

**Health and Social Care Committee - Scrutiny of Social Services and Well-being (Wales) Bill:  
Response to consultation.**

**15 March 2013**

The Children's Commissioner for Wales is an independent children's rights institution established in 2001. The Commissioner's principal aim is to safeguard and promote the rights and welfare of children.<sup>1</sup> In exercising his functions, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC).<sup>2</sup> The Commissioner's remit covers all areas of the devolved powers of the National Assembly for Wales insofar as they affect children's rights and welfare and they may also make representations to the Welsh Ministers about any matter affecting the rights and welfare of children in Wales.<sup>3</sup>

The UNCRC is an international human rights treaty that applies to all children and young people up to the age of 18. It is the most widely ratified international human rights instrument and gives children and young people a wide range of civil, political, economic, social and cultural rights which State Parties to the Convention are expected to implement. In 2004, the Welsh Assembly Government adopted the UNCRC as the basis of all policy making for children and young people and in 2011, Welsh Government passed the Rights of Children and Young Persons (Wales) Measure.<sup>4</sup>

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**This response is not confidential**

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<sup>1</sup> Section 72A Care Standards Act 2000

<sup>2</sup> Regulation 22 Children's Commissioner for Wales Regulations 2001

<sup>3</sup> Section 75A (1) Care Standards Act 2000

<sup>4</sup> <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislationmeasuresrightsofchildren>.

**1. Is there a need for a Bill to provide for a single Act for Wales that brings together local authorities' and partners' duties and functions in relation to improving the well-being of people who need care and support and carers who need support? Please explain your answer.**

As Children's Commissioner for Wales I have concerns related to provision that brings together duties and functions in relation to the well-being of people who need care and support and carers who need support into a single Act whether they are a child or an adult.

The Declaration of the Rights of the Child, states that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth". The need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly in 1959 and recognised in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialised agencies and international organisations concerned with the welfare of children.

The Children and Young Persons (Wales) Measure 2011 seeks to implement an approach to law and policy-making in Wales which focuses on the rights guaranteed by the UNCRC. Welsh Ministers must, when exercising their functions, have 'due regard' to Part 1 of the UNCRC. The Explanatory Memorandum that been issued in relation to the Social Services and Well-being (Wales) Bill clearly states that the intended effect of the legislation is to 'as far as is possible, integrate and align arrangements so that there is a common set of processes, *for people*' (2013:7). This statement of intent suggests that the proposed changes are introduced for the purpose of aligning procedural arrangements for adults and children and not on the basis of an approach which focuses on the rights guaranteed by the UNCRC.

The introduction of legislative change designed to introduce a 'common set of processes' across ages is contrary to article 3 of the UNCRC that 'in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'. There is no supporting text to explain the ways in which the proposed change to a single Act across children and adults provision and the replacement or restatement of parts of existing legislation relating to children will promote the best interests of the child in compliance with article 3 of the UNCRC.

A clear example of failure to demonstrate the application of the due regard duty and compliance with the Convention is contained within Section 144 of the Bill. This section makes amendments to section 25 of the Children Act 2004 (co-operation to improve well-being: Wales). The Explanatory Memorandum accompanying the Bill states that 'these amendments are made to ensure that the existing duty in the 2004 (Children) Act to make arrangements to promote co-operation to improve the well-being of children **is aligned with** the new duty in section 146 of this Bill (arrangements to promote co-operation – adults with needs for care and support and carers)' (2013:137). The decision to amend the existing duty towards children contained in the 2004 Act should be based on a consideration of the impact of such a change on the promotion of compliance with the relevant articles of the UNCRC. In this case an assessment should be made of the impact of such a change in relation to compliance with:

### Article 3:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all legislative and administrative measures.

The intent set out in the Bill here does not relate to an application of consideration of the due regard duty with particular reference to article 3 of the UNCRC. One example of non-compliance in relation to the need for special care for children in promoting the best interest principles is the introduction through the Bill of a National Independent Safeguarding Board to consider safeguarding arrangements for both children and adults. In the annual report I published in 2011, I set out my vision for an independently chaired national safeguarding board to set the remit for local safeguarding children boards and child protection issues. I remain convinced that there are strong arguments for the establishment of a separate National Independent Safeguarding Board for children and I am concerned that the proposed joint Board will be consumed with issues related to the new statutory framework for vulnerable adults. I have made my support for appointment of an independent chair clear in the past and this position has not changed.

The clearest breach of the 'best interests' principle is contained in Section 13 of the Bill in relation to refusal by a child of a needs assessment. In my response to the White Paper I set out the issue of parental consent to assessment of need as the single most important issue that needed to be addressed. Provision under the Children Act 1989 sets out that a child in need referral under section 17 can only be made where parental consent is sought and granted. I stated my concerns that children and young people can be denied the right to an assessment on the basis of identified need if their parents refuse consent for such an assessment to take place. The system through which referral without consent can only be achieved in relation to child protection concerns runs counter to central principles of the Bill - early intervention, prevention and the promotion of wellbeing. I called for the Bill to be used as an opportunity to address this and to provide for the referral for assessment of any child or young person identified as in need as of right and without the need to secure parental consent in line with the best interests principle. However not only does the Bill provide that the duty on the local authority to assess does not apply if anyone with parental responsibility for a child under 16 refuses an assessment (section 14), it also introduces provision that the local authority is not obliged to carry out an assessment if a child refuses. The Explanatory Memorandum states that this provision is introduced as this 'recognises the importance of ensuring children have the same control as adults over whether the local authority is to be involved in providing or arranging services to meet their care and support needs' (2013:98). While article 12 of the UNCRC provides that a child who is capable of forming his or her own views has the right to express those views freely in all matters affecting them this right to be heard should support rather than undermine the application of article 3 (best interests) and article 19 (protection) of the UNCRC. I have already referred to the international instruments that set out the need to extend particular care to the child. The introduction of provision through which a child can refuse the assessment of their own need does not take account of the requirements of article 3 of the UNCRC. In practical terms the proposals contained in section 13 also ignore the potential impact of normalization of detrimental experiences, anxiety related to state intervention in family life and processes of control on the capacity for children to recognize their own need for support.

The Bill also contains proposals related to the conditions that must be met for a local authority to be under a duty to meet the care and support needs of a child in its area (Section 23). This section is derived from but in effect replaces the duties contained under section 17 and Schedule 2 of the Children Act 1989. For the purposes of section 17 of the Children Act 1989 a child shall be taken to be 'in need' subject to a number of criteria including *C) he is disabled*. However section 23 of the Bill provides for a duty to meet care and support needs of a child where:

*(1) A local authority must meet a child's needs for care and support if it is satisfied that conditions 1 and 2, and any conditions specified in regulations, are met.*

*(2) Condition 1 is that the child is within the local authority's area.*

*(3) Condition 2 is that—*

*(a) the needs meet the eligibility criteria, or*

*(b) the local authority considers it necessary to meet the needs in order to protect the child from—*

*(i) abuse or neglect or a risk of abuse or neglect, or*

*(ii) other harm or a risk of such harm.*

The Bill removes the status of 'child in need' and the associated support connected to that status as afforded to disabled children under the Children Act 1989. Information on what will constitute 'eligible need' under the Bill has yet to be developed and will be the subject of regulation.

Article 23 Paragraph 2 of the UNCRC states that:

States Parties recognize the right of the disabled child to special care and shall encourage and ensure extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

The changes contained in the Bill in relation to those children to be included as subject to the duties imposed upon local authorities represent retrogression in relation to compliance with article 23 of the UNCRC. The United Nations Committee on the Rights of the Child issued General Comment No. 9 on the rights of children with disabilities in 2006. The General Comment states that in the application of paragraph 2 of article 23 States Parties should 'effectively implement a comprehensive policy by means of a plan of action ... Which ensures that a child with disability and her or his parents/or others caring for the child do receive the special care and assistance they are entitled to under the Convention' (2006:4). The inclusion of a disabled child under criteria to qualify as a 'child in need' under section 17 and Schedule 2 of the Children Act 1989 affords protection in relation to the right to 'special care and assistance'. The changes introduced on the face of the Bill in relation to which children are entitled to support for their care and needs omit specific reference to disabled children and weaken regard to article 23 of the UNCRC as described in the General Comment No. 9 on the rights of children with disabilities. The omission of such a fundamental provision that is currently afforded in statute, with insufficient safeguards on the face of the Bill to guard against any retrogression is of itself grounds to question the validity of the Bill within the context of children's rights.

When the First Minister made a statement on the legislative programme on July 17<sup>th</sup> 2012 he stated that the planned introduction of a Children and Young Persons Bill to build upon the introduction of the Rights of Children and Young Persons (Wales) Measure 2011 was to be lost from the legislative programme. Further the First Minister in his statement said that the Social Services Bill would provide the vehicle to 'strengthen our approach to supporting looked-after children' as well as other issues.

