

Gwenda Thomas AC / AM  
Y Dirprwy Weinidog Gwasanaethau Cymdeithasol  
Deputy Minister for Social Services



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our LF/GT/0975/13

David Rees AM  
Chair  
Health and Social Care Committee  
Cardiff Bay  
Cardiff  
CF99 1NA

7 October 2013

*Deav Dawid,*

Thank you for meeting with me on 3 October to discuss your Committee's Stage 1 report on the scrutiny of the Social Services and Well-being (Wales) Bill. You asked if I could provide you with further information about my responses to your recommendations. As we noted during the meeting, I am not required to provide a recommendation by recommendation response to your report but I appreciate that you will find it helpful for me to do so. I therefore attach for you a table setting out a summary of my thinking in accepting and rejecting your recommendations.

As I set out in my letter of 25 September, I have accepted recommendations to make five Government amendments. In addition to this, I have accepted recommendations to make a series of Written and Oral Statements to provide further information on a range of issues. These include:

- a major policy statement on Assessment and Eligibility that I will be making before the end of October;
- a statement on children's social care which will cover issues such as disabled children and which I intend to make an annual statement;
- a statement on funding for the Bill which will supplement the statement I have already made and correspondence to the Finance Committee; and
- my annual statement on safeguarding.

I hope you will agree that I have been positive in my overall response to your report. Of course the correct place for me to respond more fully to the recommendations is during the Stage 1 debate on 8 October to which I look forward.

Yours sincerely

*Gwenda*

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Y Dirprwy Weinidog Gwasanaethau Cymdeithasol  
Deputy Minister for Social Services

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*Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)*

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**Social Services and Well-being (Wales) Bill**

**Summary of the Deputy Minister for Social Services' Responses to Health and Social Care Committee Stage 1 Report  
Recommendations**

<b>No</b>	<b>Theme</b>	<b>Summary of Recommendation</b>	<b>Summary of Response from the Deputy Minister</b>
1	Statutory Principles	<i>"We recommend that the Deputy Minister considers these draft principles and either brings forward an amendment to put them on the face of the Bill or takes them into account in bringing forward her own set of statutory principles".</i>	<p>I am legislating for a clear new direction for social care in Wales through this Bill and I believe that embedding the core principles throughout the provisions, rather than simply including a list of statutory principles on the face of the Bill is the best way of achieving the systemic change that is needed.</p> <p>In this way the Bill already does contain the most important principles. For example, section 4(1) relating to overarching well being duties contains the general principle that persons exercising functions under the Act must seek to promote the well-being of people who need care and support, including carers. Subsections (2), (3) and (4) are all statements of principle which apply to a person when exercising functions in relation to an individual.</p>
2	Definitions	<i>"We recommend that the Deputy Minister give consideration to how the social definition of disability could be embedded in practice, for example through Regulations or Codes of Practice, to place those principles into context and to set out how services should be designed and delivered to reflect them".</i>	<p>I have already indicated my intention to explore how we can translate the social model of disability in to subordinate legislation for this Bill. This is an area which will continue to be explored and part of that work will entail the translation of the concept of the social model in to service guidance which could be contained within the Code(s) of Practice.</p>

3	Definitions	<p><i>“We recommend that the Deputy Minister give consideration to an alternative definition (of ‘adult at risk’) such as that used in Section 3 of the Adult Support and Protection (Scotland) Act 2007 ...we recommend that the Deputy Minister extends the definition to include the issue of coercive control.”</i></p>	<p>The definition of an 'adult at risk' has been developed to be as broad ranging as possible. This provision will ensure that all cases currently subject to the Protection of Vulnerable Adult processes are encompassed in the definition.</p> <p>Coercive control is already encompassed within the definition of 'adult at risk'. One element of the 'adult at risk' definition is an adult who is "experiencing or at risk of abuse or neglect". The Bill includes a definition of abuse at section 166 that says "abuse" means physical, sexual, psychological, emotional or financial abuse." My view therefore is that this definition is wide enough to include coercive control.</p>
4	Well-being Duties	<p><i>“We recommend that the Deputy Minister considers Option A (see full report) in the appended legal advice note and, should she be minded to accept this Option, we recommend that she brings forward the necessary amendments to Section 2(2).”</i></p>	<p>The definition of well-being in the Bill isn't new. It is based on that included in the Children Act 2004. What the Bill does is extend the definition to all people.</p> <p>The definition is therefore recognisable and provides consistency and continuity. It gives rights and entitlements and as such is a key aspect of the Bill. The whole focus of our policy and the Bill is about achieving outcomes and I am clear about the well-being outcomes that this Bill embraces.</p> <p>There is work on-going to bring together an overall approach on well-being (the harmonisation that is talked about in the report) and officials are working very closely with colleagues across the Welsh Government to align the work on well-being.</p>
5	Well-being Duties	<p><i>“We recommend that any definition of “well-being” should be accompanied by a Code of Practice setting out how the individual components listed in the definition of ‘well-being’ interact with each other and with other duties in the Bill.”</i></p>	<p>The Well-being Statement already addresses this and the National Outcomes Framework will pave the way for these issues to be dealt with in the Code(s).</p>

