

Agenda – Children, Young People and Education Committee

Meeting Venue:

Committee Room 3 – Senedd

Meeting date: 18 July 2019

Meeting time: 09.00

For further information contact:

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Committee Clerk

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Private pre-meeting

(09.00 – 09.15)

1 Introductions, apologies, substitutions and declarations of interest

(09.15)

2 Post-Legislative Scrutiny of the Higher Education (Wales) Act 2015 – evidence session 1

(09.15 – 10.05)

(Pages 1 – 38)

Estyn and Higher Education Funding Council for Wales (HEFCW)

David Blaney, Chief Executive – HEFCW

Bethan Owen, Deputy Chief Executive – HEFCW

Meilyr Rowlands, HM Chief Inspector – Estyn

Jassa Scott, Strategic Director – Estyn

Attached Documents:

Research Brief

CYPE(5)–23–19 – Paper 1 – Estyn

CYPE(5)–23–19 – Paper 2 – HEFCW



**3 Post-Legislative Scrutiny of the Higher Education (Wales) Act 2015
– evidence session 2**

(10.05 – 10.50)

(Pages 39 – 50)

Universities Wales

Professor Julie Lydon, Chair – Universities Wales

Professor Elizabeth Treasure, Deputy Chair – Universities Wales

Ben Arnold, Policy Adviser – Universities Wales

Attached Documents:

CYPE(5)-23-19 – Paper 3 – Universities Wales

Break

(10.50 – 11.00)

**4 Post-Legislative Scrutiny of the Higher Education (Wales) Act 2015
– evidence session 3**

(11.00 – 11.30)

(Page 51)

ColegauCymru

Maggie Griffiths, Assistant Principal – Grŵp Llandrillo Menai (Via Video Conference)

Emil Evans, Vice Principal – Cardiff and Vale College

Mike Williams, Assistant Principal – Coleg Sir Gâr / Coleg Ceredigion

Attached Documents:

CYPE(5)-23-19 – Paper 4 – Cardiff and Vale College

5 Post-Legislative Scrutiny of the Higher Education (Wales) Act 2015 – evidence session 4

(11.30 – 12.15)

(Pages 52 – 59)

National Union of Students Wales (NUS) and University and College Union (UCU)

Margaret Phelan, UCU Wales Official

Dr Bethan Winter, Policy and Communications Officer – UCU wales

Rob Simkins, President – NUS Wales

Joni Alexander, Interim Director – NUS Wales

Attached Documents:

CYPE(5)–23–19 – Paper 5 – University & College Union

CYPE(5)–23–19 – Paper 6 – National Union of Students Wales

6 Papers to note

(12.15)

6.1 Letter from the Deputy Minister for Health and Social Services – further information from the meeting on 12 June for the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

(Pages 60 – 70)

Attached Documents:

CYPE(5)–23–19 – Paper to note 1

6.2 Letter from the Minister for Education – further information from the meeting on 20 June for the 'Mind over Matter' report follow-up

(Pages 71 – 73)

Attached Documents:

CYPE(5)–23–19 – Paper to note 2

6.3 Letter from the Children Commissioner for Wales – Tier 4 In-patient CAMHS Services

(Pages 74 – 77)

Attached Documents:

CYPE(5)-23-19 – Paper to note 3

6.4 Letter from the Children Commissioner for Wales – Elective Home Education – update

(Pages 78 – 79)

Attached Documents:

CYPE(5)-23-19 – Paper to note 4

6.5 Letter from the Children Commissioner for Wales – Looked-after children targets

(Pages 80 – 81)

Attached Documents:

CYPE(5)-23-19 – Paper to note 5

6.6 Letter from the Chair of Finance Committee – Welsh Government Draft Budget 2020-21

(Pages 82 – 89)

Attached Documents:

CYPE(5)-23-19 – Paper to note 6

6.7 Letter from the Minister for Education – update on Home Education

(Pages 90 – 92)

Attached Documents:

CYPE(5)-23-19 – Paper to note 7

6.8 Letter from the Children Commissioner for Wales – Additional information for the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

(Pages 93 – 95)

Attached Documents:

CYPE(5)–23–19 – Paper to note 8

7 Motion under Standing Order 17.42(vi) to resolve to exclude the public from the meeting for the remainder of the meeting

(12.15)

Lunch Break

(12.15 – 13.30)

8 Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill – consideration of draft report

(13.30 – 14.20)

9 Welsh Government Draft Budget 2020 – 2021 – consideration of approach

(14.20 – 14.25)

(Pages 96 – 104)

Attached Documents:

CYPE(5)–23–19 – Private paper 1

10 Implications of Brexit: UK-wide common policy frameworks

(14.25 – 14.30)

(Pages 105 – 115)

Attached Documents:

CYPE(5)–23–19 – Private paper 2

Document is Restricted

CYPE(5)-23-19 - Paper 1

Ymateb gan: Estyn

Response from: Estyn

Background information about Estyn

Estyn is the Office of Her Majesty's Inspectorate for Education and Training in Wales. As a Crown body, Estyn is independent of the Welsh Government.

Estyn's principal aim is to raise the standards and quality education and training in Wales. This is primarily set out in the Learning and Skills Act 2000 and the Education Act 2005. In exercising its functions, Estyn must give regard to the:

- Quality of education and training in Wales;
- Extent to which education and training meets the needs of learners;
- Educational standards achieved by education and training providers in Wales;
- Quality of leadership and management of those education and training providers;
- Spiritual, moral, social and cultural development of learners; and,
- Contribution made to the well-being of learners.

Estyn's remit includes (but is not exclusive to) nurseries and non-maintained settings, primary schools, secondary schools, independent schools, pupil referrals units, further education, adult community learning, local government education services, work-based learning, and teacher education and training.

Estyn may give advice to the Assembly on any matter connected to education and training in Wales. To achieve excellence for learners, Estyn has set three strategic objectives:

- Provide accountability to service users on the quality and standards of education and training in Wales;
- Inform the development of national policy by the Welsh Government;
- Build capacity for improvement of the education and training system in Wales.

This response is not confidential.

Introduction

Estyn welcomes the opportunity to contribute to the [Children, Young People and Education Committee's](#) post-legislative scrutiny of the Higher Education (Wales) Act 2015.

Our response has focused on learning for the PCETR Bill. In summary, Estyn believes that consideration needs to be given to ensuring:

- the vision and purpose for the PCETR Bill is very clear, including the consequences of not reforming
- the scale of the proposed legislation is manageable
- stakeholder engagement is maintained through the legislative process
- appropriate transition arrangements are in place
- that the Bill gives appropriate consideration to promoting equality of opportunity and takes account of reforms happening within compulsory education

Committee Inquiry Questions

Estyn's role and powers in relation to Higher Education is currently limited to the initial and ongoing professional training of teachers and youth and community work practitioners. There is the opportunity within the Learning and Skills Act 2000 for Estyn's remit to be extended to cover initial and ongoing professional training for other post-16 education practitioners.

As such, our response does not focus on how well the Act has been implemented, but seeks to provide the Committee with helpful evidence in relation to questions six and seven.

6. Are there any lessons to be learned from the Act and how it is working in practice that may be relevant to the proposed Post-compulsory Education, Training and Research (PCETR) Bill?
7. Are there any lessons to be learned from how this Act was prepared in 2014/15 (formulated, consulted on, drafted etc)?

There was a very clear overall rationale for the Higher Education (Wales) Act 2015 i.e. due to the changes to funding, the existing mechanism of using recurrent grant terms and conditions to regulate the HE sector was no longer fit for purpose. Although, the overall vision of a more consistent and coherent approach to strategic planning is clear for the PCETR reforms, it was not clear enough in the technical consultation what the rationale for the particular proposed approach was and what the consequences of not reforming were. Equally, there was feedback in the consultation responses about the lack of overall vision for PCET. It will be essential that there is very clear communication about vision and purpose through the explanatory memorandum. This compelling case for change is key to engaging support from stakeholders for the reforms.

The Welsh Government may wish to consider the scale of the proposed legislation. The HE Act had substantial supporting information for a relatively straight forward piece of legislation. The feedback to the technical consultation identified that the scale of what was proposed for the PCETR Bill was too broad. It is essential to take the reform process a step at a time with a focus on enabling legislation with the powers to set out detail in

supporting regulations.

The Welsh Government conducted some helpful stakeholder engagement prior to the technical consultation. However, there has been limited communication with stakeholders about the legislative timescales going forward or opportunities to help shape the draft Bill.

Ongoing stakeholder engagement and communication will be essential to support the successful enactment and implementation of the Bill.

The HE Act was accompanied by appropriate transition arrangements to enable smooth change between old and new arrangements. It is important that an appropriate period of transition is in place.

The proposed (PCETR) Bill will impact on a range of education sectors. It is important that there is sufficient opportunity for the Committee to consider any direct or indirect impact on smaller post-16 sectors beyond HE and FE, such as secondary and special schools with sixth forms, adult community learning, youth and community work, Welsh for Adults, independent specialist colleges, careers and prison education.

The HE act enshrines the requirement for regulated institutions, through their fee and access plans, to promote equality of opportunity. Our thematic report on the impact of the [Learning and Skills Measure on vulnerable learners](#) found some evidence of a narrowing of the key stage 4 curriculum, and a reduction in level 1 courses post-16 both of which impact adversely on vulnerable learners. It is important that there is an explicit requirement for the new body to promote and protect equality of opportunity.

It is important to consider how the Post-compulsory Education, Training and Research (PCETR) Bill will help to maintain the synergy between pre- and post-compulsory education to ensure that there are no unintended consequences on the range of appropriate learning pathways for young people. In order to successfully achieve this, there will need to be some requirement to consider the range of learning opportunities in local areas and how these meet the needs of young people and employers, as well as ensuring greater strategic planning nationally. The legislative process will need to consider how the 14-19 Learning and Skills (Wales) Measure in relation to 14-19 Learning Pathways will be impacted and any consequences should it be repealed or amended. The new curriculum pre-16 aims to broaden learning experiences and prepare learners better to be enterprising, creative contributors ready to play a full part in life and work. The PCETR Bill needs to enable post-16 providers to complement and build on the skills and dispositions that learners developed pre-16, to ensure successful progression at key transition points across the full range of pathways.

HEFCW's response to the post-legislative scrutiny of the Higher Education (Wales) Act 2015

Introduction

The Higher Education (Wales) Act 2015 strengthened the Higher Education Funding Council for Wales' regulatory powers in relation to quality of education, financial affairs, full-time undergraduate fees and improving equality of opportunity and the promotion of higher education. We acknowledge that the Welsh Government introduced the legislation in response to the fact that the funding available for higher education in Wales was diminishing such that the pre-existing regulatory machinery, and policy levers, all of which depended on funding, were becoming ineffectual. The intent behind the legislation, therefore, was positive, but there have been a number of regulatory and operational challenges with the new arrangements.

We wish to note, up front, that the legislation only became fully enacted on 1 August 2017, and as a result, it is possibly too early in some respects to understand the full impact of the legislation. However, we wish to share some of our experiences of the legislation from the development and initial implementation of the Act.

General points we wish to make are that:

- The prescription and complexities of the legislation have prevented some of the objectives of the Higher Education (Wales) Act 2015 from being achieved. The lesson from this is not to over-specify the legislation. That doesn't mean advocating the use of framework legislation, with the detail to be added later by secondary legislation. It means accepting that the logic of having an arm's length body is that you trust that body to develop the operational machinery, albeit with an expectation that they will consult as appropriate, and that they will act reasonably (or be challenged). Whilst the Welsh Government engaged with us as a stakeholder when the legislation was being developed, and whilst we were asked a number of individual questions to aid their thinking, we were not in a position greatly to influence the shape of the legislation, or the final form in which it was presented. This resulted in a degree of complexity which we would have counselled against.
- Regulating only full-time undergraduate higher education has left some gaps in the oversight of higher education in Wales. This could result in a poorer experience for students studying on those courses, despite being allowed to receive student support to study on those courses, and
- The range of regulatory sanctions available to HEFCW are limited. This impedes HEFCW's ability to take decisive action and be proportionate when a regulated institution is non-compliant or not delivering policy objectives as effectively as they could.

In order to inform the scrutiny, we have also provided links to our original responses to consultations to inform the development of the Bill.¹

1. Has, or is the Act, achieving its policy objectives, and if not why not?

1.1 We have answered this question by responding to each of the objectives set out in the explanatory memorandum accompanying the Higher Education Bill.

(a) ensure robust and proportionate regulation of institutions in Wales whose courses are supported by Welsh Government backed higher education grants and loans;

1.2 HEFCW has established robust arrangements, through consultation and appropriate scrutiny, for the areas that the Act empowers HEFCW to regulate: fee levels, equality of opportunity, promotion of higher education, quality of education and financial affairs. As we will set out in this response, however, there are areas that are outside of the scope of HEFCW's powers that HEFCW cannot regulate.

1.3 The Higher Education (Wales) Act 2015 has only established a regulatory system for full-time undergraduate higher education provision. This has allowed for some publically funded institutions in Wales to receive student support for their part-time higher education courses without having to be regulated. As a result, providers receiving student support do not have to have undergone an external review of their higher education provision by a body on the European Quality Assurance Register, such as the Quality Assurance Agency for Higher Education. As a result, Welsh Government cannot be assured that part-time provision being supported by Welsh Government student support meets the reasonable needs of the students. This is a risk to both the public purse, the reputation of higher education in Wales and most importantly of all the students studying on those courses.

1.4 In addition to this, postgraduate study is also not regulated. Providers that receive student support for this provision are likely to be regulated by HEFCW. This provides quality oversight of those courses but does not provide the same level of scrutiny over the fee levels charged and the investment of fee income to improve equality of opportunity and promote higher education.

1.5 As we have noted in our response to question 5 of the consultation on proposals for the reform of the post-compulsory education and training system in Wales, Public Good and a Prosperous Wales², the sanctions available to HEFCW via the Higher Education (Wales) Act 2015 operate slowly and are largely existentially threatening to providers. This makes the sanctions difficult to use and does not allow for swift formal intervention to address problems proportionately through our legal powers.

