. Examples of our current work is included under our current national priorities:

#### **Identifying and valuing unpaid carers**

We fund Carers Wales and Carers Trust Wales to provide carer awareness training to health and social care professionals. It is vital statutory partners identify and support unpaid carers, who are often hesitant to ask for support. We provide funding for Age Cymru to highlight the needs of older carers and to work with GP practices. We established a Young Carers Advisory Board last year. The Board, comprised entirely of young carers, provides scrutiny and informs policy from a young carers' perspective.

#### **Providing information, advice and assistance**

We have ring-fenced 5% of the annual Regional Integration Fund for innovative carers' support services and provide an additional £1m to health boards to support unpaid carers when the person they care for is admitted or discharged from hospital.

We commissioned the Association of Directors of Social Services Cymru to undertake a [rapid review](#) on how the rights of unpaid carers are being upheld. Their report, published in November 2023, found issues with delayed access to carers' needs assessments and lack of awareness of carers' rights by some social care workers. We have established a collaborative group of health, local authority and unpaid carer representatives under the auspices of the Ministerial Advisory Group to drive improved practice. The focus is on the provision of information, advice and assistance to unpaid carers and carers' needs assessments.

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<sup>1</sup> [valuing-carers-report.pdf \(carersuk.org\)](#)

Local authorities have engaged with a survey of good practice and challenges and workshops in the autumn will agree national best practice. The voice of unpaid carers is central, and a series of engagement events with unpaid carers will bring this perspective. We are also engaging with health boards to identify areas for improvement in the discharge of their responsibilities. We plan to conclude this national workstream in spring 2025.

### **Supporting life alongside caring**

We recognise the importance of carers being able to take a break. Local authorities have the statutory responsibility to provide respite and we have provided an additional £9m to fund our national Short Breaks scheme. This will deliver an additional 30,000 short breaks for carers from 2022 to 2025. Funding can be used for short holidays, day trips and innovative approaches such as weekly keep-fit classes or equipment to pursue a hobby. We want to ensure that respite approaches are dynamic and tailored to carers needs. A third sector grant scheme, Amser, is an additional aspect of the scheme administered by Carers Trust Wales. Short breaks are available to young carers and adults and has engaged those not previously known to services, evidencing additional value in connecting carers with support services.

We are funding the Young Carers Festival in August, for the third year. This is a three-day event that enables young carers to engage in activities with their peers, and to access advice and support services.

### **Supporting unpaid carers in education and the workplace**

We have established a Young Carer ID card as a key tool for young carers to identify themselves within education, GPs and pharmacies. The card was co-produced with all local authorities and Carers Trust Wales and was supported with £600,000 to facilitate rollout. The scheme is now delivered by the local authorities. We know there are schools and colleges that offer excellent support to young carers and we want this to be consistent across all settings. We are working with local authority colleagues in social services and education to refresh awareness of the ID card and raise awareness of young carers in education settings in the autumn term. We are funding updated resources for education staff to promote good practice.

In addition, we are engaging with community pharmacies to establish the current level of recognition of young carers ID cards. These are used for young carers collecting prescriptions for the person they care for. We will determine steps to take to increase awareness in these settings.

We welcome the introduction of the Carer's Leave Act 2023 on 6 April 2024, as a step in the right direction to recognise and support unpaid carers in the workforce. We worked with Carers Wales to support awareness of this UK legislation and will be concerned to review its operation in due course.

We recognise the impact of the cost-of-living crisis on unpaid carers and their families, and we have committed £4.5m (2022-2025) to provide unpaid carers on low incomes with grants to buy essential items such as food or school uniforms or pay an outstanding utility bill. The fund is administered by Carers Trust Wales and in some areas 70% of applicants were previously unknown carers, who now have access to financial advice, which is an additional aspect of the scheme.

In conclusion, we are committed to continuing to work with our partners in the statutory and third sector to ensure unpaid carers across Wales are recognised, valued and supported. Our work to redevelop our strategic priorities will be informed by the voices of unpaid carers.

## **Additional Supporting Information**

In addition to the points in your letter there were a number of other areas that came up in our discussions that I wanted to provide the Committee with further information on:

### **Clarification on mandatory reporting**

The Welsh Government's response to Recommendation 13 of the [final report of the Independent Inquiry into Child Sexual Abuse \(IICSA\)](#) – to introduce a legal duty on 'mandated reporters' to notify local authorities or the police of **child sexual abuse** – has been guided and is broadly supported by the views of our safeguarding partners and stakeholders.