6	Well-being Duties	<p><i>“...if our recommendation is not accepted we recommend that the existing definition of well-being should make reference to suitable housing and independent living.”</i></p>	<p>I do not believe that explicit reference needs to be made to these areas. The definition of well-being is grounded in the Children Act 2004, is well understood and extending these rights and entitlements to adults is the way forward.</p> <p>Further, whilst the provision of suitable housing may contribute towards a person's physical and mental health and emotional well-being, this does not mean that suitable housing is being measured as an outcome in the same way as a person's health can be measured. Nevertheless, in developing the Social Services National Outcomes Framework and a further iteration of the Well-being Statement, we will be exploring how we include aspects of housing and other types of accommodation in the Outcome Measures.</p> <p>In relation to the inclusion of independent living, the Bill provides for independence which will be achieved through various means, including within the definition of well-being itself. Section 2(4)(a) states that for adults, well-being includes control over day to day life in terms of domestic, family and personal relationships.</p>
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7	Preventative Services	<p><i>“ We share witnesses’ concerns that the preventative duty is weaker on health services than local authorities and recommend that the duties on LHBs to have regard to the importance of achieving the purpose of preventative services should be strengthened to equate with the duties on local authorities in section 6 (1).”</i></p>	<p>Care and support for people with eligible needs is a function of local authority social services. Under the Bill local authorities have a clear general duty to develop and deliver a range of services to prevent or delay need developing . Section 6(2) sets out the areas upon which they must focus in meeting this duty.</p> <p>Section 6(5) already requires LHBs to contribute to and support authorities in this duty by making available a range of NHS functions. Such cooperation already takes place - in re-ablement services for the elderly or sick on discharge from hospital and in Families First, where health visitor involvement is necessary to assess and meet health contributions to the well-being outcomes for users.</p> <p>In their planning local authorities and LHBs will be required to contribute, with other partners, towards the priority outcomes set out in the statutory outcome measures framework. The LHB as the health partner is therefore obliged to consider the contribution and direct provision it can make to assist the local authority to deliver the local preventative agenda.</p>
8	Preventative Services	<p><i>“We recommend that guidance or Code(s) which set out the ways in which these duties (preventative services) should be discharged by local authorities and their partners, and how this relates to other duties, would provide the clarity that is needed.”</i></p>	<p>The Bill provides for this through the Code(s) of Practice and guidance that will set out expectations on local authorities, LHBs and other partners to develop and deliver a range of services to meet the needs of the local population.</p>
9	Preventative Services	<p><i>“We recommend that there should be a duty on local authorities and their partners to publish a statement on preventative services and how these services may be accessed, which would enable both professionals and service users to understand the scope and purpose of such services.”</i></p>	<p>Section 5 provides for a joint local authority/LHB needs assessment of the local population, including the range and level of preventative services required. These duties will be discharged by the single integrated plan that will drive the development of services in each local authority area. Section 5(3) makes provision so that the plan with this information must be published. Details of how publication is to be carried out will be set out in guidance.</p> <p>In addition, under section 8 the local authority must provide to the local population information, advice and assistance about the care and support and preventative services available and how to access them, to which the LHB must add information about the contribution it is making.</p>

10	Assessments	<p><i>1: We ... recommend that the Deputy Minister considers bringing forward amendments to Sections 10(1) and 17(5)(a) of the Bill to facilitate the delegation of assessments to the most appropriate person.</i></p> <p><i>2: We also considered Section 18 of the Bill, which sets out Regulations on the conducting of needs assessments and outlines the requirements which could be imposed. We recommend that these Regulations are necessary and that a national standard for assessments should be set out in these Regulations.</i></p>	<p>The Bill already provides for delegation of the type set out in the recommendation though a regulation-making power under section 18(2)(b) which will enable the Welsh Ministers to say when local authorities may authorise other parties to carry out assessments.</p> <p>Through this there will be a greater role for primary care and in some cases secondary care professionals to carry out low level assessment. However, ultimate responsibility for the assessment will remain with the local authority.</p> <p>In relation to the second element of the recommendation the framework of regulation that will be developed under section 18 will itself provide for a 'national standard' for assessment.</p>
11	Assessments	<p><i>"We recommend that the Deputy Minister considers providing further clarity on the definition of 'proportionate assessment' in Regulations and detail of how she envisages they will work in practice."</i></p>	<p>The Assessment and Eligibility Framework (which will be set out in Regulations and the Code(s)) will outline the future arrangements and clarify and provide other examples of what is meant by 'proportionate' in terms of the individual's needs, outcomes and wider social and environmental factors and so on.</p>
12	Refusal of Assessment	<p><i>"We are broadly content with provisions in the Bill that enable adults to refuse an assessment although we are concerned about how these provisions deal with cases whereby adults may be coerced into refusing an assessment, for example in cases of abuse. We recommend that the Deputy Minister gives further consideration to this concern."</i></p>	<p>I have given consideration to this matter and am content that there are sufficient safeguards built into the primary law and will be matched in the Code(s). Section 11(2) provides added protection in that the refusal of an adult does not discharge the local authority's duty to assess in a number of scenario including if:</p> <ul style="list-style-type: none"> <li>• the local authority is satisfied that the adult lacks capacity and;</li> <li>• it is the person's best interest; or</li> <li>• the local authority suspects that the person is experiencing or at risk of abuse or neglect.</li> </ul>

13	Refusal of Assessment	<p><i>“We recommend that this Section 14 of the Bill be undertaken in the ‘best interests of the child’ but in a manner that is in accordance with Article 8.”</i></p>	<p>It is my view that section 14, when taken with other provisions in the Bill, provides the right balance between the duties of local authorities to protect a child and the right of a family in terms of potential state intervention.</p> <p>I do not believe that the provision dilutes either position but rather, recognises the fine balance local authorities face in their determination of a child’s best interest and Article 8. Section 14(2) of the Bill provides a range of circumstances where the local authority’s duty will not be overridden.</p> <p><i>Significant harm</i>, as defined in the Children Act 1989, is the threshold in care proceedings for intervention by the state. The threshold in section 14 of the Bill states “<i>suspect the child is experiencing, or at risk of abuse, neglect or other kinds of harm</i>”. This is a lower threshold and offers protection to a greater number of people.</p> <p>The local authority application will need to balance its deliberation against the principle aims of the Bill and particular emphasis in section 2(4) (a) about <i>the importance of the upbringing of a child by their family</i>.</p> <p>For these reasons I feel that the Bill strikes the best balance as currently drafted.</p>
14	Refusal of Assessment	<p><i>“We recommend that the circumstances in CASE 1 in Section 14(2), in which the local authority retains its duty to undertake an assessment, despite a refusal, should be amended to place the onus on local authorities to have ‘reason to believe’ rather than ‘suspect’ that the child is experiencing or at risk of abuse, neglect or other kinds of harm.”</i></p> <p><i>“We also recommend that CASE 2 in Section 13 (2), be amended accordingly.”</i></p>	<p>I feel that the term ‘<i>suspect</i>’ is stronger and is well established and understood in social work training and practice. ‘<i>Suspect</i>’ is followed through with an investigation of the facts and evidence.</p> <p>‘<i>Reason to believe</i>’ assumes there is already evidence of concern.</p> <p>Keeping the test as “suspect” therefore provides wider protection to individuals.</p>