¹ [HEFCW response to Welsh Government Higher Education \(Wales\) Bill Technical Consultation](#); [HEFCW response to the White Paper consultation on the Further and Higher Education \(Wales\) Bill 2013](#)

² HEFCW response to [Public Good a Prosperous Wales – the next steps](#)

- 1.6 The regulatory system has also been established with a focus on institutions. This limits HEFCW's ability to use the regulatory tools to facilitate collaborative activities to meet Welsh Government priorities such as in relation to improving equality of opportunity.
- 1.7 The legislation is too prescriptive and complex, leaving limited flexibility for HEFCW to shape it operationally. We set out below, in relation to maintaining a strong focus on improving equality of opportunity, that the level of detail makes it harder to improve equality of opportunity and promote higher education. It has also resulted in terms being used such as *quality likely to become inadequate* that have to be worked through with quality experts and the sector to define, as it is a unique concept to quality arrangements in higher education. In addition the legislative requirement for the Financial Management Code to be approved by the Minister and laid before the National Assembly prior to implementation has reduced the Council's ability to respond swiftly to changing circumstances.
- 1.8 There are some areas, though, where it is appropriate that the legislation, and implementation of the legislation, is not moderated to reflect differing types and scale of provider. The result of entering the regulatory system in Wales is that all full-time higher education courses delivered by a regulated institution are automatically designated for student support. All institutions, regardless of size or mission, must be able to demonstrate that they meet the same requirements of financial viability and quality of education as any other regulated institution in order to protect students and provide assurances to Welsh Government.

(b) safeguard the contribution made to the public good arising from the Welsh Government's financial subsidy of higher education;

- 1.9 All institutions that are currently regulated for their full-time undergraduate courses are charities. Additionally, they are all required to invest a proportion of their student fee income to meet objectives to improve equality of opportunity and promote higher education in Wales. This safeguards the contribution to the public good to an extent, but our response to the question regarding fair access below suggests that the legislation might secure only limited improvement to the contribution being made by institutions to the public good.
- 1.10 As noted above, part-time and postgraduate study is not regulated therefore there are no regulatory controls linked to that tuition fee income in order to improve the contribution to the public good.

(c) maintain a strong focus on fair access to higher education;

- 1.11 The legislation provides a strong focus on fair access in higher education through the requirement for an institution, wishing to be regulated, to submit a fee and access plan demonstrating their commitment to not just fair access but a wider range of important measures to improve equality of opportunity and promote higher education. However, maintaining a focus is not the same

as effectively improving equality of opportunity and promoting higher education. Whilst it is still a little early to definitively comment on the effectiveness of fee and access plans given that the first fee and access plans have still not been fully evaluated, we do have concerns about how effective fee and access plans, in the way they are set out in the 2015 Act, can be in achieving the policy objectives.

- 1.12 The protection of the autonomy of institutions has been set out to such an extent in the 2015 Act where we have been advised that, legally, we cannot require regulated institutions to focus on national outcomes to improve equality of opportunity and promote higher education in Wales. Institutions can choose the objectives and targets they include in fee and access plans. Institutions that focus on national outcomes do so voluntarily.
- 1.13 The detail set out in the legislation, supporting legislation and guidance regarding the process for fee and access plans is too prescriptive. Institutions in Wales are all different types of institutions yet the mechanism used to achieve Welsh Government's policy aim to improve equality of opportunity and promote higher education is detailed and does not allow for a strong focus on outcomes. In the future we would recommend that any new legislation should be less prescriptive and allow a regulatory body to determine, via advice from committees and through relevant consultation, the best methods and processes to improve equality of opportunity and promote higher education in Wales. The regulatory body should be trusted to do this and be judged on the outcomes that the sector achieves.
- 1.14 The timings for approving and then monitoring the compliance with and evaluating effectiveness of fee and access plans are disjointed as to take forward effectively the objectives that the fee and access plans were designed to achieve. For example the 2017/18 fee and access plans were written and approved in early to mid-2016. They can only be monitored and evaluated effectively in late 2018-mid 2019, the time at which the 2020/21 fee and access plans are being written and approved. In the event of any issues with effective plans then it would have been too late to inform effectively the approval of 2, if not 3, subsequent plans.
- 1.15 Given that part-time and postgraduate provision is not regulated then the levers to improve equality of opportunity in this area of higher education are limited.

(d) preserve and protect the institutional autonomy and academic freedom of universities.

- 1.16 The preservation and protection of institutional autonomy and academic freedom are writ large throughout the legislation. The intention to protect institutional autonomy does seem to have, in some areas, prevented HEFCW from achieving the objectives of the legislation.
- 1.17 We have noted the barriers to improving equality of opportunity above such as challenging target setting to improve outcomes for Wales.

2. How well are the Act's overall arrangements working in practice, including any actions your organisation has had to take under the Act?

- 2.1 We have set out some of the limitations of the overall arrangements of the Act in response to the question above, such as the range of sanctions available to HEFCW and the effectiveness of fee and access plans.
- 2.2 As noted below the financial costs of the developing arrangements for the implementation of the legislation and then the implementation of those arrangements has resulted in us diverting resources from other areas of HEFCW activity.
- 2.3 As we will explain in response to the following question, the complexities and the prescription of the legislation required us to procure a significant amount of legal advice in order to understand how the legislation could be implemented in the context of a Welsh higher education system that operates at a UK and international level.
- 2.4 The Act effectively gave HEFCW oversight of all of the provision of regulated institutions, which has had complexities in relation to providers whose principal business is further education, which is inspected by Estyn. This oversight or lack of clarity in legislation has taken us some time to work through, and establish how to address our legal responsibilities without increasing the burden on institutions. It would have been helpful for the Act to focus only on the higher education provision of regulated institutions.
- 2.5 In the same way, where there are complex post-compulsory education institutions, in the future it will need to be clear where the responsibilities of a new commission end, and how any overlaps are dealt with.

3. Are the costs of the Act, or your organisation's own costs for actions taken under the Act, in-line with what Welsh Government stated they'd be?

- 3.1 We have previously supplied some estimated costs for our costs under the Act to Welsh Government. Our estimated costs are more than that estimated by the Welsh Government previously. We estimated at the time that in order to implement the Act as effectively as possible we would have needed to employ extra staff. We were not able to achieve this and staff working on developing and implementing the Act were also responsible for continuing HEFCW's ongoing work in addition to this. This has impacted on our ability to deliver our remit effectively.
- 3.2 As noted above, we have had to take legal advice and this has amounted to approximately £54,500.

- 3.3 The staff costs are more difficult to estimate. Of course, monies were saved because we used existing staff and their knowledge base. If we had employed new staff there would have been a longer period of training and development while those staff settled in. That means that during the period in question, other work, which should have been completed was set delayed and deprioritised. It is impossible to cost the extensive additional hours which were completed within our flexi system by the officers involved, including during the fee and access plan exercise during the act.
- 3.4 Taking into consideration the costs of developing arrangements to account for the new legislation and then developing the new requirements of the legislation we have estimated staffing costs at approximately £250k per annum since 2016-17 as a result of the additional work.
- 3.5 We also know that regulated institutions have encountered significant additional costs as a result of the legislation.

4. Has the Act achieved value for money?

5. Have there been any unintended or negative consequences arising from the Act?

- 5.1 We have highlighted some of our concerns in response to the above questions and have added a few additional points in response to this question. We believe that these consequences could have been avoided if HEFCW had been able to influence the detail of the legislation at an early stage in the light of our extensive operational experience.
- 5.2 The development of HEFCW's powers has not recognised the fact that most regulated institutions are also awarding bodies. It has limited HEFCW's oversight over some of the riskiest elements of higher education provision such as overseas provision.
- 5.3 The specific course designation process in Wales has had to be amended to allow previously publicly funded institutions to apply for their full-time higher education courses to be specifically designated for student support.

6. Are there any lessons to be learned from the Act and how it is working in practice that may be relevant to the proposed Post-compulsory Education, Training and Research (PCETR) Bill?

- 6.1 We have set out above in more detail some of the issues we feel have arisen from the 2015 Act.
- 6.2 The key lessons to be learnt from the Act are:
- The legislation should not be as detailed and prescriptive as the 2015 Act. The new organisation should be trusted to develop the necessary arrangements to achieve the policy objectives associated with the new legislation. Detailed and prescriptive legislation will prevent the new organisation from being flexible to meet the needs of Wales. The new

organisation will be subject to public scrutiny, it will have to be reasonable, it will consult on its arrangements, its members will be publicly appointed and the organisation will be funded by the Welsh Government. They are sufficient controls to keep that new organisation accountable in achieving the objectives of the legislation.

- Provide the new organisation with flexible sanctions that will allow it to respond proportionately and decisively to lever providers to act in ways that meet the legislation's objectives.
- As we have noted above there are limits to fee and access plans to achieve the policy objectives. As we have noted in our response to the PCETR consultations we recommend the separation of regulation and outcome agreements and ensure that all education, research and training providers that receive funding from the new organisation are not treated any differently.

7. Are there any lessons to be learned from how this Act was prepared in 2014/15 (formulated, consulted on, drafted etc)?

- 7.1 We have discussed the limitations of the 2015 Act in detail above. To avoid some of these the development of the legislation and the detail in the legislation should be discussed first with those who have experience of implementing current arrangements, such as HEFCW, before the legislation is laid in the Assembly.

Dr David Blaney
HEFCW Chief Executive
3 May 2019

CYPE(5)-23-19 – Paper 3

Ymateb gan: Prifysgolion Cymru Response from: Universities Wales

1. Introduction

- 1.1. Universities Wales represents the interests of universities in Wales and is a National Council of Universities UK. Universities Wales' Governing Council consists of the Vice-Chancellors of all the universities in Wales and the Director of the Open University in Wales.

2. Q1. Has, or is the Act, achieving its policy objectives, and if not why not?

- 2.1. The Act achieved its essential and key **immediate** objectives though not necessarily the overarching policy objectives. Overall a robust regulatory system for universities in Wales has been maintained despite the major reduction in grant funding for universities in Wales and major change in the funding and regulatory systems in other parts of the UK. The Act has so far provided robust arrangements for fee limits and the use of fees, measures to promote student access, quality assurance arrangements, and financial management. At the same time the FHEA 1992 has continued to cover the use of all public funding.
- 2.2. Nevertheless, the legislation was not fully successful in meeting its objectives and there remain significant regulatory challenges particularly in the longer term, which in part have led to the further PCET reform proposals.
- 2.3. A key objective was to enable the regulatory system in Wales to function in the absence of significant grant funding for higher education. The new powers do not rely on funding. By comparison, however, current arrangements are inflexible and cumbersome and not well suited for strategic and policy engagement. The funding powers under the 1992 Act continue to provide a far more flexible and effective instrument in this respect, but only apply to some activities and providers.
- 2.4. The CYPEC Committee expressed its concern that the Welsh Government had not given sufficient consideration to the potential

outcomes of the Diamond Review and the Bill may prove to be a temporary 'stop-gap' piece of legislation. (Stage 1 Report, Para 23). In the event, the Diamond Review recommended the continuation of significant HEFCW funding. The result is that HEFCW now has a wide set of additional powers for which the rationale for maintaining may be largely redundant once the recommendations of the Diamond Review are fully implemented.

- 2.5. The Act's stated objectives included ensuring that the new powers were proportionate and that the arrangements preserved and protected the institutional autonomy and academic freedom of universities. The Act, however, went much further than enabling existing arrangements to work without funding, and provided HEFCW with an array of new intervention powers and sanctions for example, where providers are deemed to be at risk of not complying with the regulatory requirements. Unis Wales had very significant concerns with the Bill as introduced which raised issues in respect of competition law, charity law requirements, and the national accounting status of universities. The CYPEC Report at Stage 1 in October 2014 similarly expressed concerns that the new powers were disproportionate in relation to a mature sector (para 83) and there was 'a danger of over-regulation' (para 84).
- 2.6. The areas of greatest concern in the Bill were addressed through amendment before it was enacted, but there remain potential issues in some areas e.g. potential for the powers to give directions enforceable by injunction to be used for minor matters, the lack of procedural requirements for the Welsh Government of HEFCW in issuing statutory guidance and potential for lack of clarity about what is statutory, and the unrestricted potential coverage of the financial management code.
- 2.7. The Bill only partly implements the Welsh Government's original proposals as set out in the Technical consultation in June 2013 to provide a holistic HE system. In particular, the Act only applies to 'regulated' providers, and only providers with full-time undergraduate provision can become regulated under the Act. Other types of HE provider (or potential HE provider) cannot be regulated under the Act, including part-time and postgraduate only providers, research institutes etc. FE colleges who only offer part-time HE education, for instance, cannot become regulated institutions under the Act unlike their counterparts who provide full-time HE education. The Act would

allow changes to the regulations to allow part-time provision to be regulated – but at the expense of imposing fee limits which may not accord with optimal funding and finance arrangements. More generally, there is question about how far the system will be able to cope with new providers.

- 2.8. Contrary to CYPEC’s recommendation in its Stage 1 Report, the Act only implemented a part of the arrangements for HE and did not deal with specific course designation for non-regulated institutions. In fact, it did not deal with either automatic course designation for regulated institutions either. These were both left to be dealt with through subsequent student support regulations. Specific course designation arrangements are still developing and a source of confusion for new providers, particularly given the differences in approach adopted in England. The funding powers under the FHEA 1992 also continue to operate in parallel rather than as an integrated system, resulting in a complex interaction between the two. The opportunity to develop a fully integrated system was missed.
- 2.9. Moreover, it left challenging overlaps in responsibilities. HEFCW, for instance, is responsible for the quality of all provision of the regulated institution not just HE provision – this includes e.g. FE and lower level provision with clear statutory overlap in responsibilities with other existing bodies.
- 2.10. Despite its intention, the new regulatory framework still remains sensitive to cross-border changes in the fee and funding systems. To work in practice, the Act relies on providers applying voluntarily to become regulated institutions and accepting the higher levels of regulation and fee limits in return for higher levels of student support. So far all universities have opted to become regulated providers (and special provisions were made for the OU in Wales in the Act). However, non-regulated providers are not subject to restrictions on the fees they can charge or subject to the greater regulatory controls of the Act. If fees are substantially lowered in response to changes in England, however, this may remove the financial advantages for regulated institutions (ironically, the main incentive could be the recognition of regulated institutions for purposes of enabling English students to receive student support). A particular issue that we raised during the passage of the Bill was that the scope of HEFCW’s powers and duties under the Act in respect of quality assurance are limited to regulated

institutions' courses within Wales. An additional s.150 order was put in place to ensure coverage of Welsh providers's courses in England, but HEFCW's powers do not extend to courses in other parts of the UK or outside it. In practice, universities and HEFCW have worked around this together to ensure that quality assurance arrangements cover all courses. It is hoped that future legislation may resolve this more satisfactorily, however.

- 2.11. Finally, the Act successfully maintained a focus on fair access under the new system, with the fee and access plans replacing similar arrangements under the HEA 2004 and requiring a significant part of the full-time undergraduate fee income to be used in the support of equality of access or promotion of higher education. The system remains designed around full-time undergraduate students, however. As highlighted in our PCET consultation responses, there are opportunities to improve on regulatory arrangements to focus more clearly on the areas of greatest risk for students, and to rethink the system with their needs and involvement in mind.

