

## Children and Young People Committee

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Meeting Venue:  
**Committee Room 1 – Senedd**

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Meeting date:  
**20 November 2013**

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Meeting time:  
**09:15**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



For further information please contact:

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### Agenda

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#### AGENDA

**Private Pre-meeting – 09.15 – 09.30**

#### **1 Introductions, apologies and substitutions (09.30)**

#### **2 Inquiry into Educational Outcomes for Children from Low Income Households – Evidence session 3 (09.30 – 10.30) (Pages 1 - 4)**

Bevan Foundation  
CYP(4)-30-13 – Paper 1

Victoria Winckler, Director

#### **3 Inquiry into Educational Outcomes for Children from Low Income Households – Evidence session 4 (10.30 – 11.30) (Pages 5 - 10)**

Save the Children  
CYP(4)-30-13 – Paper 2

Mary Powell-Chandler – Head of Wales Save the Children  
Trudy Aspinwall, Programme Officer: Travelling Ahead

#### **4 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

Items 5 and 6

**5 Committee Remit (11.30 – 12.00)** (Pages 11 - 13)

CYP(4)-30-13 – Private paper 3

**6 Papers to note**

**Briefing on European Commission Work Programme 2014** (Pages 14 - 24)

CYP(4)-30-13 – Private (paper to note) 4

**Correspondence from the Minister for Education and Skills re Stage 1 Scrutiny of the Education (Wales) Bill** (Pages 25 - 34)

CYP(4)-30-13 – Paper to note 5

**Correspondence from the Minister for Communities and Tackling Poverty re Welsh Government Draft Budget 2014–15** (Pages 35 - 62)

CYP(4)-30-13 – Paper to note 6

## National Assembly for Wales

### Children and Young People Committee

#### CYP(4)–30–13 – Paper 1

#### Inquiry into Educational Outcomes for Children from Low Income Households

#### Evidence from : The Bevan Foundation

#### Introduction

1. The Bevan Foundation welcomes the opportunity to submit evidence to the Committee's inquiry. The Bevan Foundation is an independent think-tank that helps to make Wales a fairer place through research and policy development, publications and events. It has a very modest income and resource, and is funded primarily by research commissions and membership subscriptions.
2. It has developed considerable expertise on many aspects of poverty and social exclusion in Wales. Recently its Director, Dr Victoria Winckler, has been appointed to the Joseph Rowntree Foundation's Task Group preparing a UK poverty plan – this project is undertaking a review of evidence of 'what works' to inform a set of proven actions due for publication in 2015/16.
3. In terms of work on education and low income, the Bevan Foundation is currently running the 'Poverty and Education Network', with the support of the Joseph Rowntree Foundation, to bring together interested organisations, including schools and community organisations, to exchange experience and ideas. The network's funding is limited (less than £5,000) ends in March 2014. The Foundation also recently completed a report for the Heads of the Valleys Education Programme on adult learning in Merthyr Tydfil and Blaenau Gwent, areas with a high incidence of low income.

#### **The effectiveness of policy and strategy in mitigating the link between poverty and educational outcomes**

4. The Bevan Foundation welcomes the Welsh Government's commitment to "tackle poverty" and its action plans to do so. It has been suggested<sup>1</sup> that the Welsh Government is a world-leader in its commitment. The Foundation has identified a number of ways in which the "Tackling Poverty" plans could be strengthened, including:

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<sup>1</sup> Dr Peter Kenway, speaking at the launch of *Monitoring Poverty and Social Exclusion in Wales, 2013* on 19<sup>th</sup> September 2013, Urdd Centre, Cardiff

- a. Recognising the different incidence of low income amongst different groups of people, including different age groups;
  - b. Recognising the different causes of low income as they affect different age groups, such as worklessness (and in particular the relationship with disability), low income from paid work (both as a result of low wages and limited hours of work) and low state benefits, including pensions;
  - c. Taking a wider view of low income to include resources (such as savings / debt, capital assets) and costs (in particular domestic fuel and food costs);
  - d. Making breaking the link between low income and poor quality public services a high priority – this would include breaking the link between low income and low educational attainment.
5. Eradicating the link between low income and low educational attainment would, in our view, be the single most significant step towards equality, social mobility and the realisation of the potential of Wales's children (and adults) that could be taken.
  6. In terms of delivering the Welsh Government's priorities, it is vitally important that the action plan embraces other public bodies, schools and the third sector as well as Welsh Government - all have a vitally important role to play in reducing poverty.

**The respective roles of the Welsh Government, education regional consortia, local authorities, schools and governing bodies in addressing this issue and why there is variation between schools in mitigating the link between poverty and educational outcomes**

7. The Bevan Foundation has no observations to offer on the roles of various bodies.
8. As far as variation between schools is concerned, it appears from our work with the Poverty and Education Network that schools and others are unclear about the most effective actions to take, and in this vacuum develop their own approaches. It is clear that schools also vary in the relative priority they give to reducing the impact of low income on attainment. The Network has proved a valuable forum for schools to discuss these ideas and there is considerable potential to develop it further.

**Whether Welsh Government policy sufficiently takes forward issues relating to parental engagement in respect of the educational outcomes of children from low-income households, and whether it addresses the views and experiences of children and young people from such households regarding the barriers in this regard.**

9. The Bevan Foundation's work with the Poverty and Education Network has identified considerable interest amongst schools in engaging with parents. We have seen that schools are developing numerous different approaches to engaging parents, some of which are reported to be highly successful. However, most initiatives are not being formally evaluated, if at all, and it is difficult therefore to establish their effectiveness independently of other factors.
10. The research undertaken by the People and Work Unit in Glyncoch suggests that parental engagement needs to take place in the wider context of community

engagement, and should be part of a suite of actions both school and community based which 'build bridges' between the two and encourage learning and support self-esteem in all age groups.

**Relevant funding issues, including the effectiveness of the pupil deprivation grant and any anticipated effects of the recently issued guidance for 2013-2015**

11. The Bevan Foundation does not have expertise in this area and has no evidence to offer.

**The costs associated with education (trips, uniforms, sporting equipment etc) and the effectiveness of the Welsh Government's approach in ensuring that children from low-income households are not disadvantaged in this regard**

12. Work undertaken by the Bevan Foundation and Save the Children in 2008<sup>2</sup> highlighted significant concerns about the costs of state education, including compulsory costs (such as uniforms, ingredients for cookery classes, additional text books) as well as items which are voluntary but for which significant social pressure to purchase is exerted (photographs, trips, book fairs etc). We recommended that immediate action be taken to make participation in education genuinely free of charge, including adoption of a simple, low-cost uniform.

**Free school meals, including take-up rates, the perceived stigma of claiming free school meals, the use of free school meals as a proxy indicator for child poverty and the impact of the need to revise eligibility criteria arising from the introduction of Universal Credit.**

13. The Bevan Foundation and Save the Children Wales's 2008 report<sup>3</sup> recommended that action be taken to encourage take-up of free school meals particularly at secondary level, and to reduce the perceived stigma of claiming and receiving them.
14. Use of Free School Meal (FSM) entitlement as an indicator for child poverty is imperfect. As only children in families which receive out-of-work benefits are eligible, children in working families, which comprise a substantial and growing proportion of households in low income, are excluded. The recent New Policy Institute report for Joseph Rowntree Foundation<sup>4</sup> suggests that in-work poverty is more prevalent in rural Wales than other areas, so use of FSM as an indicator may mean the number of children from low-income families is under-estimated here.
15. The problem is compounded by take-up rates. Evidence from England suggests that approximately 3% of all pupils are eligible but do not claim. However, low take-up is significantly more common in relatively affluent areas and in schools with low take-

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<sup>2</sup> Bevan Foundation and Save the Children (2008) **Children in Severe Poverty in Wales: an agenda for action**. Available at: <http://www.bevanfoundation.org/publications/children-in-severe-poverty-in-wales-an-agenda-for-action/>

<sup>3</sup> Op. Cit.

<sup>4</sup> New Policy Institute (2013) **Monitoring Poverty and Social Exclusion in Wales, 2013**, Joseph Rowntree Foundation

up, and among families with professional occupations and higher qualifications.<sup>5</sup> The use of FSM as an indicator thus magnifies the differences between schools with high and low proportions of FSM claimants.

16. The introduction of Universal Credit is an opportunity to put eligibility for FSM on a more equitable footing. Whilst the Bevan Foundation has previously expressed concerns about aspects of Universal Credit, it has the advantage of its receipt being an indicator of low income and household need that does not depend on a family's work status. We would favour receipt of Universal Credit being a simple passport to FSM entitlement. The alternative is that all school meals are free.

**Views on the Welsh Government's response in taking forward the recommendations of the Children and Young People Committee of the Third Assembly in respect of the 'Child Poverty: Eradication through Education' report.**

17. The Bevan Foundation has no observations on this point.

**Other points**

18. In the course of our work on many different aspects of poverty, comments have often been made about the role of the curriculum, both in terms of its appropriateness for children from low income households (such as assumptions about household composition or resources in setting homework) as well as its potential to equip children with life skills to live in (and move on from) low income homes, for example cookery skills, to skills of co-operation with others, financial literacy.
19. We are not able to comment on the validity of these comments, but they suggest that the Committee may wish to include the role of the curriculum in its inquiry.

Victoria Winckler

Director, Bevan Foundation

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<sup>5</sup> Samaira Iniesta-Martinez & Helen Evans (20XX) *Pupils not claiming free school meals*, Department for Education. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/183380/DFE-RR235.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/183380/DFE-RR235.pdf)

## National Assembly for Wales

### Children and Young People Committee

#### CYP(4)-30-13 - Paper 2

#### **Inquiry into Educational Outcomes for Children from Low Income Households**

#### **Evidence from : Save the Children**

Save the Children believes that no child should be born without a chance to thrive and fulfil their potential. We want to see the link between low educational attainment and deprivation broken once and for all. Through our policy work and our programme work on the ground, we offer solutions to the challenges the UK's poorest children and families face.

We welcome the Children and Young People's Committee consideration of undertaking an inquiry into educational outcomes for children from low income households.

