

Dawn Bowden AS/MS

Y Gweinidog Plant a Gofal Cymdeithasol

Minister for Children and Social Care



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-DB-10629-24

Peredur Owen Griffiths MS

Chair

Finance Committee

Senedd Cymru

SeneddFinance@senedd.wales

18 October 2024

Dear Peredur,

Thank you once again for your consideration of the Health and Social Care (Wales) Bill during Stage 1. I am pleased that your Committee welcomes the aims of the Bill, and I thank Committee Members for this, and for their recommendations.

I have set out below my response to the recommendations.

I hope that the attached information helps to inform your further scrutiny as the Bill progresses through Stage 2. I look forward to continuing to work with Committee members on the details of the legislation in the future.

I am copying this letter to the Chairs of the Health and Social Care Committee and the Legislation, Justice and Constitution Committee.

Yours sincerely,

Dawn Bowden AS/MS

Y Gweinidog Plant a Gofal Cymdeithasol

Minister for Children and Social Care

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Dawn.Bowden@llyw.cymru
Correspondence.Dawn.Bowden@gov.wales

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.

Health and Social Care (Wales) Bill

Responses to the Finance Committee's recommendations

Conclusion 1. The Committee is broadly content with the financial implications of the Bill as set out in the Regulatory Impact Assessment, subject to the comments and recommendations in this report.

I welcome the Committee's consensus with the financial implications of the Bill as set out in the Regulatory Impact Assessment. I have set out my responses to the Committee's recommendations in its report below. I will be accepting thirteen of the recommendations in full; accepting three in part; and accepting two in principle.

Recommendation 1:

The Committee recommends that the Welsh Government ensures a consistent approach when presenting financial information in Regulatory Impact Assessments, especially where a Bill is proposing a number of different policy changes.

I accept this recommendation.

The Welsh Government will always seek to ensure Regulatory Impact Assessments (RIA) present the financial information in a consistent and transparent way, while also trying to maintain accessibility. The Committee's report and recommendations have been shared with Welsh Treasury officials who lead on the RIA process.

In terms of this specific RIA, we will look to address the Committee's concerns when we come to revise the RIA following completion of Stage 2.

Recommendation 2:

The Committee recommends that the Welsh Government ensures it includes summary tables in the Regulatory Impact Assessment to demonstrate how the constituent elements agree to the range of total costs of the Bill.

I accept this recommendation.

When revising the RIA following completion of Stage 2, we will include additional summary tables.

Recommendation 3:

The Committee recommends that the Welsh Government reviews the arrangements it has in place to quality check information prior to it being shared with the Committee, to avoid it having to subsequently correct its evidence.

I accept this recommendation.

The Welsh Government will ensure that an additional check is made for all further complex figure work provided to the Committees on the Bill, in order to prevent a repetition.

Recommendation 4:

The Committee recommends that the Minister updates and corrects the Explanatory Memorandum at the next opportunity to address any errors and apparent inconsistencies between the aggregate value of the annual costs and benefits with the figures in the RIA summary, as well as include information about how those costs and benefits have been calculated.

I accept this recommendation.

The Welsh Government will update and correct the Explanatory Memorandum in order to address any errors, to explain or address any apparent inconsistencies, and to provide further information where possible. A revised Explanatory Memorandum will be laid following completion of Stage 2.

Recommendation 5:

Given the uncertainties with the estimates, the Committee recommends that, should the costs associated with the Bill significantly change during its passage through the Senedd, updated calculations are made available, and the Minister appears before the Committee for further scrutiny.

I accept this recommendation.

The Welsh Government will update the Explanatory Memorandum following completion of Stage 2 and I would be content to attend the Committee again at that time or to provide further information as needed.

Recommendation 6:

The Committee recommends that the Minister provides an update about the latest evidence on whether private providers are expected to convert to 'not-for-profit' status, and that this information is included in a revised Regulatory Impact Assessment.

I accept this recommendation.

We will provide a statement based on the latest available market intelligence and we will include information on this, in the event that it would modify our costings, when we update the Explanatory Memorandum following completion of Stage 2.

