

HEALTH AND SOCIAL CARE (WALES) BILL – STAGE 2 GOVERNMENT AMENDMENTS

This table provides information about the amendments tabled in the name of Dawn Bowden MS on 11 November. Further amendments for consideration at Stage 2 will be tabled by the Minister for Children and Social Care in due course.

No.	GOVERNMENT AMENDMENT	GWELLIANT Y LLYWODRAETH	PURPOSE AND EFFECT
1.	Section 2, page 3, line 17, leave out ‘has the meaning given by section 74’ and insert ‘means children who are looked after by local authorities as described in section 74(1)’.	Adran 2, tudalen 3, llinell 17, hepgorer ‘mae i “plant sy’n derbyn gofal” yr ystyr a roddir gan adran 74’ a mewnosoder ‘ystyr “plant sy’n derbyn gofal” yw plant sy’n derbyn gofal gan awdurdodau lleol fel y’u disgrifir yn adran 74(1)’.	<p>The purpose of this amendment is to amend <u>section 2(c) of the Bill</u>, which amends Schedule 1 to the 2016 Act by inserting new sub-paragraphs (3A) and (3B). The amendment makes a change to the definition of “looked after children” which is set out in sub-paragraph (3B).</p> <p>The effect of this amendment is to change the definition of “looked after children” which is set out in sub-paragraph (3B) so that instead of providing that it has the meaning given by section 74 of the 2014 Act, it provides that “looked after children” means children who are looked after by local authorities as described in section 74(1) of the 2014 Act.</p> <p>This follows the Welsh</p>

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			Government accepting in part a recommendation from the Legislation, Justice and Constitution Committee's Stage 1 report (Recommendation 12) that this definition should be clarified.
2.	Section 4, page 7, line 19, after '11(1)(a)(i)', insert 'or 11(1)(a)(ii)'.	Adran 4, tudalen 7, llinell 19, ar ôl '11(1)(a)(i)', mewnosoder 'nac 11(1)(a)(ii)'.	This amendment is made to <u>section 4(3) of the Bill</u> , which (as explained above) inserts new Schedule 1A into the 2016 Act. Paragraph 2(1) of the Schedule describes the class of providers who are registered at the date the transitional period begins and to whom the section 6A(1) not-for-profit requirement will not apply during the transitional period. Paragraph 2(4) then sets out certain circumstances when the disapplication will not apply. This amendment amends paragraph 2(4). The Bill as introduced already disapplies subparagraph (3) for the purposes of section 6(1) and section 11(1)(a)(i) of the 2016 Act, and this

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			<p>amendment will also disapply it for the purposes of section 11(1)(a)(ii) because that is the provision under which a legacy for-profit provider might seek to vary its registration to add a further place (e.g. a further children's home) which is not already specified in its registration.</p> <p>This removes the need for a regulation-making power and so amendment 3 removes the regulation-making power.</p>
3.	Section 4, page 7, leave out line 20.	Adran 4, tudalen 7, hepgorer llinell 20.	<p>This amendment is made to <u>section 4(3)</u> of the Bill, which inserts new Schedule 1A into the 2016 Act. Paragraph 2(1) of the Schedule describes the class of providers who are registered at the date the transitional period begins and to whom the section 6A(1) not-for-profit requirement will not apply during the transitional period. Paragraph 2(4) then sets out certain circumstances when the disapplication will not apply.</p>

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			<p>As drafted, paragraph 2(4)(b) contains a regulation-making power to prescribe other enactments for whose purposes the disapplication will not apply.</p> <p>The purpose of this amendment, taken together with amendment 2, is to remove this regulation making power.</p> <p>The effect of this amendment, taken together with amendment 2, will be to remove the regulation-making power. This amendment is in response to recommendation 18 made by the Legislation, Justice and Constitution Committee to remove the regulation-making power from paragraph 2(4)(b) of new Schedule 1A (to be inserted by section 4 of the Bill), which has been accepted by the Government.</p>
4.	Section 4, page 8, line 8, leave out 'has the meaning given by section 74' and insert 'means children who are looked after by local authorities as described in section 74(1)'.	Adran 4, tudalen 8, llinell 8, hepgorer 'mae i "plant sy'n derbyn gofal" yr ystyr a roddir gan adran 74' a mewnosoder 'ystyr "plant sy'n derbyn gofal" yw plant sy'n derbyn gofal gan awdurdodau lleol fel y'u disgrifir yn adran 74(1)'.	This amendment is made to <u>section 4(3) of the Bill</u> , which inserts new Schedule 1A into the 2016 Act. The purpose of the amendment

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			<p>is to change the definition of “looked after children” in paragraph 3(6).</p> <p>The effect of this amendment is that instead of providing that the definition has the meaning given by section 74 of the 2014 Act, it provides that “looked after children” means children who are looked after by local authorities as described in section 74(1) of the 2014 Act.</p> <p>This mirrors the change made by amendment 1 above to section 2(c) of the Bill and again it is in response to a recommendation from the Legislation, Justice and Constitution Committee’s Stage 1 report (Recommendation 12) that this definition should be clarified.</p>
5.	Section 4, page 8, line 38, leave out ‘section’ and insert ‘paragraph’.	Adran 4, tudalen 8, llinell 37, hepgorer ‘yr adran hon’ a mewnosoder ‘y paragraff hwn’.	<p>This amendment is made to <u>section 4(3) of the Bill</u>, which inserts new Schedule 1A into the 2016 Act.</p> <p>The amendment ensures</p>