In August 2022, we took the opportunity of a [consultation on legislative change in social care](#) to ask exploratory questions about mandatory reporting, based around [our existing duties on 'relevant partners' of a local authority](#) to report **children and adults at risk of abuse, neglect and (in the case of children) other harms**. Questions were posed in relation to both organisational and individual duty approaches, in anticipation of a recommendation from IICSA which, at that time, had not yet published its final report (October 2022) and therefore the detail of its proposals were unknown.

One hundred responses were received from a wide range of individuals, bodies, sectors and representative organisations, with clear calls for further exploration, engagement and consideration before introducing any new legal duties. [Our analysis of these consultation responses](#) has informed our decisions not to take further primary legislative action at this time and to [agree in principle](#) with the Inquiry's recommendation.

We wholly agree with the Inquiry, that where there has been disclosure, witnessing or observation of other evidence that a child is experiencing or is at risk of sexual abuse, this must be reported without delay. Our existing duties to report, our well-established procedures and our guidance support this for children and adults experiencing or at risk of a wide range of harms, not only sexual abuse.

The Inquiry itself found that mandating the reporting of abuse, alone, is not enough to protect children: that this must be coupled with other measures including real public awareness; access to effective training and tools for practitioners; and organisational arrangements to create safer environments. Our existing systems require organisations such as local authorities, health boards, the Police, Probation and Youth Offending Services to have effective policies, procedures and support in place to ensure that those working on their behalf (staff, contractors, volunteers) know their responsibilities, sufficiently understand them and are enabled to act accordingly.

Whilst some responses to our consultation recognised that introducing duties on individuals could, in principle, strengthen the protection of children and adults at risk; serious concerns were raised about the implications of imposing disproportionate duties and a strong theme emerged, that any new legal duties should not diminish or replace organisations' (employers') safeguarding responsibilities. This is echoed in response to the [UK Government's recent consultation on mandatory reporting of child sexual abuse](#) where a

majority agreed with the concept of organisational duties, as well as individual. There was also significant support for widening the scope of reporting to other forms of abuse, which is the approach we already take here in Wales.

Furthermore, the [IICSA Changemakers' response](#) to the call for evidence in England – coordinated by the NSPCC, representing 65 charities, support services and people with lived and front-line experience of abuse – accords with our position: that mandatory reporting is not a solution in and of itself. They highlight effective and timely reporting as a vital element of child protection systems but warn that absolute duties could have negative consequences, deterring some young people from disclosing what is happening to them.

We continue to listen to a broad spectrum of views and, at present, are confident both in our existing procedures and organisational approach; and that we are taking proportionate and progressive actions by strengthening safeguarding requirements, where necessary, on regulated services like childcare, education, health, and social care; coupled with further exploration of introducing duties more widely. We will include seeking further views about individual duties, as part of this conversation.

## **Continuing healthcare**

The National Framework document for CHC – '*Continuing NHS Healthcare – the National Framework for Implementation in Wales*', was published in 2021 and is operational as of 1 April 2022. The framework sets out the process for the NHS, working together with local authorities and other partners, to assess health needs, decide on eligibility for CHC and provide appropriate care. LHBs and LAs are required to fully implement the requirements of the National Framework.

The framework provides a foundation for assessing, commissioning and providing CHC for adults, over the age of 18 years, across Wales. This is to ensure that there is a consistent, equitable and appropriate application of the process for determining eligibility.

The 2021 framework replaced the 2014 publication (and the previous 2010 publication). A consultation exercise sought stakeholder's views on amendments to the Framework and also the Decision Support Tool (DST), which is used as part of any assessment for eligibility to receive CHC. Representatives from LHBs, LAs, the Public Services Ombudsman for Wales and third sector organisations were involved.

The Welsh Government gives a commitment to review the current 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 MDT decision making with the Forum.

It is worth noting that the introduction of direct payments for CHC recipients is anticipated to remove some of the pressure from the CHC system. This in turn should reduce disputes at the margin of LA and LHB care including those around eligibility.

### **Direct payments: Social Care**

For the last two years (up to March 2023), the number of adults receiving a direct payment (DP) has been stable at around 5,600 people – or 11.3% of all adults with a care and support plan.