3. Q2. How well are the Act's overall arrangements working in practice, including any actions your organisation has had to take under the Act?

- 3.1. Overall, arrangements are working adequately at the moment. However, the arrangements are in general procedurally cumbersome and inflexible and the administrative burden has increased significantly for both HEFCW and providers and the arrangements of the Act, seemingly without a proportionate increase in benefits.
- 3.2. The Fee and Access plan arrangements in particular have become much more complex and lengthy and require significantly more resource to prepare than the arrangements they replaced. The mandatory content is prescribed through a suite of documents whose length, complexity and differences have resulted in difficulties of understanding and interpretation. This includes the Act itself, separate regulations, and Welsh Government statutory guidance as well as HEFCW's own guidance.
- 3.3. As the fee and access plan has become the central tool for implementation of policy, the size and detail of the plans has significantly increased. Universities are now required to fully cost planned expenditure for sixteen different headings, and a further breakdown of student support. The result is that the size of the plans

and content have more than doubled in most instances. In addition to the increase in resource required to implement and prepare the plans, one side effect is that the original objective of the fee plans of providing useful information to students has increasingly been a challenge.

- 3.4. Likewise the data and information requirements are significantly increased – particularly relating to institutional eligibility and partnership provision, and forecasting and monitoring information. Implementation has required significant changes to provider processes and systems including approval and sign-off and monitoring processes – including franchise providers as well as the regulated institutions themselves.
- 3.5. As highlighted above, the lack of flexibility and procedural requirements in the Act remain an obstacle, particularly given the need for Welsh universities to respond in a fast moving higher education context. This highlights that there is currently no satisfactory substitute for providing grant funding for more strategic engagement. Quality assurance arrangements have continued to work well despite the need to adapt to major changes across the UK and challenges to the UK wide-system, but have required significant translation to the new system. There is ongoing work to fully develop and satisfactorily implement HEFCW's new statutory duties – for instance in terms of the practical arrangements for identifying provision that is likely to become unsatisfactory, and alignment with the requirements of the Bologna process and European Standards and Guidelines for Quality Assurance.
- 3.6. The development of the financial management code has highlighted in particular the challenges of operating the new powers alongside the funding powers under the FHEA 1992. The interaction and application of the different provisions is not straightforward. The providers that HEFCW deals with may be regulated or funded – or both. It has been a significant challenge to separate those provisions which belong to regulation under the Code and those – such as value for money provisions – which relate directly to the use of funding.
- 3.7. As we commented at the time, the drafting of the Code provisions have significant potential to be used for matters that were not originally intended. So far this has not been an issue and the oversight of the National Assembly in revisions of the Code provides a helpful

procedural check. The process of revision prescribed in the Act remains extremely elaborate, however, and we would have preferred the Act to have found a way of providing greater flexibility for executive decision making and minor change.

- 3.8. Otherwise it is noted that many of the new powers of intervention and sanctions provided by the Act remain unused/untested. The Act is highly detailed and proscriptive in terms of the procedural steps required to exercise the new powers. These can add significantly to the administrative burden in seeking to exercise the powers, without really providing the further protection for stakeholders or providers intended.

4. Q3. Are the costs of the Act, or your organisations own costs for actions taken under the Act, in-line with what Welsh Government stated they'd be?

- 4.1. It has been very difficult to reliably assess the costs of implementation retrospectively, given changes of personnel and limitations of the data available. However, the actual costs for universities (including Universities Wales) appear to have significantly exceeded the Welsh Government's estimates.
- 4.2. The Welsh Government estimated that the additional costs of reforming the functions to enable effective regulation falling on universities to range between £97k and £145k between 2015/16 and 2019/20 (Option 3, Table 10, p.93) – totalling £1.24 million up to 2018/19.
- 4.3. Our best estimate (as set out in our fuller report prepared for the Welsh Government) is that the direct additional costs for Welsh universities and Universities Wales to be in the region of £4.3m up to 2018/19 with ongoing additional costs of around £0.53m. If we include HEFCW's own published estimates of its additional costs (excluding costs prior to 2015/16) the additional cost for higher education in Wales is estimated at around £4.93m up to 2018/19, with ongoing costs of around £0.61m:

Estimated/indicative costs for HE (£000s)

Academic Year	Unis Wales	Universities	HEFCW	Total
2012/13	44	201	-	245
2013/14	126	228	-	354
2014/15	163	382	-	545
2015/16	43	212	49	303
2016/17	15	2,000	264	2,279
2017/18	8	549	244	801
2018/19	4	527	80	610
Grand total	402	3,894	636	4,933

- 4.4. Our analysis identified very considerable costs relating to engagement with the consultation and development of the proposals over several years as necessitated by the Act. This includes the White Paper, Technical Consultation, the Bill, commencement orders, around nine sets of regulations pursuant to the Act, corresponding student support regulations (and consequential changes in other legislation), the different tranches of statutory guidance issued by the Welsh Government, and related consultation on specific course designation.
- 4.5. In terms of implementation, a very significant amount of time and resource was spent on developing interim and transitional arrangements as well as final arrangements including the Fee and Access Plan guidance, partnership guidance, the Full and Transitional Statements of Intervention, and the Financial Management Code (staged through revisions to the Financial Memorandum first). In some areas, as noted above, implementation is still continuing.
- 4.6. The key area for additional recurrent costs, is the fee and access plans which have been a major source of additional cost of the system, with institutions typically employing additional staff to deal with the additional requirements.
- 4.7. Although the direct costs are significant the opportunity costs for universities in Wales, are arguably even more important. If invested in research and innovation, for instance, Welsh universities could have been expected to attract around £11m more income from UK R&I funding on the basis of the correlation between investment and returns in UK R&I funding identified by the Reid Review. On the basis of previous economic analysis of the sector, the loss of wider income generation for other sectors in Wales could be estimated at around £5m:

Opportunity costs - measured in potential loss (£000s):

Academic Year	R&I income loss	Knock-on income generation (Wales)	Knock-on income generation (RUK)
2012/13	564	245	81
2013/14	814	354	117
2014/15	1,254	545	180
2015/16	697	303	100
2016/17	5,243	2,279	752
2017/18	1,842	801	264
2018/19	1,404	610	201
Grand total	11,345	4,933	1,628

- 4.8. Universities were not engaged with the process of estimating costs or impact of the legislation, and the necessary measures for monitoring costs more accurately were not put in place with the Act. We support the findings of the Finance Committee which recommended improved stakeholder engagement when preparing legislation and associated costings in its Report in 2017.

5. Q4. Has the Act achieved value for money?

- 5.1. Maintaining a robust regulatory system is essential for universities in Wales and we would expect this to require significant investment. More generally, investment in higher education represents extremely good value for money, given the benefits for students and the wider Welsh economy and society.
- 5.2. However, as identified above, the Act was only partially successful in its objectives and other options may have achieved the identified objectives better or at lower cost.

6. Q5. Have there been any unintended or negative consequences arising from the Act?

- 6.1. In addition to the comments above we note the following.
- 6.2. There has been significant growth in work relating to unregulated providers. While it has made sense for HEFCW to be delegated the administration of specific course designation arrangements, it is not clear that HEFCW have had the additional resource to cover the work. It

will remain important to ensure that changes in HEFCW's responsibilities in other areas do not impact on universities and that HEFCW is able to employ additional staff to manage the additional work. Further reforms may provide an opportunity for integrating automatic and specific course designation arrangements more fully.

- 6.3. Arrangements for franchise provision under the Act have caused significant challenges in implementation for both franchising universities and franchised providers. The Act necessitated a wholesale review of all partnership contracts and arrangements, to ensure compliance with the new statutory definitions and arrangements with a number of providers having to seek legal advice to navigate the complexities of the legislation. Difficulties in this area are to some extent compounded by new/different arrangements being adopted in England.

7. Q6. Are there any lessons to be learned from the Act and how it is working in practice that may be relevant to the proposed Post-compulsory Education, Training and Research (PCETR) Bill?

- 7.1. There are significant lessons to be learnt from the Act that are relevant to considering future PCET legislation.
- 7.2. A key issue for us is that a clearer and more coherent set of guiding principles needs to underpin the PCET system reforms from the start. This should obviate disparities in treatment of part-time provision for regulated and non-regulated providers for instance.
- 7.3. There is further scope for future arrangements to better address the needs and interests of the full range of students. The current regulatory system reflects the fact that it has been built around, and depends on, fee and finance arrangements for full-time undergraduate students.
- 7.4. The level of assurance and regulation needs to be proportionate and better reflect the needs of students. The current system provides strictest regulation of the institutions who pose the lowest risk. Potential for regulatory measures to focus better on areas of greatest need. At the moment the regulation has been increased for institutions that have already strong track records, rather than new and alternative providers.

- 7.5. The risks, costs and value for money of any major legislative proposals need to be assessed very clearly and weighed carefully against alternative options. Experience of the HE(Wales) Act points very clearly to the very substantial costs and time involved in implementing major new legislation, and the long time scales before any potential benefits can be realised. As commented above, in particular the opportunity costs for universities and wider stakeholders are substantial and should not be underestimated.
- 7.6. The Act focusses on regulatory compliance and providing means of intervention for providers deemed to be at risk of failing. It is less successful and less geared towards providing support for strategic oversight of the sector, which was much easier under the previous system. As concluded by Diamond, there is no satisfactory replacement for grant funding in many areas. It is absolutely vital for universities and the economic prosperity of Wales that universities continue to thrive on the global economy and receive the necessary investment and support.
- 7.7. Experience of the HE (Wales) Act also demonstrates the critical importance of maintaining effective relationships and cooperation between stakeholders. Many of the potential difficulties of the Act have been overcome or mitigated in practice due to cooperation within the sector, as highlighted above. The regulatory system needs to provide proportionate assurance and support delivered primarily by developing good relationships and using its powers primarily to incentivise and facilitate.
- 7.8. Experience of dealing with challenges of implementation and shortcomings of the Act further highlights the value of having an effective independent body with responsibility for higher education in Wales operating at arms-length. This means ensuring that the body has sufficient resource and operating flexibility, while setting clear and appropriate parameters for it to work within.

8. Q7. Are there any lessons to be learned from how this Act was prepared in 2014/15 (formulated, consulted on, drafted etc)?

- 8.1. Yes, there are significant lessons to be learnt from the preparation of the HE(W) 2015, as we identified and were recognised in the reports of the National Assembly Committees at the time.

- 8.2. We submitted evidence to your Committee's Inquiry on law-making in the 4th Assembly, prior to the introduction of the Bill on the 19th June 2014 which raised concerns about the lack of consultation and engagement with the sector on detailed proposals or a Draft Bill following the close of the Technical consultation in June 2013. In our view many of the problems with the Bill that had to be ironed-out during the legislative passage or have remained, could have been avoided and dealt with more efficiently prior to its introduction, .
- 8.3. Despite intentions, the Bill did not initially achieve its objectives and required extensive amendment to become workable. In the case of legislation, experience strongly suggests that the legislative detail is critical. It is absolutely essential that there is sufficient time and resource available to all stakeholders for developing, drafting and amending the provisions together, and legislative time in the calendar to deal with any future changes.
- 8.4. In terms of the current PCET proposals, the Welsh Government's engagement with stakeholders in its PCET reform proposals has been better so far, but we note that it was precisely at this stage that the problems occurred last time. It will remain essential that the detailed proposals and or a draft Bill are discussed with the sector prior to laying any Bill, to avoid similar issues again.
- 8.5. As discussed above, it appears that the costs of the proposals for the sector were underestimated, as we suspected at the time. The recommendations of the National Assembly Finance Committee in 2017 on financial estimates accompanying legislation appear to be highly pertinent in this context. In particular, it is important that relevant stakeholders are engaged with the process of costing to achieve a better shared understanding and agreement of the likely costs, risks and impacts. For any new proposals, the Welsh Government should also consider setting up appropriate monitoring arrangements for assessing costs and policy impacts from the outset.
- 8.6. There were also a significant lessons to be learnt in terms of the approach to drafting the Bill, as recognised in particular by the Stage 1 report of the National Assembly's Committee for Constitutional and Legislative Affairs, published in October 2014:
- The Bill as introduced left a substantial amount of important

detail to be determined or clarified through subsequent subordinate legislation. As commented by CLAC, the Bill lacked clarity and did not ensure that those affected by the legislation have a clearer and fuller picture of how it will impact on them. There was a tendency to omit matters deemed as technical from the face of the Bill, despite their importance. It will be important in future legislation to ensure that the all matters of significance are dealt with on the face of the Bill and not developed piece-meal.

- In particular it was a concern that, initially in the large majority of cases, the negative resolution procedure was proposed. The use of the negative resolution process does not formally require consultation, or allow amendment of the detail of the provisions. These were amended following the National Assembly Constitutional & Legislative Affairs's Stage 1 Report, published in October 2014.
- In three instances, the Bill incorporated powers to amend either the Act itself or other primary legislation through the means of subsequent regulations (i.e. Henry VIII powers). The inclusion of these powers has traditionally been infrequent and controversial, since it enables primary legislation to be amended without the proper oversight of the Assembly.

8.7. Based on experience of the HE(W)A 2015, we would not support any form of 'framework bill' which sought to stagger the process by leaving important details to be determined at a later date through regulations without the full requisite scrutiny process of primary legislation. This would only increase risks, and be likely to create more issues for students and providers than it seeks to address.

Agenda Item 4

CYPE(5)-23-19 - Paper 4

Ymateb gan: Coleg Caerdydd a'r Fro
Response from: Cardiff and Vale College

As an FE college delivering HE through franchise agreements with our University partners, we are not required to return a Fee and Access Plan so the Act has not directly impacted us. However we would like to make the following observations in response to the consultation:

The Act seems to have ensured robust and proportionate regulation of institutions in Wales.

The introduction of the QAA Gateway Review has provided the platform for Cardiff and Vale College to deliver Higher Education courses without the need for franchise. This will enable the College to meet the needs of the region and develop higher level qualifications in vocational areas. This is a major step forward for CAVC and the FE sector.

To date, the arrangements set out in the Act have not impacted greatly on the College, due to the relationship and arrangements in place with HEI partners.

The college supports the changes to the Fee and Access plan arrangements, and the fee cap in Wales.

What is still unclear however, is whether a non-Welsh domiciled student can receive funding to study a higher level course in Wales, as this is the case when the situation is reversed. I.e. will the Office for Students fund an English student to study a HND with Cardiff and Vale College?