Regular updates are also provided to the Eliminating Profit Programme Board to help mitigate risks and will be a key component in future planning.

Recommendation 7:

The Committee recommends that, in revising the Explanatory Memorandum, the Minister should model the financial consequences of extending the transitional period beyond three years.

I accept this recommendation.

The Welsh Government will provide modelling for the financial consequences of extending the transitional costs in respect of eliminating private profit from the care of looked after children beyond three years.

Recommendation 8:

The Committee recommends that the Minister revisits the assumptions made about the projected number of looked after children in the Regulatory Impact Assessment to ensure the costs of the proposals to eliminate profit from their care are as accurate as possible, and based on historical and empirical evidence.

I accept this recommendation.

Whilst the trend in the number of children looked after has been increasing since data has been collected in 2003, this has levelled off in more recent years since 2020.

The costs have been estimated using an assumption that the number of looked after children in Wales is likely to remain similar in the next ten years. The Welsh Government will review this assumption further as it prepares an updated RIA following completion of Stage 2.

Recommendation 9:

The Committee recommends that the Minister reviews the apparent inconsistencies between the aggregate value of the annual resource (or revenue) costs expected to be incurred by local authorities and the reduction in their outturn as a result of the provisions in the Bill to eliminate profit from the care of looked after children, with the values reported in the Regulatory Impact Assessment summary, and provides an update to the Committee.

I accept this recommendation.

The Welsh Government notes that the Finance Committee has raised concerns in paragraph 98 of its report that the sum of the annual start-up, legal and commissioning costs for new residential and fostering services does not match the value of revenue costs in the RIA summary. The sum of these costs is £65.0m for Scenario B (which is £13.6m lower than the figure in the RIA summary) and £86.7m for Scenario C (which is £16m lower than the figure in the RIA summary).

In explanation, in addition to the revenue costs identified above, the figures in the RIA summary also take into account the increased revenue costs which have been modelled in the cost of for-profit provision during the transition period, on the assumption that providers exiting the market would charge a premium during the transition period. These costs are found in tables 7.19 (Scenario B) and 7.22 (Scenario C) in the Local authorities – residential outturn line for 2025-26 and 2026-27 (the figure for 2026-27 in Scenario C is £0).

We will continue to reflect on costs and ensure the updated RIA, following completion of Stage 2, sets out the rationale for them clearly. The outturn costs represent local authority savings.

Recommendation 10:

The Committee recommends that the Minister further clarifies how the proposals to eliminate profit from the care of looked after children will result in a reduction in local authority outturn for residential care and fostering services.

I partially accept this recommendation.

The Welsh Government provided clarification on this in its written response to the Committee's questions on 26 July 2024 (see the response to Q2(a)).

However, we will consider whether any further clarification can be provided in the updated RIA following the completion of Stage 2.

Recommendation 11:

The Committee recommends that the Minister confirms whether she has implemented the recommendation by the Competition and Markets Authority to conduct pilots to test the potential for local authorities to make savings by bringing some fostering services in-house:

- **if so, the Minister should publish the results of the pilots;**
- **if not, the Minister should explain why the Welsh Government did not implement the recommendation.**

I accept this recommendation.

As noted, the CMA report recommended that pilots should be set up in certain local authorities to test the potential to make savings by bringing more fostering placements in-house.

The Welsh Government's commitment to the transformation of children's services, however, is not primarily about saving money. It is about changing how we provide services to children and their families as part of locally-based provision that has the welfare of the young person at its heart.

We have not therefore set up pilots in certain local authorities to test the potential to make savings in local authority foster care, as we are focused on applying the principle of in-sourcing by bringing more fostering placements in-house across the whole of Wales.

Foster carers are central to delivery of the changes we are seeking to make, and we are committed to increasing the supply of local authority foster carers. This will also help deliver our wider transformation agenda to re-balance provision away from residential care to foster care. We are providing significant funding to Foster Wales to help achieve its ambitious target of recruiting an additional 800 foster carers by 2026.

We would be happy to provide a future update on the progress that Foster Wales is making.