We have worked with the AGW and local authorities to embed the recommendations in the 2022 [Direct Payments for Adult Social Care](#) report into Statutory Guidance. This includes specific recommendations for local authorities to improve the information provided to people as well as through the workforce. We will be writing to local authorities to confirm their position on this in the Autumn.

We will also be using the information from our new Performance Framework to review take-up of DPs and work with local authorities to strengthen this using best practice, not least around communications. This will inform the potential need and required content for a publicity campaign. This broader evidence is helping us to better understand the current direct payments landscape.

### **Direct payments: CHC**

The proposed all-Wales Hub structure involves much of the management of new administrative and support elements for CHC Direct Payments being organised centrally. The Hub model will prevent the need for seven sets (from the seven local health boards in Wales) of costs for core functions and will prevent differentiations in approach and the potential for a 'postcode lottery' for individuals, depending on where they live in Wales.

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.

### **Confirmation of the dates/details of the RPB consultation**

Last summer, as part of our Rebalancing Care and Support consultation, we consulted on proposals to amend the Partnership Arrangements (Wales) Regulations 2015, and also sought views on a revised version of the Part 9 Statutory Guidance on Partnership Arrangements. The overall aim of these changes is to strengthen the regional partnerships and particularly the role of the Regional Partnership Boards in overseeing the planning and commissioning of health and social care.

Our response to that consultation may be found on here:

<https://www.gov.wales/rebalancing-care-and-support-programme>.

On 16 April this year, we opened a further consultation on the draft Partnership Arrangements (Miscellaneous Amendments) (Wales) Regulations 2024, to put our

proposals into effect. This consultation runs until 9 July, and may be found here: <https://www.gov.wales/draft-partnership-arrangements-miscellaneous-amendments-wales-regulations-2024>.

In summary, the draft regulations will:

- extend the objectives of RPBs to include ensuring that the partnership bodies work effectively together to respond to market stability reports; give due regard to a local authority's duty to promote social enterprises, co-operatives, user-led services and the third sector; and promote the development of integrated health and social care arrangements
- also extend an RPB's objectives to include monitoring the exercise of a local authority's duty under section 12 of the Children and Families (Wales) Measure 2010 in relation to the partnership arrangements; and working with Llais to promote the involvement of service users and carers in the partnership arrangements
- extend RPB membership to include the Wales Ambulance Service Trust and representatives from primary care providers, the health and social care workforce, and the county voluntary councils
- require RPBs to invite Llais to be as an independent observer member
- ensure the partnership bodies each appoint a responsible person for ensuring co-operation in the partnership arrangements
- introduce new administrative requirements on RPBs in relation to roles, recruitment and support for their members
- require RPBs to undertake a biennial self-assessment
- clarify the information RPBs must include in their annual reports
- require RPBs to prepare and publish an annual delivery plan, and undertake an annual review of the five yearly joint area plan
- amend the publication date for the five yearly market stability reports.

Following the consultation we will lay the draft Regulations and the revised Statutory Guidance before the Senedd in the autumn term. It is intended that the new regulations and the statutory guidance will come into force on 31 December 2024.

Yours sincerely



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



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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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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.

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/744441/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/1144441/childrens-social-care-market-study-final-report.pdf) .

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)

**Eluned Morgan AS/MS**

**Ysgrifennydd y Cabinet dros Iechyd a Gofal Cymdeithasol**  
**Cabinet Secretary for Health and Social Care**



**Llywodraeth Cymru**  
**Welsh Government**

Russell George MS  
Chair  
Health and Social Care Committee

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

1 July 2024

Dear Russell

You will be aware that in summer 2022 the then Deputy Minister for Mental Health and Wellbeing consulted on proposals to improve the health of food environments in Wales: [Healthy food environment | GOV.WALES](#).

I am writing to inform you of the [consultation](#) I have published on the enforcement approach and the text of draft regulations for placement and price promotion restrictions in Wales, largely equivalent to [The Food \(Promotion and Placement\) \(England\) Regulations 2021](#) which I intend to lay before the Senedd before the end of 2024. The intention is for there to be a 12-month implementation period, which would allow industry the time to make the necessary changes before, subject to Senedd approval, the coming into force of the regulations towards the end of 2025. You may also wish to note the [Written Ministerial Statement](#) I have published to announce the launch of the consultation.

Following the Welsh Government's separate consultation in 2022 on a proposal to restrict the sale of energy drinks to under 16s, I am also taking this opportunity to undertake a call for evidence to further understand the impacts of energy drink consumption by children, including those for our wider society.