Agenda Item 5

CYPE(5)-23-19 – Paper 5

Ymateb gan: Undeb Prifsgol a Choleg Cymru Response from: University & College Union

The University and College Union (UCU Wales) represents almost 7,000 academics, lecturers, trainers, instructors, researchers, managers, administrators, computer staff, librarians, and postgraduates in universities, colleges, adult education and training organisations across Wales.

UCU Wales is a politically autonomous but integral part of UCU, the largest post-school education union in the world. It was formed on the 1st June 2006 by the amalgamation of two strong partners – the Association of University Teachers (AUT) and the National Association of Teachers in Further and Higher Education (NATFHE) – who shared a long history of defending and advancing educators’ employment and professional interests. In providing our response we have followed the questions set out by the committee in our submission.

1. We welcome the opportunity to respond to the consultation on the Scrutiny of the Higher Education (Wales) Act 2015. The original description of the HE (Wales) Bill 2014 stated that “It will provide a revised framework for HE in Wales regulatory framework by providing the Higher Education Funding Council (HEFCW) with the necessary functions to assure the quality of higher education provision, enforce tuition fee controls and fee plan requirements” in institutions which are designated for student support.

UCU remain concerned that the legislative framework does not provide HEFCW with the necessary tools to ensure quality and oversight of financial probity within the HE sector in Wales. In our view HEFCW, or indeed the new post 16 body, needs to be supported with a regulatory framework which allows those tasked with such oversight to intervene in the early stages where a problem is detected. The complexity of the regulation in our view prohibits such early intervention, which from our perspective results in quite disastrous consequences for staff working in the sector, and as a result for the quality of education and research. We would submit that you consider the consequences of the failures of governance since 2015 across the HE sector in Wales (see for example Aberystwyth, Bangor, Swansea). Good governance underpins the ability

of institutions to serve the needs of students, local communities and wider society. It is also essential to the creation of an academic community in which the professionalism of staff is respected.

Further, the requirement placed upon HEFCW to be responsible for the quality of the total provision of an HE provider, including when the registered provider is an FE Institution, is problematic. This is because it means that the quality of provision in these FE Institutions will be inspected by two different bodies with statutory powers to do so- QAA and Estyn. The QAA, whom HEFCW contract to do the quality work on their behalf have significantly differing methods and approaches to Estyn- which is ostensibly a schools focused body and, in our view, adds little value to FE quality and the student experience in Wales. They inspect provision and, in our view, do very little to improve the practice of delivering learning in the education sector. FE lecturers tend to have a dual professional role - that of teaching and that of their professional expertise which is why they are employed to lecture. This fact is crucial to the future development of the workforce in Wales, but is overlooked by most policy developments and those public sector bodies who are tasked with ensuring quality in the current FE sector.

UCU have been lobbying for change for some time to get this fact recognized properly in relation to the qualifications needed to teach in FE and the need to update professional practice by keeping up to date with the sector from which staff entered teaching. High quality teaching and learning stems from investment in staff who have the status of highly trusted professionals. To date we have had little impact on this whole debate, but we do intend to pursue it until such time as the Government recognise these factors and address them with the same vigor that they are demonstrating in the changes needed to deliver the new curriculum in the schools sector.

This issue will need to be addressed before drafting the White Paper for the new post 16 sector- are we going to maintain two differing systems of quality in the one sector? We sincerely hope not. We submitted our views on quality to the Weingarten review and those can be found [here](#).

There are a number of omissions in the Act: there is no regulation as we understand it covering (i)part time HE provision or fee levels (ii)postgraduate provision (iii)courses in Wales franchised from English institutions (iv)international provision delivered overseas (remember the debacle that was the University of Wales under the then VC, Professor

Marc Clement). Finally, the Act doesn't cover those students who decide for whatever reasons to study at an institution in England.

2. UCU are not required to act in relation to the HE Act. As we have tried to illustrate, it is the consequences of the actions of employers- the HE sector institutions - and the regulatory levers which are available to HEFCW which create the problems we as a professional body need to deal with. This causes significant issues for staff and students, especially in relation to the failure of institutional governance and the inability of HEFCW to respond flexibly, as a consequence of complex specifications within the Act which we believe need to be looked at in detail by your committee.

An example for the committee to consider: Since devolution there has been significant re-structuring in Wales of both HE and FE institutions. The reconfiguration and collaboration agenda – a key education policy of successive governments for many years- was a reasonably successful way to bring institutions together, to create economies of scale and to encourage and foster collaboration to improve the experience of learners and ensure a breadth and depth to the curriculum on offer to learners across all parts of Wales. The recent Reed review of research in Wales also pointed to the need to encourage and foster collaboration more widely to ensure Wales can continue to develop its research profile in the UK and internationally. Yet the HE Act requires that HEFCW use Fee and Access plans which are developed at an institutional level, bear no relation to past government policy on re-configuration and collaboration, and effectively set up institutions in both the FE and HE sector to compete with one another for students. It fails to require institutions to collaborate to provide strategies which address the governments' broader education policy agenda, for example Widening Access.

If the new commission is going to be able to function effectively it must remain at 'arm's length' from the Government and it must not be hide bound by a regulatory framework which actively undermines government policy in many areas. Policy and regulation must start to cohere.

3. UCU have nothing to offer in relation to this question.

4. UCU have grave concerns about the statement on value for money. We do not believe that the fees raised by the tuition fee regime are spent appropriately by institutions or that spending decisions are always in the best interests of learners and the staff who deliver post 16 education in

Wales. At the heart of our concern is that this Act and a wholesale failure of HE governance will not protect the sector for future generations.

5. UCU do not have the resources to list the many failures of this Act and the consequences of the interventions of HEFCW, but we are more than happy to give evidence to the committee in one of your sessions should you wish to discuss our views further.

6. UCU are of the view that lessons must be learnt before the White Paper is drafted for the new Commission. Our response to the technical consultation can be found [here](#)

7. We would like to see much more genuine engagement with key stakeholders before the White Paper is drafted. If the government fails to do this once they have a version of the White Paper that they are happy to share, confidentially if necessary, then we run the significant risk of another failure to match regulation with policy as it affects post 16 education. The current structures within government still, in our view, operate in silos and their policy leads need to work much more collaboratively with the sector, including the trade unions which represent and work within the post 16 education sector.

This is NUS Wales' response to the Post-Legislative Scrutiny consultation on the Higher Education Act (2015).

Consultation Response

Question One

Has, or is the Act, achieving its policy objectives, and if not why not?

A key policy objective of the act was maintaining a strong focus on fair access to higher education, through the mechanism of Fee and Access Plans.

There has undoubtedly been a change in the demographic make up of students in Welsh higher education institutions, however by assessing the numerical changes alone, we cannot draw the conclusions that it is directly to do with the HE Act, or glean information about the experience of these students.

There has been a 0.7% increase in the total number of students taking up higher education between the years 2015/16 and 17/18¹, however a net increase in and of itself is not proof that participation in education has broadened. There have been significant increases in Black² students in higher education, with Bangladeshi students increasing by 135%, Black Caribbean Students by 31% and those who defined their ethnicity as Black Other by 29%.³ While an increase in the racial diversity of education is to be welcomed, there also needs to be discussion of the student experience, particularly concerning Black

1

https://www.hefcw.ac.uk/documents/about_he_in_wales/equality_and_diversity/Equalities%20Monitoring%20-%201718.pdf

² Black is used here in line with the NUS Black Students' Campaign definition, to

attainment gaps, as part of work on access and participation.

Similarly, the number of students who declare disabilities has increased, particularly those who declare an anxiety or mental health disorder (47% increase.)⁴ However, this increase in declarations does not necessarily mean that the number of students with mental health conditions has increased, rather can only guarantee that the number of students who feel able to declare them has. This could also be attributed to the cultural shift around declarations of mental health conditions.

To explore this area more deeply, we would recommend that an Equality Impact Assessment of the effects of the Act is carried out as part of the Post-Legislative Scrutiny process.

Where there have been demographic changes, it is important that students are supported not just to enter university, but to achieve their full potential while there. The regulator should emphasise to providers who wish to grow their admissions that it is irresponsible to recruit students without the intention of supporting them, and this should not be counted as action on widening participation. There should instead be a renewed focus on student support and retention, as well as a recognition that the weight of widening participation must be lifted

mean students of African, Asian, Arab and Caribbean descent

3

https://www.hefcw.ac.uk/documents/about_he_in_wales/equality_and_diversity/Equalities%20Monitoring%20-%201718.pdf

⁴ Ibid.

equally across a diverse sector, from elite and specialist institutions to modern universities.

Question Two
How well are the Act's overall arrangements working in practice, including any actions your organisation has had to take under the Act?

The Act will only be able to be delivered to its full potential if students' unions are involved centrally in its delivery and governance, both locally and nationally.

NUS Wales is particularly interested in the delivery of Fee and Access Plans, and the ability of students' unions to engage with these.

There is currently varied practice across the sector. There should be a baseline of student involvement, and assurances from the regulator which incentivise providers to have to involve students' unions, for example a union sign off of the plan, submitted independently of the provider to evidence that there has been sufficient engagement. While HEFCW's guidance on the topic is useful, there should be an assurance to ensure that it is followed and that the expertise of students' unions is respected and that they are involved throughout the process.

While there are pockets of good practice, it is the feeling that Fee and Access Plans have become less important to institutions as they have become part of the regulatory architecture and the amount of "new" fee income they have to spend stabilises; this should be remedied.

Students' unions need to be involved from the beginning of the process and be able to mesh it to their existing work. HEFCW Guidance states that institutions should implement good practice by following the [Wise Wales Statement on Partnership](#), consulting student representatives for their knowledge and

expertise, taking heed of student campaigns and involving students and their unions in the monitoring of the Fee and Access Plan. However, there is currently a problem with late-stage engagement of students' unions, which leads to the feeling that they should be signing off a complete Plan rather than engaging in the process of development.

Some students' unions do require capacity building to be able to fully engage with the work of their institutions and in particular their Fee and Access Plans; we would recommend that central funding is made available to develop this through project work.

While there is the system of HEFCW-generated targets steering the work of the Fee and Access Plans, these should be developed in conjunction with providers and their unions, particularly drawing on the expertise of students' unions to understand the student populations and student groups who could benefit from interventions.

There has to be an incentive to make deep-rooted and long-lasting change rather than superficial initiatives which hit targets, or one off projects which are defunded by the next cycle of funding.

Fee and Access Plans regularly reference their institutions Student Charters; it is a positive impact of HEFCW's guidance that these have been developed in partnership between institutions and unions, however they should be regularly reviewed and updated locally, and the principles of partnership working should frame the work of HEFCW.

Question Three

Are the costs of the Act, or your organisations own costs for actions taken under the Act, in-line with what Welsh Government stated they'd be?

There is currently, primarily, a time cost to students' unions to engage with the mechanisms of the Act, which could be better spread throughout the year. The student engagement work needed from students' unions for institutions to submit an effective fee and access plans, for example intelligence gathering student opinion and experience, analysing the barriers which students face in education and enhancements to teaching and learning form the bread and butter of the work that students' unions do, and were they involved from the beginning of the cycle of preparing the Fee and Access Plan it would lead to a lesser burden of work for the students' union and likely a higher quality of engagement.

It is notable that the current timeline for Fee and Access Plans means that their time for final sign off and adjustment comes in the Spring when students' unions are at capacity, running their elections. We would recommend that the timelines were reviewed to avoid this.

Question Four

Has the Act achieved value for money?

NUS Wales is not submitting an answer to this question.

Question Five

Have there been any unintended or negative consequences arising from the Act?

The greatest perceived unintended consequence of the Act is the incentive for universities to engage with regulatory interventions superficially, for example by growing their student population as a

consequence of targets in Fee and Access Plans, without thought given to the support that different student demographics need.

In some providers, the short time span of Fee and Access Plans has led to a culture of short-term project funding for one year projects, which are then 'faded out' when no new money becomes available; rather than this approach, universities should be incentivised to embed long-lasting change in partnership with their students' unions and deliver retention-based activities across the whole student lifecycle.

Question Six

Are there any lessons to be learned from the Act and how it is working in practice that may be relevant to the proposed Post-compulsory Education, Training and Research (PCETR) Bill?

As Post-Compulsory Education reform moves forward in Wales, there should be a high baseline for the involvement of student and their unions in the design, development and delivery of their education and their institutions, through a partnership approach. This should be an incentive for further education providers and those with less developed unions to build their capacity, with support from HEFCW and, subsequent to legislation passing, a new tertiary education body.

The current student voice structures in Welsh further education institutions are not independent charities and see significantly lower levels of engagement and support than their higher education counterparts. This should be remedied. Further education student voice structures within a new landscape of post-compulsory education, training and research will require training and committed funding from central government in the short term transition period, and subsequent to formation, via the tertiary education body. This will allow

students' union capacity building in further education, with the aim of a parity of representation between higher and further education providers across Wales. This will ensure not just that students are empowered to have a voice in their education, but that this voice is effective and independent, and that unions are able to do work in building communities which we know improves participation and retention.⁵

recommend further evaluation of new legislation is done to match this.

Furthermore, as the PCET process moves forward, we believe it would be effective for the Welsh Government and the funding body to frame this work with a comprehensive, values-based national vision for education, developed using the same principles of partnership with students that are expected of Welsh higher education institutions. NUS Wales currently operates on the assumption that this vision would be framed around education which is accessible to all, flexible and portable in its delivery, and delivered and designed in partnership with students and their unions, informed by the Wise Wales Principles of Partnership.

Question Seven

Are there any lessons to be learned from how this Act was prepared in 2014/15 (formulated, consulted on, drafted etc)?

Any legislative development in education should have student voice front and centre; just as partnership is expected in the delivery and enactment of legislation, it should be expected practice when developing regulation at the national level.

While the lifecycle of the average higher education student is three years, we would

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<https://www.heacademy.ac.uk/knowledge-hub/building-student-engagement-and->

[belonging-higher-education-time-change-final-report](#)

Agenda Item 6.1

CYPE(5)-23-19 - Paper to note 1

Julie Morgan AC/AM
Y Dirprwy Weinidog Iechyd a Gwasanaethau Cymdeithasol
Deputy Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-L/JM/0484/19

Lynne Neagle AM
Chair
Children, Young People and Education
Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

| July 2019

Dear Lynne,

I would like to thank the Children, Young People and Education Committee for their scrutiny of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill to date.

Annex 1 to this letter provides further information on a number of points your Committee has requested further clarity on, following my evidence session on 12 June 2019.

I trust the Committee will find the information provided helpful during your continued scrutiny of the Bill.

