

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** The Children's Society, | **Evidence from** The Children's Society,

---

## **General principles of the Bill**

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

---

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

Our response refers to Part 1 of the Health and Social Care (Wales) Bill (the Bill) only. In principle, we welcome Part 1 of the Bill's general principles to develop a social care market that will consist of not-for-profit providers of children's services only. However, we have general concerns pertaining to how this intention will be realised, as well as specific concerns about the provisions in the Bill, which we will address in our responses to the other questions.

We are concerned about the timeframes within which the primary aims of the proposal are expected to be achieved – specifically, that new providers of children's social care registering with Care Inspectorate Wales (CIW) must have 'not-for-profit' status from April 2026, and that any 'for-profit' providers will need to transition to having 'not-for-profit' status, and register with CIW as having such status, by April 2027. We believe that these timeframes do not provide enough time for providers and other stakeholders to reach these aims, or do not provide enough time for these aims to be reached safely.

We are concerned that disallowing 'for-profit' providers from operating in Wales within such a short space of time will worsen the current problem of there being a lack of supply to meet demand. This means increased costs for local authorities when seeking and purchasing child social care provision; placing children in settings that might not be appropriate to their needs; and, in more severe instances, a risk of delay in securing a placement for a child and that child remaining in an environment in which it is unsafe for them to be. The current proposed timeframe could force 'for-profit' providers to either cease or withdraw their operations in Wales, thereby removing supply from the market and exacerbate the risks of increased costs for local authorities, a lack of appropriate provision, or insufficient availability of provision in general, thereby negatively impacting looked-after children.

As a first step towards eliminating profit in the long-term, we believe that Welsh Government should first focus on rebalancing the care system by supporting more non-for-profit providers to expand or establish themselves. In doing so, we believe that supply can be increased to meet demand in such a way that local authorities will face less difficulty in placing children in appropriate care settings, and that transitioning the market to one that is made up entirely of not-for-profit providers will be a process that is done safely and with minimal disruption to children. As mentioned previously, the current timeframe within which it aims for these changes to happen is insufficient, so Welsh Government needs to allow enough time for this process to happen.

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

---

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

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

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

---

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

Whilst we welcome the intention of developing a children's social care market that is made up of not-for-profit providers only, we are concerned about the lack of detail pertaining to key sections of the Bill.

We welcome the inclusion of transitional arrangements under Section 4 of the Bill, but there is a lack of information about which 'for-profit' providers will benefit from these transitional arrangements and which will not. We note that the explanatory memorandum states that "existing 'for profit' providers will be subject to transitional provisions (to be set out in regulations) from 1 April 2027," but elsewhere in the explanatory memorandum it is stated that "any current 'for profit' providers will need to transition to, and register with CIW, as a not-for-profit entity (as set out in the Bill) by 1 April 2027 unless benefitting from the transitional provisions set out in the Bill." The lack of information regarding who will benefit from the transitional arrangements brings uncertainty and instability to providers and to children in their care, so clarity is needed to enable providers to take the necessary steps to bring stability to the children in their care, and this clarity needs to be provided before regulations are published.

Furthermore, there is a lack of detail about how Welsh Government will support providers who wish to transition as not-for-profit providers. Changing from a 'for-profit' to a 'not-for-profit' provider will require providers to undergo structural change, which is a process that can be time-consuming. Not all providers who wish to transition will have the expertise to

make these structural changes, and not all providers who wish to transition will be able to transition at the same pace and within the proposed timeframe. This might force many providers to cease operations, thereby worsening the problem of a lack of supply to meet demand and potentially putting children at risk.

We also note that Section 4 gives Welsh Ministers powers to place conditions on providers who may benefit from transitioning arrangements. We share our concerns about these conditions and their unintended consequences in Question 18.

Furthermore, we note the requirement in Sections 11 and 12 for local authorities to develop annual sufficiency plans, but there is no information about how Welsh Government will support local authorities to address those gaps brought about by removing 'for-profit' providers and replacing them with new not-for-profit providers. We address this in more detail in Question 17.

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

---

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

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

---

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

**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**

---

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

## **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?**

---

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

We envisage potential barriers to the provisions of the Bill pertaining to ensuring sufficient placements for looked-after children. According to Care Inspectorate Wales (CIW), in March 2023 there were 277 registered children's homes. Two hundred and forty-eight of

these children's homes (89.5%) are provided by 'for-profit' providers, and 39 (10.5%) are provided by local authorities. According to the Welsh Local Government Association (WLGA), in June 2022 there were 1,795 (33%) registered foster beds provided by 'for-profit' providers. However, the WLGA states that "21.4% of the maximum foster beds were unavailable."

Although some private sector providers of foster care and children's homes will wish to transition to not-for-profit provision, others will not transition, which will lead to even less provision to meet the care needs of looked-after children. If local authorities are required to complete annual sufficiency plans to ensure that there is provision available in their areas, they will need to fill the gaps caused by 'for-profit' providers who do not transition exiting the market.