I look forward to hearing your views and working together on this important area.

I have also sent a letter to the Chair of the Children, Young People and Education Committee and the Chair of the Legislation, Justice and Constitution Committee.

Yours sincerely,

**Eluned Morgan AS/MS**

**Ysgrifennydd y Cabinet dros Iechyd a Gofal Cymdeithasol**  
**Cabinet Secretary for Health and 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.

# Agenda Item 6.5

**Eluned Morgan AS/MS**  
Ysgrifennydd y Cabinet dros Iechyd a Gofal Cymdeithasol  
Cabinet Secretary for Health and Social Care



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref MA/EM/5226/24

Russell George MS  
Chair  
Health and Social Care Committee  
Senedd Cymru

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

17 June 2024

Dear Russell,

Thank you for sharing the Health and Social Care Committee's final report about its post-legislative scrutiny of the Nurse Staffing Levels (Wales) Act 2016.

Please find my response to the committee's recommendations attached.

Yours sincerely,

**Eluned Morgan AS/MS**

Cabinet Secretary for Health and Social Care  
Ysgrifennydd y Cabinet dros Iechyd a Gofal Cymdeithasol

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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.

## Written response from the Welsh Government to the Health and Social Care Committee's report *Nurse Staffing Levels (Wales) Act 2016: Post-legislative scrutiny.*

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A detailed response to each of the recommendations is listed below.

As requested, I will provide the committee with a written update by 17 October about the recommendations identified below.

Recommendation	Accept / Accept in principle/ Reject	Welsh Government response
<b>Recommendation 1.</b> <i>The Minister for Health and Social Services should clarify the consequences for non-compliance with sections 25B and C of the Act and consider including provision for this in the NHS Wales Escalation and Intervention Arrangements.</i>	<b>Accept</b>	<p>I am happy to clarify in writing in this response to the committee that which was touched upon in evidence last year.</p> <p>The Nurse Staffing Levels (Wales) Act 2016's ("the 2016 Act") operational guidance is clear on this point:</p> <p><i>"It is the health boards/trusts at an executive level that are accountable for compliance with the Act. Any instances of non-compliance will be considered under the Joint Escalation and Intervention Arrangements that have been in place since 2014. Under these arrangements, the Welsh Government meets with the Wales Audit Office and Healthcare Inspectorate Wales twice a year to discuss the overall position of each health board/trust. A wide range of information and intelligence is considered to advise on the escalation status, any issues and ensure they are resolved effectively. Non-compliance with a piece of legislation such as the Nurse Staffing Levels (Wales) Act would be considered under these arrangements."</i></p> <p>During the committee's hearings none of the witnesses to whom the duties of the 2016 Act apply reported any lack of clarity around the consequences for non-compliance with the legislation.</p>

		<p>The Executive Directors of Nursing are very familiar with these escalation processes given their executive responsibilities within their respective organisations. They are also familiar with how these processes would play out in the context of non-compliance with the 2016 Act, because – as I mentioned in my 6 December evidence – they have seen it applied in practice. Lack of compliance with the 2016 Act was cited as one of the reasons Cwm Taf University Health Board was placed into targeted intervention status in 2019.</p> <p>A refreshed <a href="#">NHS Oversight and escalation framework</a> was published in January 2024. It describes the escalation, de-escalation, and intervention process in more detail, building on the learning from our experiences with Cwm Taf Morgannwg and Betsi Cadwaladr university health boards.</p> <p>This document – in combination with the 2016 Act’s operational guidance – contains all the clarity required for health boards/trusts to understand the consequences of non-compliance with the 2016 Act.</p>
<p><b>Recommendation 2.</b>  <i>The Minister for Health and Social Services should write to us within 6 months of publication of this report to provide an update on progress by health boards in consistently displaying information about nurse staffing levels on wards where section 25B applies.</i></p>	<b>Accept</b>	<p>The chief nursing officer (CNO) has raised this issue with the Executive Directors of Nursing. The reporting subgroup of the All-Wales Nurse Staffing Group (AWNSG) is already working through the detail of the necessary steps to ensure a return to nurse staffing level information being displayed consistently across Wales.</p> <p>I will include more detail about our progress on this action in my follow-up six-month update.</p>
<p><b>Recommendation 3.</b>  <i>The Minister for Health and Social Services should bring forward</i></p>	<b>Accept</b>	<p>Developing operational guidance setting out consistent use of a triangulated calculation approach in 25A areas is now a central part of the refreshed work programme for the All-Wales Nurse Staffing Programme (AWNSP).</p>