15	Portability	<p><i>“We welcome provisions in Section 40 (2) of the Bill which requires an authority, to which an eligible person moves, to meet the care and support needs set out in the person’s existing care plan until it completes its own review and assessments.</i></p> <p><i>While we believe that this provision will help to ensure gaps in care are avoided, we note that it is only to be used as an interim measure and involves reassessment or review by the receiving authority.</i></p> <p><i>We also believe that the transfer of information between authorities needs to be done in a timely manner and recommend that an amendment to Section 40 (1) (b) be brought forward to reflect this.”</i></p>	<p>Although I agree with the Committee as to the importance of the timely transfer of information, I believe this issue is better dealt with in subordinate legislation. The detailed arrangements of the portability scheme including timelines for the transfer of information will be set out in Regulation powers under section 40(6) and the Code(s) of Practice.</p> <p>Both will be very clear about the sending and receiving authorities responsibilities in ensuring continuity of care and where necessary support for the carer if the person has one.</p>
16	Portability	<p><i>“We believe there is potential for Section 40(2)(d) of the Bill to be misinterpreted in that a person moving from one authority to another would have to restart the assessment process from the beginning. Therefore, we recommend the Deputy Minister brings forward an amendment to redraft the wording of Section 40(2) (d) to read: ‘(d) assess, reassess or review whether the person has needs for care and support, and, if the person does, what those needs are, have in regard in particular to any change in the person’s needs for care and support arising from the move.’”</i></p>	<p>As with Recommendation 15, I believe that the Regulations and Code(s) of Practice will set out the detailed arrangements. Part of the information transferred between the authorities will be the persons care plan. The receiving authority will need to have regard to information in the plan when carrying out the assessment. If the person has different needs to that in the original plan, the authority will have to advise the person of the changes, including any change in the cost, to providing the care.</p> <p>The local authority response to address need and meet an individual’s outcomes will also differ depending on local provision in the new area and the individual’s unique circumstances.</p>



17	Portability	<p><i>“We are concerned that there is scope for section 40 of the Bill to be misinterpreted. We believe that there is risk of raising expectations on what this section of the Bill will deliver in practice. For example, we believe there is potential for the expectation that an existing care package provided by the sending authority would be replicated in the receiving authority.</i></p> <p><i>To address this concern and add clarity to the intention of this section, we recommend that the title of this section be amended to read ‘portability of care plans’ rather than ‘portability of care and support’.”</i></p>	<p>I do not believe that the section title is misleading nor do I believe that the alternative proposed is an improvement on that already in the Bill. If on further examination it is considered that there is a need for clarity in greater detail then it can be dealt with in the Code(s) of Practice.</p> <p>However, in light of the Committee’s views in this matter, I intend to include this issue within the Written Statement which I will be making in response to Recommendation 18.</p>
18	Portability	<p><i>“We are unclear about cross border portability, since the Bill only applies to portability within Wales and not those coming into Wales. Therefore we recommend that the Deputy Minister clarifies the arrangements for individuals coming into Wales before the end of Stage 2.”</i></p>	<p>I welcome the Committee’s comments in this area and I wish to be clear that the term ‘portability’ relates to the provision of care and support within the local authorities of Wales only and not in relation to the provision of care and support across the borders with England, Scotland and Northern Ireland. Officials are however continuing to work together with those from the UK Government’s Department of Health, Department of Education and Scotland and Northern Ireland colleagues, to ensure the smooth continuity of care across our borders.</p> <p>In line with the recommendation of the Committee I will be making a written statement on this matter before the end of Stage 2.</p>

19	Portability	<p><i>“We welcome the Deputy Minister’s reconsideration of her position on the inclusion of portable care plans for carers in the Bill and recommend that she bring forward an amendment to this effect.”</i></p>	<p>I have now considered this issue in detail. The content of the Explanatory Note makes clear that section 40 places a responsibility on the receiving authority to <b>also</b> consider the care and support arrangements for the carer and to provide such information as it considers necessary. It states ‘...when the ‘receiving authority’ is satisfied that the person is moving to its area it must notify the ‘sending authority’ of this, provide the eligible person and their carer if they have one with appropriate information and review the care and support plan and support plan.’</p> <p>In essence, what this means is that the carer’s support plan is required to be reviewed in any case when a service user and their carer move. I therefore no longer feel that an amendment to the Bill in this area is required.</p>
20	Eligibility	<p><i>“1. We note the Deputy Minister’s commitment to bringing forward a major policy statement on eligibility and recommend that she supplements this with an oral statement in Plenary before the end of Stage 2.</i></p> <p><i>2. Eligibility is central to the success of the Bill and therefore we believe that this Committee should have the opportunity to robustly scrutinise the draft regulations on eligibility with sufficient time to review, question the Deputy Minister, and report as a Committee on the draft regulations before Stage 3 proceedings take place in early 2014.</i></p> <p><i>3. We recommend that regulations relating to eligibility criteria are subject to a super affirmative procedure.”</i></p>	<p>In relation to the first part of the Committee’s Recommendation, I can confirm that I will be making a major policy statement during the Autumn term.</p> <p>However, in relation to the second part, the draft Regulations will not be available within the time frame suggested by the Committee but will be developed through engagement with stakeholders over the Autumn and Winter. I believe however that the statement to which I refer above, and my earlier commitment to Committee to provide policy intent of major regulations by December of this year, will help satisfy the request for information about these important issues.</p> <p>As regards the third part of the Committee’s recommendation, I retain my view that the Affirmative procedure will allow for sufficient scrutiny and consultation.</p>
21	Eligibility	<p><i>“We recommend that should the Deputy Minister accept our recommendation to include statutory principles on the face of the Bill (referred to in recommendation 1), any future Regulations setting out the national eligibility criteria should</i></p>	<p>As I do not think that statutory principles are required on the face Bill (Recommendation 1), this Recommendation is not applicable.</p>