Local authorities may not be able to buy these 'for-profit' providers because they cannot financially afford to do so, and in the case of residential care settings, they do not have the skills or knowledge to run a residential care setting. Furthermore, there is a lack of information about how Welsh Government will "encourage new not-for-profit creation of provision", as it had previously stated.

It is crucial that any work undertaken to encourage new 'not-for-profit' provision is done in collaboration with local authorities. According to the Competition and Markets Authority (CMA), local authorities in Wales use their resources reactively, rather than on planning for future need. Additionally, CMA reports that local authorities have difficulty in shaping the market, such as by signalling their needs and encourage providers to operate in their areas. Therefore, local authorities are forced to use resources reactively, meaning that they often take any placement that is available, even if these placements are not appropriate or are unable to meet the needs of specific groups of children and young people.

Additionally, with regard to residential care settings, opening such a setting can be a lengthy process. Anecdotally, we have heard that recently it took a local authority five years to open a residential care setting. Amongst the possible causes of this lengthy duration is the current planning requirements in Wales. According to CMA, due to the planning system in both Wales and England, care providers face difficulties in gaining planning permission to set up and open new children's homes. For example, providers often face outdated views about children's homes and looked after children held by people living in an area in which a provider wants to open a home, as well as facing losing a potential property due to a rival bidder for use of the property as a home for a family.

Welsh Government must support local authorities to develop new provision to ensure that annual sufficiency plans meet the needs of looked-after children in their areas.

---

## **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)

A serious unintended consequence likely to arise from the Bill, in our view, is the lack of suitable placements where children need them. We are concerned about the conditions that will be placed on 'for-profit' providers during the transitional period, as is proposed under Section 4 of the Bill, and the implications that these conditions may have on the ability to use 'supplementary placements', in accordance with Section 13 of the Bill, which would enable local authorities to place looked-after children in 'for-profit' provision if there are no not-for-profit placements in their areas, or if the not-for-profit placements in their areas do not meet children's care and support needs.

Although we do not know what Section 4 conditions will entail, an indication is given in Section 4(3) that conditions may include "restrictions on the type of restricted children's service that the service provider may provide;" or "restrictions on the description of looked after children in respect of whom the provider may provide the restricted children's service, for example by reference to their care and support needs."

If these conditions are placed on providers of supplementary placements, who may be 'for-profit' providers, the availability of placements for looked-after children would be restricted even further. There is a risk that a local authority has no not-for-profit provider or no suitable not-for-profit provider in its area, but cannot use a potential supplementary provider that would meet the care and support needs of a looked-after child, given that the service that it used to be provided has been made unavailable because of Section 4 conditions. This could lead to the child being placed in unregistered placements which do not meet his care and support needs, or being placed in foster or residential care in England or elsewhere outside of Wales. In addition to the risk of placing children far from their homes, it goes against Welsh Government's aim to place looked-after children closer to their homes, and its commitment to ensure that the needs of looked-after children with complex needs are "met as close to home as possible and in Wales wherever practicable."

We believe that Welsh Government should rethink the bill's provision for Welsh Ministers to place conditions on providers during the transitioning period to ensure that unintended consequences, such as the afore mentioned example, is avoided, and children are not placed at risk of being placed in accommodation that is unsuitable to their needs or placed far away from their homes when that is unnecessary and undesirable for children. To this end, as the scrutiny process for the Bill continues, we would welcome the opportunity to work with members of the Committee to draft amendments pertaining to the Bill's provision to place conditions on 'for-profit' providers.

## **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?)**

---

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

**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?**

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

**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**

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

## **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**

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

## **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?**

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

We have heard from stakeholders who work with looked-after children that not enough has been communicated to children about the changes that will be brought about by the Bill and the upheaval that many of these children may face because of these changes.

There is a risk of placements that provide stability and happiness to looked-after children coming to an end, because the providers of those placements are not not-for-profit entities. This would also end stable relationships between providers and children, as well as the need for children to begin again new relationships with new care providers, thereby bringing further instability and unpredictability to their lives.

The same can be said about 'for-profit' providers who provide specialist support for looked-after children. Some of these providers might provide children with on-site education, and others provide specialist health support for children in their care. Stakeholders working with looked-after children have told us that specialist placements such as these are not provided by providers that are run by local authorities. If these specialist providers do not transition to not-for-profit provision or are subject to Section 4 conditions, there is a risk that the educational and health needs of children in the care of these specialist providers will be significantly affected.

More needs to be done by Welsh Government to ensure that these changes are communicated to looked-after children who will be affected to help them prepare for these changes. Additionally, provision should be included in the Bill to offer specialist advocacy for children who will be affected by the changes. This advocacy offer should enable children to have a say in any changes that are happening to them, and for that to contribute to decisions pertaining to replacing them with other providers. As the scrutiny process for the Bill continues, we would welcome the opportunity to work with members of the Committee to draft amendments to ensure that a specialist advocacy offer is available to children affected by these changes.