However the Bill actually does very little to alter the existing legislation in relation to looked after children in Wales. The Explanatory Memorandum accompanying the Bill states that ‘the obligations and duties of local authorities (and LHBs) currently in provisions within Part 3 of the Children Act have been included in this Part (6). The provisions have been updated and clarified but do not in essence change the obligations and duties towards these groups of children and young people’ (2013:13). The Explanatory Memorandum also states that ‘the Bill simplifies (but does not change the effect of) the complex provisions within Part 3 of the Children Act 1989 which describe the different categories of young persons who constitute ‘care leavers’ and seeks to clarify the local authority’s often different obligations and duties towards each category of young person’ (2013: 13,14). While the intention to clarify duties in relation to care leavers may lead to improvements the Bill has not been used as a vehicle to strengthen the approach to supporting looked-after children in Wales or to promote a rights-based approach to policy relating to looked-after children in-line with the spirit of the duty of due regard to the UNCRC on Welsh Ministers. The Bill could have been utilised as a legislative tool to strengthen arrangements in relation to looked after children with regard to article 20 of the UNCRC (entitlement to special protection and assistance for a child temporarily or permanently deprived of his or her family environment) , the application of the other articles of the UNCRC in line with the principle of non-discrimination under article 2 and the United Nations framework: Guidelines for the Alternative Care of Children(2009).

The Bill does include some additional considerations in relation to children. The definition of well-being as it applies to a child includes: (a) physical, intellectual, emotional, social and behavioural development and (b) welfare (as interpreted in the 1989 Children Act) in addition to the 7 domains included in the definition for all ‘people’. The duty to assess the needs of carers for support (section 15) includes direction on the consideration by the local authority in carrying out a carers assessment of whether a child carer is actually a child with care and support needs in their own right who should be assessed under section 12. While I welcome the recognition of the need for additional considerations in relation to the well-being of children and in relation to child carers these in themselves are not sufficient to address the concerns I have raised.

There is clear danger that the paramountcy principle (which reflects the article 3 duty) may be diluted by the introduction of a single Act and I regard this change as potentially contrary to the best interests of children in Wales.

## **2. Do you think the Bill, as drafted, delivers the stated objectives as set out in Chapter 3 of the Explanatory Memorandum? Please explain your answer.**

### 2.1 Improve the well-being outcomes for people who need care and support and carers who need support

I welcome the intention to build on the definition of wellbeing introduced in the 2004 Children Act through the addition of item (e) *securing their rights*. I am aware that this reflects the definition of wellbeing set out in the Government of Wales Act 2006. However in meeting the intention (p90:7.9) that the legislation should build upon the Rights of Children and Young Persons (Wales) Measure 2011 a more detailed statement on securing rights is needed. I would like to see an amendment to the definition of well-being to include a direct reference to the United Nations Convention on the Rights of the Child in relation to securing the rights of children and young people. This will provide clarity for those subject to the duty to promote wellbeing. There is evidence that the duty to promote the welfare of children and young people as contained in the 2004 Children Act has had limited impact on the lived experiences of children and young people. Robust measures are needed to ensure that there is accountability in relation to the implementation of this general duty. I have already stated my concerns about the decision to amend the existing duty towards children contained in the 2004 Act on the basis of the need to ‘align’ procedures with new duties related to adults and about a failure to demonstrate a

consideration of the impact of such a change on the promotion of compliance with the relevant articles of the UNCRC. The Bill does not set out the Code of Practice or National Eligibility Framework and it therefore not possible to assess if those charged with the delivery of social services will be clear in relation to their specific statutory duties towards children and young people.

The White Paper appeared to suggest that the introduction of the general 'well-being' duty for local authorities and their partners would ensure earlier and easier access to support for children in relation to their well-being support needs. Children and young people deserve the support they need to enjoy the levels of well-being experienced by their peers and in order that their rights under the UNCRC are realised. The case for identifying problems in families early and intervening to prevent their occurrence or escalation has been strongly presented at the UK and Wales levels over the last decade. Analysis shows that early intervention can be highly cost effective as well as meeting the primary objective of securing better outcomes for children.

However the contents of the Bill suggest additional gate-keeping in relation to the provision of statutory services to children. The omission of disabled children in section 23 of the Bill as compared to section 17 of the Children Act 1989 that I have set out above is one example of this. Section 19 of the Bill provides that an assessment will be needed to conclude if there are care and support needs or support needs to be met, once it is concluded that there are needs to be met the local authority must then determine whether the needs meet the eligibility criteria. Section 23 states that the application of the eligibility criteria will be the principle means of determining the child's needs for care and support (condition 2). The eligibility criteria is not provided on the face of the Bill, this makes any assessment of the likely impact of the Bill on the well-being of children in need of care and support impossible. Section 23 also provides that the duty to meet the care and support needs of a child exists where a child does not meet the eligibility criteria but where the:

- (b) the local authority considers it necessary to meet the needs in order to protect the child from—*
  - (i) abuse or neglect or a risk of abuse or neglect, or*
  - (ii) other harm or a risk of such harm.*

The duty to investigate children at risk is already contained in section 47 of the Children Act 1989 (and restated in section 108 of the Bill). The Bill does not however address the processes that will be in place to meet the needs of those children who have an assessment that identifies that they have care and support needs, are not considered at risk and do not meet the eligibility criteria.

In the absence of information about eligibility criteria and procedures for meeting the needs of those assessed as having needs but not meeting eligibility criteria within the Bill, it is difficult to assess if the intentions to improve well-being outcomes are likely to be met. More information is also needed in order to assess the degree to which the Bill introduces additional gate-keeping to statutory services or can be said to be compliant with promoting Article 19 Paragraph 2 of the UNCRC:

Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and those who have the care of the child, as well as other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

The potential for the Bill to deliver on the intention to improve the well-being of children and young people in Wales would be considerably strengthened if the issue of equal protection was addressed on the face of the Bill. The proposed Children and Young Persons Bill provided a statutory vehicle to provide for equal protection for children in Wales, however this Bill has now been lost from the legislative programme. Welsh Government must take action on the issue of equal protection for children and young people if it is to provide a clear

message to children and young people that they have the right to be safe. In England and Wales, Section 58 of the Children Act 2004 removed the defence of 'reasonable chastisement' for those with parental responsibility but replaced it with one of 'reasonable punishment'. While section 58 prevents the use of the defence in relation to serious assaults, it may be used in relation to charges of common assault. The Children Act 2004 therefore fails to prohibit all physical punishment in the family. Where a parent hits a child, they are able to claim a justifying defence – one that would not be available were the victim over the age of 16. As such, children are denied the equal protection of the law. It is lawful for parents to use 'reasonable punishment' as long as it does not leave more than a 'transitory mark' on the child.

The current lack of equality of protection with adults cannot be justified because:

- even the mildest smack sends children the message that hitting people is acceptable behaviour;
- research shows that escalation from mild smacking to serious assaults is an inherent (albeit not inevitable) feature of physical punishment;
- physical punishment invades children's physical integrity, making it a potential pathway to sexual abuse;
- professionals working with families are unable to deliver clear messages that hitting and hurting children is not allowed;
- children do not complain about something they are told is permitted and justified;
- those witnessing violence to children have no confidence in either intervening themselves or reporting it to the authorities;
- parents are receiving confusing messages about the legitimacy of hurting their children;
- Section 58 of the Children Act 2004 fails to protect children from painful, dangerous, humiliating or frequent assaults;
- It is a human rights obligations to respect the physical integrity and human dignity of children.

To fulfil those obligations properly, children must be given the protection of the law against assault. The Bill offers a means of providing equal protection to children in Wales in support of the intentions to improve well-being and safeguard children.

## 2.2. Simplifying the web of legislation that currently regulates social care in Wales

I do not believe that the Bill assists in simplifying the web of legislation that currently regulates social care for children in Wales. The Bill includes sections which restate existing legislation from the Children Act 1989 and the Children Act 2004 and other relevant legislation, sections which alter parts of the provision already contained in those Acts and introduces changes in relation to provisions contained in those Acts as they apply to children. As I have already stated many of these changes appear to be have been made in order to align arrangements for children with those introduced for adults through the Bill, rather than on the basis of decisions related to promoting right-based policy for children in Wales in line with the duty of due regard to the UNCRC.

The Committee may wish to consider the approach that has been adopted by the Scottish Government in their Children and Young People Bill. The Scottish Bill is intended to bring together earlier plans for separate legislation on children's services and children's rights into a single, comprehensive framework that will underpin work to realize the Scottish Government's ambitions towards children. Their proposals seek to embed the rights of children and young people across the public sector in line with the UNCRC into one piece of legislation. The approach of introducing changes to align adult and children's social care and well-being services in the Welsh Bill does not afford the same level of protection to the distinct needs and rights of children.