		<i>cross reference to these principles.”</i>	
22	Eligibility	<i>“ We recommend that the Deputy Minister sets out how these amendments will secure the rights as currently set out in Section 17 of the Children Act 1989.”</i>	<p>I recognise the need for further detail in this area and will be looking to respond to these issues either through a Written Ministerial Statement on Children’s Social Care or in my policy statement about assessment and eligibility referred to in my response to recommendation 20 above.</p> <p>In the meantime it is important to remember that section 17 of the Children Act 1989 does not afford a right to an individual child and family. It is a general duty on local authorities to ensure they have a range of services to support Children in Need and their families.</p> <p>These are now in the main provided for in section 6(2).</p>
23	Eligibility Framework	<i>“We recommend the Deputy Minister considers the potential impact arising from the transition from existing eligibility criteria to a new national eligibility framework.”</i>	<p>I wrote to the Health and Social Care Committee on 20 May 2013 to emphasise that transition of people’s care on the switch over to the new system will be a priority for local authorities and that arrangements will be in place.</p> <p>That letter sets out further details which address this recommendation.</p>
24	Duty to meet the care and support needs of a child	<i>“We recommend that the development of the eligibility framework takes full account of the need for early intervention to promote the well-being and welfare of children.”</i>	<p>I have agreed to a number of changes to the Assessment and Eligibility Framework that, among other matters, place a greater emphasis on local authorities’ duties to promote and consider early intervention and preventative services to meet need, including those who do not have an eligible need.</p> <p>These are set out in the Written Statement I published on 19 July along with details of the amendment that will further strengthen the accountability of local authorities to consider how to meet individual need.</p>

25	Charging	<p><i>“1. We recommend that the powers to charge 16 and 17 year olds should be removed from the Bill.</i></p> <p><i>2. We recommend that the Deputy Minister provides greater clarity on the circumstances in which charges would be imposed for these services.”</i></p>	<p>Regulations under section 46 provide the Welsh Ministers with powers to <i>specifically exclude 16/17 years from charging and any other groups as necessary</i>. Retaining the powers to charge, but putting in place this safeguard through regulations enables the future proofing of the Bill so that the Welsh Government, and future Governments, can respond to changes depending on the policy of the day and social and economic environment. I do not therefore wish to remove it from the Bill.</p> <p>However, I recognise the Committee and stakeholder interest in this matter and further clarification of the circumstances in which charges would be made will be available in the form of policy for regulations, in guidance and in forthcoming Ministerial Statements.</p>
26	Transition from Children’s to Adults Services	<p><i>“...we recommend that an amendment is brought forward to place a clear statutory duty on the face of the Bill that will set out clear duties for local authorities and other partner bodies in managing the transition process.”</i></p>	<p>Whilst I do not accept the need for an amendment I do however accept the principle of this recommendation. I am of the view that these arrangements are best accommodated within the Code(s) of Practice and through the Eligibility Framework that will be sensitive to different circumstances including the transition into adulthood.</p>
27	Information, Advice and Assistance	<p><i>“We recommend that the Bill is amended to include reference to ‘accessible’ information.”</i></p>	<p>The Equality Act 2010 includes provisions requiring public authorities to publish the steps it takes to meet the equality objectives for the general equality duty in section 149, in a way which is accessible to those with “protected characteristics” under that Act.</p> <p>Therefore whilst the Bill does not include a reference to accessible information in this section, to the extent that its equality objectives extend to the provision of information, advice and assistance any such information will need to be ‘accessible’.</p> <p>Furthermore, there will be a requirement for such accessibility placed on Local Authorities and their partners in the Code of Practice and Regulations and in the arrangements setting out the role and function of the future Information, Advice and Assistance (IAA) services.</p>

28	Independent Advocacy	<i>“We recommend detail on who will be entitled to receive independent advocacy is provided before the start of Stage 2.”</i>	<p>I issued a Written Statement on the Statutory Framework for Advocacy on 12 June which set out the broad scope of the Framework to enable Regulations to prescribe categories of people and/or circumstances. The Statement also set out those circumstances in which the Government intends to bring forward future Regulations to ensure advocacy is available for:</p> <ul style="list-style-type: none"> <li>• people who are at risk</li> <li>• people who may lack capacity or have very complex needs and have no wider family community networks.</li> </ul> <p>Later this Autumn the Commissioner for Older People will report on the early work in this area to inform the business case. Further statements will then follow in due course in line with policy and resources developments.</p>
29	Independent Advocacy	<i>“We recommend the Deputy Minister considers the need for appropriate quality assurance (for the regulation and inspection of independent advocates) and provides detail on how this will operate in practice before the end of Stage 2.”</i>	As I stated during my last Committee appearance, this matter will be dealt with via the White Paper on the future of Regulation and Inspection of Care and Support in Wales which was published for consultation on 30 September.
30	Direct Payments	<i>“We considered the differing views of witnesses on whether direct payments should become the default method of service provision and these were reflected in a range of views within the Committee. We did not reach a unanimous view on this issue but the majority of Committee Members did not wish to see direct payments as a default method of service provision.”</i>	I welcome the Committee’s consideration of stakeholder views in this area and have noted the majority view taken by the Committee.