It is unacceptable that at every stage of schooling Wales' poorest children do worse and make less progress than their better-off classmates. Save the Children believes that children's backgrounds should not determine the opportunities they have in life. To break cycles of deprivation, children from the poorest homes must be given high-quality and sustained additional support to ensure they can overcome disadvantage and realise their potential. Save the Children believes that a key ingredient to tackle the attainment gap is additional spending targeted at children living in poverty.

Poverty has a significant influence upon current levels of education performance in Wales. The gap between the achievements of disadvantaged compared to advantaged children is significant as early as age three. The gap often narrows during primary school but widens again by age 11. By GCSE there is a 34% gap in attainment between children living in low income households and their better off classmates.<sup>1</sup>

Please see our initial response to the Committee's requests for views on the following points:

**1. The effectiveness of Welsh Government policy and strategy in mitigating the link between poverty and educational outcomes, including the 'Tackling Poverty Action Plan'<sup>2</sup>; relevant education policy; and broader Welsh Government policies in this regard, for example Communities First;**

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<sup>1</sup> Egan, D. (2012). *Communities, Families and Schools Together: A Route to Reducing the Impact of Poverty on Educational Achievement in Schools Across Wales*. Cardiff: Save the Children.

Egan, D (2013). *Poverty and Low Educational Achievement in Wales*. York: Joseph Rowntree Foundation

<sup>2</sup> Welsh Government (2012) *Tackling Poverty Action Plan 2012 - 2016*

Both Strategies published this summer ‘Building Resilient Communities’<sup>3</sup> and ‘Building a Brighter Future’<sup>4</sup> clearly articulate the Government’s commitment to mitigating the link between poverty and education. We strongly support the Welsh Government’s decision to make reducing the impact of poverty on educational attainment, one of its three national priorities for education in Wales. Correspondingly we welcome the introduction of the Pupil Deprivation Grant (PDG) to enable schools to invest in those pupils eligible for Free School Meals. The Communities First Pupil Deprivation Grant Match-Fund, which encourages joint working between communities and schools and which optimises the PDG, is also an innovative and welcome measure which should achieve strengthened links between schools, communities and families. Communities First continues to be a flagship programme in Wales and following its realignment, the three strategic objectives of prosperous, healthy and learning communities strengthen the link between poverty and education. Similarly the Flying Start programme and its expansion show Welsh Government commitment to this priority.

In terms of the effectiveness of the policies and strategies, it is important that application and performance is carefully monitored and outcomes measured. It is also essential that best practice is shared to ensure the most impactful outcomes for all our children living in poverty in Wales. The School Effectiveness Grant (SEG) and Pupil Deprivation Grant Guidance published in April 2013<sup>5</sup>, presents monitoring arrangements which should prove helpful in determining effectiveness and sharing best practice. We look forward to reading the first narrative evaluation reports due in January 2014 and are pleased that the Guidance referenced the findings of our research in ‘Communities, Families and Schools Together.’<sup>6</sup> (Egan, 2012 i)

We remain concerned however that existing policy and strategy does not specifically address:

- (1) the increasing number of children experiencing poverty even though at least one parent is working
- (2) the number of children experiencing poverty who live outside the designated Communities First and Flying Start areas

## **2. The respective roles of the Welsh Government, education regional consortia, local authorities, schools and governing bodies in addressing this issue and why there is variation between schools in mitigating the link between poverty and educational outcomes;**

Our report ‘Communities, Families and Schools Together’<sup>7</sup> concluded, as many other academic works have done, that that we all have a role to play in this matter –

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<sup>3</sup> Welsh Government (2013), *Building Resilient Communities: Taking Forward the Tackling Poverty Action Plan*

<sup>4</sup> Welsh government(2013) *Building a Brighter Future: Early Years and Childcare Plan*

<sup>5</sup> Welsh Government (2013), *School Effectiveness Grant and Pupil Deprivation Grant 2013 to 2015*

<sup>6</sup> Egan, D. (2012). *Communities, Families and Schools Together: A Route to Reducing the Impact of Poverty on Educational Achievement in Schools Across Wales*. Cardiff: Save the Children

<sup>7</sup> Egan, D. (2012). *Communities, Families and Schools Together: A Route to Reducing the Impact of Poverty on Educational Achievement in Schools Across Wales*. Cardiff: Save the Children



it is not a problem that schools alone can fix. Importantly, strategic direction is provided by Welsh Government together with resources and guidance to assist all stakeholders to implement effectively. It is inevitable that initially there will be variations between schools as each determines what best meets their needs. Each school and its community are unique. There are a range of potential interventions and to some extent one can expect a period of 'trial and error'. The aforementioned SEG and PDG Guidance<sup>8</sup> refers readers to the Sutton Trust Toolkit<sup>9</sup> which provides invaluable information in terms of assessing impacts but whose list of programmes, as stated on the website, is not exhaustive. There are anecdotal accounts of schools using their PDG to recruit staff; this is clearly not the use for which it is intended – as reflected in this year's Guidance. One would expect less variation with the publication of SEG and PDG monitoring reports which will engender the sharing of best practice.

**3. Whether Welsh Government policy sufficiently takes forward issues relating to parental engagement in respect of the educational outcomes of children from low-income households, and whether it addresses the views and experiences of children and young people from such households regarding the barriers in this regard;**

There will always be scope for improvement in this regard which is where Third Sector organisations such as our can help. We can provide access to the beneficiaries of our programmes (Families and Schools Together and Eat Sleep learn Play), who have agreed to speak about their experiences. We can also provide access to young people via our Young Leadership programme and others such as the Young Researchers whose publication 'Small Voice, Big Story'<sup>10</sup>, was so warmly received by Ministers, Assembly members and Welsh media in February of this year. The recommendations made by these young people included providing a safe place to learn, peer mentoring, and a joining-in fund to ensure all children can participate in extra-curricular activities (not dissimilar to the Joining-in fund which the Minister for Education and Skills has advocated). Save the Children continues to pursue these recommendations and strongly advocates that policy-makers are given increased exposure to those whom their policies aim to help.

**4. Relevant funding issues, including the effectiveness of the pupil deprivation grant and any anticipated effects of the recently issued guidance for 2013-2015;**

Please see 1 and 2 above.

In addition, Save the Children would support that Welsh Government adopts the same approach as in England whereby pupils who have been eligible for FSM at any

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<sup>8</sup> Welsh Government (2013), *School Effectiveness Grant and Pupil Deprivation Grant 2013 to 2015*

<sup>9</sup> Sutton Trust and Education Endowment Foundation Toolkit, *online resource*

<sup>10</sup> Save the Children Wales, (2013) *Small Voice, Big Story*

point in the previous six years, or have been in care for more than six months continuously, qualify for the Pupil Premium.

We also support the extension of the PDG to Nursery schools.

**5. The costs associated with education (trips, uniforms, sporting equipment etc) and the effectiveness of the Welsh Government's approach in ensuring that children from low-income households are not disadvantaged in this regard**

According to our Young Researchers who interviewed pupils across Wales<sup>11</sup> this continues to be an issue and one set to worsen as poverty levels increase, as anticipated. The Report quotes from one Focus Group,

'...You need the school to help provide things like running shoes and the things children would like, to be able to join in with everyone else.'

In the UN Committee on the Rights of the Child Concluding Observations to the UK in 2008, they stated that:

'[The Committee] is concerned that significant inequalities persist with regard to school achievement of children living with their parents in economic hardship.' The Committee went on to recommend that: 'The State party continue and strengthen its efforts to reduce the effects of the social background of children on their achievement in school.'

Save the Children is pursuing the recommendation for a fund to help children from low income families access help with meeting the cost of additional books, stationery, school trips et al

**6. Issues relevant to free school meals within this context, such as take-up rates, the perceived stigma of claiming free school meals, the use of free school meals as a proxy indicator for child poverty and the impact of the need to revise eligibility criteria arising from the introduction of Universal Credit**

Save the Children is concerned that many children living in poverty are still not entitled to free school meals.

We are also concerned by the persistently low levels of take-up of free school meal entitlement. Findings by the Welsh Assembly Children and Young People's Committee in February this year record that the average take of-up of free school meals in Welsh secondary schools is just 68%<sup>12</sup>. Several key child poverty organisations have collectively campaigned for universal free school meals to eradicate stigma and bullying and to improve take-up whilst also reducing financial

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<sup>11</sup> Save the Children Wales, (2013) *Small Voice, Big Story*

<sup>12</sup> Welsh Government ( 2013) *Free school meals case study report*

pressures on families. Save the Children supports universality as the best way to overcome stigmatising in schools and to ensure that those children living in poverty who do not qualify for free school meals under the current system, are not missed. Save the Children welcomes moves to facilitate flexible charging for school meals, designed to make school meals more affordable for families, especially those from low income groups.

The introduction of Universal Credit is a major cause of concern in terms of it eliminating the existing means of identifying entitlement to FSM. We welcome Welsh Government's commitment to find alternative means to identify Free School meal entitlement and hope that this will be an opportunity to address the issues listed above.

## **7. Views on the Welsh Government's response in taking forward the recommendations of the Children and Young People Committee of the Third Assembly in respect of the 'Child Poverty: Eradication through Education report**

The prominence of this issue in key documents, *Building Resilient Communities*<sup>13</sup> and *Building a Brighter Future*<sup>14</sup> together with the published SEG and PDG Guidance<sup>15</sup> and targeted funding demonstrates a clear and positive commitment to this agenda.

## **Concluding comments**

We welcome the opportunity to comment and hope that any future enquiry will include consideration of the issues that remain a concern for us. Namely,

- (1) the increasing number of children experiencing poverty even though at least one parent is working
- (2) the number of children experiencing poverty who live outside the designated Communities First and Flying Start areas
- (3) Provision for the extension of PDG to cover other groups of children depending on the new eligibility criteria for FSM set out under Universal Credit, under 5's etc.
- (4) Monitoring PDG spend and looking at ensuring those from deprived backgrounds with good or high attainment levels are given additional support.