### 2.3. Providing people with a stronger voice and greater control over services they receive

Section 8 of the Bill places a duty on local authorities to secure the provision of an information, advice and assistance service. The purpose of the service is set out as to provide people with information and advice relating to care and support and to provide assistance to them in accessing it. The Bill does not address the need for such a service to meet the needs of children in terms of age appropriate and fit for purpose information and assistance for children so that they understand the care and support that is available to them and their families and get appropriate assistance in accessing advice on their care and support.

Article 13 of the UNCRC provides that:

The child shall have their right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

I have drawn attention in the past to evidence contained in reports and reviews undertaken by my office such as 'Telling Concerns' (2003), Lost After care (2011) and Missing Voices (2012) that demonstrates the particular barriers for children and young people using social care services in accessing information and advice on their statutory entitlements. The Bill does not currently address this issue, promote article 13 or offer the potential for children to be involved in choices about the care and support they receive in an informed way.

My review of independent professional advocacy services (2012) for children and young people with a statutory entitlement has highlighted the considerable improvements that are needed in supporting access to assistance for children and young people.

Advocacy plays a critical role in enabling children and young people to safeguard themselves by exercising their rights as outlined in the UNCRC and specifically in relation to having their voices heard in line with article 12. Section 159 of the Bill replicates the provision in section 26A of the Children Act 1989 in relation to assistance for persons making representations but does not refer to independent professional advocacy services specifically.

The Scottish Government is seeking to put in place legislation that ensures:

- all children and young people from birth up to leaving school have access to a Named Person;
- all relevant services cooperate with the Named Person in ensuring that a child's and young person's wellbeing is at the forefront of their actions.

The approach proposed in Scotland, in conjunction with the provision of independent professional advocacy services for children making representations would provide a much stronger offer in relation to the exercise of a stronger voice and real control for children in line with the promotion of rights based policy. The Bill as it is currently drafted does not deliver on the intention to provide a stronger voice and real control for children in need of care or support.

### 2.4 Ensuring people receive the help they need to live fulfilled lives.

In my opinion providing children with the help they need to live fulfilled lives requires the provision of a Bill that brings together proposals to embed the rights of children and young people across the public sector in line with the UNCRC. The Bill as it is drafted does not provide for this and does not sufficiently demonstrate the



application of the duty to have due regard to the UNCRC contained in the Children and Young Persons (Wales) Measure 2011.

### 2.5 Stronger national direction with clear local accountability for delivery.

The Bill is weighted towards enabling the provision of regulation and at this time it is not clear if this regulation will provide stronger national direction with clear local accountability for delivery. The Bill in itself does not currently provide stronger national direction in relation to provision for children supported by policy which focuses on the rights guaranteed by the UNCRC. Furthermore the Bill does not specify the provision that local authorities may or must provide (section 20). This is intended to 'provide flexibility and encourage innovation' (2013:101, Explanatory Memorandum). While I understand the need for innovative services that can respond flexibly to local needs I do have concerns that this may lead to further inconsistencies in relation to the ways in which the care and support needs of children are met, dependent on where they live.

The Bill provides that the Welsh Minister must issue and from time to time revise a statement relating to the well-being of people who need care and support and carers who need support. I have already welcomed the proposal to create a coherent and transparent framework of outcomes and standards across social services and social care agencies. The proposed duty on Welsh Ministers to encourage improvement in social services and social care services and to publish and review statements of national outcomes are important mechanisms for supporting on-going improvements in services. I would hope that such an approach would help to reduce incidents where standards at the local authority level slip to a point where there are concerns about the ability of services to promote the welfare of and safeguard children and young people. The usefulness of a National Outcomes and Standards Framework as a means of securing implementation and holding services to account should be informed by the lessons learnt through the process for delivery of the NSF for Children, Young People and Maternity Services (2005). The fact that duties to scrutinise delivery on the standards was left to those responsible for delivery has arguably had an impact in relation to weak implementation of NSF Standards. The development of wellbeing outcome statements which focus on the individual is important and I welcome the intention to look at the distinct ways in which wellbeing can be said to have been achieved for children in different circumstances. The outcomes statements and measures will also need to be informed by the UNCRC. I understand that at this time the issue of agreeing a set of high level outcome statements for 'people' irrespective of age is problematic in terms of ensuring that regard to the UNCRC is reflected in the way these outcome statements relate to children. There is a need to be more specific within the Bill about the processes that will be introduced in relation to monitoring implementation and progress against the outcomes frameworks, without this it is difficult to assess if the proposed changes will support a process of robust accountability in the best interests of the child.

### **3. The Bill aims to enable local authorities, together with partners, to meet the challenges that face social services and to begin the process of change through a shared responsibility to promote the well-being of people. Do you feel that the Bill will enable the delivery of social services that are sustainable? Please explain your answer.**

There is some evidence that at the point of service delivery integrated services can deliver better outcomes for children. The language of joint working, pooled resources and integrated services has been with us for some time however implementation is inconsistent. My Investigation and Advice team are often involved with cases where children and young people are let down while agencies argue over responsibility and funding to meet the needs of the child or young person.

However in defining regulations and guidance for the development of formal partnerships attention must be given to stronger drivers towards shared national population outcomes across delivery partners. The use of two separate definitions of 'wellbeing' in the Bill and the Mental Health Strategy for example demonstrates the

barriers to integrated working and shared outcomes for local services. Welsh Government will need to develop integrated strategic guidance that is informed by duties and priorities across policy areas in order to provide local partners with the regulations and guidance they need to deliver integrated services. These developments are likely to be seriously hindered where the strategic drivers for different agencies do not 'talk' to each other. All agencies must have a common understanding of their role in addressing need, whether it is statutory or non statutory support. Having ascertained the relevant information, all agencies should discuss what their contribution will be to address the needs of this cohort of the population which, provided with appropriate early intervention and support, may not reach a stage so grave as to require a statutory social service or health assessment.

Article 18, paragraph 2 of the UNCRC provides that:

For the purposes of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

Services for children who need care and support must be delivered on the basis of need and in compliance with the provisions of article 18 of the UNCRC and not on the basis of policy that aims to reduce demand.

**4. How will the Bill change existing social services provision and what impact will such changes have, if any?**

**AND**

**5. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?**

Addressing questions related to the impact of the changes proposed in the Bill and the potential barriers to implementing the provision of the Bill is challenging in the absence key pieces of information that will impact directly on the implementation of the Bill, such as the eligibility framework, code of practice and outcomes statement. However the responses I have provided to earlier questions above illustrate the fact that I have a number of concerns related to the implementation of the Bill. Central to these concerns is the need for changes to the Bill to better reflect the Welsh Government commitment to implement an approach to law and policy-making for children in Wales which focuses on the rights guaranteed by the UNCRC.

I am also concerned about the lack of detail in relation to key issues, for example in relation to new safeguarding arrangements on the face of Bill. The National Assembly Health, Well-being and Local Government Committee Inquiry into Local Safeguarding Children Boards (LSCBs) was undertaken in 2010. The Committee recommendations focus on the need for greater direction in requirements related to collaborative partnership working across agencies and better accountability in relation to safeguarding responsibilities of agencies beyond social service departments. The Committee also recommended the development of a national funding formula for LSCBs and consideration of the need for an amendment to current guidance to specify that agencies 'will contribute' rather than 'may contribute'. The Committee also recommended that guidance should be issued to meaningfully involved children and young people as relevant to the work of the LSCB. I believe that the Bill provides an appropriate vehicle for the implementation of the recommendations made by the Committee in line with promotion of article 19 paragraph 1 of the UNCRC through which:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

The requirements set out on the face of the Bill (section 111) in relation to Safeguarding Children Boards provides for regulation to be made specifying the areas in Wales where there are to be Safeguarding Children Boards. While the Bill provides that each of the following is a partner of a Board: a local authority, a chief officer for a police area, a LHB and NHS Trust, the lead partner who will have responsibility for establishing each Board is to be provided for in regulation. The Bill provides that Boards 'must' publish annual plans and reports (section 113). However the Bill provides only that a Board 'may' ask a person to body to provide information. Similarly section 115 of the Bill states that a Board partner 'may' make payments towards expenditure incurred by the Safeguarding Board. The face of the Bill does not therefore address the recommendations made as a result of the National Assembly Health, Well-being and Local Government Committee Inquiry into Local Safeguarding Children Boards or provide strong national leadership on the effective provision of Boards to deliver on the article 19 of the UNCRC and other relevant articles. I am also concerned that the Bill does provide for Welsh Minister to amend this part of the Bill (section 117) to require that a Safeguarding Children board and a Safeguarding Adult Board combine creating a single Board. Should this provision within the Bill be applied it will be contrary to a commitment to policy that focuses on the rights guaranteed by the UNCRC.

**6. In your view does the Bill contain a reasonable balance between the powers on the face of the Bill and the powers conferred by Regulations? Please explain your answer.**

Whilst overall there appears to be a reasonable balance on the face of the Bill and powers conferred by regulations I have significant concerns regarding two specific elements of the Bill. Left undefined there is a danger that the stated intentions of the Bill will not be met. Eligibility criteria under section 23 of the Bill is not defined on the face of the Bill and requirements in relation to Safeguarding Boards are not set out in the Bill. These are fundamental issues that undermine the intention to provide leadership, coherence and clarity through the Bill.