Best Wishes
Julie

Julie Morgan AC/AM
Y Dirprwy Weinidog Iechyd a Gwasanaethau Cymdeithasol
Deputy Minister for Health and Social Services

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

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

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ANNEX

1. Information on the contacts made with parents, including details of the messaging used relating to parenting, before the Healthy Child Wales Programme's 3.5 years pre-school point

The Healthy Child Wales Programme (HCWP) sets out what planned contacts children and their families can expect from their health boards from maternity service handover to the first years of schooling (0-7 years). At these planned contacts health visitors may provide parents with appropriate [Parenting. Give it Time](#) resources, which provide a range of information, including on brain development, potty training, tantrums, mealtimes and bedtimes. [Bump, Baby and Beyond](#) also provides parents with a range of information including on pregnancy, breastfeeding, weaning, mealtimes, sleeping, temper tantrums and toilet training.

The Welsh Government expects that every child and family will be offered the HCWP. The programme underpins the concept of progressive universalism and aims to identify a minimum set of key interventions to all families with pre-school children, irrespective of need. For some families there will be a need to increase intervention to facilitate more intensive support.

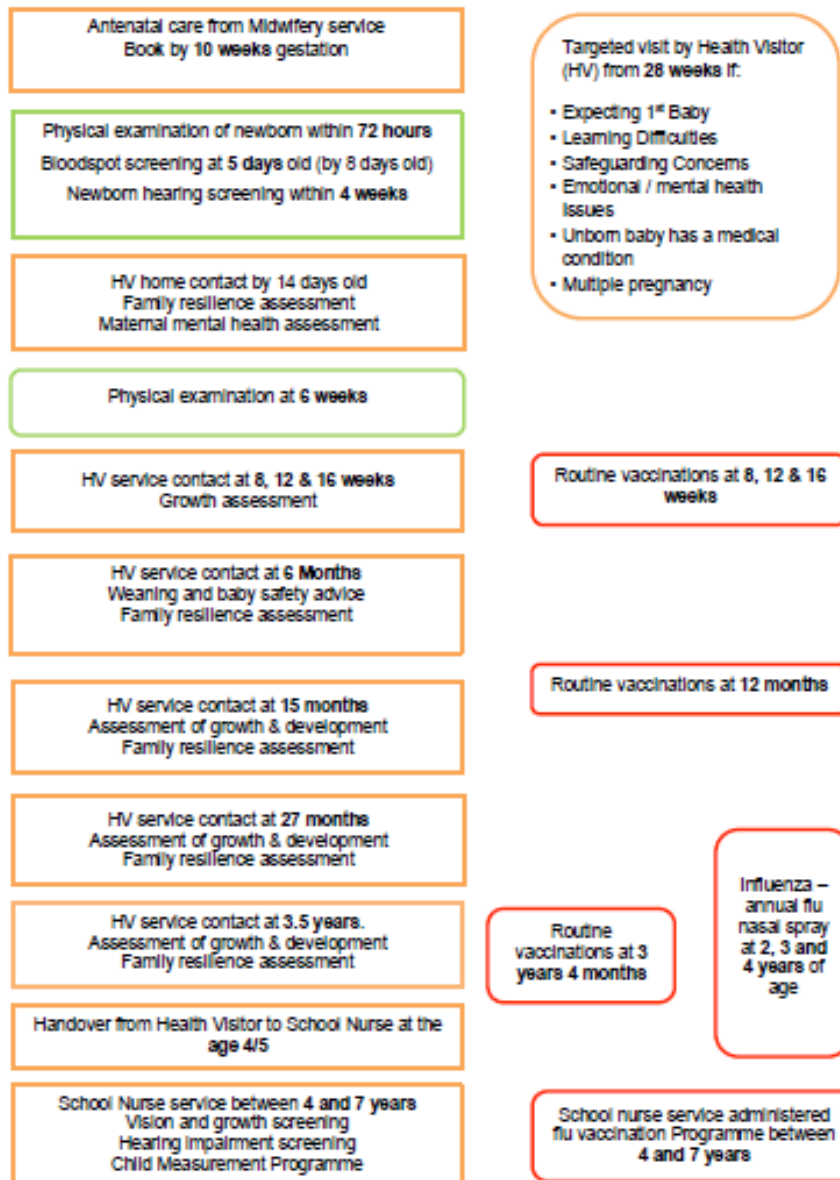
The programme aims to achieve the following key priorities:

- Deliver key public health messages from conception to 7 years, so that families are supported to make long term health enhancing choices (e.g. advice on breast feeding and healthy weaning, smoking and substance misuse; and prevention of Sudden Infant Death Syndrome through safe sleeping advice)
- Promote bonding and attachment to support positive parent-child relationships resulting in secure emotional attachment for children (e.g. parenting support programmes, including assessment and promotion of parent-baby interaction)
- Promote positive maternal and family emotional health and resilience (e.g. looking at the development of the child and consideration of wider influences such as social, economic and environmental factors and whether the child and family need additional support to address areas of concern.)
- Support and empower families to make informed choices in order to provide a safe, nurturing environment (e.g. Positive behaviour change (smoking, substance misuse, diet, dental health etc.)
- Assist children to meet all growth and developmental milestones enabling them to achieve school readiness.
- Support the transition into the school environment.

- Protect them from avoidable childhood diseases through a universal immunisation programme.
- Ensure early detection of physical, metabolic, developmental or growth problems through an appropriate, universal screening programme.

Summary of HCWP Universal Scheduled Contacts for 0-7 year olds

The following **screening, immunisation and monitoring and supporting child development (surveillance)** contacts are what each child and parent can expect to receive.



Further detailed information on the expectations around each contact session can be found in the guidance which accompanies the Healthy Child Wales programme <https://gweddill.gov.wales/docs/dhss/publications/160926healthy-children.pdf>

2. A note on the mapping exercise being undertaken in relation to the availability of early years support for parents, to include detail of the mapping process, timescales, and how findings will be taken forward

The mapping exercise, to scope what parenting support is currently being delivered in Wales, will be undertaken during the summer with internal and external stakeholders. The findings of the exercise will determine what, if any additional parenting support, advice and information is required to support behaviour change alongside the Bill, as well as identifying any gaps in current provision. The findings will be reported to me by the end of September.

The findings will be shared with the Parenting Expert Group, which will advise the Implementation Group on its parenting support work stream. The group will be tasked to consider and determine what additional information and support, if any, may be needed for parents, those acting in loco parentis, and professionals who work with parents and families. The inaugural meeting will be held in the autumn, once the mapping has been completed, and will meet regularly from then on.

In addition, we will enhance the support we already provide by committing to expand the age range covered by our Parenting. Give it Time campaign, from 0 - 7 years of age to 0 - 18 years of age, in order to support parents and families with older children. We will use the expertise of the Parenting Expert Group to support us with the expansion, including the development of new resources as required.

3. An update on the Welsh Government's latest work on out of court disposals, including estimated costs

Decisions around the use of out of court disposals are a non-devolved responsibility. We will continue to work with the Home Office, Ministry of Justice, CPS, Police and Police and Crime Commissioners to consider suitable and proportionate interventions.

As I said in Committee on 12 June the Strategic Implementation Group held their first meeting on 14 May. The group agreed to establish a dedicated work-stream to consider out of court disposals and diversions. This task and finish group, will meet on 11 July, and will take this detailed work forward overseen by the Strategic Implementation Group. There are a range of options the group will consider, ranging from a leaflet or on-line e-learning 'course' to a face-to-face group session. Costs will vary according to which option or options are agreed upon.

Providing a firm estimate of costs of a diversion scheme is, therefore, difficult at this stage because the details of what will be delivered; who will deliver it and how it would be delivered are to be determined.

To provide the rough costs below, we have estimated that approximately 548 individuals may be directed to a diversion scheme per annum. This is based on an assumption that the estimated figure of 274 cases the police currently investigate at the reasonable punishment level, set out in annex 7 to the Explanatory

Memorandum for the Bill, will increase by 100% after the Bill comes into force¹. Paragraphs 8.34 to 8.36 of the Explanatory Memorandum explain the differences between Wales and New Zealand which might have an effect on the rates of physical punishment of children; however, this data gives us the best estimates possible in the current circumstances.

The following options give an initial estimate of potential annual costs depending on which option, if any, is selected:

- £8,000 for 2,500 copies each of 3 bilingual (English and Welsh) booklets appropriate for different age ranges and translated into 10 community languages²;
- £118,000 for a half day group based course³; and
- £45,000 for individuals to access an existing evidence-based on-line parenting course⁴.

These costs are based on existing resources and provision which may need to be adapted and do not include police and other operational and administrative costs (e.g. for monitoring compliance with conditions). Further work to establish these costs will be undertaken by the relevant task and finish group.

Caution must be taken in making assumptions and cost projections based on these cost estimates, which are intended to give an approximate estimate only. The most appropriate models of delivery, guidance, funding and resourcing arrangements will need to be negotiated through our dedicated task and finish group and with partners in the Home Office and Ministry of Justice.

¹ The projected 100% increase is based on data from the New Zealand police force. Their data showed that in the five years following legislation prohibiting physical punishment, compared to the baseline, reports to the Police of child assaults, including smacking and minor acts of physical discipline, occurred on average twice as often each quarter than they had before the legislation (a 100 per cent increase).

² This is based on the cost in financial year 18/19 of printing the ['Parenting Give it Time' booklet, Supporting and Guiding Children](#) and translating it into 10 community languages. We would assume that 3 different booklets would be needed to cater for parents with children of different ages. Cost assumes content will be written, designed and Welsh translation provided by Welsh Government staff. Translation into community languages would be out sourced. Additional copies would be available for subsequent years, as printing costs go down the more copies that are printed.

³ This is based on the [Cafcass Cymru – Working Together for Children \(WT4C\) half-day course](#) which costs £150 per person. The half day course helps parents understand how best to work together to support their children during and after separation. It is not suitable for our needs but gives an idea of cost to deliver a half-day course. £35,000 has also been included in this total to account for development of a bespoke half-day course, approximate costs for training and translation of content and materials.

⁴ The basis of this cost is the fee to complete the [Triple P Online evidence based web-based parenting intervention](#). It includes 8 modules which focus on positive parenting principles and parenting strategies. The cost per participant is £72.00 but it is only available in English so an estimate for translation costs has also been included. Providing this cost estimate does not imply this on-line course would necessarily be used. Any procurement undertaken by Welsh Government would follow normal Welsh Government procurement rules.

4. Figures relating to the frequency with which ‘non-conviction’ information has, and is anticipated to be, disclosed;

A note providing further detail on the discussions the Welsh Government referred to holding with the Disclosure and Barring Service (DBS) in relation to the Bill and the disclosure of ‘non-conviction’ information

As I explained in my evidence to the Committee on 12 June the disclosure of non-conviction data is not confined to the offence of common assault against a child. An Enhanced Disclosure and Barring Certificate can include relevant and proportionate non-conviction information (for example details of arrests, incidents for which individuals were never arrested, charged or prosecuted or where they were found “Not Guilty” in a court of law, in certain circumstances); as well as convictions and cautions.⁵ The police have a legal responsibility to disclose such information in accordance with Part V of the [Police Act 1997](#) (section 8). An enhanced certificate would be required for certain occupations such as work with children or vulnerable adults or roles in certain licensed occupations or positions of trust (e.g. police officers, solicitors).

The [Protection of Freedoms Act 2012](#), introduced a number of safeguards relating to the disclosure of non-conviction information. [Statutory Disclosure Guidance](#), issued by the Home Office⁶, sets out the principles chief officers should apply in deciding what, if any, information should be provided for inclusion in an enhanced check. The guidance sits alongside the [Quality Assurance Framework](#) (QAF) which is a standardised decision-making process and more detailed guidance covering the disclosure of local police information, drawn up by the police service and the Disclosure and Barring Service (DBS). The objective of the QAF is to deliver a standard process and audit trail across all Disclosure Units when considering information for disclosure under 113B (4) of the Police Act 1997. Disclosure Unit compliance with the QAF process is assessed by the Standards and Compliance Unit (SCU). An overview of the structure and function of the QAF is set out in [“Quality Assurance Framework: An applicant’s introduction to the decision-making process for Enhanced Criminal Record Checks”](#).

Before information held locally, is disclosed by the police it must pass certain tests which are contained within the Statutory Disclosure Guidance. These are related to considerations of whether the information is reliable and relevant and whether it is proportionate to disclose the information considering the likely impact on the applicant. The Police must record their thought process, their “rationale”, and explain how and why they reached all of their conclusions and decisions. The information is assessed by the Chief Officer to determine whether it is reasonable to believe that it is relevant and whether, in their opinion, it ought to be disclosed. Information should only be disclosed if it meets both of those requirements. Consideration is also given to the Human Rights impact of disclosure and non-disclosure on the applicant and on the vulnerable group/groups associated with the application.

⁵ See Annex 5 of the Explanatory Memorandum for further information

⁶ The guidance is issued under section 113B(4A) of the Police Act 1997

If the police disclose any non-conviction information as part of an enhanced check, the applicant is able to challenge this decision by way of an application to an Independent Monitor⁷. The Independent Monitor assesses whether or not police applied QAF correctly when processing an application. In accordance with section 119B of the Police Act 1997 (1997 Act), the Independent Monitor must also review a sample of cases in which police non conviction information is included, or not included, on enhanced criminal record certificates. The purpose of these reviews is to ensure there has been compliance with Home Office Statutory Guidance on disclosure and Article 8 of the European Convention of Human Rights (ECHR).

We do not expect the Children (Abolition of Reasonable Punishment) (Wales) Bill to necessitate any changes to this process. Any changes made would have to be within the confines of existing UK primary legislation.

Further to recent discussions my officials have had with the DBS, in the year 18/19 in Wales:

- 2,582 enhanced/standard DBS applications were despatched;
- Of these 2,536 or 98.22% were despatched clean (i.e. there was no recorded information of any sort);
- 44 enhanced/standard DBS applications were despatched which contained information on convictions/cautions;
- 2 enhanced DBS applications were despatched containing non-conviction data (Local Police Force 'approved' information).

As this data applies to all offences and is not limited to 'assault against a child' we do not expect the Bill to have an appreciable impact on the disclosure of 'non-conviction' information.

5. How will the Welsh Government ensure this Bill protects the youngest children who are unable to voice their experiences?

The Bill supports the Welsh Government's commitment to create conditions to give every child the best start in life, and enable them to fulfil their potential⁸. [Prosperity for All – the National Strategy](#) identifies the early years as a Welsh Government priority, highlighting that an individual's experiences in childhood play a significant part in shaping their future and committing to legislation to ban the physical punishment of children.