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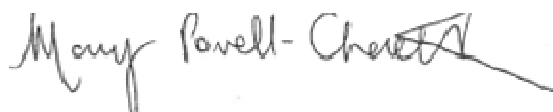
<sup>13</sup> Welsh Government (2013), *Building Resilient Communities: Taking Forward the Tackling Poverty Action Plan*

<sup>14</sup> Welsh government(2013) *Building a Brighter Future: Early Years and Childcare Plan*

<sup>15</sup> Welsh Government (2013), *School Effectiveness Grant and Pupil Deprivation Grant 2013 to 2015*

- (5) How the voices and experiences of children and young people can be taken into account in prioritising and monitoring PDG spend.

Finally, we will welcome the opportunity to provide more detailed written and or verbal evidence if the Committee Members proceed with an inquiry.

A handwritten signature in black ink, reading "Mary Powell-Chandler". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

**Mary Powell-Chandler**  
Head of Save the Children, Wales

**Save the Children works in more than 120 countries.  
We save children's lives. We fight for their rights.  
We help them fulfil their potential.**

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Huw Lewis AC / AM  
Y Gweinidog Addysg a Sgiliau  
Minister for Education and Skills



Llywodraeth Cymru  
Welsh Government

Ann Jones AM  
Chair  
Children and Young People Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

13 November 2013

Dear Ann,

## **CHILDREN AND YOUNG PEOPLE COMMITTEE - STAGE 1 SCRUTINY OF THE EDUCATION (WALES) BILL**

Following my appearance before the Children and Young People Committee on 24 October 2013 I agreed to provide Members with further details on the transferring of SEN pupils between local authorities, the consultation and responses received relating to Independent schools (s347), and the specific difference between s160 and s347.

I have also detailed information regarding the School Term Dates Equality Impact Assessment in order to clarify a point raised by Rebecca Evans AM.

### **The consultation relating to Independent schools (s347)**

In September 2012, the Department for Education and Skills published a consultation on '*Reform of the registration and approval of Independent Schools in respect of special educational needs*'. The consultation took place over a six week period and ended on the 1 November 2012. The Welsh Government published a summary of consultation responses in June 2013. The consultation document and response can be accessed at:

<http://wales.gov.uk/consultations/education/senregistration/?status=closed&lang=en>

All independent schools and the Welsh Independent School Council were written to as part of this consultation and invited to comment on the proposal to repeal section 347 (in view of the existing provisions under section 160 of the Education Act 2002 ("section 160")) and on proposed measures to be put in place to support this legislative change.

The Welsh Government received three responses from independent schools to this consultation. Two independent schools agreed with the proposals, whilst one disagreed. The one independent school that disagreed with the proposal provided supporting comments which highlighted that they disagreed on the basis that repealing section 347 would leave no requirement for Independent schools to be annually monitored by Estyn.

This is a misunderstanding of the legislative proposal, as independent schools that admit pupils with statements of SEN are annually monitored against the independent school standards made under section 157 of the Education Act 2002.

Overall, the majority of those responding to the six questions posed in the consultation were in agreement with the proposals.

### **An explanation as to what is required under the section 160 process compared with that of the section 347 application**

All independent schools must be registered. Schools apply to be registered under section 160 of the Education Act 2002 ("section 160"). An application for registration by any school is assessed by Estyn against the Independent School Standards ("ISS"), these are standards set out in regulations<sup>1</sup>.

As part of the registration process, a school can be registered to admit pupils with SEN regardless of whether they have a statement. Any school wishing to admit a pupil with SEN, which has not been registered to do so can apply to do so under section 162 of the Education Act 2002 ("section 162"). This is known as an application for a material change to the registration.

Independent schools that wish to admit pupils with statements of SEN must be approved by the Welsh Ministers under section 347 of the Education Act 1996 ("section 347").

An approval under section 347 can be a general approval which means that the school is approved to admit any pupil with a statement of SEN. Regulations made under section 347<sup>2</sup> ("the approval regulations") set out the criteria to be taken into account to approve the school.

If the school does not have general approval and a pupil with SEN wished to attend that school, the Welsh Ministers can consent to the placement.

A summary of the information requirements, the ISS and the approval regulations is at Annex A. It is the view of the Welsh Government that the registration regime and the ISS provide sufficient safeguards that there is no longer a need for the approval regime.

### **Individual Placements**

During 2012, there were 386 pupils with a statement of SEN on roll within 34 independent schools in Wales. Of those, the Welsh Ministers provided approval for 7 pupils with statements of SEN to be placed in independent schools in Wales. Welsh Ministers also provided approval for 5 placements within English schools.

Where consent for the admission of an individual pupil to be placed in the school is sought, if the independent school is in Wales, the Welsh Government seeks advice from Estyn that the placement is suitable. Estyn's advice is based on their assessment of the individual's statement and its own monitoring report for that independent school. The advice from Estyn then forms the basis of the Welsh Ministers' decision.

If the independent school is in England then Welsh Government officials make a recommendation to the Welsh Ministers following an assessment of the facts which consists of:

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<sup>1</sup> Independent School Standards (Wales) Regulations 2003 made under section 158 of the Education Act 2002.

<sup>2</sup> Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994



- a. Assessing the independent school's criteria fits with the statement of SEN. i.e. the sex, age range, and type of SEN provision provided.
- b. Assessing the latest Ofsted report on the school against compliance with independent school standards; and
- c. Contacting the relevant local authority where the independent school is located to identify any contentious issues, i.e. child protection, etc.

We consider the local authority to be best placed to assess the SEN provision available within an independent school against the needs set out within a pupils statement of SEN, including for those pupils it is looking to place in an English school.

## **Monitoring**

If a school has general approval under section 347 the Welsh Government has an agreement with Estyn that they will undertake an annual monitoring visit. However where individual consent under section 347 has been given to allow the placement of a pupil, no annual monitoring takes place.

## **Education (Wales) Bill**

In addition to repealing section 347, the Education (Wales) Bill seeks to reform the way that independent schools register to admit pupils with SEN. The Bill will amend section 160 to strengthen the registration regime of independent schools by changing the way in which independent schools register to admit learners with statements of SEN.

Schools who register to admit pupils with statements of SEN, must also indicate what type and level of SEN provision they are able to cater for. Those schools will be subject to regular monitoring visits by Estyn. The summary of the monitoring report will be published on Estyn's website so that it is available to those interested in placing pupils at the school.

If a pupil is admitted to a school that has not been registered to admit pupils with a statement of SEN, the Welsh Ministers expect that an application for a material change should be made within 6 months of that placement. If that does not happen, the Welsh Ministers can take enforcement action against the independent school if it considers that it is necessary to do so.

Overall we consider that this reform will:

- a. provide for clearer law;
- b. provide better quality information about independent schools for those placing children with statements of SEN
- c. strengthen safeguarding as more schools will be subject to monitoring visits by Estyn than would be at present.

## **The transferring of SEN pupils between local authorities**

### ***Provisions***

The Education (Wales) Bill includes provision to give local authorities responsibility to make arrangements for the assessment of young people with learning difficulties and to secure specialist further education provision where it is necessary to meet assessed education and training needs.

These proposals will remove the current separation of responsibility for assessing and securing specialist provision from age 16 for learners with learning difficulties and/or disabilities. This will provide greater continuity between pre and post-16 education and

training and support better transition planning as those already familiar with the learners and their needs can support the assessment of needs and provision required to meet them.

The Bill also proposes the introduction of a new right of appeal to the Special Educational Needs Tribunal (SENTW) which will bring the rights of learners aged 16 to 25 more closely in line with younger learners and remove the current inequality for some learners depending on where they receive their education.

### **Assessment**

In relation to arranging for assessment the key responsibilities are on the face of the Bill and regulations will set out the detail arising from these. In addition, a Statutory Code of Practice will guide authorities in discharging their duties. This will enable the use of language more easily understood by interested parties. A Code will also reflect best practice and be developed and adapted over time.

Local authorities will be required, in certain circumstances, to secure an assessment of the post-16 educational and training needs of a person for whom it maintains a statement of SEN. This requirement applies where a person is in their last year of compulsory schooling, or over compulsory school age, and the local authority believes that he or she wishes to undertake some form of post 16 education or training on leaving school.

In addition, there will be a discretionary power on a local authority to secure a post 16 education and training needs assessment of a person, subject to their meeting certain requirements set out in the Bill. These are that; the person must be ordinarily resident in the authority's area; either in the last year of compulsory schooling or over compulsory school age but under 25; have a learning difficulty; and be either receiving post 16 education or training or seem to wish to do so.

There are a number of regulation-making powers relating to this area. It is expected that provision made under these powers will be contained in two sets of regulations. One set of Regulations will deal with appeals (tribunal rules and period within which local authorities must comply with orders of the Tribunal, for example) and the other set of Regulations will make provision about assessment of needs and related matters including:

- what goes into the assessment of needs;
- how assessment requests are dealt with;
- time limits for assessment;
- when someone can be considered ordinarily resident in a local authority area;
- when further assessments can be carried out;
- specifying circumstances in which the local authority no longer has to make provision set out in the assessment.

These regulation making powers will allow the Welsh Ministers to set out when a learner is/is not to be treated as being ordinarily resident in a local authority area, reducing the potential for disruption to learner's education should they move from one authority to another. These powers could for instance be used to provide that the duty is to continue to apply for a specified period after a person moves out of an authority's area, and/or that the duty is to cease to apply if a person fails to co-operate in certain circumstances with provision for further assessment. Detailed guidance setting out the position regarding a learner moving from one authority to another will be addressed in the Code of Practice. It is, in any event, anticipated that once drafted, the regulations and the Code will be consulted upon.

The proposed regulations together with a statutory Code of Practice will provide both detail and also provide the level of flexibility that is needed to allow for adaptation over time, as policy develops or as circumstances affecting the detail change. It is proposed that draft regulations and a draft Code of Practice to which local authorities must have regard, will be prepared and consulted on by the end of 2014 in order to give local authorities sufficient time to prepare for transition.

### **School Term Dates Equality Impact Assessment**

Ms. Evans queried the impact on the protected characteristic of religion and belief in the Equality Impact Assessment being recorded as all 3 possible options i.e. “positive”, “negative” and “none/ negligible”.

The text in the EIA explains that *“It is possible for the impact on certain Christian religious groups who wish their children to be in school during Holy Week (i.e. up to including Maundy Thursday) to vary”*.

