Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	**Eliminating profit from the care of children looked after - update on timescale and permitted models**
DATE	**27 November 2024**
BY	**Dawn Bowden MS, Minister for Children and Social Care**

I am writing to update you on the Health and Social Care (Wales) Bill introduced on 20 May 2024 and currently in Stage 2 scrutiny. As you will know the Bill contains provisions around the care of children looked after including detailing permitted future models of provision underpinned by planning related to timescales for implementation.

The Welsh Government has given careful consideration to Committee recommendations and what key stakeholders have told us. This includes consideration around extending timescales for implementation of the transitional provisions which have been a feature of the Bill since inception ('the transitional period'). The operation of these transitional provisions for a stable, identified period has always been intended to give local authorities sufficient time to plan and build up their own provision and give those providers of restricted children's services who wish to re-establish their business under a permitted not-for-profit model sufficient time to do so. Having such a period also reduces the risk of disruption to existing child placements by enabling current "for-profit" providers of the new restricted services to continue to operate while replacement provision is developed and put in place.

Changes to the Transitional Period Timetable

Under our current transition plans, new providers registering with Care Inspectorate Wales to provide a restricted children's service will have to have not-for-profit status from 1 April 2026. Existing for-profit providers will be subject to transitional restrictions from 1 April 2027 unless they re-establish their business as a permitted not-for-profit model. The transitional restrictions will prevent such providers from registering new homes or approving new foster carers; the provisions will also mean that local authorities in Wales will only be able to place children with such providers with the approval of Welsh Ministers.

I am aware that both existing providers and local authorities have concerns around the proposed timetable and have highlighted the risk of a gap in provision of children's home and fostering service placements and a consequential adverse impact on children and young people. I fully understand that local authorities require time to develop sufficiency of in-house and not-for-profit provision, particularly residential homes, and the time it takes to obtain registration as a charitable organisation for any for-profit provider wishing to re-establish under the permitted not-for-profit models. I am also aware of the financial challenges given the broader budgetary pressures within local authorities.

The Welsh Government has been supporting local authorities to develop their in-house children's care provision for several years through various different capital and revenue funding streams. Current capital streams include the Housing with Care Fund (HCF) and the Integration and Rebalancing Capital Fund (IRCF), with revenue funding being available via the Regional Integration Fund (RIF) and the Social Care Reform Fund. We will of course continue to provide support via both revenue and capital funding as we move forward. However, a longer period before the transitional restrictions come fully into effect for existing providers would allow local authorities to spread these costs.

I have carefully considered the merits of different timescales to strike an appropriate balance between enabling additional planning and implementation time for local authorities and providers whilst maintaining the policy intent to eliminate profit from the care of children looked after. Securing long-term sustainable provision that best meets the needs of our most vulnerable children is vital but we must also mitigate against any potential adverse unintended impacts on them.

To that end I am minded to adjust the transitional arrangements accordingly:

- Spring 2025 – anticipated Royal Assent for Bill
- From 1 April 2026 – no new for-profit providers of restricted children's services (care home, fostering and secure accommodation services) are able to register in Wales
- From 1 April 2027 – no additional beds or foster carers able to be added by existing for-profit providers of a children's care home, secure accommodation service or fostering service.
- 1 April 2030 – no new placements of children within existing for-profit children's care homes, fostering and secure accommodation service providers by English placing authorities except in exceptional circumstances specified in regulations. No new placements from Welsh placing authorities unless there is Ministerial approval via the supplementary placements process set out in the Bill.

Not-for-profit models

Our legislation sets out that future permitted operating models (not-for-profit entities) have to satisfy the principle there must be no payment of dividends to shareholders or members and that trading surpluses should be reinvested into the service (including building appropriate reserves and capital expenditure). A not-for-profit entity will also be required to have objects or purposes that primarily relate to the welfare of children or such other public good as the Welsh Ministers determine.

A not-for-profit entity is defined in the Bill as:

(a) a charitable company limited by guarantee without a share capital,
(b) a charitable incorporated organisation,
(c) a charitable registered society, or
(d) a community interest company limited by guarantee without share capital.

Feedback from for-profit residential care providers has included proposals to expand these permitted models to include other models such as an Employee Ownership Trust (EOT) and a co-operative society. I have given this matter careful consideration but have concluded that, in order to ensure the integrity of both our legislation and policy intent, it would not be appropriate to add Employee Ownership Trusts or co-operatives, as defined under the Co-operatives and Community Benefit Societies Act 2014, to the list of permitted models within the Bill.

An EOT owns shares in an operating company on behalf of all employees and is overseen by Trustees who look after their interests. If EOTs were a permitted model this would mean in effect we were adding a company limited by shares as an acceptable model. This is because, regardless of the way in which the EOT owned the shares in the operating company, the operating company itself would be a company limited by shares. The structure around the EOT also means that the burden of regulation will fall solely on Care Inspectorate Wales, unlike the existing models set out in the Bill.

There have been similar calls for co-operatives to be added to the list of permitted models. As you will know, co-operative societies are strongly encouraged by the Welsh Government, but Co-operatives, as defined under the Co-operatives and Community Benefit Societies Act 2014, are required to be set up for the benefit of co-operative members, a requirement which does not align with our policy, which is for the welfare of children to be the primary purpose. However, there are arrangements adopted by organisations that adhere to the cooperative values and principles, and where these are operated within one of the four types of undertaking permitted in the Bill, these could meet the not-for-profit requirements. We will continue to work with organisations in this space.

The Welsh Government remains fully committed to ensuring that we do not have a market for the care of looked after children and to ensure that all public money invested in accommodation and fostering services is not extracted out as profit or shares or bonuses but re-invested to support better outcomes for our most vulnerable children and young people.

I am keen to ensure transition can be undertaken in a careful and considered way, and support will be provided by the Welsh Government to both for-profit and not-for-profit providers as part of this process.