31	Direct Payments	<p><i>“... we recommend that the Deputy Minister considers amending Section 34 to place a duty on local authorities to promote Direct Payments.”</i></p>	<p>Earlierr this year, in response to Mark Isherwood AM's Member Proposed Bill for an 'opt out' system for Direct Payments, I agreed that the Welsh Government would give greater emphasis to increasing the number of direct payment recipients through the Social Services and Well-being (Wales) Bill to address concerns about the low level of take-up.</p> <p>I can confirm that in response to this and to the recommendations of the Committee that I am minded to bring forward Government Amendments in this area.</p>
32	Direct Payments	<p><i>“We have considered Section 34 of the Bill and are concerned about the breadth of Sections 34 (3) (c) (i) and 34 (4) (d) (i) which provide that local authorities may not be required or allowed to make direct payments if they are not satisfied that this would be an appropriate way of meeting needs. We consider these sub Sections allow local authorities too much discretion to decide whether to provide direct payments and we therefore recommend that they are removed. However, in strengthening the promotion of direct payments we would expect the Deputy Minister to put in place provisions for safeguarding users of direct payments against the misuse of the money by others.”</i></p>	<p>In considering their responsibilities under section 34, local authority must have regard to section 4(3) of the Bill which states that the adult is best placed to judge their own wellbeing.</p> <p>Section 34 however provides additional protection for those who may lack capacity or individuals who may be coerced into agreeing to a Direct Payment. I feel that this is a sufficient safeguard.</p>

33	Direct Payments	<p><i>“We recommend that the Deputy Minister considers extending the provision of Direct Payments to people in receipt of joint health and social care packages.”</i></p>	<p>Where a package is genuinely a joint one, the individual may receive Direct Payments for the social care element but not for the medical interventions provided by the NHS (e.g. district nursing). The problems arise where that person has become eligible for Continuing NHS Healthcare, when the whole cost is picked up by the NHS. This means that the individual loses the right to receive Direct Payments even for the social care elements of the package.</p> <p>It is not my intention to introduce a power for the NHS to make Direct Payments. My officials are gathering evidence from various groups of stakeholders (including the All-Wales Direct Payments Forum) about the approaches that have been adopted across Wales to maximise the control that individuals who need social care and health elements in their packages have over those packages.</p> <p>We are also considering these issues as part of the review of Continuing NHS Health Care which will be reporting to me this Autumn.</p>
34	User and community-controlled providers	<p><i>“We recommend that the Deputy Minister brings forward an amendment to Section 7 (1) (d) to either include the independent sector or remove reference to ‘third sector organisations’.”</i></p>	<p>The policy underpinning this section of the Bill relates to the overall intent to promote social enterprises, co-operatives and service user led models as a component of service transformation. It is not intended as a general duty to promote local markets.</p> <p>What we are seeking to achieve is to promote a model of delivery and that model of delivery is open to all. This is a way of ensuring that we embrace co-production by promoting reciprocity. This is about planning, organising and delivering services in ways that promote well-being and participation.</p> <p>The Committee will however wish to be aware that I am minded to bring forward an amendment to this section to clarify that the promotion of preventative services from third sector organisations encompasses social enterprises and co-operative organisations.</p>

35	User and community-controlled providers	<p><i>“We recommend that the Deputy Minister provides guidance on the governance arrangements for social enterprises to ensure they are managed in a robust manner that is consistent with the aims of the Bill.”</i></p>	<p>I agree that it is essential that robust governance arrangements are put in place, but I believe that this must apply across social enterprise more widely and is not particular to the social care sector.</p> <p>Support and guidance is available through the Wales Co-operative Centre whatever the sector and we would want to encourage people to access that support. There is wider work underway at the moment in respect of the Welsh Co-operatives and Mutuals Commission and we will work closely with colleagues to ensure that any recommendations from that are built in to the work we are doing in this area.</p> <p>The White Paper on the future of Regulation and Inspection of Care and Support in Wales provides an opportunity to consider how regulation and inspection can contribute to the robustness of new models of service such as social enterprises, co-operatives and user led services.</p> <p>Although I do not feel that this is an issue that rests entirely with the Social Services and Well-being (Wales) Bill I do accept the principle of this recommendation.</p>
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36	Adult Protection and Support Orders	<p><i>“We welcome the Deputy Minister’s intention to bring forward an amendment to include powers of removal in the Bill should this matter be resolved. However, if matters remain unresolved we recommend that the Deputy Minister does not repeal Section 47 of the National Assistance Act 1948.”</i></p>	<p>It is important for me to clarify the recommendation was not my intention to give the impression that the provision establishing Adult Support and Protection Orders will be amended so as to provide Social Services with the ability to 'remove' an adult suspected of being at risk of abuse.</p> <p>In keeping with the general principles of the Bill, it will be the wishes of an 'adult at risk' that are key to any support given. It is the role of Social Services to negotiate and persuade an 'adult at risk' to accept support, even those who are reluctant.</p> <p>Section 47 of the National Assistance Act 1948, provides for Social Services to apply for an Order to remove an adult with capacity <u>living in insanitary conditions</u>. I accept the Law Commission’s view as contained in its Review of Adult Social Care Law that in the modern age the state should not have the power to detain people in this way. As I understand it, the UK Government’s Care Bill is also repealing this provision as it applies in relation to England.</p>
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37	Regional Safeguarding and Protection Boards	<p><i>“1. We recommend that the Deputy Minister remove powers in the Bill allowing the merging of regional adult and children safeguarding boards.</i></p> <p><i>2. If the Deputy Minister is not minded to remove powers to combine regional safeguarding boards we recommend that she provides further information on the rationale for including powers in the Bill to merge such boards and detail on the procedure for merging boards.</i></p> <p><i>3. We also recommend that any decision to merge boards should be subject to a super affirmative procedure.”</i></p>	<p>The merging of Adult and Children's boards is a permissive power which I have been clear I have no current plans to use. I have also stated in Committee that the use of this power would only take place if and when there is clear evidence that doing so would help strengthen safeguarding arrangements for everyone. This is a Bill for a generation and this provision allows Ministers to consider further arrangements at a future date with which to break down barriers based on age, without having to revisit primary legislation.</p> <p>Regarding the second part of the recommendation, I accept the need to provide further information and will deal with this issue through my annual Written Statement on Safeguarding which I will make in the Autumn.</p> <p>As regards the third part, in light of the Stakeholder and Committee interest in this area I am minded to bring forward an amendment which will require the super-affirmative procedure to apply if and when subordinate legislation is brought forward regarding the decision to merge Children’s and Adults boards.</p>
38	Regional Safeguarding and Protection Boards	<p><i>“We note that the Deputy Minister’s decision to include powers to combine safeguarding boards stems from advice in a report from the Wales Safeguarding Children Forum. We ask that this report is re-published and the Deputy Minister makes an oral statement to plenary on this issue before the end of Stage 2 proceedings.”</i></p>	<p>The report of the Wales Safeguarding Children's Forum is available on the Welsh Government website: <a href="http://wales.gov.uk/topics/childrenyoungpeople/publications/forum/?lang=en">http://wales.gov.uk/topics/childrenyoungpeople/publications/forum/?lang=en</a>.</p> <p>I will also be referring to this issue in my annual Written Statement on Safeguarding which I will make in the Autumn.</p>