Possible impact will depend on whether or not the term dates which are set accord with these Christian groups’ wishes for their “faith” schools. If dates do not accord with their wishes, it could be said to have a negative impact on these Christian groups. By contrast, if the term dates do accommodate “faith” school needs there should be no/ negligible impact on these Christian groups as their wishes have been met.

In the same way as for families who do not belong to these Christian groups, there may also be a positive impact for some faith school staff, pupils and their families as they will no longer have to find and finance additional childcare.

I trust that the information I have provided is helpful and clarifies the position on the issues above to the Committee.

Yours,



**Huw Lewis AC / AM**

Y Gweinidog Addysg a Sgiliau  
Minister for Education and Skills



Llywodraeth Cymru  
Welsh Government

Annex A

Current Information requirements to support Welsh Ministers to make a decision under section 160, section 162 and section 347

<p><b>Section 160 of the Education Act 2002 – to be classed and operate as an independent school</b></p> <p><b>Section 162 of the Education Act 2002 – application for 'material change' to the original registration (in the context of admitting pupils with statements of SEN)</b></p>	<p><b>Section 347 of the Education Act 1996 – Approval to admit pupils with statements of SEN, generally</b></p>	<p><b>Section 347 of the Education Act 1996 – Specific approval for the placement of an individual with a statement of SEN</b></p>
<p><b>Section 160</b></p> <p>Prescribed information within an application for independent status:</p> <ul style="list-style-type: none"> <li>the age range of pupils;</li> <li>the maximum number of pupils;</li> <li>whether the school is for male or female pupils or both;</li> <li>whether the school provides accommodation for pupils;</li> <li>In addition, a school must also include details of whether it admits pupils with SEN regardless of whether they have a statement.</li> </ul> <p>Establishments must also provide Welsh Ministers the following to support the application:</p> <ul style="list-style-type: none"> <li>Plans of the school showing the layout of the premises and accommodation of all buildings.</li> </ul>	<p><b>Section 347</b></p> <p>Criteria that independent schools must comply with before being approved:</p> <ul style="list-style-type: none"> <li>suitability of proprietors and staff (with particular reference to the suitability of teachers for visually and hearing impaired pupils);</li> <li>suitability of residential care staff when the school is a boarding school;</li> <li>admission of the pupils to the schools, whereby a pupil will not be admitted if: <ul style="list-style-type: none"> <li>i. the school is unable to provide full-time appropriate education,</li> </ul> </li> </ul>	<p><b>Section 347</b></p> <ul style="list-style-type: none"> <li>a copy of a child's statement of SEN;</li> <li>a recommendation for that child to be placed in a named independent school;</li> <li>written confirmation from the independent school that they have a place available to accept that child</li> <li>advice from Estyn that the placement is suitable.</li> </ul>

<ul style="list-style-type: none"> <li>• Detailed curriculum policies, schemes of work (for the subjects taught) and the procedures by which pupils' work and progress will be assessed.</li> <li>• Copies of the school's written policy on: Bullying; Safeguarding and promoting the welfare of children who are pupils at the school; Safeguarding and promoting the health and safety of pupils on activities outside the school; and promoting good behaviour amongst pupils.</li> <li>• A copy of the school risk assessment.</li> <li>• A copy of the school complaints procedure.</li> <li>• All independent schools must satisfy the Welsh Government of the suitability of the proprietor, who will be subject to a check undertaken by the Disclosure and Barring Service.</li> </ul> <p>Schools will be assessed by Estyn based on standards prescribed within the Independent School Standards (Wales) Regulations 2003. These include:</p> <ul style="list-style-type: none"> <li>• The quality of education provided in the school, covering in particular:- <ul style="list-style-type: none"> <li>○ the curriculum, requiring schools to implement an appropriate curriculum policy, supported by plans and schemes of work, with the aim of securing an appropriate, broad and balanced education for pupils of all abilities including those with a statement of SEN without being prescriptive about what independent schools are required to teach:</li> <li>○ the teaching in the school;</li> <li>○ evaluation of pupil performance; and</li> <li>○ effective provision for those whom Welsh or English is an additional language.</li> </ul> </li> <li>• The spiritual, moral social and cultural development of pupils at the school, which covers the broader</li> </ul>	<p>or</p> <ul style="list-style-type: none"> <li>ii. that it would be incompatible with any condition imposed by the Welsh Ministers, or</li> <li>iii. that it might not breach any maximum school admission number;</li> </ul> <ul style="list-style-type: none"> <li>• exclusions from the school are not to be unreasonable;</li> <li>• health and welfare of the pupils is to be provided by suitably qualified persons; to promote the welfare and safeguard boarders at a school (if relevant) and to maintain health and medical records;</li> <li>• substances and apparatus involving health hazards that involve a prescribed amount of radioactive material or in vacuo whereby accelerated electrons are to be used for instruction at the schools, requires a prior notification to the Welsh Ministers;</li> <li>• collective worship and religious education should be, as far as practicable, attended by and received by pupils;</li> <li>• incident and punishment books to be kept; and</li> <li>• standards of the premises shall conform to the standard prescribed under section 542 of the 1996 Act.</li> </ul> <p>Once a school is approved, there are further requirements to be complied</p>	<p><b><u>Monitoring Requirements</u></b></p> <p>None. There are no requirements for Estyn to monitor an independent school where Welsh Ministers have given specific approval for the placement of an individual with a statement of SEN.</p>
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<p>development of pupils and sets out some principles which the school should seek to promote.</p> <ul style="list-style-type: none"> <li>• Welfare, health and safety of pupils, covering in particular: <ul style="list-style-type: none"> <li>○ the requirement to have bullying, safeguarding, health and safety, behaviour, and first aid policies;</li> <li>○ the extra standards which apply when a school provides accommodation or boarding;</li> <li>○ levels of fire safety;</li> <li>○ proper supervision of pupils;</li> <li>○ keeping records of sanctions imposed for disciplinary offences; and</li> <li>○ maintaining admissions and attendance records.</li> </ul> </li> <li>• The suitability of staff, supply staff and proprietors, covering in particular: <ul style="list-style-type: none"> <li>○ the checks which must be carried out in relation to staff employed at the school, including Disclosure and Barring Service checks, overseas conduct investigations, right to work in the UK and other suitability indicators;</li> </ul> </li> <li>• Premises of and boarding accommodation at the school;</li> <li>• The provision of information by the school, covering in particular:- <ul style="list-style-type: none"> <li>○ information, the availability of which is to be notified to parents and prospective parents, copies of which are to be provided on request;</li> <li>○ parents' rights to be informed of the results of the findings of inspections of the school;</li> <li>○ the information which must be provided to any inspectorate inspecting the school;</li> <li>○ annual reports to parents in connection with each individual pupil setting out progress and attainment;</li> <li>○ accounts to be provided to local authorities where local authorities wholly or partly fund pupils at the school;</li> <li>○ information required by any local authority for the purposes of reviewing any SEN pupil's statement of</li> </ul> </li> </ul>	<p>with. These include:</p> <ul style="list-style-type: none"> <li>• appropriate education provision;</li> <li>• changes in the control of the school should be notified to the Welsh Minister;</li> <li>• notification of substantial alteration to the premises to the Welsh Minister;</li> <li>• requesting advice from the fire and rescue authority;</li> <li>• misconduct reports in respect of dismissed (or who would have been dismissed) employees to the Welsh Minister and relevant local authorities;</li> <li>• application of provision relating to school year and day and leave of absence;</li> <li>• provision of written reports on children with statements to a local authority;</li> <li>• provision of information to the appropriate person in respect of a child with SEN when a child leaves the school to go to another school or institution;</li> <li>• report any death, illness or injury to prescribed people;</li> <li>• grant the local authority and parents access to the school and boarders; and</li> <li>• publish a prospectus to contain prescribed information.</li> </ul>	
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SEN; and

- the provision to the Welsh Ministers of a fire safety risk assessment.
- The manner in which complaints are handled by the school.

Independent schools may also apply to Welsh Ministers under the existing provision of section 162, for “material changes” to its original registration, i.e. an independent school could apply to broaden its range of SEN provision under s162.

### Section 162

Section 162 of the Education Act 2002 requires that all independent schools must gain approval before implementing certain specified changes. In the context of admitting pupils with statements of SEN, the schools will need to provide within its application:

- Any proposal to admit pupils with special educational needs:-
  - Details of the numbers and age range of proposed pupils, together with information about the types of SEN to be catered for. Also curriculum details, schemes of work and where alterations have been made to the school premises, the school plans.

### Monitoring Requirements

After 3 months of operation, following initial registration, Estyn will visit the independent school to confirm that it continues to meet the standards for registration once pupils have been admitted and the school is operational.

Independent schools are then inspected routinely by Estyn

### Monitoring Requirements

Where an independent school has been approved (under section 347) to admit pupils with statements of SEN generally, Welsh Ministers have an agreement with Estyn to annually monitor those schools.

This annual monitoring visit will review the SEN provision against the Independent School Standards. *This annual monitoring visit is the same as that conducted under section 160 where an independent school is registered to admit pupils with SEN regardless of whether they have a statement.*

<p>against the Independent School Standards (Wales) Regulations 2003,. These inspections take place at least every six years, however inspections will be more frequent where a school is giving cause for concern.</p> <p>Where an independent school is registered (under section 160 or following approval for a material change to its registration under section 162) to admit pupils with SEN regardless of whether they have a statement, it will be subject to an annual monitoring visit by Estyn. This annual monitoring visit will review the SEN provision against the Independent School Standards.</p>		
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Jeff Cuthbert AC / AM  
Y Gweinidog Cymunedau a Threchu Tlodi  
Minister for Communities and Tackling Poverty



Llywodraeth Cymru  
Welsh Government

Ann Jones AC/AM  
Chair - Children and Young  
People Committee  
National Assembly for Wales  
Cardiff Bay

12 November 2013

Dear Ann

### **Welsh Government Draft Budget 2014-15**

Thank you for your letter of 29 October 2013 and the annex outlining the conclusion of your scrutiny. I and the Deputy Minister look forward to attending in future to provide the further evidence around the various evaluations we are currently undertaking. Your letter also refers to issues you felt weren't fully addressed during the session and areas where additional information would be helpful. These are covered below.

### ***Strategic Approach***

I am disappointed that my response on prioritisation did not entirely persuade you so I will elaborate on the large amount of work that went into considering the options.