<i>clear operational guidance to support the consistent application of section 25A across health boards in Wales. She should report back to us on progress with developing this within 6 months of publication of this report</i>		There is significant work that will need to be completed to underpin this guidance, but it has already commenced, and I will include detail of the programme's progress in my follow-up six-month update.
<b>Recommendation 4.</b> <i>The Minister for Health and Social Services should commission a mapping of the digital systems involved in complying with the requirements of the Act to enable an honest appraisal of the work that still needs to be done to improve the efficiency and connectivity of those systems, and the timescales for this. This should include consideration of the role of digital technology in enabling nurses to provide better patient care.</i>	<b>Accept</b>	As with the above recommendation, this work is already reflected in the AWNSP's refreshed work programme. The programme team has encountered issues recruiting digital expertise in the past, and I am aware that the programme manager is exploring potential solutions for employing short-term support to make rapid progress against the digital elements of the work programme.  I will include detail on progress against this recommendation in my six-month update.
<b>Recommendation 5.</b> <i>The Minister for Health</i>	<b>Accept in principle</b>	I support the principle of independent evaluation of legislation passed by the Senedd. However, as the CNO set out to the committee in December, it is hard to make an

<i>and Social Services should commit to undertaking a full and academic review of the Act as soon as the data to support this work is available.</i>		<p>argument for commissioning such evaluation work at this time given the fractured implementation of the 2016 Act, due in part to the disruption caused by the pandemic, and the digital issues that have hampered data capture to date.</p> <p>Such evaluation is only typically commissioned once – we should therefore do this when we have the robust data required to underpin an academically rigorous evaluation. April 2024 marked the beginning of the third three-year reporting period – the first since the Safecare ward management module has been rolled out to all 25B areas. We expect this to result in the capture and analysis of more robust data. The conclusion of this reporting period would present an opportunity to undertake the independent evaluation of the 2016 Act.</p> <p>I have asked the AWSNP to include an action in its work programme to periodically review the situation and update the CNO.</p>
<b>Recommendation 6.</b> <i>The Minister for Health and Social Services should commission a piece of research into the use of the Welsh Levels of Care workforce planning tool to date, including consideration of how Wales compares with the other UK nations in terms of improved nurse staffing levels and patient safety.</i>	<b>Accept in principle</b>	Research into the implementation of the Welsh Levels of Care tools to date would form a significant component of the legislative evaluation described in recommendation five and would not be commissioned as a separate piece of work. The same barriers described above would also therefore apply to commissioning this type of research at the present time.
<b>Recommendation 7.</b> <i>The Minister for Health and Social Services should provide a written</i>	<b>Accept</b>	I will include details of our progress in these areas in my six-month update.

<p><i>update, within 6 months of publication of this report, on the success of actions to improve nurse recruitment and retention and ensure a sustainable supply of nurses, including reference to international recruitment and the use of agency staff.</i></p>		
<p><b>Recommendation 8.</b>  <i>The Minister for Health and Social Services should:</i></p> <ul style="list-style-type: none"> <li>▪ <i>confirm that the introduction of the registered nursing associate role will be fully funded, and set out where that funding will come from;</i></li> <li>▪ <i>provide assurance that the role of registered nursing associate will be an addition to the current workforce and not a substitute for registered nurses; and set out the extent to which the Act mitigates the risk of substitution;</i></li> </ul>	<p><b>Accept</b></p>	<p>If the registered nursing associate (RNA) role is introduced in Wales, it will be the only band 4 role in our nursing workforce following a period of transition. Therefore, the funding currently allocated to the education and training of band 4s would be reallocated to the education and training of RNAs.</p> <p>Phase 2 of the band 4 project work is in its early stages, and over the coming months the subgroups of its programme board will lead on identifying the detail and potential timeline of that funding transfer. The four workstreams are: workforce, legislation, parameters of practice and education, and all four will be making financial considerations in respect of those specific areas. I will include details on this work in my six-month update to you.</p> <p>The CNO and I are very clear on the point of substitution. Over time, the registered band 4 role will be replacing the current band 4 healthcare support worker (HCSW) role, <u>not</u> registered nurses. Registered nurses are an irreplaceably important feature of the workforce, and they will be more effectively supported by registered band 4 colleagues with a higher level of education than current band 4 HCSWs. The primary mitigation against registered nurse substitution will be the development of unequivocally clear parameters of practice which distinguish an RNA from a registered nurse. This document will be developed by the parameters of practice subgroup, with a full consultation on the document to follow.</p>