As outlined in the [Children's Rights Impact Assessment](#) the prohibition of the physical punishment of children is consistent with the Welsh Government's commitment to children's rights under the [United Nations Convention on the Rights of the Child](#) (UNCRC). It fits with the lead taken by the Welsh Government in setting our policy for children and their families firmly in the context of the UNCRC. This commitment is enshrined in legislation through the [Rights of Children and Young Persons \(Wales\) Measure 2011](#).

⁷ As legislated for in section 82 of the Protection of Freedoms Act 2012

⁸ Programme for Government *Taking Wales Forward – Ambitious and Learning*
<https://beta.gov.wales/sites/default/files/publications/2017-08/taking-wales-forward.pdf>

As set out in the [Equality Impact Assessment](#) research suggests that children aged between two to nine experience physical punishment more frequently than children of other ages. The use of physical punishment appears to peak for children between the ages of three and five⁹.

The defence of reasonable punishment, which can apply to the actions of parents, carers, guardians or those acting in loco parentis in any unregulated settings including places of learning, worship, play, leisure, in the home or any other location, will no longer be available. The intended positive impact of the Bill is that younger children will be less likely to be physically punished and will therefore have their rights respected and be protected from the negative outcomes associated with physical punishment.

As currently happens, I would expect professionals, including those in health, education and childcare to be sufficiently tuned in to the voices of young children and have an awareness of changes in behaviour or other signs of distress which may indicate a family needs extra support. As is the case now I expect such staff to follow established procedures if they do have any concerns about a young child. This Bill does not change that.

I am reassured to hear from childcare settings and health visitors that our [‘Parenting. Give it Time’ resources](#) are being offered to parents at appropriate stages of their child’s development. These provide advice to parents on positive parenting and a range of common parenting concerns including on tantrums, potty training and biting. Alongside the Bill, information and face to face support (i.e. through health visitors, Flying Start and Families First) will help promote culture change in reducing the acceptability and subsequent use of physical punishment of any child, of any age taking place in Wales.

6. What assessment has been made of whether women, particularly vulnerable women, will be affected disproportionately by this Bill given that they are the primary care giver in many cases?

The [Equality Impact Assessment](#) provides a detailed and thorough assessment of the impacts of the Bill on a broad range of individuals with protected and other characteristics, including women.

Some research has explored whether mothers and fathers differ in their use of physical punishment. Evidence appears to be somewhat contradictory, but a common finding reported in the literature is that mothers are more likely to use physical punishment than fathers. Some differences, however, may occur because some of the research was conducted some time ago when mothers tended to have a greater caretaking role and therefore, compared to fathers, may have spent more time with their children¹⁰. In a comprehensive review of research on the physical

⁹ Please see the Equality Impact Assessment for a full list of references

¹⁰ Please see the Equality Impact Assessment for a full list of references

discipline of children by the [University of Otago](#)¹¹, for example, much of the research cited was conducted in the late 1990s. Nobes et al (1999)¹² concluded that rather than being a mother/father distinction, use of physical punishment is related to parental roles. When these roles were more 'equal' parents administer physical punishment to equal extents.

Although research has identified certain characteristics of parents or children as a risk factor in the use of physical punishment, a parent's decision to use physical punishment is complex. It may depend on a number of factors including personal choice and experience; family structure; the individual child and adult; stress and society/cultural norms. It is also important to recognise the limitations of some of the research around parental physical punishment which is a sensitive and complex area. Many studies rely on retrospective self-reporting from parents making it harder to accurately measure the use of physical punishment. Also most studies have not taken place in Wales and the findings may not necessarily transfer to the Welsh context.

The positive impact of the Bill is that all children irrespective of the gender of their parent or any other characteristic would have the same protection from physical punishment if the law is enacted.

The Welsh Government already provides information, advice and support for parents that include alternatives to physical punishment. As part of awareness raising existing parenting support will be promoted to parents through the 'Parenting. Give it' Time campaign and other initiatives.

Our [Parenting Support guidance](#) includes specific sections highlighting the issues faced by parents whose situation may make them vulnerable (e.g. who have experienced domestic abuse, mental health problems or because they are young). The guidance provides practical strategies for those delivering parenting support to help them adapt services to ensure parents' needs are met.

¹¹ Smith, A. B., Gollop, M. M., Taylor, N. J., Marshall, K. A. (2005) "The Discipline and Guidance of Children: Messages from Research," A Review of Research Literature for the Office of the Children's Commissioner by the Children's Issues Centre, University of Otago.

¹² Nobes, G., Smith, M., Upton, P., & Heverin, A. (1999). "Physical punishment by mothers and fathers in British homes". *Journal of Interpersonal Violence*, 14(8), 887-902 - research cited in Smith et al (2005)– reference provided at footnote 11.

- 7. This Bill's Equality Impact Assessment says: "...there is some limited evidence that children from some ethnic groups may experience physical punishment more frequently due to the parents' ethnic or cultural origin"; "Minority ethnic parents face a number of different barriers to accessing services including discrimination; language and cultural barriers and a lack of awareness of services and how to access them" and that Gypsy and Traveller families "may be reluctant to use services for fear of stigma and prejudice; have a lack of trust in service providers and may also have limited literacy". Please can the WG outline how significant an issue it believes this to be, and provide practical examples of how it will be mitigating these potential impacts?**

We have given detailed consideration to the impact of the Bill on people in protected groups and how these could be mitigated, and this is set out in detail in the [Equality Impact Assessment](#).

There is some limited evidence that children from some ethnic groups may experience physical punishment more frequently due to the parents' ethnic or cultural origin. On the whole the research into physical abuse and punishment in minority and ethnic groups is inconclusive and often contradictory. Ethnicity can be confounded with other variables, such as socio-economic status, which make it difficult to establish the influence of ethnic group status¹³.

This legislation will ensure children and young people from all ethnic groups would have the same protection from physical punishment if the law is enacted.

Our family support programmes, Flying Start and Families First take an individualised, tailored and flexible approach to support parents and promote their engagement. Our '[Parenting. Give it Time](#)' parenting campaign provides practical tips and advice to parents on encouraging positive behaviour, boosting their child's confidence and supporting their development. Information is provided through a dedicated website, Facebook page and printed resources. Tips and advice on common parenting concerns including on tantrums, bed times, bath times and potty training is available in ten minority community languages.

Our Parenting Support guidance sets out the Welsh Government's expectations on how parenting support should be provided. The guidance highlights practical strategies for facilitating the engagement of those less likely to access support, including those from Gypsy and Traveller communities and other ethnic groups.

The Welsh Government will use existing networks and trusted agencies who work with parents from minority ethnic groups to raise awareness of the change in the law and consider whether extra support, advice and information may be needed.

In our communications work we will be looking at effective messages for a range of audiences, including for those from black and minority ethnic communities, recognising where individuals have different needs, rather than expecting that one message will work for everyone.

¹³ Please see the Equality Impact Assessment for a full list of references

Agenda Item 6.2

CYPE(5)-23-19 - Paper to note 2

Kirsty Williams AC/AM
Y Gweinidog Addysg
Minister for Education



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA(P)KW/2034/19

Lynne Neagle AM
Chair
Children, Young People and Education Committee
National Assembly for Wales
Cardiff.
CF99 1NA.

1 July 2019

Dear Lynne

During my evidence session to Committee on 20 June on progress against the Mind Over Matter Report we discussed adverse childhood experiences (ACEs) and the training the ACE Hub has provided to teachers. I agreed to provide a note to the Committee on the numbers of schools and teaching staff who have received ACE training.

The ACE Hub has provided the attached information. However the Hub operates a cascade model, whereby train the trainers, ACE Ambassadors and Leaders of Learning are up-skilled to deliver training to others in their area. The pilot area for this work is the EAS Consortium, where we expect all primary schools to have received Phase 1 training by the end of the school summer term. EAS has been collecting data as they will be formally evaluated for Phase 1. The Hub does not collect data on how many staff currently receive this in each area of Wales. To obtain this data the Hub will need to ask individual trainers, schools and consortia and I have asked my officials to liaise with the Hub to see if, and by when, this data can be made available. It is not mandatory for schools to receive training, though all schools will be offered the opportunity. Each of the consortia areas are working with the Hub to agree a model that works for their schools. Training is available to all staff working in the school setting and has also been delivered to Estyn Inspectors and others. I will provide a further update to the Committee in due course.

However, I also want to point out that the ACE training, whilst important, is just one aspect of training being delivered. We are looking to build on this as part of our whole school approach so that we can meet, as far as we can, the Committee key recommendation that everyone who cares, volunteers or works with children and young people is trained in emotional and mental health awareness. In this respect the CAMHS school in-reach pilots are also contributing to this agenda by training school staff to identify and understand low level mental health issues. The Minister for Health and I have indicated that we are keen to roll out some of the early good practice arising from the pilots. You are also aware that we are engaging with universities to develop child development, mental health and additional learning needs training modules.

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

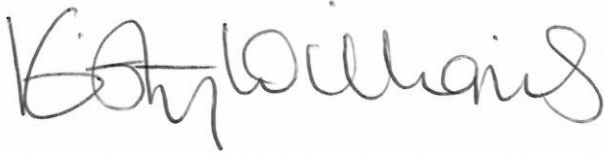
We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Taken together all this activity will contribute to professionals having a better understanding of the issues children face and go a considerable way towards meeting the Mind Over Matter recommendation.

I know you will maintain your scrutiny of our approach and contribute to our work in this area, both as Chair of the Committee and member of our Task and Finish and Stakeholder Reference Groups.

I am copying this letter to the Minister for Health for information.

Yours sincerely

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

Kirsty Williams AC/AM

Y Gweinidog Addysg
Minister for Education

ACE Training

The Adverse Childhood Experiences Support Hub is using a train the trainer cascade model with each education consortia. EAS is the pilot consortium and their approach and data is the basis for the evaluation of the Phase 1 training. This is due to report later in the year. EAS have committed to all schools in their region receiving the training. As EAS is the pilot consortia the Hub has accurate numbers for this area, but would need to seek information from the leads of the other consortia, and in some cases individual local authorities where they have decided not to access their training via the consortium, to get an overall picture.

What the Hub has for the others, are numbers of ambassadors and other staff they have trained to deliver the cascade training to schools in each area. Training events are completed in INSET days. Training is not mandatory so is based on the commitments made by each consortia, or local authority based on their perceived need and availability of time for INSET.

Wales view

Since the ACE Support Hub started, over 300 ACE Ambassadors (champions for driving the ACE agenda forward in schools), teachers and schools leads have been trained, 140 Estyn inspectors and challenge advisors, and 95 'Train the Trainers'.

EAS

256 schools have received Phase 1 (awareness), with 15 left to go which will be completed by the EAS lead by the end of the summer term, ensuring that by September 2019 all EAS schools have had ACE Awareness training.

70 ACE Ambassadors have been trained as trainers to deliver Phase 1 and 2 (applying the knowledge) across the clusters of the 271 schools in total. Phase 2 is currently being cascaded out.

ERW

50 Cluster Leaders of Learning trained as trainers for Phase 1 and 2 – number of schools delivered unknown so far.

72 trainers trained to deliver Phase 1 and 2 across Powys schools. 50 Designated Safeguarding Officers have been trained as train-the-trainers to deliver Phase 1 and 2 across schools in Neath Port Talbot.

CSC

75 train-the-trainers trained to deliver Phase 1 and 2 across schools in CSC. All Cardiff schools have sent one trainer from each primary and secondary school to become a trainer to deliver Phase 1 and 2. 25 Spectrum Team (an all Wales programme funded by Welsh Government and delivered by teachers in primary and secondary schools, promoting healthy relationships and raising awareness about domestic abuse, sexual violence and violence against women) teachers to be trainers in Phase 1.

GWE

The ACE Hub Director will be meeting the Directors of Education in this region in July to identify a way forward for training. The Hub will be happy to deliver training via the consortium or on an individual bases if that is preferred by LAs— this is a model the Hub has used for Neath Port Talbot and Powys.

Agenda Item 6.3

CYPE(5)-23-19 - Paper to note 3

Comisiynydd
Plant Cymru

Children's
Commissioner
for Wales

By email only

Lynne Neagle AM
Chair, Children, Young
People and Education
Committee
National Assembly for
Wales
Cardiff Bay
CF99 1NA

4th July 2019

Dear Lynne,

Re: Tier 4 In-patient CAMHS Services

Thank you for your email requesting to receive a written update on themes emerging from my team's recent casework in relation to tier 4 in-patient CAMHS services.

Some of the themes emerging from recent casework include:

- No suitable provision available in Wales for a small number of vulnerable young people. This includes a young person aged 16 kept for weeks on adult wards in hospitals. Although the young person received one-to-one nursing in an individual room, we were informed that sex offenders are also patients in the same setting.
- This young person was detained under section 3 of the Mental Health Act in order to avoid discharge, even though there was some debate amongst clinicians as to whether they had a diagnosable condition. There appeared to be no other means of keeping the young person safe.
- In some cases, there have been disputes between health and social services over responsibility for young people who are not deemed to have a diagnosable mental health condition.
- Lack of a care plan for transition to adult services for a young person very close to their 18th birthday who would not be well enough to be discharged on attaining adulthood.
- An in-patient unit has been repeatedly asked to consider accommodating a young person being kept in unsuitable temporary placement. Each time the unit has stated that they are unable to accommodate as they do not meet qualifying criteria, or are deemed too high risk.
- Lack of support for families during the process of accommodating children and young people, and upon their discharge, including respite provision.



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Key concerns for me relate to the fact that our current in-patient provision has narrow capacity and this leads to children being accommodated in ad-hoc provision within Wales, or being accommodated in England or Scotland:

1. The capacity for our in-patient units to accept patients whose behaviour is deemed too challenging. These young people are instead receiving care in crisis beds designated for adult patients, or being accommodated far from home in England.
2. Absence of low-secure mental health beds for children in Wales. The very small number of children who require this provision cannot be provided for in Wales.
3. Lack of suitable provision for young people with complex behavioural and mental health needs who do not have a diagnosis of a treatable mental health disorder, but may be suicidal. They appear to require specialist care that could be jointly developed by mental health and social services, but currently tend to fall to the responsibility of social services alone in terms of seeking accommodation.

As you know, it is my believe that what is required is additional residential provision which caters for the small number of children and young people who require residential care but who do not fit neatly into the existing health or social care provision. This was reflected in my [annual report](#) recommendation published in October 2018:

I recommend that Welsh Government takes concrete steps towards commissioning new provision that can meet the care and mental health needs of the small number of young people with very challenging behavioural and emotional difficulties, for whom there is currently very little suitable residential provision in Wales.