**7. What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?**

**In answering this question, you may wish to consider Chapter 5 of the Explanatory Memorandum, which contains a table summarising the powers delegated to Welsh Ministers in the Bill to make orders and regulations, etc.**

Regardless of whether the affirmative or negative procedures are undertaken it is essential given the level of potential impact on individuals lives that robust and extensive consultation processes are in put in place. Whilst I note that major areas of the Bill's implementation from children's perspectives appear to be appropriately the subject of the affirmative procedures, I would not wish to fully commit to that position in the absence of further examination.

**7. What are your views on the financial implications of the Bill?**

**In answering this question you may wish to consider Chapter 8 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the Bill.**

Article 4 of the UNCRC provides that States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources. I would expect that in order to exercise their duty of due regard to the UNCRC Welsh Ministers will ensure that a child's rights impact assessment is conducted to evaluate how the allocation of budget is proportionate to eth realization of the legislation introduced through the Bill.

**Submission by:**

A handwritten signature in black ink that reads "Keith Towler". The signature is written in a cursive style and is underlined with a single horizontal line.

**Keith Towler**  
**Children's Commissioner for Wales**

**Written evidence from BAAF Cymru on Social Services and Well-being (Wales) Bill for The Health and Social Services Committee**

**1. The Organisation**

BAAF is a UK wide association and registered charity with a distinct national footprint across Wales. BAAF Cymru is also registered as a voluntary adoption and voluntary adoption support agency.

We have been educating, advising and campaigning to improve the lives of children and young people in care and on the edge of care since 1980, identifying permanent families for children unable to live with their birth families whilst working to secure placement stability and optimise outcomes.

Members include local authorities, voluntary adoption agencies, independent fostering providers, local Health Boards, law firms and other organisations/individuals working with our priority groups of children and young people. A Helpline is also available and accessible to all including non-members and members of the public.

Our priority objectives in Wales are underpinned by a policy and legislative mandate set out by Welsh Government and include the following:

1. High quality training, consultancy and information to improve delivery of fostering and adoption services.
2. Accessible and responsive advice and information to members of the public affected by adoption and fostering
3. Enhanced public understanding about adoption and fostering by effective collaboration with partner agencies and the media
4. Provision of specialist advice to Welsh Government
5. Delivery of services informed by the voice of the child

In providing this written evidence BAAF Cymru has sought to represent views from a number of different perspectives based on our experience and work within the field of adoption and fostering and is provided within the context of Q 8 additional comments on specific sections of the Bill. In providing a considered response we have found this to be a fairly challenging exercise without knowing what elements of present legislation are now going to be repealed as a consequence of this Act. BAAF Cymru acknowledges the Welsh Government's long term aim of creating a separate statutory framework for

children's law in Wales, and that the present Bill is the start of the journey. Whilst we welcome the opportunity to look afresh at these provisions we would urge that clarity is maintained in stating which parts of the Children Act 1989 are to be repealed. Furthermore it would be helpful when considering this Act there is an explicit understanding about its interface with new Children and Families Bill for England and Wales that is presently going through the parliamentary process at Westminster.

#### **PART 4 Meeting Needs**

cl 27 We would suggest that regulations ,for a young adult sibling defined as between age 18-20 ,ensure extra support if they care for a sibling who is also a child.

cl 40 We would suggest that portability of assessments has some criteria attached to them. It is of course sensible that a person with long term health needs may not require a reassessment if they move a few miles to another Local Authority Area. However vulnerable children's needs can change when new adults join the household or preventative services are no longer available if the family moves to another area.

#### **Part 6**

##### **LOOKED AFTER AND ACCOMODATED CHILDREN**

cl 59(4)(a): we would suggest that the term 'independent fostering provider foster parents' is added;

cl 60: this is a reworking of the provisions of s20 Children Act 1989. However, the provisions of s20(4), which relate to short break or respite care are missing from cl 60. It is important that, if the provisions of s20 CA are to be repealed, that there should be a provision reflecting a local authority's powers to provide respite / short break care.

Similarly the provisions of s20(5) are not reflected in cl 60 (the power to provide accommodation in a community home between the ages of 16 and 21 if the local authority considers that to do so would safeguard or promote the child's welfare. It is imperative that, as in all aspects of the Bill that there is implicit referencing to the UNCRC, particularly when considering the needs of young people post 16.

cl 62(2)(a); we suggest that this is amended from ‘a duty to promote the child’s educational achievement’ to ‘a duty to promote the child’s education’, so reflecting the all-round benefits of education for all looked after children, regardless of academic ability or achievement.

cl 62(3): we would urge that ‘the views, wishes and feelings of the child concerned’ creates a new subsection (a);

cl 65(8)(a): we suggest that the duty of a local authority to ensure that a child’s placement is near the child’s home should include the caveat ‘if it is in the child’s best interests;’ There are occasions when, for the child’s safety and well-being, he or she is placed at some geographical distance from the family home;

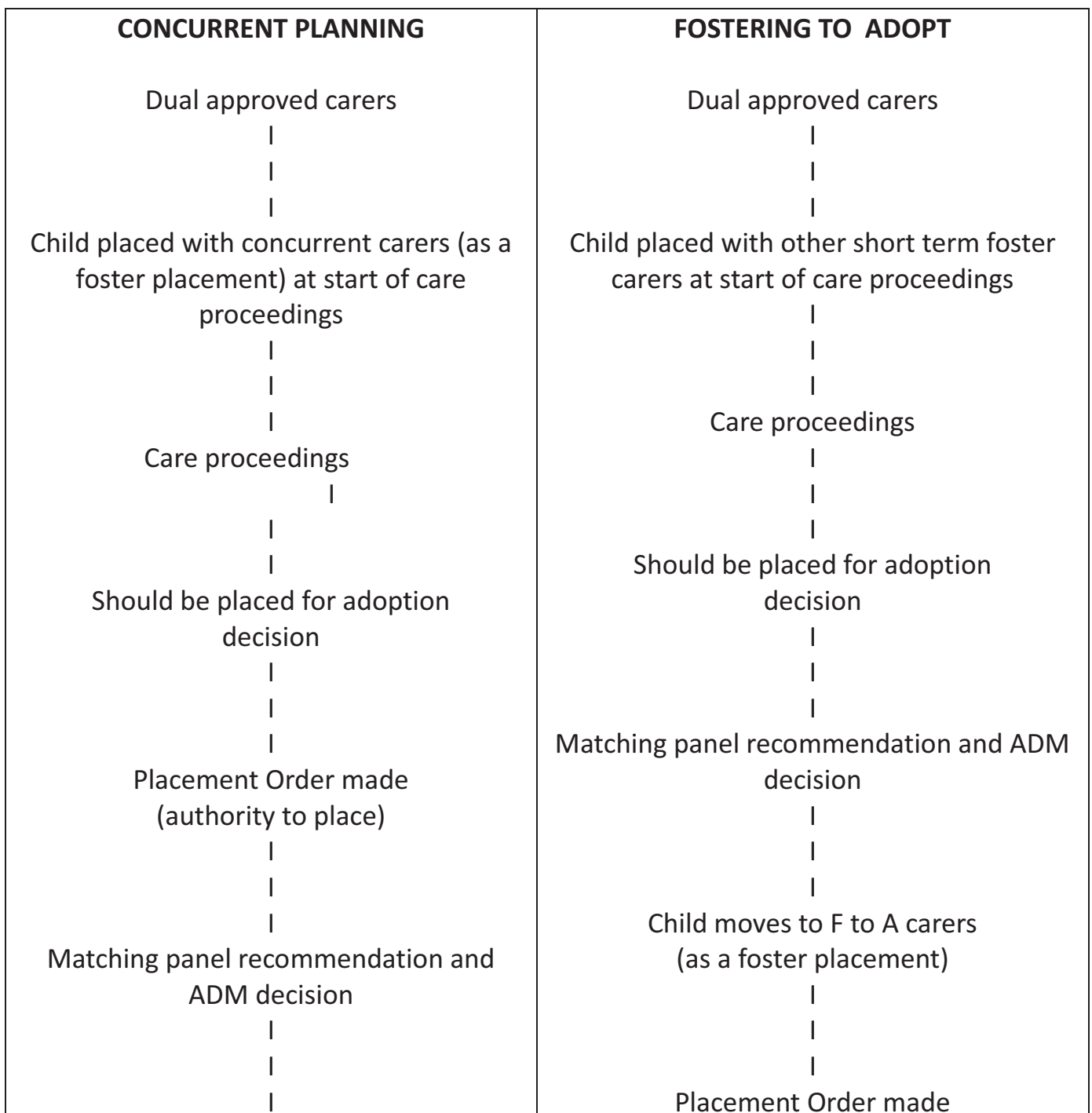
cl65(8)(c): Similarly we would suggest the caveat of ‘if it is in the child’s best interests’ is also included here. There are occasions when the assessed needs of children necessitate a placement apart from their sibling

cl 65(10)–(13): the ‘fostering to adopt’ provision’:

It is BAAF Cymru’s view that this provision will not provide any of the outcomes sought by the Welsh government in seeking early permanent placements for children.