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			that paragraph 4(8) of Schedule 1A correctly refers to “this paragraph” rather than “this section”.
6.	Section 6, page 9, line 35, leave out ‘determined in accordance with’ and insert ‘to which, see’.	Adran 6, tudalen 9, llinell 37, hepgorer ‘fel y’u penderfynir yn unol ag’ a mewnosoder ‘ac o ran hynny, gweler’.	<p>This amendment is to <u>section 6(3) of the Bill</u>, which inserts section 9A into the 2016 Act. Section 9A concerns evidence relating to financial arrangements relating to restricted children’s services which can be taken into account for the purposes of determining whether a person is a fit and proper person to be a service provider (see section 9 of the 2016 Act). Section 9A(1) provides criteria that must be met for a financial arrangement to fall within section 9A(1) for the purpose of the “fit and proper person test” in section 9.</p> <p>The purpose of the amendment is to clarify how this relates to a reference to new section 6A(3) of the 2016 Act, as inserted by section 3 of the Bill. New section 6A(3) makes it a</p>

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			<p>condition that objects or purposes – in the sense of the corporate entity’s objects clauses – primarily relate to the welfare of children or such other public good as the Welsh Ministers may prescribe (i.e. in order to be registered as a restricted children’s service, a person must not only be one of 4 specific types of corporate entity, but also, that entity’s objects clauses must accord with new s6A(3)).</p> <p>This amendment responds to a point raised by the Legislation, Justice and Constitution Committee in correspondence during the summer term (see Q5 and the Government response in the Minister’s letter from 9 July).</p>
7.	<p>Section 10, page 14, line 30, leave out ‘where the accommodation is with a local authority foster parent or in a children’s home, meets the relevant requirement described in section 81A(3) (not-for-profit placements), and”.’ and insert ‘in the case of accommodation with a local authority foster parent, is accommodation with a foster parent who is authorised as such by a person described in section 81A(4)(a),</p> <p>(ab) in the case of accommodation in a</p>	<p>Adran 10, tudalen 14, llinell 36, hepgorer ‘pan fo’r llety gyda rhiant maeth awdurdod lleol neu mewn cartref plant, yn bodloni’r gofyniad perthnasol a ddisgrifir yn adran 81A(3) (lleoliadau nid-er-elw), a”.’ a mewnosoder ‘yn achos llety gyda rhiant maeth awdurdod lleol, yn llety gyda rhiant maeth sydd wedi ei awdurdodi felly gan berson a ddisgrifir yn adran 81A(4)(a),</p> <p>(ab) yn achos llety mewn cartref plant, yn llety mewn cartref plant y mae person a ddisgrifir yn adran</p>	<p>This amendment is made to section <u>10(3)(c) of the Bill</u>, which inserted new paragraph (aa) into section 75(1) of the 2014 Act.</p> <p>This amendment is to correct a cross-reference in revisions to section 75 of the</p>

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	<p>children's home, is accommodation in a children's home in respect of which a person described in section 81A(4)(b) is registered, and".</p>	<p>81A(4)(b) wedi ei gofrestru mewn cysylltiad ag ef, a".</p>	<p>2014 Act, to ensure it refers to the correct subsections in new section 81A (which is also being inserted by the Bill).</p> <p>The redrafting in this amendment will also make the distinction regarding how the duty at section 75 applies to fostering and care homes clearer.</p>
8.	<p>Schedule 1, page 42, after line 26, insert—</p> <p>() In Schedule 1—</p> <p>(a) in paragraph 1(4), for the words “by a” to the end substitute “does not constitute a care home service if the accommodation and care is provided by—</p> <p>(a) a person, other than a local authority, who has parental responsibility for the child;</p> <p>(b) a relative of the child;</p> <p>(c) a foster parent in relation to the child (but see also paragraph 5A(3) of Schedule 7 to the Children Act 1989 (c.</p>	<p>Atodlen 1, tudalen 42, ar ôl llinell 27, mewnosoder—</p> <p>() Yn Atodlen 1—</p> <p>(a) ym mharagraff 1(4), yn lle'r geiriau o “gan riant” hyd at y diwedd rhodder “yn gyfystyr â gwasanaeth cartref gofal os yw'r llety a'r gofal yn cael eu darparu gan—</p> <p>(a) person, ac eithrio awdurdod lleol, sydd â chyfrifoldeb rhiant dros y plentyn;</p> <p>(b) perthynas i'r plentyn;</p> <p>(c) rhiant maeth mewn perthynas â'r plentyn (ond gweler hefyd baragraff 5A(3) o Atodlen 7 i Ddeddf Plant 1989 (p. 41).”;</p> <p>(b) yn lle paragraff 1(6) rhodder—</p>	<p>The purpose of this amendment is to put beyond doubt that local authority care homes are not exempted from the need to register with Care Inspectorate Wales (CIW), even where the local authority has parental responsibility for the children in the home. This will amend paragraphs 1(4) and 1(6) of Schedule 1 of the 2016 Act.</p>

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	<p>41).”;</p> <p>(b) for paragraph 1(6) substitute—</p> <p>“(6) In sub-paragraph (4), “parental responsibility” has the meaning given by section 3 of the Children Act 1989 (c. 41).”.</p>	<p>“(6) Yn is-baragraff (4), mae i “cyfrifoldeb rhiant” yr ystyr a roddir i “parental responsibility” gan adran 3 o Ddeddf Plant 1989 (p. 41).”.</p>	