39	Regional Safeguarding and Protection Boards	<p><i>“We note that Section 111 (2) of the Bill lists Safeguarding Board partners but omits mention of the Probation Service. We recommend that this Section is amended to include reference to the Probation Service.”</i></p>	<p>I appreciate the Committee’s position on this matter and I would be minded to bring forward amendments at Stage 2</p> <p>It should be noted however that Probation functions are vested in the Secretary of State under the Offender Management Act 2007 and it is not possible to include the <u>full</u> range of probation functions without the consent of the relevant Secretary of State. As a result any amendment will need to be made in such a way that takes this issue into consideration.</p>
40	Regional Safeguarding and Protection Boards	<p><i>“We note the Deputy Minister’s intent to develop safeguarding policies on six geographical footprints. We recommend that she provides further information on the footprints and the rationale behind her intent.”</i></p>	<p>I am aware that a number of new Safeguarding Boards - for both adults and children - have already been established well in advance of the legislation coming into place. My annual Written Ministerial Statement on Safeguarding will include further clarification of the rationale for moving to the public service delivery footprint of six Safeguarding Board areas.</p> <p>This coherent, common footprint will enable and support joint working across local government, health and police services, reducing complexity and duplication.</p>

41	National Independent Safeguarding Boards	<p><i>“Having considered the evidence we are of the view that there should be separate national safeguarding boards for adults and children.</i></p> <p><i>1. We recommend that the Deputy Minister brings forward an amendment to this effect.</i></p> <p><i>2. However, if the Deputy Minister is not minded to accept this recommendation we recommend that as a minimum there should be one national safeguarding board with two elements to it, one representing adults and the other representing children.”</i></p>	<p>In line with the people model and the aim of breaking down barriers based on age, I am convinced of the need for a National Independent Safeguarding Board that provides Wales-wide strategic leadership in relation to safeguarding people, both children and adults. This is what the Bill currently provides for and I am not minded to change this position.</p> <p>As the National Board identifies issues and areas of work, there will, on occasion, be work that will only be of significance to children or adults. I do not feel however that there is any need to formalise these arrangements on the face of the Bill by prescribing that the Board should have two elements. To do this risks losing the potential for joint learning which is what you would expect to see the National Board championing. The Board needs to have sufficient flexibility to assess its priorities and react to them and the legislation needs to enable it to do exactly that.</p> <p>Regulations can also make provisions about the constitution and membership of Boards (allowing us to prescribe those with experience in the field of adult and children’s safeguarding) and other matters such as the content of the Board’s reports.</p>
42	Due Regard to the United Nations Convention on the Rights of the Child	<p><i>“...we recommend that the Deputy Minister makes a statement, prior to the end of Stage 2, on how the scheme of legislation accompanying this Bill will include Regulations and Code(s) of Practice will promote and protect the underpinning principle of the best interest of the child throughout the Bill.”</i></p>	<p>I will be making a Written Statement on an annual basis about Children’s Social Care with the first statement being made in the Autumn. I will ensure that the issues the Committee raises are included within these forthcoming statements.</p>
43	Case for Separate Legislation	<p><i>“We recommend that the Deputy Minister issues an oral statement, before the end of Stage 2, detailing the rationale for moving from having a separate Bill for children to a people focussed Bill.”</i></p>	<p>I intend to address this during the debate on the general principles of the Bill on the 8October but would be happy to make a further statement should it be felt that this is necessary.</p>