Firstly, this is not the same provision as concurrent planning, where dual approved foster carers and prospective adopters agree to a child being placed with them, usually at the commencement of care proceedings. These carers work with the local authority in facilitating contact with birth parents and working toward reunification with birth family, if that is the court’s preferred care plan. It is only after the court provides authority to place the child for adoption, by the making of a placement order under the Adoption and Children Act 2002 and the adoption agency makes a decision that that child should be placed in an adoptive placement with these prospective adopters, that the foster placement transforms into an adoptive placement.

The chart below sets out the differences between concurrent care planning and 'fostering to adopt'.





<p>Concurrent carers become prospective adopters</p>	<p>(authority to place)</p> <p> </p> <p> </p> <p> </p> <p>F to A carers become prospective adopters</p>
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The ‘fostering to adopt’ carers will also have to be dual approved. However, under the provisions of cl 65 a placement will not be made to these carers until a ‘should be placed for adoption’ decision has been made. The child will, therefore, be moving from an established short term foster placement to the dual approved carers after a should be placed decision and matching decision by the adoption agency but before the court has given authority to place for adoption.

Fostering to adopt creates the following difficulties without the concurrency model’s benefit of maintaining the same placement if the care plan for adoption is accepted:

1) The placement with the carers, in taking place before the court gives authority to place, creates uncertainty for the carers and, more importantly, the child. How can the work usually undertaken with children about to be placed with their forever family be undertaken when the court might not approve the care plan for adoption?

2) The child’s move to fostering to adopt carers will take place at a critical time during care proceedings, where the parties, if contesting the local authority care plan, will be marshalling their evidence and filing statements in order to oppose the local authority. There will inevitably be Articles 6 (right to a fair trial) and 8 (right to a private and family life) ECHR arguments by those representing both parents and children that the adoption agency, in placing with foster carers at this stage who are also approved and matched as prospective adopters for this child, is pre judging the decision of the court. If a court does not approve the local authority’s care plan, then the fostering to adopt placement will have to end, in favour of reunification or a friends and family placement. Are these carers best placed, after only a few weeks of caring for these children, to facilitate another move? How will the child be affected by another move?

3) Even if the above concerns can be overcome, it is highly unlikely that an adoption agency will be able to make a decision and a recommendation from panel followed by a decision on the match with time to spare before the end of proceedings and the hearing for the application of the placement order. With the provisions of cl 14 of the Children and Families Bill bringing care proceedings into a 26 week timetable, there will simply not be the opportunity to bring about a fostering to adopt placement.

4) The provisions of cl 65(b) specifically demand that the child has been matched, under the Adoption Agencies (Wales) Regulations 2005 with the fostering to adopt carers before placement. Although there is nothing to prevent a matching decision taking place before the placement order is granted, current case law (Re K (Adoption: Permission to Advertise [2007] EWHC 544 (Fam)) warns that permission to advertise a child as available for adoption (in Be My Parent or Children Who Wait) would be unlikely to be granted before a final care order is made.

5) The additional cost and time which would be incurred in approving carers under both the Adoption Agencies (Wales) Regulations 2005 and Fostering Services (Wales) Regulations 2003 is disproportionate to the time a child could be placed before a placement order would be made and so authority given to place with prospective adopters. The time spent with the carers as foster carers would, in most circumstances only amount to six to eight weeks at the most.

Any perceived benefit of an earlier adoptive placement for children under this clause is far outweighed by the many factors militating against it. BAAF Cymru is an advocate of the concurrent model of placement, seeing significant benefits to the children for whom this type of placement is an option. For those children for whom concurrency is not an option, we are cautiously optimistic that the Welsh Government proposals to create a National Adoption Service will ensure consistently across Wales in the timely approval of well trained and rigorously assessed prospective adoptive parents who receive appropriate support during their adopted children's minority in order to meet their immediate and longer term needs.

In summary rather than the foster to adopt provision, we would have preferred a more general duty to be placed on a local authority to be obliged to consider as part of the permanency plan for a child, placement with carers who could become that child's permanent carers where this is in the child's best interests. The system as a whole needs to move firmly towards recognising the position of the child and the fact that he or she must not carry the burden of adult or

system inertia or hesitancy. But it must do so in a way that is fair and just and retains the confidence of society as a whole. This would have benefit for children being considered for long term fostering, special guardianship or for permanent placement with family and friends as well as that small proportion of children for whom adoption is the plan.

#### cl 67: Care and support plans

BAAF Cymru is in support of the creation of well prepared and supported care plans, but would urge that this new duty does not create an additional layer of administrative form filling for over-burdened social workers and ensures that the new care and support plans dovetail other regulatory provisions concerning planning and reviewing for looked after children.

The Welsh Government has the ideal opportunity, in the creation of this new power, to create an additional duty to 'ensure that arrangements for the delegated authority for foster carers is considered at each review'. This provision would ensure that the Welsh Government Guidance, 'Fulfilled Lives, Supportive Communities: delegated Authority for Foster Carers' is followed far more widely and properly than it has been to date.

#### Cl 75: Regulations about the disruption of education.

We suggest that any regulations take account of other crucial stages of education in addition to Key Stage 4; for example the move to primary school and to secondary school

#### Cl 76: Regulations about the placing of children with local authority foster parents.

Cl 76(d)(i) – we would suggest that the better wording for this would be that the placing local authority gives 'due consideration to the child's religious persuasion, racial origin(s) and cultural and linguistic background', with a specific reference to the needs of children whose first language is Welsh.

Cl 76(d)(ii) – again this provision should be widened to the foster parent giving an undertaking that due regard shall be had to the child's religious persuasion, racial origin(s) and cultural and linguistic background, including those children whose first language is Welsh.

#### Clauses 79 and 80: contact provisions

Here the Welsh Government has the opportunity to put right something which has always been missing in the contact provisions set out in the Children Act 1989 – to create a distinct duty to promote contact between siblings who are placed separately. Research is clear that some of the most long standing and enduring relationships in our lives are those with our siblings. We believe that far more focus should be given to promoting sibling contact, with the addition of a new cl 79(1)(b) and cl 80(2)(b). This is particularly important at a time when siblings are not always able to be placed together.

Clause 88 Young people entitled to support under 89 -96

Whilst we understand the need to distinguish between different categories of young people we would urge some reframing of this clause as an unintended consequence could result in young people being referred to by their category rather than status.

## **PART 7 SAFEGUARDING**

The first important point to make explicit under this section is that safeguarding is neither distinct or separate from fostering and adoption . We need to be mindful when debating such issues of both the Brighton and Hove and Wakefield SCR recommendations , within the context of maintaining respectful uncertainty in matters pertaining to the needs of vulnerable children living in both fostering households and children who are adopted .

Specific points to consider are as follows

cl 108 **Duty to report children at risk.** Without the framework of duty to investigate, this could be seen in isolation, as purely a duty to **report** children who are the responsibility of other Local Authorities without the explicit need to investigate all children deemed at risk and then, as appropriate, the duty to inform the area where the child is living or proposes to live . This clause would be strengthened by including the explicit duty regarding ‘child at risk’ in own authority as well as for those with whom there is a link to another local authority.; rather than just a cross reference in 108 subsection (3) to the s47 TCA CA ‘duty to investigate ‘ children at risk ‘be they in the home authority or those alluded to in subsection (1)

(1)-(3) This clause cannot be viewed in a vacuum, there is a need to dovetail the definition of ‘risk’ included here with the other thresholds of concern contained within other legislation, namely the ‘in need’ (TCA 1989 s.17); ‘significant harm’ (TCA 1989 s.31) definitions in regard of which there is a developed shared understanding and agreed assessment format . This would

be helpful in order to ensure that the whole continuum of child welfare from child in need to child in need of protection is afforded sufficient consideration.

This is particularly relevant if certain aspects of The Children Act 1989 were to be repealed.

The proposed sections in the Bill do not appear to consider these thresholds other than by this reference.

### 109-118 – Safeguarding Boards

In the context of the changing landscape of independent external service providers, in relation to both the National Independent Safeguarding and the Safeguarding Childrens' Board consideration should be given to ensuring that the organisational governance arrangements cover these independent providers.

cl 117 – Whilst developing a shared understanding and providing a structured forum for cross fertilization is positive, historically there are very good reasons for separate consideration of safeguarding responsibilities for adults and children in order to ensure due regard for children's needs.