The Communities and Tackling Poverty MEG contains three main areas: Children, Young People and Families; Supporting Communities and People; Sustainable Development and Equality. All of these are a priority for the Welsh Government, many cut across all of the WG portfolios, and all are part of the main budget theme of Supporting Children, Families and Deprived Communities.

Over the past few years we have been constantly scrutinising our budgets to identify potential savings and efficiencies. These prudent measures allowed us to have some small amounts of unallocated funds in most of the BELs. This has provided a platform for managing the reductions in 2014-15 and established a framework for good financial

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management for the future. These measures and some protection afforded to the MEG in 2014-15 means that it will be a transitional year where we will work with partners in Local Government and the Third Sector, looking at how we can better target and realign funding wherever possible in line with our priorities.

Thus, in this Draft Budget, while a number of budgets have been maintained on a level cash basis such as the funding provided to the Children's Commissioner, cuts were inevitable in other areas. Wherever possible, we have tried to address in a number of ways:

- In the first instance, any budgetary amounts unallocated (resulting from either efficiency measures or funding streams coming to an end) have been utilised; and
- Secondly, activities which can be delivered differently and more cost effectively without affecting front line delivery have been reviewed: for example the approach to funding assessment tools and the funding of "free" criminal records checks for childcare workers.

However, by 2015-16 these do not deliver the scale of reductions necessary. Therefore, Families First, Communities First and infrastructure funding for the Third Sector will all be required to deliver reductions. We will also need to refocus those elements of the Children and Families Organisational Grant located in this MEG in order to deliver a better return on investment and be more effective in delivering WG priorities. Wherever possible we will look to mitigate the impact on front line services.

In considering the longer term, we reviewed all our expenditure over the Spending Review period. That work will continue and further consideration will be given to:

- merging and streamlining some grants wherever possible to be even more effective and efficient;
- in the longer terms, looking at whether certain programmes which provide specific grants to Local Authorities could be transferred to the Revenue Support Grant;
- specific review and evaluations such as Flying Start and Families First. We will continue to closely monitor our commitments and regularly look at ways of minimising expenditure whilst maintaining effective and efficient outcomes.

### ***Evaluation***

We discussed at length some of the evaluations being undertaken and you have referred to most of them in your letter. For the sake of completeness I include a table below indicating what evaluations are being undertaken, the outcomes expected and the due date for completion. I hope you find this helpful. Following the publication of the evaluations we will be happy to attend and discuss with the Committee in more detail.

Evaluation	Mechanism/Outcomes	Due Date
Flying Start	The forthcoming reports for the 'Wave 2 evaluation'	

	<p>are as follows:</p> <ul style="list-style-type: none"> <li>• A report examining the implementation and delivery of Flying Start across all 22 local authorities</li> <li>• An impact report based on a survey of parents using Flying Start and a comparator group</li> <li>• A synthesis report that will summarise the findings and lessons from all of these reports</li> </ul>	<p>November 2013</p> <p>early December 2013</p> <p>end December 2013</p>
Child Poverty Strategy	<p>The aims of the evaluation are to answer three key questions:</p> <ul style="list-style-type: none"> <li>• What effects are each of the main Welsh Government policies and strategies having on child poverty, or can they expect to have over the long-term?</li> <li>• What effects are public bodies having on child poverty as a consequence of the new public sector duty, and the way the Child Poverty Strategy is influencing its interpretation and implementation, or otherwise? How is the Child Poverty Strategy influencing decision-making and the delivery of services?</li> <li>• What effects are the Child Poverty Strategy for Wales having on child poverty over and above what would have happened anyway, through existing policies and initiatives within and outside the Welsh Government? Is the Strategy making a difference in prioritising effort on the most promising activities and most important outcomes, and in establishing an effective accountability framework focused on impact, to help manage the performance of all contributing partners?</li> </ul>	The final report will be delivered in December 2013
Advocacy (MEIC)	A qualitative and quantitative evaluation of the service will be undertaken to measure the extent to which Meic has achieved its aims and objectives. This will inform the specification for the procurement exercise for delivery of the service from August 2014.	Spring 2014
Families First	<p>The evaluation will examine the design, delivery and impact of the Families First programme.</p> <p>The first annual report will focus on the implementation and delivery of the programme to date.</p>	Annual report early December 2013.

You express concern over the reductions in this area and though I believe I covered it in my response at Committee, I am happy to clarify that savings found will not impact on implementing the Measure. The total budget in this area was £1.3m, of which £0.5m was allocated for the Measure – that has not changed. The necessary reductions come from two elements where we will need to end old programmes and merge others with as little impact on front-line services as possible.

For example, we have legislated for children and young people's participation and we will continue to support the participation of children and young people on a national level. Reconfiguring the funding arrangements where Funky Dragon currently receives £400k per annum does not change this. In future however, funding for Third Sector organisations, including Funky Dragon, will be available through a new, single grant scheme.

Other savings amounting to £500k are as a result of work that has either now come to an end, is being funded from other BELs, or had one-off costs. Examples include:

- Promotion of knowledge and understanding of Children's Rights - Section 5 of Rights Measure
  - Refreshing the Getting It Right website
  - Consultation on the Children's Rights Scheme
  - Development and refreshing of the children's rights e-training for officials and professionals working with children and young people
  - Development and launch of the Children's Rights App and promotion
  - U-Tube clip promoting children's rights
  - Children's Rights Conference at Swansea University
  - Summary version (CYP version) of the Children's Rights Scheme
- Participation
  - The Participation unit hosted in Save the Children who no longer require the funding
  - Development of the Participation hub

### ***Children's Rights Impact Analysis (CRIAs)***

I note a number of issues raised in your letter about the exact requirements of CRIAs, which I will try to clarify.

We are committed to considering the rights of children and young people as part of the budget setting process. As the Committee will be aware, responsibility for children's rights sits within my portfolio and I am committed to embedding considerations around children's rights into policy development. In the context of the Draft Budget, we have taken a whole Government approach and all Ministers have considered children's rights in developing their detailed spending plans – this includes my own portfolio for Communities and Tackling Poverty. The outcome of this work is set out in the Equality Impact Assessment of the Draft Budget 2014-15, which was published alongside the Draft Budget 2014-15 on 8 October.

We have also undertaken a children and young people due regard analysis on the Draft Budget 2014-15, which sets out how our spending decisions respect the UN Convention on the Rights of the Child.

We are committed to improving our approach to impact assessments more generally, and are working to move towards a more integrated approach to understanding the impact of



our spending proposals in future budgets, including the integration of children's rights considerations, within the context of the proposed Future Generations (Wales) Bill.

Importantly, I would not wish you to consider that we do not take the requirements very seriously. In implementing the Rights of Children and Young Person's (Wales) Measure 2011, we focus on the policy or legislative intent which is the main determinant in outcomes, which in turn needs to be resourced to be implemented. The basis of the CRIA is to firstly consider what is the intent, which of the UNCRC articles are most applicable to the desired outcomes, consider the impact of the policy/legislation on children, consider how to fully implement the relevant UNCRC articles by increasing positive outcomes and mitigating any negative ones and make a decision based on the findings. I have attached a few examples of legislation/policy that have undergone a CRIA for your information (please see Annexes 1-3)

1. Active Travel
2. Children (Secure Accommodation) Regulations 1991
3. Organ Donation Bill

I note that your Committee would like all CRIAs to be made public in future. I have asked officials to explore this further in respect of the revised Children's Rights Scheme which sets out the arrangements we will have in place as a Government for when the additional duties come into force. I will keep you advised of progress in this area.

### ***Families First***

Cuts to the 2015-16 budget will be met from local authority grant allocations. We have made it clear to local authorities that we expect the first two years of the programme to focus on systems change. As a result, we expect the more resource intensive activity to take place during these early years. By the time cuts are implemented in 2015-16 the programme will be embedded. With the structures in place the grant can focus on the operational delivery of Families First. We are also working with policy colleagues across the Welsh Government and local authorities to improve the join up of services across early intervention and prevention programmes. This will provide opportunities for savings to be made at the local level in the delivery of services to families.

We will use the emerging monitoring and evaluation data to assess how the delivery of the programme is affected by a reduction in funding to local authorities in 2015-16. We will work closely with them during their planning stages to ensure that the key elements of Families First are prioritised and that service delivery is based on local needs assessment.

### ***Flying Start***

Wave 2 of the longitudinal survey received an extremely high response rate from parents, exceeding expectations. Whilst this meant fieldwork took longer to complete and publication was delayed, the increased sample size has enhanced the validity of the findings. The

impact report is currently subject to quality assurance through an external peer review process which will ensure the research and analysis is robust.

You asked whether there is sufficient flexibility within my budget to address issues from the research issued in October 2013 and the evaluation due to report soon. As to the first item, both I and the Deputy Minister talked at Committee about the positive, far reaching outcomes of Flying Start and also the cross-Government approach to issues, including objectives in the portfolio of the Minister for Education and Skills and work being taken forward by the Deputy Minister for Social Services. However, the Government is not complacent and fully appreciates that complex support packages are needed to protect the vulnerable in society. This matter is much wider than just my budget and so I and the Deputy Minister will be working with colleagues across Government in taking forward the Tackling Poverty Action Plan, as it's very relevant to the issues in hand.

It would be remiss of me to guarantee all the findings of the evaluations will be addressed from within my current budget when the evaluations have yet to be completed. I and the Deputy Minister await the evaluation reports with interest and will be discussing these and the potential policy and financial impacts with officials in due course. The Deputy Minister has already offered to return to Committee to discuss the findings. By that time, we will be in a more informed position to discuss policy and financial implications with you.



**Jeff Cuthbert AC/AM**

Y Gweinidog Cymunedau a Threchu Tlodi  
Minister for Communities and Tackling Poverty



**Vaughan Gething AC/AM**

Y Dirprwy Weinidog Trechu Tlodi  
Deputy Minister for Tackling Poverty

## **Active Travel (Wales) Bill**

### **Due Regard to the United Nations Convention on the Rights of the Child**

#### Step 1 – What's the piece of work?

The Active Travel Bill is a key action in the Programme for Government and is included in the Welsh Government's Legislative Programme. The Bill is intended to enable more people to walk and cycle and generally travel by non-motorised transport. We want to make walking and cycling the most natural and normal way of making getting about. We want to do this so that more people can experience the health benefits, we can reduce our greenhouse gas emissions, and we can help address poverty and disadvantage. At the same time, we want to help our economy to grow, and we want to take steps that will unlock sustainable economic growth.