44	Section 88: Young people entitled to support under Sections 89 to 94	<i>"We share the concerns of witnesses regarding the use of categories 1-5 in reference to care leavers and are uncomfortable with such terminology being similar to that used within the criminal justice systems. We recommend that alternative terminology should be used."</i>	During my evidence session with the Health and Social Care Committee on 6 June, I asked members to suggest alternative terminology but this was not forthcoming in its report. In light of this, and the fact that Stakeholders who have raised this matter directly with officials have also been unable to provide alternatives, I am not minded to change the terminology at this point. We will however continue to consider alternative terminologies which could be used in the Code(s) of Practice and in operational arrangements.
45	Disabled Children	<i>"...we...recommend the Deputy Minister provides an oral statement on how the existing rights for disabled children will be preserved in the Bill."</i>	I will be making a Written Statement on an annual basis about Children's Social Care with the first Statement being made in the Autumn. This presents a good opportunity to meet the Committee's recommendation in this important area.
46	Disabled Children	<i>"We...recommend that section 12(1) be amended to read 'that a child may need care and support by virtue of being disabled or otherwise'. In order to reflect the 'people' model promoted in the Bill we recommend that section 10(1) be amended accordingly to provide the same assurance for disabled adults."</i>	I do not believe there is a need to include this level of specificity in either of these provisions. Adding further definitions and references to disability in this way also has the potential for reinforcing the medical model which some stakeholders have expressed opposition to and at a time when I am considering how to build into subordinate legislation, a greater emphasis on the social model.
47	Adoption Services	<i>We recommend that the Deputy Minister make a clear policy statement, prior to the end of stage 2, setting out how post adoption support services will be delivered."</i>	Through the National Adoption Service we aim to improve Post Adoption Support Services, to make sure they are equitable throughout Wales. I have already said that I will use my powers of direction in this regard should the Service discover there be a need to do so. I will however make a further statement on this matter before the end of Stage 2.
48	Codes of Practice and National Outcomes Framework	<i>"We recommend that in departing from Codes, local authorities must publish a policy statement on the eligibility criteria they are proposing to use and receive agreement from Welsh Ministers to depart from the Code."</i>	The Bill provides for this to happen and section 124(4) (a) and (b) covers this area. Section 125 (2) provide 'for Welsh Ministers to direct local authorities to take any action...for the purpose of securing the exercise of functions...in accordance with the relevant Code'.  It is my intention to ensure that there is consistency and transparency in the application of the Code(s) of Practice.

49	Codes of Practice and National Outcomes Framework	<p><i>“We recommend that the Deputy Minister sets out how stakeholders will be involved in the development of draft Codes prior to this consultation taken place.”</i></p>	<p>I will ensure that officials work with stakeholders in the development of subordinate legislation (as is a matter of course) and we will be clear how stakeholders can input into the development of draft codes in this area ahead of consultation beginning.</p>
50	Cooperation and Partnership Working	<p><i>1. We are persuaded by the evidence received in favour of fully integrated health and social care and believe that a separate Bill on integrated care, such as the legislative approach currently being considered in Scotland, would provide a better opportunity to address barriers to integrated working. We recommend that the Deputy Minister considers bringing forward a separate Bill on this issue.</i></p> <p><i>2. Should the Deputy Minister not be minded to accept our recommendation calling for a separate Bill, we recommend that Sections 147, 148 and 149 be strengthened by amending all references in these Sections from ‘may’ to ‘must’.</i></p>	<p>I am strongly of the view that removing the provisions for integrated working would have the effect of removing one of the core features which makes the Bill. As I said in a recent plenary debate on this matter the Bill sets out an approach to care and support based on seeing people as part of their families and communities. It aims to ensure that duties in respect of co-operation and partnership, link through to duties to individuals. This is a basic premise of the Bill.</p> <p>Separating out the legal framework for co-operation and partnership would therefore weaken the overall approach and diminish the impact of strong co-operation and partnership through the whole system.</p> <p>I do however recognise the Committee’s view that sections 147, 148, 149 and 150 would benefit from strengthening and as a result I am minded to bring forward amendments to the Bill at Stage 2.</p>

51	Barriers to Cooperation and Partnership Working	<p><i>“...believe that local authorities should have the ability to employ professionals with both health and social care competencies, and recommend that the restrictions set out in Sections 31 (4) and (5) are removed.”</i></p>	<p>I believe that this restriction must remain. Nursing is an NHS function and nurses are registered by the Nursing and Midwifery Council. A local authority cannot employ nurses to undertake NHS nursing functions.</p> <p>However the prohibition does not and should not act as a barrier to the establishment of multi-disciplinary teams. Often such teams are managed by the local authority and LHB or jointly under a Partnership Agreement provided for by NHS (Wales) Act 2006. You will know that Integrated Family Support Service teams established under the Children and Families Measure 2010 include health visitors and mental health nurses.</p>
52	Barriers to Cooperation and Partnership Working	<p><i>“...recommend there is a need for such Regulations to outline details of professional governance arrangements in order to prevent disputes between partners on how such arrangements should operate.”</i></p>	<p>If the recommendation relates to section 146 and 147 Partnerships, then my view is that the regulation making powers in section 147(3) are broad enough to enable for the Partnership Board to put in place governance for disputes between partners.</p>
53	Collaboration and Pooled Budgets	<p><i>“We note the views of witnesses that for the Bill to succeed there needs to be a greater sharing of resources between local authorities and local health boards. We believe that the greater use of pooled budgets would assist partnership working and promote seamless cooperation as called for by health and social care partners.</i></p> <p><i>Our recommendation 50 reflects our view that provisions in section 148 of Bill, which provides that a local authority and local health board may pay towards the establishment and operation of partnership arrangements by making payments directly or in to a pooled fund’ and by providing staff, goods, services, accommodation and other resources’, should be strengthened.”</i></p>	<p>This recommendation can be put into effect via the changes I am minded to bring forward in response to Recommendation 50.</p>