### **THE NATIONAL ADOPTION REGISTER**

BAAF Cymru accepts and agrees with the Welsh Government that the creation of a separate National Adoption Register for Wales is both desirable and achievable. However, we would urge the Welsh Government to consider the timing of such a departure from the joint England and Wales Register. Current statistics obtained by present Adoption Register for England and Wales evidence that, for every prospective adopter from a Welsh Agency placed on the current register, there are 16 children from Welsh Local Authorities waiting for a match. This compares with the position in England where for every prospective adoptive family registered, there are seven children waiting. We are informed by the current Register Manager that within the context of this data more Welsh children are being placed in England than English children being placed in Wales.

Whilst we would all wish to give Welsh children the opportunity to retain their birthright of growing up in their own country, and with the establishment of the National Adoption Service for Wales and intended improvements in the

recruitment of adoptive families this may be possible in the future, the current shortfall is very concerning. There are presently no Welsh adopters on the register approved for sibling groups of three or more. We would not wish there to be the unintended consequence of the creation of a Welsh National Adoption Register at this stage to be a further hampering of successful family finding. Of course there will be reciprocal arrangements between the four Nation Registers, but systems do need to be embedded to ensure they are efficiently and operationally robust to respond to need

We would therefore suggest that, for a period of time, the Register is maintained for both England and Wales until such time as the new NAS has been established and we have sufficiently increased our Welsh pool of adopters to meet the needs of more children in Wales.

## **Chapter 2**

### **Co-operation and Partnership**

#### **151 Adoption Service –joint arrangements**

This small section of the Bill which refers to adoption specifically will allow Welsh Government the powers if necessary to direct Adoption agencies to join together in relation to specified services without amending the Adoption Agencies overall regulatory responsibilities. In its broadest sense this is to be welcomed and demonstrates an on-going commitment to have a more inclusive and consistent adoption service across Wales. However the detail provided is limited on what these powers may enforce and what criteria would constitute enforcement. Is it in respect of those Adoption Agencies that are deemed failing or is it to assist in the formation of national and regional delivery of services under the auspices of a National Adoption Service .For example 3 (d) working in conjunction with registered adoption societies.. What circumstances would necessitate Welsh Government directing Local Authority Adoption Agencies to work with a Voluntary Adoption Agency? 3(f) Does this mean in practice that if necessary the present Adoption Agency (W)Regulations 3 that restricts more than 2 Adoption Agencies joining together to hear panel business can be amended through these powers ? If so this is to be welcomed particularly as would provide the legislative mandate to rationalise resources and enable regionalised organisation of adoption panels .Very disappointingly there is no mention of post adoption services in specified

arrangements under (3).. one could interpret that this could come under financial arrangements to deliver such services but we would strongly urge that the importance of the provision of adoption support services to be included within this section. Indeed at BAAF Cymru we would very much welcome Welsh Government considering the report recently produced by the House of Lords Select Committee which urges Westminster to include adoption support in primary legislation.

Children adopted from care have complex needs which can persist after adoption despite the ordinary loving care of their adoptive families. Unless these children and their adoptive families are properly supported there is a high risk these difficulties will not improve and ultimately the placement may break down. This can only result in more damage to the child as they return to care. It also leaves the adoptive parents devastated.

Current legislation gives people affected by adoption the right to an assessment for adoption support services, but no duty to provide those services. There is also a postcode lottery of provision from one authority to another.

The House of Lords Scrutiny Committee Report highlights all of these issues in their comprehensive and important Report. This recognises that in order to increase the number of adopters coming forwards and ensure adoption succeeds, local authorities, health and education should have a statutory duty to provide support. The Committee recommends that birth parents from whom children have been removed should also receive support to break the patterns of behaviour which have led to the removal of the child. This is a fundamental recognition of the plight of many of these women – and for many, time and time again. BAAF wholeheartedly supports the recommendations of the Committee especially at a time when we are considering a once in a generation opportunity to reform adoption services in Wales. We do recognise and accept the significant impact on resources. But when the State has intervened in such a dramatic way in removing and then placing a child for adoption, it is a socially responsible investment that will, over time, reap dramatic rewards.

Evidence provided on behalf of BAAF Cymru by Sarah Coldrick , Legal Advisor and Wendy Keidan Director BAAF Cymru

Cefnogi Teuluoedd sy'n Mabwysiadu

**adoption uk**

Response  
to Social

**supporting adoptive families**

Services and Well-being (Wales) Bill. – Stage 1 consideration.

### **What is Adoption UK Wales?**

Adoption UK is the only UK wide charity run by and for adoptive parents. The charity's aim is to help to make adoptions successful and to promote loving and supportive relationships between children and their adoptive parents.

Adoption UK is primarily a membership organisation for prospective adopters, adoptive parents and long-term foster carers (current membership of over 5,000 families). However, many of our services are available to practitioners, as well as other groups of carers/guardians, most notably our general information, training programmes and workshops and *Children Who Wait* magazine. Our services are unique in that they are informed by a wealth of adoptive parenting experience and are delivered by experienced adoptive parents; they include the following:

- Four National Telephone Helplines (one in each of the countries of the UK and taking around 5,000 calls per year from prospective adopters, adoptive parents and professional working with adopted families)
- Four offices with locally-based staff in each country of the UK who have knowledge of the devolved structures of education, health and different legal systems. The Wales office is in Cardiff and there are two part-time staff and currently eight especially trained volunteers coordinating support groups around Wales.
- A UK-wide network of local support groups (run by adoptive parent volunteer coordinators). Eight groups currently running in Wales with two more starting up this year.
- Buddy support schemes (linking experienced parents with new parents or parents in difficulty), and other peer support networks.



- A Parent Mentoring Project which was developed in Scotland and which will be rolled out across the UK over the next two years offering intensive support to families who are struggling.
- Lending libraries in each of the four countries with inter-country loans available.
- *Adoption Today* - a magazine for adoptive families and professionals in adoption (6 issues a year).
- *Children who Wait* – a family finding service using a magazine and an online service that features profiles of children waiting to be adopted.
- Online Community (c12,000 registered prospective adopters and adoptive parents).
- Publications and other information resources.
- Training programmes and workshops, including *It's A Piece of Cake?* which is a six day training course for adoptive parents independently evaluated by the Hadley Centre in Bristol which has been shown to increase the confidence of adoptive parents and increase their range of parenting strategies.

The Wales office was established in Cardiff in 2008 with support from a Children and Families Organisational Grant from the Welsh Government. No one knows how many adoptive families there are in Wales in total. However, based on an average of 234 adoptions per year over the past 10 years (some of which will be sibling groups) there will be at the very lowest estimate 4,000 adoptive families with children between 0 and 25 living in Wales currently.

Our members have access to all of our services, but they are also part of a community of adopters who have made the commitment to help and support each other, with understanding and without judgement. This unique community of adopters is our most important resource.

A member of the Strategic Voluntary Adoption Partnership in Wales, Adoption UK, along with BAAF, After Adoption, Barnardos and St.David's Children's Society is exploring how the voluntary sector can work alongside the statutory sector in Wales to deliver the positive outcomes for children that Welsh Government aspires to.

## **Response to Consultation Questions**

## **General**

1. We believe that there is the need for a Bill to provide for a single Act for Wales that brings together local authorities' and partners' duties and functions particularly in relation to adoption services. The situation at present means that the law is often used as a reason why adoption agencies in adjacent local authorities cannot join together effectively to deliver a single service to adopted children and their families. For example, adoption panels and inspection regulations for each adoption agency make it harder for joint action. We commented in some detail on the benefits that greater collaboration between local authorities and voluntary sector partners would bring to adopted children in our response to the initial consultation on the Social Services (Wales) Bill and we continue to feel that this is the case.

### **2. We also believe that the Bill should include a provision to remove the “reasonable punishment” defence in relation to assaults on children in Wales**

We understand that the purpose of the Stage 1 scrutiny is to consider the aims and policy objectives of the Bill and whether the Bill, as drafted, is capable of achieving its aims/objectives. The Report following Stage 1 may contain a recommendation that the Assembly either agrees or does not agree the general principles, and can include recommendations for amendments to the Bill.

We believe that given the overall context and the overall aims of the Bill, the Stage 1 Report should recommend that a clause should be added to remove the “reasonable punishment” justification for common assault on children in Wales. The overall context includes the very clear human rights obligation to remove the defence and the long-term public commitment of successive Welsh Governments to do so (a commitment it also made to the UN Committee on the Rights of the Child). The First Minister confirmed in October 2011, having taken legal advice, that the National Assembly now has the power to legislate to remove the defence and we understand that there is strong cross party support for this action.