<ul style="list-style-type: none"> <li>▪ <i>set out how the requirements of the Act will apply to the registered nursing associate role; and</i></li> <li>▪ <i>provide details of any assessment of the risk to patient safety that has been or will be done in all areas where registered nursing associates will be employed.</i></li> </ul>	<p>There is additional mitigation – the 2016 Act’s statutory guidance states: “The nurse staffing level is the number of nurses appropriate to provide care to patients that meets all reasonable requirements in the relevant situation. The number of nurses means the number of registered nurses (this being those with a live registration on sub parts 1 or 2 of the Nursing and Midwifery Council (NMC) register).”</p> <p>The RNA would not be on those parts of the NMC register so there will be no blurring of boundaries within the context of the 2016 Act.</p> <p>The requirements of the 2016 Act would apply to an RNA in the same way they currently apply to a HCSW. The statutory guidance states: “In calculating the nurse staffing level, account can also be taken of nursing duties that are undertaken under the supervision of, or delegated to another person by a registered nurse.”</p> <p>“Another person” includes the current role of a HCSW, and would include an RNA if introduced. The AWNSG will, as a matter of course, review all templates and guidance and make any necessary adjustments to include specific references to the new role.</p> <p>Questions of patient safety in relation to the introduction of an RNA role are counterintuitive. As referenced above, the RNA would be a replacement role for the currently unregulated band 4 HCSW.</p> <p>As part of the project work that informed my decision to pursue introduction of the RNA in Wales, there was a comprehensive review of literature and clinical, academic professional and trade union opinions. Part of that work was effectively a risk assessment to patient safety of the <i>current</i> model of unregistered, unregulated band 4 HCSWs. The outcome of that investigation was that regulation minimises risks, increases patient safety and enhances public confidence because of the consistent standards of practice and education, as a result of NMC regulation.</p> <p>According to the literature (and reiterated by academics in Wales), the current absence of regulation is what poses a risk to patient safety, not least due to the enhanced scope of practice of band 4s.</p>
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		Platform 5 in the NMC Standards of Proficiency for the RNA includes improving safety and quality of care. These standards do not exist for the current unregulated band 4 role in Wales. The RNA role is also covered by the NMC Code, which includes a requirement to practise effectively and preserve patient safety. As with registered nurses, RNAs are required to revalidate on a cyclical basis, regularly redemonstrating competency.
<b>Recommendation 9.</b> <i>The Minister for Health and Social Services should report back to this Committee within 9 months of publication of this report on the use of the draft Welsh Levels of Care Tools for mental health and health visiting by health boards, providing an evaluation of how they are contributing to the development of a sustainable workforce and improved patient care in this area.</i>	<b>Accept</b>	<p>As raised during the committee's evidence gathering, there are some distinct barriers to the standardised use of the mental health and health visiting WLOC tools at present – the lack of digital platforms to enable data collection.</p> <p>As part of the Awnsp's refreshed programme of work, the programme manager intends to undertake a stock-take audit to gain an understanding of how the draft tools are being used and better understand any barriers. The results will be vital for informing the programme's broader work around standardising triangulated staffing calculations in 25A areas.</p> <p>I will include details in my follow-up six-month update.</p>
<b>Recommendation 10.</b> <i>The Minister for Health and Social Services should use the All-Wales Nurse Staffing Programme to commission a mapping of the other workforce planning tools that are available, and to develop</i>	<b>Accept</b>	This work is already reflected in the Awnsp's refreshed programme of work. This scoping work will be the first step towards developing operational guidance to ensure a once-for-Wales approach to consistently applying a triangulated calculation approach in all 25A areas, mentioned in recommendation three.

<i>the principles and guidance to ensure a consistent approach to their application across Wales.</i>		
<b>Recommendation 11.</b> <i>The Minister for Health and Social Services should share with the Committee the findings of the All-Wales Nurse Staffing Group's assessment of the impact of the Act on multi-professional working.</i>	<b>Accept</b>	When the AWNSG has concluded its work assessing the relationship between the 2016 Act and multi-professional working, I will share its findings/recommendations with the committee.