

Senedd Cymru | Welsh Parliament

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

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

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

General principles of the Bill

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

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

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

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

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

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

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

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

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

Yes

Please outline your reasons for your answer to question 2

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

Transition, timeframe and funding

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

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

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

Voice of the child

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

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

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

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

Section 10

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

Section 13

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

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

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

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

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

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

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

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

N/A

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

N/A

Implementation and impact of the Bill

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

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

Accessibility

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

Local Authority Guidance

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

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

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

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

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

Placement shortages

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

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

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

Social Care Workforce

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

Mother and babies

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

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

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

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

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

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

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

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

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

CRIA

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

EIA

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

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

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

Development of the policy and legislative proposals

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

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

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

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

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

Communication

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

Consultation

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

Advocacy

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

Any other issues

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

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

Timescales

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

Funding

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

Advocacy

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

Support for mothers and babies

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

‘My Things Matter’ Pledge

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

Corporate Parenting

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

Accessibility and communication

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