**Should you require any further information from Adoption UK please contact:**

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**Barnardo's  
Cymru**

**Title      Written contribution to Stage 1  
scrutiny of the Social Services  
and Wellbeing (Wales) Bill by the  
Health and Social Care  
Committee of the NAfW**

**From:**      Tim Ruscoe  
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**Date:**      March 2013

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| <ul style="list-style-type: none"><li>▪ <b>This response may be made public.</b></li><li>▪ <b>This response is on behalf of Barnardo's Cymru.</b></li></ul> |
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1. Barnardo's Cymru has been working with children, young people and families in Wales for over 100 years and is one of the largest children's charities working in the country. We currently run diverse services across Wales, working in partnership with most of the 22 local authorities, supporting in the region of 8,500 children, young people and families last year.
2. Barnardo's Cymru services in Wales include: care leavers and youth homelessness projects, young carers schemes, specialist fostering and adoption schemes, family centres and family support, parenting support, community development projects, short breaks and inclusive services for disabled children and young people, assessment and treatment for young people who exhibit sexually harmful or concerning behaviour and specialist services for children and young people at risk of, or abused through, child sexual exploitation.
3. Every Barnardo's Cymru service is different but each believes that every child and young person deserves the best start in life, no matter who they are, what they have done or what they have been through. We use the knowledge gained from our direct work with children to campaign for better childcare policy and to champion the rights of every child. We believe that with the right help, committed support and a little belief, even the most vulnerable children can turn their lives around.
4. In addition to the delivery of social care services Barnardo's is one of only two Third Sector adoption agencies in Wales.

## **Introduction**

5. Barnardo's Cymru welcomes both the underlying principles and the aims of the Bill as they represent a demonstration of a Government willing to take brave decisions and actions that will promote and protect the rights of the population, require a more strategic approach to addressing individual need and raise levels of wellbeing through appropriate and earlier interventions.
6. Furthermore, Barnardo's Cymru understands the need for the Bill to achieve a balance of prescription and flexibility to deliver many of the changes through future developments in regulation. Our response is offered in the spirit of achieving as much positive change as possible within a single Bill.
7. However, in reading the Bill we have identified a number of significant overall concerns in relation to the principles and aims,

as well as more specific comment contained in our answers to the consultation questions.

### **Principles and Aims**

8. Firstly, we believe that the balance on the face of the measure and the implied delivery of intent through regulation is not what is required to deliver the aims or hold to the principles of the Bill. As the Bill is presented, it requires a considerable leap of faith in regards to implementation. This leap would be more comfortable with a safety net provided by a greater degree of clear explicit requirement on the face of the Bill. It would also be beneficial in this regard if the Regulatory Impact Assessment suggested more frequent application of the affirmative procedure.
9. Secondly, it appears that a particular motivating influence is the need to address issues of services struggling to deliver effectively within a creaking system without additional funding. The difficulties and issues around social care and welfare provision have long been known: consequently, the timing of the Bill, linked to our earlier concern, might appear to be significantly driven by financial considerations rather than improving levels of wellbeing.
10. Thirdly, we could see the logic in building adult safeguarding and advocacy built upon models used in children's provisions if there were no fundamental problems with them. The reality is that LSCBs currently operate without core funding and are reliant on partnership funding without a formula. The uncertainty or inconsistency of funding for both day to day and specific focused work such as Child Practice Reviews presents a significant obstacle.
11. Similarly, all is not as well as it could be with advocacy for children and young people. The Children's Commissioner for Wales report "Missing Voices" highlights that whilst there are examples of good advocacy practice, in reality too many of the experiences of children and young people's advocacy indicate poor awareness, leadership and accountability systems. There are inconsistencies and a predominance of perception that advocacy is a young people's service rather than including younger children.
12. Barnardo's Cymru is very welcoming of the intent to simplify and clarify the legislation, powers and duties, reducing the pressures of navigation through a complex framework. In this respect, we also feel that the Bill, as tabled, does not match the aim. Experiences of the benefits of receiving care and support services must not diminish as a result of new legislation. We also know the

acceptable minimum standards that services are expected to meet currently. Additionally, we know where there are inconsistencies in receiving services, frequently referred to as postcode lottery. As this is the case we would hope that there would be greater clarity of what regulation “must” ensure, complemented by what regulation “may” also achieve.

13. For example, Section 86 **Review of cases and inquiries into representations** subsection (2) (a) to (j) some of which refers to a number of things that we know are critical in ensuring proper provision, safeguarding considerations and individual wellbeing. In our opinion, 86 (2) should read: *The regulations must make provision* - and be followed by the addition of (3) *The regulations may also, among other things, make provision* -.
14. We also have concerns in relation to the published principles and aims in the areas of Voice and Control, service delivery across agencies and the financial impacts.
15. Notwithstanding the work of officials in carrying out a due regard analysis in relation to the UNCRC, it could be argued that rather than applying the duty in a way that evaluates how the Bill will enhance children’s experience of their rights, where it fails to do so, remedial actions or justifications should be noted. It appears that the analysis was delivered to support the Bill rather than measure it against the UNCRC.
16. Possibly as a consequence, the element of voice and control in relation to services for children in their own right or services for their family could be stronger. The face of the Bill could carry more explicit requirements as to the place of children and families in their service design and delivery, evaluation and review, as well as developing their outcomes. Additionally, under the requirement in section 5 to jointly assess needs locally, there appears to be no explicit requirement for the involvement of individuals or communities in the process. Finally, in regards to voice and control the Bill appears to remain as a service led model rather than need led, reinforced by the apparent application of the medical rather than social model of disability.
17. The requirement of delivering services across a broad spectrum of providers and sectors is also welcome; although we know from experience that this has sometimes proved problematic and would benefit from greater clarity on the face of the Bill. Even if clarity is achieved, there could well be some fundamental issues to resolve such as the possible collection of charges for some services. Would the application of a charge preclude Health providers who

are required to ensure services that are free at the point of delivery?

18. Our final overall concern would be the reality of a move towards services that could be seen as universal without universal budgets. The Bill requires cross sectorial working but only considers the financial impact on Social Services budgets.
19. Section 30, **Exception for persons subject to immigration control**, leads to a disappointment rather than concern. We understand that both benefits and immigration are not devolved and realise the difficulty that could arise from not including this exception, however exempting this group does not sit easily with the notion of a Government with aspirations to evidently promote and protect Human Rights. This section removes the duty to support people whether they are individuals, in a family with or without children, from receiving services when they are destitute because of their status. In our opinion people, are frequently forced into this state of destitution for fear of returning to their country of origin or having insufficient means to do so.

## **Consultation Questions**

### **General**

**1. Is there a need for a Bill to provide for a single Act for Wales that brings together local authorities' and partners' duties and functions in relation to improving the well-being of people who need care and support and carers who need support? Please explain your answer.**

20. As stated earlier, we welcome the commitment in bringing clarity to the legislative framework. However, we have reservations about the Bill delivering this aim. The short but conditional answer therefore would be yes.
21. Although the current situation is undeniably complicated, it is in place, there is considerable experience of operating within it and there is scope to amend or further regulate the raft of legislation that exists. Maintaining this approach, however, would limit the scope of desired development outlined in Sustainable Social Services and would fail to offer a distinct Welsh approach or provide Welsh Ministers with the powers within the Bill.
22. We, therefore, believe that it is appropriate to provide the legislative framework for social care through a single Welsh act. It is an opportune time to simplify and clarify what is currently

provided, develop further provision, drive change and ensure strategic assessment and provision. As already noted by Government this would also enhance the understanding of entitlement, purpose and process which, in itself, contributes to a positive sense of wellbeing.

23. In considering this, it might have been helpful if, perhaps within the explanatory memorandum, there was clear reference to the effect of the Bill on current legislation in order to build confidence that issues are being addressed and not lost and that development will indeed lead to an obvious improvement for people requiring services.
24. Additionally, it should be apparent in the Bill how other policy and legislative developments in Wales relate or are likely to relate to, and link with the Bill, particularly those which have an evident effect on wellbeing such as the Independent Living Framework, Additional Needs and Domestic Violence. It is understood that it is not possible to fully accommodate future considerations or legislation; however, where likely developments are known or presumed, account should be taken and reflected in the Bill by way of recognising powers to regulate.
25. Similarly, there has been much work on developing outcomes in relation to Mental Health services. Although there may be much collaboration between departments, divisions and drafters, evidence of collaboration and consequently shared learning is hard to identify in the Bill as drafted or the explanatory memorandum.
26. In order for the Bill to address the significant barriers in identifying and meeting community and individual need across sectors it must enable the workforce to "buy into" the required change. As such, there should not only be greater clarity and direction in service delivery, a stronger voice for service users but also a clear recognition of the role of the workforce in planning and delivering change.

**2. Do you think the Bill, as drafted, delivers the stated objectives as set out in Chapter 3 of the Explanatory Memorandum? Please explain your answer.**

27. Once again we welcome what appears to represent positive aspiration but again are concerned that the Bill is not drafted in a way that will achieve them.