It is my experience that both health services and social services senior staff agree that such provision is required in Wales, but there is some debate about whose responsibility it is to develop that provision.

Actions I have taken

I have visited both of the in-patient units in Wales to listen to young people and staff. I have been in touch with one of these units on multiple occasions in recent weeks in relation to 4 young people who have been in contact with my office requesting assistance, either directly, or via their families.

On 9th July, I will be meeting with senior Welsh Government officials, as well as representatives from T4CYP, ADSS, and the Youth Justice Board, to discuss the next steps for ensuring progress on making further provision available to this very

vulnerable group of children and young people. I have requested this meeting due to my concerns about lack of progress in this area.

On 7th June, I wrote to the Deputy Minister, and have suggested the following options for Welsh Government to consider in order to make progress on jointly commissioned provision for those for whom in-patient provision is not deemed the best option, or who need further care after discharge and cannot return home:

- Ring-fencing a portion of the next tranche of transformation or ICF funding.
- As a longer term solution, the government could also take steps to require health boards and local authorities to pool budgets for children's residential care, as would be possible under the Social Services and Well-being Act. This would of course require an amendment to the regulations under Part 9 of the Act, something my office called for in our response to last year's consultation on *Amendments to Partnership Regulations under Part 9 of the Social Services and Well-being Act*, but may be a powerful lever to ensure that these services are jointly commissioned and delivered. In my consultation response I noted the consistent message in the pooled funds and commissioning strategies sections of this document in relation to provision for other vulnerable groups, such as social care for older people. I believe that children and young people's well-being should form an equivalent strand in these regulations.
- An alternative would be for the government to lead on commissioning services on an all-Wales basis, using capital and revenue funds that might otherwise have been available for this work to regions, perhaps in partnership with the third sector or one region taking the national lead.

As mentioned above, I also believe that recent casework has demonstrated the need for low secure mental health in-patient beds to be made available in Wales, and I have raised this in a separate letter to the Minister, attaching my letter to the Deputy Minister.

I have not yet received a response to these letters, but I have discussed the issues in person with the Deputy Minister in our recent quarterly meeting. She agreed that this area of work should be a high priority.

In relation to the North Wales Adolescent Service, I recently met with Betsi Cadwaladr's Chair, Chief Executive and assistant director for children's services. As you are aware, there have been issues with recruitment. I am told work is taking place to improve the out-of-hours service, but that there are still significant gaps for face-to-face urgent consultations out-of-hours. The Board are

hopeful that the work taking place as a result of transformation funding may help to address some of these concerns.

In relation to safety issues in Ty Llidiard, following the tragic death of a young person in March 2018, I continue to monitor the progress of improvement works via the Chair of Cwm Taf Morgannwg Health Board. The most recent correspondence from the Chair confirmed that all the scheduled works are programmed to be completed by mid-August. However, I am told that upon completion of works to the perimeter fence which were due to be completed at the end of June, the senior clinical team and WHSSC will review the current admissions criteria. The Chair has promised to keep me updated on progress of the works, and the review of admissions criteria.

I discussed both in-patient units and arrangements for monitoring the quality of cross-border placements with WHSSC in mid-May. Both in-patient units remain at 'escalation level 3', and are therefore receiving significant input and intervention from WHSSC. With regards to cross-border placements, I have since written to the Director of Nursing and Quality to request figures for children and young people placed in England. I have also requested details of the systems for review of the quality of care of these units, which I have been told are undertaken in collaboration with NHS England and the Care Quality Commission. I am awaiting a response to this letter.

I will be visiting the in-patient service at Abergele, and the community CAMHS service base in Rhyl in July. I am happy to keep you updated on issues arising from my meetings and visits over the next month.

Yours sincerely,



Sally Holland
Children's Commissioner for Wales

Agenda Item 6.4

CYPE(5)-23-19 - Paper to note 4

Comisiynydd
Plant Cymru

Lynne Neagle AM
Chair
Children, Young People and
Education Committee
National Assembly for Wales

Children's
Commissioner
for Wales

Via email:
SeneddCYPE@Assembly.Wales

05 July 2019

Dear Lynne

Re: Elective Home Education – request for update

Thank you for your letter dated 19 June 2019 in relation to elective home education.

You will know that my tests for this policy, accepted in full by Government, remain unchanged:

1. Firstly, that all children in Wales can be accounted for and that none slip under the radar of universal services, and society in general;
2. Secondly, that every child receives a suitable education and their other human rights including health, care and safety; and
3. This cannot be achieved without the third aim, that every child should have the opportunity to be seen and their views, including their views about their education, and experiences listened to.

Throughout this process I have been assured by officials that revised guidance, with statutory force, will be a quicker way to ensure that changes are made to better protect and uphold the rights of children educated at home than developing primary legislation. Despite this assurance, the process has been time-consuming.

It is the details of this guidance that will be the ultimate success or failure of this policy and throughout the process of development I have maintained a continuous scrutiny of policy content and detail, assessing each aspect of the draft statutory guidance against the three tests I have set out and challenging any element that falls short. I have also had constructive meetings with government officials and lawyers and sought my own legal advice as to the capability of secondary legislation to enable the change that is needed.

Significant steps have been taken in relation to two of my three tests and while I recognise that the development of practicable guidance to fulfil these policy aims is complex, I am frustrated that over eighteen months on from the Minister's statement in January 2018 this policy has not yet been brought forward for public consultation.



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As I have communicated to Government, I am retaining the option to use my legal powers of review should I have concerns that Government are not exercising their functions to ensure appropriate policy aims will be met. My current focus, however, is to press on Government to hold true to its current timetable for the implementation of the guidance, including any technical solutions necessary to deliver this policy.

I would like to thank the Committee again for your ongoing scrutiny of this issue. In my engagement with Government I remain determined to take the best course of action to ensure children educated at home receive their human rights.

I expect to be in a position to have a more detailed conversation with the Committee about the government proposals in my annual scrutiny session in the autumn, by which time I expect to have responded to a public consultation on the matter.

Yours sincerely



Sally Holland

Children's Commissioner for Wales

Agenda Item 6.5

CYPE(5)-23-19 - Paper to note 5

Comisiynydd
Plant Cymru

By email only

Lynne Neagle AM
Chair, Children, Young
People and Education
Committee
National Assembly for
Wales
Cardiff Bay
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Children's
Commissioner
for Wales

5th July 2019

Dear Lynne,

Many thanks for your letter in regards to the Welsh Government's work stream to safely reduce the numbers of children in local authority care and for sharing your concerns as a Committee at the potential expectation of reduction "targets". As an office, we have not had close involvement in this agenda and it is my understanding that this work is taking place between local authorities and government. However, I do attend the Ministerial Advisory Group (MAG) on Improving Outcomes for Children.

I support the aim of safely decreasing the numbers of children who are looked after, particularly where it may lead to better quality and volume of family support and preventative work. As you are aware, the MAG has a specific focus on developing edge of care and preventative services, with Regional Partnership Boards and Local Authorities receiving funding from Welsh Government to invest in these areas.¹

I have been informed in recent meetings organised by the ADSS and the WLGA, that a number of local authorities are unhappy about the request to set targets in this area and that not all feel able to comply with this request. Reasons for this include the fact that they feel that a number of factors are beyond their control, such as the actions of the family courts and the impact of poverty - areas which will require cross-governmental action to address. It is important that this context, along with the individual needs of local authority populations are carefully considered, before developing and assessing each local authority's safe and realistic reduction strategies.

¹ http://www.senedd.assembly.wales/documents/s86361/PAC5-09-19%20PTN3%20-%20WG%20letter%20-%20CEC_e.pdf



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I would, however, expect local authorities, whose looked after population figures are significantly higher than those with similar socio-economic profiles, to carefully and critically examine whether its services and practices could be adjusted to enable more children to safely live with their birth families.

I have been informed by Welsh Government officials that the 22 visits to local authorities were generally informative and constructive. I hope that the visits will have been an opportunity to also inform how local authorities have used funding to further develop these edge of care and preventative services and how they hope to deliver improved outcomes for the children they support. Developing a consistent picture of these services will provide a strong starting point for developing individual strategies and what can be safely expected by each authority.

The Social Services and Well-being (Wales) Act 2014 performance measurement framework will be an important means of evaluating progress for local authorities. However, it is important that individual local authorities develop strategies that work to best support their local populations. Whilst sharing experience and best practice is important, comparing progress between local authorities will not always be appropriate, as the monitoring of progress will only be relevant to the safe and realistic plan developed by individual local authorities.

I welcome the opportunity the Committee has provided to explore this important policy change in further detail.

Yours sincerely,



Sally Holland
Children's Commissioner for Wales

Agenda Item 6.6

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Cyllid

National Assembly for Wales
Finance Committee

CYPE(5)-23-19 - Paper to note 6

Chair, Children, Young People and Education Committee
Chair, Climate Change, Environment and Rural Affairs
Committee Chair, Culture, Welsh Language and Communications
Committee Chair, Economy, Infrastructure and Skills Committee
Chair, Equality, Local Government and Communities Committee
Chair, External Affairs and Additional Legislation Committee
Chair, Health, Social Care and Sport Committee

10 July 2019

Dear Committee Chairs

Welsh Government Draft Budget 2020–21

At our meeting on 1 May 2019, the Finance Committee agreed its approach to the budget scrutiny. I am writing to all Chairs of subject committees to share our thinking, and to encourage your committees to consider how you can contribute to delivering the most coherent and effective scrutiny of the Government's spending plans.

Budget focus

We have agreed to continue the approach followed in previous years, whereby budget scrutiny is centred on the four principles of financial scrutiny: affordability, prioritisation, value for money and process. The principles are:

- **Affordability** – to look at the big picture of total revenue and expenditure, and whether these are appropriately balanced;
- **Prioritisation** – whether the division of allocations between different sectors/programmes is justifiable and coherent;
- **Value for money** – essentially, are public bodies spending their allocations well – economy, efficiency and effectiveness (i.e.) outcomes; and
- **Budget processes** – are they effective and accessible and whether there is integration between corporate and service planning and performance and financial management.

Following a stakeholder event in Aberystwyth on 27 June, we have identified a number of areas which we would like to see the focus of the scrutiny, these are:



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- *How the Welsh Government should use taxation and borrowing powers, particularly in relation to the Welsh Rate of Income Tax*
- *Approach to preventative spending and how is this represented in resource allocation (Preventative spending = spending which focuses on preventing problems and eases future demand on services by intervening early), particularly in relation to the financing of local health boards and health and social care services*
- *Sustainability of public services, innovation and service transformation*
- *Welsh Government policies to promote economic growth, reduce poverty, gender inequality and mitigate welfare reform*
- *The Welsh Government's planning and preparedness for Brexit*
- *How evidence is driving Welsh Government priority setting and budget allocations*
- *How the Future Generations Act is influencing policy making*
- *In declaring a "climate emergency", is it clear how the Welsh Government intends to respond and resource that challenge*

We would encourage you to use some of these areas as the focus for your budget scrutiny.

Draft budget consultation

As has been the previous practice, we will be undertaking a consultation on behalf of all Committees over the summer recess and the responses will be shared with you in the Autumn in order to assist your scrutiny of the draft budget.

I enclose a summary of the views we heard at the Finance Committee's pre-budget stakeholder event in Aberystwyth, which may inform your budget scrutiny.

Timetable

The draft budget is usually published in October. However, this year the UK Government has confirmed it would hold a Comprehensive Spending Review which will conclude alongside the UK Budget. So the Welsh Government currently has no indication of funding from the UK Government for 2020-21 to base its budget upon. The Minister for Finance and Trefnydd has announced that the Welsh Government is planning to publish the outline and detailed draft Budgets together on 10 December 2019, and the final Budget on 3 March 2020.



As you will be aware the provisions in relation to the reporting by policy committees changed in 2017, and you are now able to report in your own right (if you so wish), and your reports can be used as a supporting document to the draft budget debate.

If you have any questions about any aspect of the draft budget process, please feel free to contact me or the Clerk to the Finance Committee, Bethan Davies, 0300 200 6372, Bethan.Davies@assembly.Wales

Yours sincerely

A handwritten signature in black ink, appearing to read 'Llyr', is centered on a light-colored rectangular background.

Llyr Gruffydd AM
Chair of the Finance Committee



Stakeholder Engagement: Welsh Government

Draft Budget 2020–21

Finance Committee | July 2019

The Committee held an informal stakeholder event at the Marine Hotel, Aberystwyth on 27 June 2019. The event focussed on the draft budget for 2020–21.

1. Preventative Spend, Health & Social Care

Prevention and early intervention should be at the heart of budget allocation.

Stakeholders discussed the increased pressure on local authority budgets especially within social care due to demographical changes and workforce pressures. Current financial pressures for local authorities include workforce parity of treatment re-dress (eg changes to National Living Wage and sleep-in payments), high-cost high-need care packages and increased responsibilities following introduction of new policies and legislation (eg Additional Learning Needs Bill and Sustainable Drainage Systems Standards). Stakeholders felt that duties or responsibilities of local authorities are not reduced when budgets are cut.

Many local authorities are reaching “saturation point” and cannot absorb any additional costs. This is leading to significant cuts in preventative services despite specific focus in recent legislation on the importance of early intervention and prevention (eg Social Services and Well-being Act, Well-being of Future Generations Act, Violence Against Women Domestic Abuse and Sexual Violence (VAWDASV) etc). Cutting non-statutory services such as leisure, culture and transport can have a potentially negative impact on the physical and mental well-being of the local population. In the long term, this can lead to increased pressure on statutory services. Cuts to public transport, for example, can have a significant impact on the local population, especially in rural areas.

Some stakeholders suggested that the affordability of universal services such as free public transport and free prescriptions needs to be revisited by Welsh Government given the current financial climate and reduction in budgets.

Out-of-county placements have huge cost implications for local authorities. It was suggested that local authorities need to work together on a regional basis to develop



specialist, not-for-profit services locally in order to avoid sending children and adults to high cost out-of-county placements.

However, stakeholders discussed the tension between preventative action, which often tends to be longer term, and addressing short term, immediate pressures.

2. Long-Term Planning & Strategies

Despite the Finance Committee's recommendations in 2017, the financial implications of new legislation remain difficult for local authorities to plan for. Even when Welsh Government provides assurances that any changes will be "cost neutral", this is rarely the case in practice. It is not just about the direct costs but also the impact of re-direction of resources away from other services. There is often an impact on the third sector too, for example the introduction of the VAWDASV Act had significant resource implications for domestic abuse charities.