There has been a lot of work over previous years to promote walking and cycling. The Walking and Cycling Strategy, published in December 2003, aimed to maximise the opportunities afforded by walking and cycling and to point out the disadvantages of using private cars, particularly for short journeys. The subsequent Action Plan, published in December 2008, set out the initiatives which the Welsh Government and key partners are undertaking or planning to undertake to support more people to walk and cycle safely and more often. Though the Walking and Cycling Action Plan Annual Report 2009-10 did show an increase in the number of people walking and cycling to work in Wales, this was not the significant growth that we had hoped to deliver.

Research indicates that for many people, including children and young people, the biggest barrier to walking and cycling is concern for their safety. These concerns relate mainly to the existing infrastructure, the speed and proximity of traffic, and concerns for personal safety. After safety, the practical difficulties of walking and cycling are the biggest barriers. These are issues such as storing bikes and outdoor clothing, both at home and at the destination; the logistics of transporting bags, children and so on by foot or by bike; and time constraints. For children and young people, parental perceptions of safety can be a significant barrier to active travel and for outdoor play.

The third significant barrier is the lack of a walking and cycling culture, where walking and cycling is seen as the most natural and obvious way of making shorter journeys. The absence of this culture leads to a perception that walking and cycling is something abnormal, done by eccentrics and enthusiasts only.

What this shows is that when it comes to actually changing the way people travel we need to be doing things differently. We need to think more broadly about how we encourage people to change their behaviour, and in doing so change the culture surrounding walking and cycling.

Behaviour change means far more than just enabling people to use active travel by providing safe routes. People need to be able to engage with the idea of walking and cycling and feel encouraged to give it a go. Finally, as a Government we need to set the example for the kind of culture change we wish to see through consistent and clear messages and activity, for example using the "Four E" model of behaviour change: Enabling, Engaging, Exemplifying and Encouraging.

The Active Travel Bill will require Local Authorities in Wales to:

- identify and map the network of routes within their areas that are safe and appropriate for walking and cycling;
- identify and map the enhancements that would be required to create a fully integrated network for walking and cycling and develop a prioritised list of schemes to deliver the network;
- deliver an enhanced network subject to budget availability and following due process;
- consider the potential for enhancing walking and cycling provision in the development of new road schemes.

We propose that under this Bill, Local Authorities would have a duty to identify the routes within their areas that are safe and appropriate for walking and cycling. These routes would consist of a combination of traffic-free routes, on-road provision and access through public spaces such as parks. Where pedestrians or cyclists would be in proximity with motorised traffic, there should be provisions in place to make these routes safe for pedestrians and cyclists, for example through traffic calming, 20mph zones or through segregated routes. Local Authorities would also have a duty to identify the facilities that are publically available to enable active journeys by foot or bike, such as cycle storage, toucan crossings and wash facilities.

Once the current routes and facilities were identified, Local Authorities would have a duty to mark them on to a map that would be publically available and promoted as appropriate. This would be an advisory map, aimed at informing the public of the location of suitable routes for walking or cycling, and the facilities they might use while making active journeys. The map would need to be updated on a regular basis to reflect the improvements that have been made to the infrastructure for pedestrians and cyclists.

Local Authorities would then be required to identify where routes do not join up within their areas and across their boundaries, and where there is a lack of facilities along those routes to support walking and cycling. Local Authorities would also be required to identify where significant numbers of shorter journeys are being made and there is no safe route for pedestrians or cyclists. They would then need to identify what enhancements, upgrades and new infrastructure would be required to enable people to make continuous and safe journeys by foot or by bike.

Local Authorities will also have a duty to create a second map, showing these proposed upgrades and enhancements. This map should set out an integrated network which will allow the majority of shorter journeys made in Wales to be made by walking or cycling, including routes to schools. This map will be an ambitious vision that will take a long term view, setting out what Local Authorities feel could be achieved over decades, rather than the next few years. Local Authorities will then be expected to deliver continuous improvements to their integrated network, subject to due process.

When new road schemes are planned, Local Authorities will have a duty to consider the potential these schemes could have for enhancing walking and cycling infrastructure. It is more efficient and cost effective to incorporate walking and cycling provision into a design than to retro-fit this provision into a completed scheme. Incorporating walking and cycling provision into new road schemes could help Local



Authorities to deliver the maps, or could present new opportunities for connecting existing infrastructure. We recognise that this may not always be the case, and we want to avoid creating isolated pieces of infrastructure for walking and cycling that do not form part of a network. However, at the same time we do not want the opportunities that new construction presents to be overlooked.

This Bill is just one tool for delivering an increase in walking and cycling and will be supported by a range of activity by central and local government. Alongside the Bill, we intend to produce new design guidance and standards for pedestrian and cycling routes (on-road and traffic-free) and for street design to enforce the hierarchy of road users, prioritising non-motorised transport users over cars. We also intend to review activities and targets set out in the Walking and Cycling Action Plan to support the delivery of the Bill. We will be consulting separately about these activities in due course. These activities are an opportunity to address equality issues related to active travel alongside the delivery of the Bill.

### Step 2 – Which UNCRC rights does the work help to realise or affect?

Our assessment is that the work helps to realise or affects the following rights:

Article 1	Everyone under 18 years of age has all the rights in this Convention.
Article 2	The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say and whatever type of family they come from.
Article 3	All organisations concerned with children should work towards what is best for each child.
Article 4	Governments should make these rights available to children.
Article 6	All children have the right of life. Governments should ensure that children survive and develop healthily.
Article 12	Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account.
Article 13	Children have the right to get and to share information as long as the information is not damaging to them or to others.
Article 17	Children have the right to reliable information from the mass media. Television, radio and newspapers should provide information that children can understand, and should not promote materials that could harm children.
Article 23	Children who have any kind of disability should have special care and support so that they can lead full and independent lives.
Article 24	Children have the right to good quality health care and to clean water, nutritious food and a clean environment so that they will stay healthy. Rich countries should help poorer countries achieve this.
Article 27	Children have a right to a standard of living that is good enough to meet their physical and mental needs. The Government should help families who cannot afford to provide this.

Article 30	Children have a right to learn and use the language and customs of their families, whether these are shared by the majority of people in the country or not.
Article 31	All children have a right to relax and play, and to join in a wide range of activities.

### Step 3 – Respecting rights and giving greater effect to the UNCRC

The Active Travel (Wales) Bill will affect children and young people living in Wales. The mapping exercise will provide them with information to assist them in travelling actively. It will lead to better routes and facilities to support active travel at schools and play services.

The following section indicates whether each of the Articles above is breached, respected or given greater effect by the proposals. It also indicates any additional action which is needed. This assessment should be read alongside the equalities impact assessment, which includes an assessment of the impact of the Bill of the people of different ages, disabilities and races. It also includes a summary of the evidence used to support the impact assessments and details of the bodies consulted.

*Article 1 - Everyone under 18 years of age has all the rights in this Convention.*

*Article 2 - The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say and whatever type of family they come from*

*Article 3 - All organisations concerned with children should work towards what is best for each child.*

*Article 4 - Governments should make these rights available to children.*

#### **Respected**

The products of Active Travel (Wales) Bill will apply equally to all children and young people. Guidance is being developed to support the implementation of the Bill, and this will include engagement and consultation with children and young people. Even though the Rights of the Child Measure (2011) does not apply to local authorities in Wales, the delivery guidance will reflect the importance of respecting children's rights. The design guidance for routes will also consider the needs of children and young people.

*Article 6 - All children have the right of life. Governments should ensure that children survive and develop healthily.*

*Article 24 - Children have the right to good quality health care and to clean water, nutritious food and a clean environment so that they will stay healthy. Rich countries should help poorer countries achieve this.*

#### **Given greater effect**

Children will experience both direct and indirect health and environmental benefits as a result of this Bill. It will make it easier and safer for them to travel actively, meaning that they will receive the health benefits of physical activity and they will be at lower risk

from accident or injury. They will also experience benefits of reduce greenhouse gas emissions, better air quality, lower levels of noise pollution and vibration from traffic. The shift from car centred infrastructure to pedestrian and cyclist centred infrastructure will benefit children and young people by providing them with a more child-centric environment.

*Article 12 - Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account.*

## **Respected**

During the development of the Bill, groups that represent the views of children and young people were consulted and their views have helped form the final provisions for the Bill. Additionally, the Sustrans led consultation event on the 18 June involved primary school aged pupils from “Bike It” schools. They were actively engaged in the event, interviewing attendees and presenting poetry they had written about their experiences of cycling. The guidance on the delivery of the Bill will include consultation with children and young people so that their views can be considered in the identification of suitable routes for active travel.

*Article 13 - Children have the right to get and to share information as long as the information is not damaging to them or to others.*

*Article 17 - Children have the right to reliable information from the mass media. Television, radio and newspapers should provide information that children can understand, and should not promote materials that could harm children.*

## **Given greater effect**

Currently there is limited information on suitable routes for active travel for children and young people. Some schools are proactive and provide information on access, but many do not. Many facilities that are valued by children and young people (play centres, parks, leisure centres, libraries and so on) do not publicise safe and appropriate routes for access, and there is very limited information about safe routes for visiting friends and family. Google maps offer both walking and cycling maps, but these are not always appropriate routes (as the disclaimers on the site make clear).

The provisions in the Bill will lead to better information provision for all, including children and young people. Maps are more accessible than written documents to many children, meaning that they can gain a better understanding of safe routes based on reliable information. It is also likely that commercial mapping organisations will use the maps to improve their data and provide better information on safe routes.

*Article 23 - Children who have any kind of disability should have special care and support so that they can lead full and independent lives.*

## **Respected, potentially given greater effect**

The guidance to deliver the Bill will include engagement with children and young people and engagement with those with disabilities. We recognise that children with visual impairments will not be able to use paper maps, the equalities impact assessment sets out the mitigating action we are taking to address this. Disabled

children will potentially benefit significantly from the provisions of the Bill, if it gives them better access to services and facilities. Again the equalities impact assessment sets this out in more detail.