Recommendation 12:

The Committee recommends that, in updating the Regulatory Impact Assessment, the Minister includes information about:

- **the component elements of the resource (or revenue) costs expected to fall on local authorities as a result of the proposals to eliminate profit from the care of looked after children to better demonstrate which have been included in the estimates; and**
- **how these revenue costs, and the reduction in the outturn for both children's residential and foster care, have been calculated.**

I accept this recommendation in principle.

The Welsh Government will consider how the basis for the revenue costings (including component elements) can be clarified and potentially expanded further as it prepares an updated RIA following completion of Stage 2.

Recommendation 13:

The Committee recommends that the Minister provides information about the planned processes to monitor, and the measures to be put in place to mitigate, increases in the fees charged to local authorities by private providers for placements.

I accept this recommendation in part.

We will work with our local government partners to consider the most appropriate mechanisms to monitor the fee position regarding placements and consider any collective actions to mitigate the impact of any increases. As Members will be aware, all local authorities in Wales already work together to commission accommodation services for children through their consortium arrangements. The consortium approach has been a substantial tool through which local authorities have been able both to proactively plan to meet their need to commission placements from private providers, and to negotiate on price. Local authorities will continue to be able to use the collective power of their consortium to mitigate cost increases and maximise their bargaining position in the commissioning process.

Recommendation 14:

The Committee recommends that, in updating the Regulatory Impact Assessment, the Minister provides information on:

- **the alternative models considered to achieve the policy objective of eliminating profit from the care of looked after children, including the associated costs; and**
- **why the options for alternative models were rejected and not included in the Regulatory Impact Assessment.**

I accept this recommendation in part.

We have already set out why the options for alternative models were rejected at paragraph 7.43 of the Explanatory Memorandum. However, we will revisit the text already in the Explanatory Memorandum and Regulatory Impact Assessment to ensure that it is as clear and as comprehensive as possible in setting out why these models were considered to not achieve the policy objective.

Regarding providing costings of these alternative models, given we do not consider these achieve the basic policy intent we do not consider this to be an exercise relevant to the Bill.

Recommendation 15:

The Committee recommends that the Minister provides further information to illustrate how reinvestment of any profit made by providers will improve services for looked after children and how this will be measured.

I accept this recommendation.

We will explore the potential for future studies, following implementation, to consider the extent to which the move to not-for-profit provision of services has positively impacted looked after children and the longer-term sustainability of children's services. We will consider the timescales for this with Eliminating Profit Programme Board members as part of considering the broader timescales for the eliminating profit programme.

Recommendation 16:

The Committee recommends that the Minister provides further information to explain how cost estimates associated with implementing and administering Continuing Health Care direct payments, expected to fall on the Welsh Government, were calculated, including details of the data and models used, and for this information to be included within a revised Explanatory Memorandum.

I accept this recommendation.

When we update the Explanatory Memorandum following completion of Stage 2 we will provide further detail on how the costs for implementation and administration of Continuing Healthcare direct payments have been estimated.

Recommendation 17:

The Committee recommends that the Minister provides evidence to support its assumption that, when the cost of Continuing Health Care direct payment packages will be similar to the average costings for Personal Health Budgets in England, the Regulatory Impact Assessment notes the cost will be towards the bottom of this range.

I accept this recommendation.

The Welsh Government will provide further information to support its use of the estimated average cost of a CHC package in the RIA.

Recommendation 18:

The Committee recommends that the Minister confirms the sources used to justify modelling the financial implications of the proposals for funding Continuing Health Care direct payments in Wales on the level of savings made by NHS England after the introduction of Personal Health Budgets, and for this information to be included in a revised Regulatory Impact Assessment.

I accept this recommendation in principle.

Information sourced from internal data supplied confidentially by NHS England provided the basis for modelling a level of 11-16% savings associated with Continuing Healthcare direct payments. Officials are asking NHS England whether that data can be published, and if it is, the Welsh Government will include a link or reference to it in the revised Explanatory Memorandum.

It is however the case that sometimes information which has informed our estimates of costs and benefits has been shared on a confidential basis with the Welsh Government, whether due to commercial sensitivity or other reasons, and for this reason it will not always be appropriate to cite specific sources for estimates of costs and benefits.