54	Complaints and Representations	<p><i>“We agree with the Ombudsman that the process for handling complaints when multiple agencies are involved should also be simplified. We recommend that the Deputy Minister give consideration to this matter and we request further clarification on her proposals for the management of complaints.”</i></p>	<p>Although this matter when considered in its totality falls outside the scope of the Bill, the process for handling complaints when multiple agencies are involved is being given consideration in the development of the new Social Services complaints procedure.</p> <p>The Regulations and guidance for the new two stage procedure will be subject to consultation in the Autumn and I will be issuing a Written Statement about the consultation at the time.</p> <p>Regulation making powers under the Bill will enable the Welsh Ministers to make similar Regulations in future under the Bill. I therefore accept this recommendation.</p>
55	Complaints and Representations	<p><i>“We note the Ombudsman views on the role of independent advocacy in the complaints process and agree the importance of independent advocacy in providing assistance to those who need it in presenting their complaints effectively.”</i></p>	<p>Whilst I note that this is not a recommendation of the report, The Committee’s conclusions in this area are welcome and I would hope that the proposed amendment in this area, which I announced in a written statement before the Summer recess, will help address concerns of the Committee and the Ombudsman.</p>
56	Funding Transformational Change	<p><i>“We note the Deputy Minister’s views on the possibility of phased implementation so that costs are offset by benefits and her commitment to providing further information on this prior to this Committee having to vote on the Bill. We recommend that the Deputy Minister make this information available prior to the end of Stage 2 and provide clarity on how phased implementation will work in practice”.</i></p>	<p>The Committee will wish to note my recent Written Statement on finance and funding for the implementation of the Bill. In this statement I announced that £1.5m of funding for implementation is to be allocated this financial year and also set out my thinking on the collaborative approach that implementation would require.</p> <p>I am also aware of the recent report from the Institute of Public Care at Oxford Brookes University which contains a number of recommendations on implementation.</p> <p>I wish to consider this report, and also the work of officials in developing an approach to implementation and will be looking to provide further information to Committee before the end of Stage 2.</p>



57	Training	<p><i>“We welcome the Deputy Minister’s commitment to allocating additional funding for work force training but are concerned about the lack of detail made available on this funding. We are concerned that such funding is only provided for local authorities and that the Regulatory Impact Assessment pays insufficient regard to other partners. We recommend that the Deputy Minister give further consideration to these matters”.</i></p>	<p>My officials have already begun a process of consultation with practitioners to develop a National Training Plan.</p> <p>This work is being taken forward as part of the Sustainable Social Services Programme and the most recent engagement on this matter took place on 17 July. One of the key messages from this session, the purpose of which was to consider the training implications of the Bill, was that “audiences outside of the social care sector are as much of a priority as those within the sector”.</p> <p>The development of a National Training Plan (and of the implementation plan itself) will result in further detail becoming available during the passage of the Bill. As part of this, further consideration will have to be given to the specific issue of training for partners other than Local Authorities, including those from the Health sector. I therefore accept this recommendation.</p>
58	Resource Implications from Assessing and Meeting the Needs of Carers	<p><i>“We support the extension of the definition of carer and accept that, if the Bill is to improve services for carers, this will incur costs, both in terms of additional assessments and services. We believe that further details of these costs are needed and that is not reflected in the information made available to date. We recommend that the Deputy Minister provides further information on this matter prior to the end of Stage 2.”</i></p>	<p>I accept that the extension of support to carers is likely to result in additional costs and that these costs would arise in relation to assessment and meeting of needs.</p> <p>Provisions for this are predominantly contained in sections 18 and 26-29 of the Bill. These sections will be underpinned with further detail developed under subordinate legislation in the form of Regulations. I have been clear that whilst work on developing policy intent for subordinate legislation will take place in parallel with the Bill, the consultation and making of Regulations will take place from 2014 and will be subject to their own RIA procedure.</p> <p>This means that although further detail on the intent for Regulations will be provided before the end of Stage 2, this does not equate to costs being known.</p>

59	Repeals	<p><i>“We recommend that a specific reference to ‘aids and adaptations’ is added to the list set out in Section 20 (2).”</i></p>	<p>My intention in regards to section 20 was that the list should be short and broad line with the Law Commission’s recommendations, its Review of Adult Social Care Law having concluded that the list of services “must be as straightforward as possible and include the minimum number of categories”.</p> <p>However in light of committee and stakeholder feedback and given that the list is illustrative of the kind of things which can be provided or arranged to meet needs for care and support (rather than exhaustive) I would be minded to bring forward an Amendment at Stage 2 in line with the recommendation of the Committee.</p>
60	Repeals	<p><i>“We ... recommend that Section 20 (2) of the Bill should be amended to make it clear that the list ‘should include but is not an exhaustive’ list of examples of what may be provided or arranged to meet needs under Section 21 to 29.”</i></p>	<p>I feel that this is already dealt with in the Bill. The section refers to the list as ‘examples’ and that needs to be clearly understood. It enables wide scope for local authorities to respond to a person’s care and support needs in creative ways that matter to them. The Explanatory Notes contained within the Explanatory Memorandum also provide clarity on this issue. I therefore do not see the need to bring forward an amendment.</p>
61	Repeals	<p><i>“We...recommend the Deputy Minister provide further assurances that the repeal of the Carers Strategies (Wales) Measure 2010 will not undermine the existing rights and entitlements of Carers.”</i></p>	<p>The decision to repeal the Carers Strategies (Wales) Measure 2010 when the provisions of the Bill come into force in 2016 is not intended to dilute the vitally important focus on carers which the Measure sought to develop.</p> <p>There should be no reduction in the capacity or willingness of partners to work together to support carers. I do not see why the work that has already started under the Measure should not continue.</p> <p>The Measure will be overtaken by a wholly new system of enhanced entitlements for carers. The Bill will, for the first time, give carers equivalent rights to the people that they care for. One of the most significant rights that carers will have under the Bill is that a local authority will be under a duty to meet the needs of carers who have eligible needs (see sections 26 and 27).</p> <p>They will also have a much stronger right to an assessment under Section 15 whilst Section 8 will ensure that carers can readily</p>

			<p>access information, advice and assistance about the type of support and services available in their community and how the system works. This will play a crucial role in signposting and assisting carers in accessing, amongst other things - preventative support services.</p> <p>There will also be a requirement for a population level well-being assessment to be carried out jointly by local authorities and Local Health Boards. This is being done via an amendment to the NHS Act (Wales) 2006. I intend to use the Code(s) of Practice to direct in this area and I am looking to do so in relation to <b>carers</b>, care leavers and Looked after Children.</p> <p>I will be writing to the Committee before the end of Stage 2 on this matter.</p>
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