*Article 27 - Children have a right to a standard of living that is good enough to meet their physical and mental needs. The Government should help families who cannot afford to provide this.*

### **Respected**

The improvements to the local environment and improved access to services will support a standard of living that will help meet children's physical and mental needs. The Bill will also help tackle poverty by promoting better access to employment, which is a significant factor in worklessness. Families where one or more parents work are significantly less likely to be in poverty than families where parents are workless. A reduced dependency on motorised transport (both private and public) will lead to financial benefits for families that are no longer required to spend as much on transport.

For older children and young people, a safer environment will active travel will help support them to travel independently, meaning they are less dependent on others to give them lifts or paying for public transport. This will give them better access to facilities and services, including education and leisure facilities, supporting a standard of living that meets their needs.

*Article 30 - Children have a right to learn and use the language and customs of their families, whether these are shared by the majority of people in the country or not.*

### **Respected**

Maps are non-linguistic, as are the majority of road signs for walking and cycling. The provision of information on safe routes, as well as the provision of safe routes, allows children and parents to make informed decisions about appropriate routes for active travel. The Bill does not require people to use active travel or penalise those who wish to make other travel choices due to cultural preferences. Please see the equalities impact assessment for more information.

*Article 31 - All children have a right to relax and play, and to join in a wide range of activities.*

### **Given greater effect**

Safer and more appropriate routes for active travel will enable children and young people to access play and leisure facilities more easily. It could also make access to activities more affordable for low income families, if they are less dependent on motorised travel. If this Bill leads to a reduction in both traffic volume and traffic speed then children will benefit from a safer environment for outdoor play, even if they are not travelling actively.

## **Recommendations**

- The delivery guidance should include engagement and consultation with children and young people.
- The Walking and Cycling Action plan should consider the potential benefits and impacts on children and young people, and seek to maximise the benefits of the Bill for this group.

## **Legal Aid, Sentencing and Prevention of Offenders Act 2012**

### Step 1 – What's the piece of work?

#### **Amending the Children (Secure Accommodation) Regulations 1991**

The Regulations revoke the “modified test” set out in Regulation 6(b) in respect of 10 to 11 year olds irrespective of the basis of their detention, **and** for 12 to 16 year olds remanded to local authority accommodation. Such children will be subject to the application of the “welfare test” under section 25 of the Children Act 1989.

The Regulations will form part of a suite of consequential amendments to support implementation of the revised remand framework proposed under the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

The Act provides that children remanded to youth detention accommodation (secure children's homes, youth offending institutions or secure training centres) be treated as children looked after by the designated authority. The Act also provides for the modification or dis-application of legislation that applies to looked after children where the exercise of that duty would not be consistent with their remanded status.

Currently, only those children who are remanded to local authority accommodation or those remanded to local authority accommodation with a security requirement are designated as “looked after”. This excludes the majority of 15 and 16 year-old boys and all 17 year-old offenders (who are remanded to under-18 young offender institutions).

These new arrangements will align the treatment for all looked after children and place on-going duties on local authorities to support them whilst in custody and to plan for their release.

The Home Office, ACPO and the Police Federation have argued for the retention of the modified test for 12 to 16 year old children in determining the restriction of liberty to prevent individuals absconding and / or committing further offences on the basis of the necessity to protect the public from harm.

The determination of the appropriateness of whether a child is detained under PACE and the determination of the appropriateness of the child's release on bail are matters for the Police. Such determinations are made prior to the consideration of the application of either the “welfare” or “modified” tests by a local authority.

The Children's Commissioner for Wales argues for the revocation of the modified test, highlighting the Welsh Ministers' duty to have due regard to the UNCRC (particularly Article 37(b)) as required by the C&YP Rights Wales Measure.

"No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time" (Article 37(b))

Due to the significance of this particular work, some of the more pronounced articles identified below are in bold. The full article detail is covered in certain elements of the analysis below.

### Step 2 – Which UNCRC rights does the work help to realise or affect?

Our assessment is that the work helps to realise or affects the following rights:

Article 1	Everyone under 18 years of age has all the rights in this Convention.
Article 2	The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say and whatever type of family they come from.
Article 3	<b>All organisations concerned with children should work towards what is best for each child.</b>
Article 4	Governments should make these rights available to children.
Article 5	Governments should respect the rights and responsibilities of families to direct and guide their children so that, as they grow, they learn to use their rights appropriately.
Article 6	All children have the right of life. Governments should ensure that children survive and develop healthily.
Article 9	Children should not be separated from their parents
Article 12	Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account.
Article 13	Children have the right to get and to share information as long as the information is not damaging to them or to others.
Article 14	Children have the right to think and believe what they want and to practise their religion, as long as they are not stopping other people from enjoying their rights. Parents should guide their children on these matters.



Article 15	Children have the right to meet together and to join groups and organisations,, as long as this does not stop other people from enjoying their rights.
Article 16	Children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes.
Article 17	Children have the right to reliable information from the mass media. Television, radio and newspapers should provide information that children can understand, and should not promote materials that could harm children.
Article 18	<b>States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.</b>
Article 19	<b>States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.</b>
Article 20	<b>A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.</b>
Article 23	Children who have any kind of disability should have special care and support so that they can lead full and independent lives.
Article 25	<b>States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.</b>
Article 27	States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
Article 36	<b>States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare. This Article means that children and young people should be protected from anything which could harm their welfare (be this physical or psychological) and ability to grow up safely.</b>



	<b>Children and young people should be treated with respect at all times and not exploited or used by others.</b>
Article 37	<b>No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;</b>
Article 38	<b>States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.</b>
Article 40	<b>States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.</b>
Article 41	<b>If the laws of a particular country protect children better than the articles of the Convention, then those laws should stay.</b>
Article 42	<b>States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.</b>

### Step 3 – Respecting rights and giving greater effect to the UNCRC

The following section indicates whether each of the Articles above may counterbalance, respect or give greater effect by the proposals. It also indicates any additional action which is needed.

#### **Respected. .**

It is the case that any type of incarceration of children is a high consequential and impact area and requires a thorough analysis against the articles of the UNCRC. The harsh reality and sharper end of children's rights in taking decisions around the criminal and youth justice system can and does ultimately with a child being potentially locked up. This counterbalance

centres primarily around article 3 'best interests' and article 37 that looks at the potential imprisonment of a child.

The principles of this work are based on trying to ensure that the child's interests are paramount and that this also pertains to the potential victims of a child as an offender.

Determining the potential risk to others and or absconding, which could place the child as an offender in risks themselves, is a relevant process. Clarification and support of a collaborative relationship with those responsible for these decisions, at times in very fluid scenarios with time and resource issues can respect the rights of these children.

Article 20 is also a key right particularly if a Welsh child is placed within England and is a first language Welsh speaker. This would require some support in order that this right is respected.

### **Article 3**

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision."

This Article of the Convention is incredibly important and it means that adults should always put children and young people's needs first. In practice, putting this Article in effect can have a number of effects including adults changing the way that they work with children and young people to find out what their needs are, looking again at policies that are written for children and young people and ensuring that services provided do not cause harm.

### **Article 20**

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

This Article means that not only do children and young people have a right to family life, but, should their parents/carers not be capable of looking after them, the Government should make arrangements for appropriate care to be provided. As part of this right, a child or young person can expect those adults who look after them to respect their cultural background and traditions, religion, and language.

### **Article 37**

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

This Article means that if a child or young person breaks the law or other rules, they have to be treated with respect by people such as the Police or their teachers. Children and young people must be treated fairly, and in a way which respects due process. The right to be protected from cruel punishment includes a child or young person having the chance to keep in touch with their family, even if they are placed in jail, and to have a Court review any sentence which has been imposed. In cases where a child or a young person has been accused of breaking the law, they also must be granted access to legal representation and have an opportunity to challenge the taking away of their liberties.

### **Given greater effect.**

The history criteria is not a requisite of the “modified” test and provides greater flexibility in ensuring the child(ren) can be securely accommodated where this is appropriate as a result of the nature of the offence(s).

This is an example where greater affect can be linked into finding the relevant accommodation in relation to female children. There is evidence that places remain difficult in the system for this particular group. The flexibility identified here is a positive opportunity.

Placing children far from their home community is also a difficulty. Links to family and community could create a sense of alienation immediately, even though it may be short term. This could be a reason to try and abscond in the very first instance?

On the flip side to this disconnection, it may be that being back within their home community could create the potential in being a danger to themselves and or others?

Treating children with dignity in this regard is supported by a more flexible approach.

### **Step 4 – What action could the Welsh Ministers take next?**

The following are potential actions drawn from the analysis at Step 3.

**NB It is recognised that this has a non devolved component.**

- Review the impact of the collaborative nature of the model over time and its impact in relation to the UNCRC
- Ensure training in place on the UNCRC is delivered to police and those in local authorities. Some of this work has been taking place amongst social services and the police in Wales as part of a ‘train the trainers’ UNCRC Welsh Government activity.
- Where possible provide the opportunity to involve advocates for children within these circumstances if the parent/guardian is unwilling and or unavailable.
- Have information for children and families available on their rights where they may be held.
- There will be a commitment to include the views of the child.
- Try to ensure the parent/guardian or those responsible are fully aware of the convention.
- Ensure there is an understanding that whilst the ‘best interest’ general principle will be a paramount model, the other relevant articles around harm to others and the child as an offender under PACE can be clarified.

- Look at the training of the police and other professionals involved in the decision making process in regard to those children with a disability.
- Look at the training police and other professionals involved in the decision making process
- Ensure that religion, cultural and language rights are respected using training

#### Step 5 – Ministerial Decision

A summary of this assessment will be put to the Minister as part of the SF briefing.

#### Step 6 – Keeping Records

This assessment is stored on the Welsh Government's record system iShare (ref A4547087)

Nick Keating  
David Clayton  
February 2013



## **Draft Human Transplantation (Wales) Bill**

### **Due Regard to the United Nations Convention on the Rights of the Child**

#### Step 1 – What's the piece of work?

The action in question is a legislative proposal to introduce a soft opt-out system for organ donation in Wales.