Several stakeholders raised concerns about the potential impact of Brexit and the lack of clarity around post-Brexit policy and the Shared Prosperity Fund. It will be necessary to fill some legislative "gaps" post-Brexit but Welsh Government needs to carefully consider the cost implications of this. For example, if Welsh Government is considering raising regulatory standards for farming post-Brexit this could have significant resource implications for local authorities who would be expected to carry out additional inspections. They felt that the Welsh Government should be preparing for a New Deal Brexit, in order to be best prepared for that possible eventuality.

There is a need for more joined up working between health, social care and the third sector, for example on the Adverse Childhood Experiences (ACEs) agenda as this can impact on many areas of society.

Stakeholders stressed that long-term spending and vision were imperative as part of longer-term planning. There was a feeling that short term projects and yearly budgets do not allow for strategic spending nor for value for money – that budgets are being spent for the sake of being spent rather than to follow strategies and with priorities in mind.

A suggestion was made for 'disruptive' budgets, moving away from annual budgets and moving closer to the principles of the Wellbeing of Future Generations Act to ensure requirements are met. Budgets should have an emphasis on meeting the need, working in areas that require action and co-working across sectors rather than adheres to a departmental structures and encourage competition between sectors.



3. Economy, businesses & the Third Sector

The Welsh Government needs to do more to promote the economy and business in Wales. Wales should be procuring “from Wales for Wales”, for example, currently most of the education books are procured from England. This is often because procurement rules make it difficult for small suppliers to bid for contracts.

Stakeholders felt that having more support for local businesses would lead to increase in local economic growth and that the Welsh Government needs to work together with local authorities to achieve this.

The third sector is often expected to “take up the slack” when local authorities are forced to cut services but many of these organisations are also working at full capacity and having to turn people away due to lack of resources. Many smaller third sector organisations have been lost in recent years due to lack of funding or forced to merge with other organisations in order to survive and this has led to a loss of local knowledge, expertise and support.

Public transport was seen as key to communities and especially in rural communities, as well as being integral to enabling economic opportunities. Key considerations around transport were availability, affordability and quality.

Stakeholders were wary of providing funding for large innovative schemes and the risks that may surround that funding and suggested that those resources may be used to support other services. For example, stakeholders questioned whether it was for Wales to take the lead in unproven technologies such as tidal.

Stakeholders discussed the need for a fair work strategy.

4. Education funding

Stakeholders suggested that the education budget needed to be clarified and simplified.

Stakeholders from the education sector highlighted that certain industries, facilities and services operate across different areas and rather than competing for budgets, sectors should be working together with outcomes in mind.

5. Local services

There were also concerns that community facilities, including leisure centres, were closing. It was noted that this has a significant impact on health and well-being of those communities, which in many cases is preventative, either through opportunities to exercise or for mental health reasons. It was also noted that community facilities provided structures to build social capital.



There was a concern that services and assets were being transferred from local authorities to community and town councils. This leads to a significant risk in terms of the ability of the organisations responsible for service having capacity to operate them, with a local authority likely to have larger specialist teams and a wider pool of expertise compared to a community and town council. Stakeholders suggested that transfer of services needed to be supported by adequate transfer for funding and resources.

Stakeholders suggested that assets needed to be utilised better, and that all tiers of government needed to work together to understand what assets they had and how these may best be used.

There was a general feeling that there was increasing strain being placed upon local authorities due to the lack of funding, which would lead to reduction in staff and a lack of resources, which would only create further issues; stakeholders described this as an endless cycle that wasn't being resolved.

6. Housing

Local authorities need more support from Welsh Government to enable them to fulfil their priorities on the availability of affordable housing. For example, when borrowing to purchase own housing stock, it would be helpful if local authorities could pay back at the lower rate rather than the market rate that Registered Social Landlords are required to pay.

Some stakeholders wanted to see a resolution to the 'loophole' in second home tax, wanting to provide local Welsh residents more housing opportunities.

7. Transparency & Scrutiny

There's not a clear understanding of Welsh Government's spending decisions and focus needs to be on outcomes and the need of the citizen. The Future Generations Act is integral to impact assessments for local authorities, yet many commented that it has not had a significant impact. Stakeholders acknowledged that the Future Generations Act will likely have a positive impact in the long run, however there will be no immediate benefit and instead will only restrict upon how much money local government will receive. Stakeholders felt that the Future Generations Act needed to be fed into any other additional plans and not be treated as a standalone Act.

Some stakeholders felt that the Welsh Government was overspending and there was an unfairness with regards to funding for health services. Some stakeholders questioned how the Welsh Government is monitoring health boards' spending, given the number of boards in special measures.



8. Equality & Vulnerable Groups

Cuts to public transport often have a disproportionate impact on certain groups in society, for example disabled people, older people or victims of domestic abuse. Stakeholders noted that poverty should be at the core of all budget decisions and that the budget should utilise a poverty impact assessment methodology.

9. Taxation

Stakeholders were concerned that local taxes were increasing whilst services are being reducing. Stakeholders were keen to understand what additional taxes might be considered for Wales and what might be appropriate. There was an emphasis on the importance of the public being aware what Welsh taxes will fund and cross border concerns with taxes differing in England.

Stakeholders were keen on the idea of a 'Tourist Tax' for people visiting Wales and it's National Parks, arguing that tourists use resources such as the health services, so this could counter balancing that.



Agenda Item 6.7

CYPE(5)-23-19 - Paper to note 7

Kirsty Williams AC/AM
Y Gweinidog Addysg
Minister for Education



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA(P)/KW/24621/19

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11 July 2019

Dear Lynne,

Thank you for your letter seeking an update on progress in relation to home education. I welcome this opportunity to update the committee on developments and timescales for going forward.

Our primary policy objective with this approach is to assist local authorities in undertaking their duties under section 436A of the Education Act 1996 to identify children not in receipt of suitable education and to take appropriate action to rectify this situation. While developing the new statutory guidance there are a number of fundamental principles we need to ensure we uphold. Not least of these are the rights of the child to be heard and to be safe.

Statutory guidance

I am pleased to confirm new draft statutory guidance has been developed and represents a significant shift in current expectations of local authorities. The statutory guidance will assist local authorities to carry out their duty to ensure children receive a suitable education. In addition to providing clarification on the characteristics of a suitable education, the statutory guidance reinforces the levers available to local authorities to use when a suitable education is not being provided. The statutory guidance also clarifies the support local authorities could make available to home educators in their area.

I have previously stated my view that I do not believe it would be possible to make an informed judgement about whether a child is in receipt of suitable education without seeing the child. The draft statutory guidance reflects this view and provides local authorities with far more detailed advice about assessing the suitability of education for home educated children.

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

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

In developing the guidance my officials have engaged with a range of stakeholders to ensure it is as comprehensive and effective for local authorities as it can be prior to the consultation. Throughout this process officials have engaged with all 22 local authorities seeking their input on the guidance ensuring it has been developed with an understanding of the practical implications of its implementation.

Officials have also engaged with the Children's Commissioner for Wales on the development of the guidance. Discussions have focused on the Commissioner's three tests. My officials have made every reasonable effort to take on board the views and feedback from the Commissioner, and I am confident the draft statutory guidance has been informed by a children's rights approach.

I am aware of the Commissioner's concerns about the pace of delivery on these proposals. However, the Commissioner recognises this is a complicated area. I fully acknowledge it has taken longer to develop the guidance and regulations than originally anticipated, but this is not without good reason. The repercussions of not getting this right for local authorities and home educating families are too serious, and so we have been comprehensive in our engagement with local authorities and other stakeholders. As you will appreciate, citing them on numerous draft versions of the guidance takes time. I am confident that our draft guidance goes further in setting out expectations on local authorities than any other country in the UK; we have taken time and effort to think through the implications and possible unintended consequences as a result of this significant shift in expectations on local authorities. My officials have undertaken all of the necessary and appropriate assessments, including a detailed integrated impact assessment, of which a children's rights impact assessment is a key component.

We have worked with local authorities to try and establish the costs of current administrative practice across Wales, and to consider potential future costs as a result of the new statutory guidance and new expectations on local authorities. This will inform the regulatory impact assessment which will be published alongside the final version of the guidance and regulations.

Handbook for home educators

Officials have also developed a handbook for home educators; this was not part of the original proposals. However, it has been developed because a number of universal health, care and support services and youth services are facilitated through school and as a result, some home educated children and their families may not be aware of their entitlements and potentially miss out on key initiatives and services.

The handbook is a comprehensive resource for those who are already home educating or those who may be considering home education. It brings together a variety of information and links to resources that will be of interest to home educators. My officials have engaged with home educators on the development of the handbook, seeking to ensure it is written with the needs of children in mind, but also outlining implications for home educators as a result of the new statutory guidance.

Database

Consultation on the draft regulations regarding the database and the exchange of information between local health boards and independent schools to local authorities will take place separately. This is due to an extensive scoping exercise officials are undertaking with local authority, independent school and local health board representatives. We want to ensure the database is as comprehensive as it can be, but also to ensure the database is

developed in such a way that if appropriate it can utilise existing data platforms and does not place a disproportionate administrative burden on local authorities, local health boards and independent schools. This is detailed work, not just looking at existing systems, but also the legal basis under which current systems work and considering if these can be used, what changes if necessary we may need to make to regulations in order to ensure these systems if used is done in a lawful way. The scoping work will be complete by mid August and a consultation on the database, which will be technical in nature, is expected to take place in November. Rather than delay the consultation on the guidance to coincide with the regulations, which as I outlined above won't be ready till November, I consider it expedient to consult on the guidance later this month, as it will have a wider audience than the regulations, which are a technical matter and won't have as a direct impact on home educating families as the new guidance.

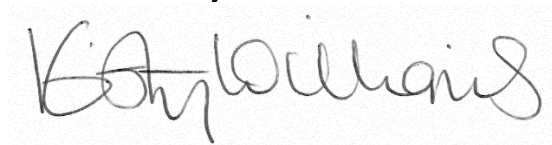
Next steps

The consultation on the draft statutory guidance and handbook for home educators will commence on the 29 July for 12 weeks. There will be a series of events across Wales to gather the views of stakeholders including home educated children and young people.

The consultation on the draft regulations is expected to commence in November this year. This will be a shorter consultation as it will be technical in nature and therefore will run for 8 weeks.

It is intended that the statutory guidance and regulations will come in to force in May 2020.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kirsty Williams', written over a light grey rectangular background.

Kirsty Williams AC/AM

Y Gweinidog Addysg
Minister for Education

CYPE(5)-23-19 - Paper to note 8

Comisiynydd
Plant Cymru

Children's
Commissioner
for Wales

Lynne Neagle AM
Chair
Children, Young People and
Education Committee
National Assembly for Wales

Via email:
SeneddCYPE@Assembly.Wales

11 July 2019

Dear Lynne

Re: Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill – children's awareness

Thank you for your letter dated 26 June 2019 requesting my views on the next steps the Welsh Government should be considering in preparation for raising awareness of the legislation among children, including pre-school children.

There have been constructive discussions about this topic at the Welsh Government's Expert Stakeholder Group and there are clear commitments to continue working with the third sector and my team on finalising their plans.

Below I outline my thoughts on what the Welsh Government's approach might look like.

Input and insight from children and young people: I would encourage the Welsh Government to secure meaningful input from children and young people on their engagement plans. Young Wales, hosted by Children in Wales, would provide an obvious vehicle for this work. This work could help shape any education materials and messaging and could, crucially, enable the Government to determine the best vehicles for reaching diverse populations, including those not in education or training, home educated children and young people, those with additional learning needs and those from Wales' various faith groups.

Outputs (what engagement activities could look like):

Children and young people need to have more than an awareness of equal protection legislation, they need to understand this in the context of their human rights, as guaranteed by the UN Convention on the Rights of the Child (UNCRC).

This means that schools should develop children and young people's understanding of their human rights, including their right to be safe, their right to be protected from harm, and their right for adults to act in their best interests. New legislation can be



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explained and clearly understood within this context. Many schools across Wales have well-developed children's rights approaches in which all children, including the youngest have this understanding of their rights. I would suggest that practice studies from these schools could be used to demonstrate how new legislation can be presented both to children and families in this context and there could be local opportunities for school-to-school learning across Wales. Many schools would be well placed to lead this work and their role should be considered when developing the resource implications.

This approach should be underpinned by the new curriculum, in which the draft versions of the Humanities and Health and Wellbeing AoLE show an emphasis on developing human rights education and an understanding of the rights of children. The curriculum would support this even more strongly if the legislation also includes a due regard duty to the UNCRC. I am calling on Government to make this commitment to the long-term needs of children in primary legislation so that children's human rights remain at the centre of education into the future.

Developing this understanding among children and young people would also be well placed in Relationships and Sexuality Education, which is proposed as a statutory requirement of the new curriculum from 3-16. In my response to this consultation I urged Government to re-visit this guidance in detail, emphasising the need to work with the specialists in the field of RSE, the teaching profession and young people to co-produce a document that gives more clarity and granularity to teaching professionals about the knowledge, skills and experiences appropriate for children and young people at different stages of development. I would suggest that developing children's understanding of what they should expect from their relationships with adults, including understanding this new legislation, could form a clear part of this guidance.

This work cannot be seen as a one-off communications campaign. Instead, as well as clear links within the new curriculum, it also needs to tie-in to well-established education programmes e.g. School Beat and the NSPCC's 'Speak Out, Stay Safe' service in primary schools. It should be seen as one critical element of the Government's wider stakeholder plan. The plan should target those working and caring for children and young people, including youth services, Healthy Child Wales, Flying Start and Families First Networks and other key partners working in early years' settings e.g. Mudiad Meithrin – stakeholders who would be able to cascade relevant positive, empowering information themselves to children and young people, and stakeholders who would need to be equipped via a central rights-based resource pack on how to handle situations that could arise as a result of any new legislation.

I understand that third sector partners on the Welsh Government's expert stakeholder group, including Barnardo's Cymru, NSPCC Cymru/Wales and Save the Children, and ourselves are keen to continue providing advice and support to the Government on ensuring materials are age-appropriate, accessible and have the widest-possible reach.

Outcomes

I think it's important to outline here what the proposed outcomes of this work should be. For me, the ultimate aim of any communications work targeted at children and



young people about this positive development is simple: for children and young people to know that it is illegal to punish children in Wales in any way that causes pain.

Again, I'm reassured by the discussions taking place at the expert stakeholder group about what and how to effectively evaluate any communications work.

I trust the above provides you with an idea of what I think the Government should be including in its communications planning.

Yours sincerely,



Sally Holland

Children's Commissioner for Wales

Agenda Item 9

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

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