A soft opt-out system is one where consent to the removal and use of organs and tissues is treated as having been given unless the deceased objected during their lifetime, but where the next of kin of will be involved in the decision making process.

The aim of the Bill is to increase the number of organs and tissues available for transplant, which will benefit the people of Wales by reducing the number of people dying whilst waiting for a suitable organ to become available and improving the life of others.

The shortage of human organs for the purposes of transplantation continues to cause unnecessary death and suffering, both to patients waiting for a transplant and their relatives. Around 1,000 people a year die across the UK each year and in Wales, on average, around one person dies each week while waiting for an organ transplant. Around 300 people in Wales are normally on the active waiting list for a transplant and 37 people died in Wales in 2011/12 while waiting for an organ donation.

Organ transplantation surgery is one of the most clinically effective forms of modern medical treatment and saves lives for patients with organ failure affecting heart, kidneys, lungs, pancreas and liver. Historically much of the focus has been on transplantation to save lives but recent years have also seen a number of transplants of tissue aimed not at saving lives but improving their quality of life. Organ donation is also cost effective. One donor could save or improve the life of up to nine other people and many more can be helped through the donation of tissues. Organ donation helps reduce costs to the NHS, in particular in relation to kidney transplants.

In the case of adults who live and die in Wales, the effect of the Bill will be that appropriate consent for the donation of a deceased person's organs and/or tissues is either:

- a positive wish to donate all or some organs and tissues expressed by a person during his or her lifetime (i.e. by joining an "opt-in" register or leaving written instructions), or
- a wish not to donate certain or any organs and tissues expressed by a person during his or her lifetime (i.e. by joining an "opt-out" register or leaving written instructions), or
- agreement given by a nominated representative after the person's

death, or

- treated as having been given if a person did none of the above.

For the final provision above, the Bill will provide for a person in a qualifying relationship to be able to supply information to show the deceased did not wish to be a donor (i.e. to be able to “rebut the presumption” that the person was in favour of being an organ donor).

The new arrangements with regard to consent being treated as having been given will not apply to children<sup>1</sup>. However, children under 18 will still be able to register their wish to become an organ donor, or will be able to register their wish not to be a donor, i.e. they will be able to exercise either of the first two options set out above. In practice, if a child dies in circumstances where donation becomes a possibility, then their stated wish to consent to, or not consent to, organ donation takes precedence and families will be sensitively encouraged to accept their decision. However, it would be normal practice for a person with parental responsibility to be consulted to establish whether the child was competent to make the decision. Where a child has not expressed a wish to donate or not to donate, then their consent will not be treated as having been given and the person with parental responsibility or in a qualifying relationship will be asked to make the decision about organ donation.

## Step 2 – Which UNCRC rights does the work help to realise or affect?

Our assessment is that the work helps to realise or affects the following rights:

Article 1	Everyone under 18 years of age has all the rights in this Convention.
Article 2	The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say and whatever type of family they come from.
Article 3	All organisations concerned with children should work towards what is best for each child.
Article 4	Governments should make these rights available to children.
Article 6	All children have the right of life. Governments should ensure that children survive and develop healthily.
Article 12	Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account.

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<sup>1</sup> In this assessment “children” means people under the age of 18 because that is the language of the UNCRC and the Rights of Children and Young Persons (Wales) Measure. In other contexts we refer to people under 18 years of age as “children and young people”.

Article 13	Children have the right to get and to share information as long as the information is not damaging to them or to others.
Article 14	Children have the right to think and believe what they want and to practise their religion, as long as they are not stopping other people from enjoying their rights. Parents should guide their children on these matters.
Article 16	Children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes.
Article 17	Children have the right to reliable information from the mass media. Television, radio and newspapers should provide information that children can understand, and should not promote materials that could harm children.
Article 23	Children who have any kind of disability should have special care and support so that they can lead full and independent lives.
Article 24	Children have the right to good quality health care and to clean water, nutritious food and a clean environment so that they will stay healthy. Rich countries should help poorer countries achieve this.
Article 41	If the laws of a particular country protect children better than the articles of the Convention, then those laws should stay.

### Step 3 – Respecting rights and giving greater effect to the UNCRC

Apart from introducing the ability for a child to register a wish not to be a donor, the Welsh Government is proposing that there is no change in the law regarding organ donation as it applies to children. However, there are reasons why our proposals should be assessed in terms of their impact on children, as follows:

- The decision to make no change to the law for children, rather than, for example, applying the new soft-opt out system from the age of 16, is itself a decision that affects children.
- At present if a child makes it known that they do not wish to donate organs, that decision should be respected by their parents if they die. What is changing is that there will be a new register set up where children can record by phone, online or by post that they do not wish to donate their organs, as well as record that they do wish to donate organs.
- It will be important for children to be provided with information at the right time so they can understand that at the age of 18 the new soft opt-out system will apply to them.



The following section indicates whether each of the Articles above is breached, respected or given greater effect by the proposals. It also indicates any additional action which is needed.

*Article 1 - Everyone under 18 years of age has all the rights in this Convention.*

*Article 2 - The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say and whatever type of family they come from*

*Article 3 - All organisations concerned with children should work towards what is best for each child.*

*Article 4 - Governments should make these rights available to children.*

### **Respected. .**

Children and young people will continue to have the right to express a wish to donate their organs after death. In addition, we will extend to them the right to express a wish not to be a donor. In many respects this will help clarify the wishes of a number of children and provide a more solid basis for decision making in the event of their death, which could have the effect of increasing the number of organs donated.

In terms of the main change being introduced by the legislation, a child's consent will **not** be treated as having been given. In reaching this position, careful consideration has been given as to which age limits should apply, balancing children's ability to make their own decisions whenever possible, with a parent's role and whether it is right to treat no expressed wish on the child's part as appropriate consent. We have taken into account responses received during the consultation, including from children and young people, whose view appears to be that we should set a lower age limit. Our conclusion is that for the time being, and whilst the new system embeds, the arrangements should apply from the age of 18 years. This is consistent with other significant legal changes at age 18 such as the right to vote and existing laws on organ and tissue donation (The Human Tissue Act 2004).

However it is our intention to review this matter after a suitable period of time as we are sympathetic to the arguments that this would be in the best interests of children and young people to seek to extend the arrangements to a lower age range at some point in the future.

*Article 6 - All children have the right of life. Governments should ensure that children survive and develop healthily.*

*Article 24 - Children have the right to good quality health care and to clean water, nutritious food and a clean environment so that they will stay healthy. Rich countries should help poorer countries achieve this.*

**Given greater effect.**

The proposals overall should increase the pool of organs and tissues for transplantation for both sick adults and children, and in many cases save the lives of children that would otherwise die or have a poor quality of life. Although the provisions for treating consent as having been given will not apply to children, the intention is that the publicity and education campaign will make more children aware of the opportunity to register whether they wish to donate or not donate organs and tissue if they die, and have a conversation with their family about it. If they then die, the family would be more confident that they could follow their wishes and more families would consent to donation.

*Article 12 - Children have the right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account.*

**Given greater effect.**

Children will still be able to formally register their wish to be a donor. We will also extend to them the right to register that they do not wish to donate their organs or tissues after their death. A major public awareness campaign, including work in schools, will bring this right to the attention of children to a much greater extent than before. The law will continue to provide that if children die and they have said what they think should happen about their organs and tissues, then parents, relatives and doctors should take this into account and be sensitively encouraged to accept the child's wishes.

*Article 13: Children have the right to get and to share information as long as the information is not damaging to them or to others.*

*Article 17: Children have the right to reliable information from the mass media. Television, radio and newspapers should provide information that children can understand, and should not promote materials that could harm children.*

**Given greater effect.**

A major public awareness campaign is central to our proposals and we need to ensure this has strands of work that will reach children. The main mass media messages will be aimed at adults but through paid-for advertising and work with broadcasters we will work to ensure that materials pay attention to the information needs of children, in particular those approaching their 18<sup>th</sup> birthday. At least as important will be direct work with children and young people through schools, youth forums or other means.

*Article 14: Children have the right to think and believe what they want and to practise their religion, as long as they are not stopping other people from enjoying their rights. Parents should guide their children on these matters.*

## **Respected.**

The Welsh Government thinks that whether children do or do not wish to donate organs their view should be respected. All the major religions support organ donation if someone has expressed their wish to donate organs after they die. Information setting out various religious and world views is already available to help guide people, including children, on these questions.

*Article 16: Children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes.*

## **Respected.**

It will be vital to ensure that if children register their wishes about organ donation, the information is held securely and with complete confidentiality until they die.

We are publishing a Privacy Impact Assessment that sets out how this will be achieved.

*Article 23: Children who have any kind of disability should have special care and support so that they can lead full and independent lives.*

## **Respected.**

We recognise that disabled children should be treated equally. This means that we will work with those working with disabled children so that they have equal access to information about the new law. They should have help if necessary to understand the new law and decide whether to express their wishes regarding organ donation.

*Article 41: If the laws of a particular country protect children better than the articles of the Convention, then those laws should stay.*

## **Respected.**

We consider that our proposals respect this right, in accepting that the existing legislation on organ donation strikes an appropriate balance between protecting children, enabling them to express their wishes about what should happen if they die, and helping children that need transplanted organs. These laws should therefore stay.

### Step 4 – What action could the Welsh Ministers take next?

The following actions are drawn from the analysis at Step 3.

- Review the age limit for the legislation within a reasonable timeframe and as part of the evaluation of the operation of the new system.

- Ensure that the public awareness campaigns encompasses work with schools and other ways of engaging with children and young people, and communicates that they will be able to register whether they wish to donate or not donate organs and tissues if they die.
- Ensure systems are designed so that if children register their wishes the information is held securely and with complete confidentiality.
- Ensure that the public awareness campaign takes account of the needs of disabled children.

#### Step 5 – Ministerial Decision

A summary of this assessment will be put to the Minister as part of advice on the draft Bill that is to be published on 18 June 2012. It will be reviewed prior to advising the Minister on the introduction of the legislation into the Assembly.

#### Step 6 – Keeping Records

This assessment is stored on the Welsh Government's record system iShare (ref A2947584)

John Abraham  
Bill Manager  
May 2012