28. In particular regard to the wellbeing of children, there seems to be insufficient weight given to the importance of education. The place of education in enabling children to develop and achieve their potential is well known, however the Bill seems to give little specific regard to the role of education. This is particularly important given that the statutory changes to SEN legislation stress how assessment for support must be undertaken jointly between education, health and social services.
29. The objectives of chapter 3 represent the laudable policy intent of Sustainable Social Services: A Framework for Action. Achieving them will require the development of a very different environment through legislation. Too frequently the draft Bill appears to represent a rewriting of what is there, rather than what is required to carry forward the required change.
30. We welcome the ambition of population outcomes and services but have difficulty in seeing how the Bill will provide the appropriate starting point to achieve it. However, as an organisation well versed in outcome planning and delivery, we would suggest there is benefit in the creation of more pragmatic rather than high level aspirational outcomes.
31. Contrary to the published policy intent, the Bill appears to outline a service led model similar to that which currently exists. We also have no clear view about how the vision might currently be reached without significant increases in investment and long periods of evolutionary transition building from improved pragmatic specified services for Children, Families, Adults and Older People to unified services for a population.
32. As drafted, the Bill currently has the potential to address some of the gaps in services for adults and older people, introduce some portability of assessments except for carers and introduce a National Eligibility Criteria. As drafted it also has the potential to fall short.
33. Whilst welcoming the benefit that a National Eligibility Criteria might bring, and recognising the central role of the criteria in delivering the intention of the Bill, without knowing what the criteria will be it is difficult to conceive how the objectives might be achieved. As the criteria are as yet unpublished, it is also difficult to comment on this critical aspect which must be produced in a way to enable the proper and appropriate provision of care and support rather than primarily manage resources. We also have concerns regarding how eligibility criteria may affect the balance of preventative services and specialist services and the

extent to which people can access each of these types of interventions.

34. A similar criticism might be made of the proposed 3 stage assessment process. Assessment of Need followed by eligibility and financial assessment points more readily to resource management. If this is the case, the increase in known yet unmet need could well rise uncomfortably particularly in families with children.
35. The Bill makes positive movement towards achieving a broader access to assessment by right, particularly in promoting the status of carers' assessments. It is surprising therefore that paragraph 46, page 12 of the explanatory memorandum and the Minister,s response to William Graham when tabling the Bill, indicate the denial of portability in carers care and support plans. Section 40 of the Bill does not make explicit reference to carers' care and support plans, yet we would not envisage significant transfer of resource issues if carers' care and support plans were to be portable until the point of review by a new authority.

**3. The Bill aims to enable local authorities, together with partners, to meet the challenges that face social services and to begin the process of change through a shared responsibility to promote the well-being of people. Do you feel that the Bill will enable the delivery of social services that are sustainable? Please explain your answer.**

36. We believe that the Bill as tabled will not meet this aim without significant amendment or undue faith in regulation.
37. It should be made clear how the single act repeals or amends current legislation. Local authorities and their partners frequently deal in complex issues. However, the Bill or Explanatory Memorandum could be clearer in relation to this so local authorities, partners and providers can more easily see how functions will remain, evolve or transition. It will also provide reassurance that those vulnerable people currently receiving appropriate services will not face a situation that leads to diminishing support.
38. The aims of the Bill require improvement within partnerships at all levels to deliver the change. While illustrative of the desire for delivery across a broad spectrum of services and sectors, the Bill appears not to recognise the difficulties experienced in this. It does not address some of the fundamental issues of funding and leadership as well as sectorial budgets and priorities. In this

regard it is our opinion that greater prescription is required whether through regulation or on the face of the Bill. Sufficient prescription will allow social care service partnerships to remain locally made ensuring adequate funding and membership without relying on goodwill. Furthermore, our practitioners have a worry that the "little voice" can be lost when there is too much distance between service user, practitioner and decision makers.

39. Barnardo's Cymru believes that the ability to charge for services is right. There are some services that might lend themselves to this; however, charging should not impose upon or limit access or availability.
40. We do, however, have some concerns as to the possibility of charging for information. As information is critical to service access, an inalienable human right specifically mentioned in the UNCRC and central to the Equalities Objectives, we would welcome some additional explanation.
41. Effective early preventative services will be a fundamental building block of sustainable social services into the future, particularly for children and families. There is a welcome emphasis on this as it represents significant potential for improving wellbeing and reducing the remedial, often expensive crisis interventions when needs have escalated. However, once again, we fear the Bill, as drafted, will not lead to implementation. It is obvious from discussions that the Bill is sufficiently vague as to promote many perspectives of what preventative services might be.
42. We believe that preventative services should be provided in the first instance as a result of local needs assessment. These might be seen as universal services. These might include library, leisure and youth services. In ensuring this level of provision, the necessary infrastructure (e.g. transport) would need to be factored in.
43. A second level of preventative services might be established on a community need such as parenting groups; carers support groups or engagement groups. These, although established on an identified need, would also be open access with voluntary commitment. They would require frequent evaluation to ensure their continued fit.
44. We also believe there is a third level of preventative services that is based on assessment of individual need requiring an individual tailored response rather than an "off the shelf" solution. This

would not be seen as a long term care and support plan but an individual preventative intervention.

45. It is possible that this or something similar is intended; however, there needs to be more clarity on the face of the Bill and a more detailed description and requirement through regulation in order for the aims to be achieved.
46. Notwithstanding the lack of an adequate definition of wellbeing within the Bill, we would again reinforce our support for preventive services as the best means of improving long term wellbeing outcomes.

#### **4. How will the Bill change existing social services provision and what impact will such changes have, if any?**

47. In some parts the Bill represents a rewrite of what currently exists. However, we feel mostly supportive that this is largely the case with Part 6 Looked After and Accommodated Children. In some respects, the Children's Act 1989 represents a landmark shift in children's services. The 1989 Act has largely worked and the addition of sections 67 and 68 (care and support plans) in this Bill are welcome. However, we would welcome explicit reference to the possibility of foster carers having the right to a carers' assessment. Additionally, there could be a case for other foster children or the foster parents' own children to request carers' assessments.
48. The Bill does not, however, address some of the current shortcomings. In delivering looked after services, it rightly continues to emphasise the importance of foster care yet there is insufficient capacity now and the financial assessment makes no reference to the considerable investment required in recruiting and preparing foster carers in the numbers or to the levels required.
49. We were expecting to see the inclusion of the "When I am Ready" scheme in Part 6. This scheme for care leavers would also have had an impact on foster care capacity. We presume by the fact that it is omitted that it will be considered as a pioneer project in the future.
50. In relation to adoption, it is our opinion that the Bill makes appropriate amendment to the Adoption and Children's Act 2002 affording powers to direct local authorities into joint arrangements for adoption services. The explanatory memorandum is clear that this power will also extend to the creation of a national adoption

support service. In principle we are fully in favour of a single national support service. We are pleased that the regulatory impact assessment for the powers through amendment will require consultation with affected authorities. We presume that this requirement will extend to the development of a national adoption support service and that Third Sector adoption agencies will be fully involved in any consultative processes.

51. Realising the aims, principles and policy intent of "Sustainable Social Services; a Framework for Action" requires significant change in social services provision. However, in reality the most significant changes will be seen in Adult Safeguarding, Adult Advocacy and National Eligibility. The changes for children and families will largely depend on subordinate legislation. The adult lobby has rightly advocated for necessary change but achieving equity without diminishing children's provisions will be a significant challenge.
52. Improving access and uptake of Direct Payments is welcome. It is our opinion that they have a valid place in transition developments for disabled children and young people. In particular, Learning Disabled young adults are under represented in the take up. It is well documented that access to direct payments enables disabled people to have increased lifestyle choices and independent living options. We would welcome a strengthening of access to direct payments given that Wales currently has in the region of a 5% uptake of direct payments by disabled people compared to over 50% in the other countries of the UK. We also feel that this section should be cross referenced with the Framework for Action on Independent Living and also be proofed for children's welfare to ensure that it does not focus upon a mainly adult agenda.
53. The development and inclusion of Cooperatives, Third Sector and Social Enterprise models is welcome and should impact in particular on the variety and nature of preventative provision. It must also be recognised here that this developing capacity will require additional inspection and regulatory capacity; this again should be recognised within the financial assessment.

**5. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?**

54. We have highlighted a number of issues throughout this document that could represent barriers to implementation. In short they are:

- Simplicity and Clarity. The Bill must match the bravery of the aims and principles. The Bill is entirely dependent on local operational commitment and decisions. In order for this to happen consistently, it would be helpful if the Bill was not ambiguous or as dependent on substance through subordinate processes.
- The practical implementation of the Bill should better reflect the person centered rights approach clear in the policy intent.
- Both the UNCRC Duty of Due regard and the Equalities Impact assessments seem to have been less comprehensive than we would expect.
- We do not believe the financial assessments consider all of the costs likely to be incurred against a social services budget or the costs to other budgets.
- The Bill does not seem to address by duty the issues of joint working. As drafted the current issues for joint working are likely to continue.

**6. In your view does the Bill contain a reasonable balance between the powers on the face of the Bill and the powers conferred by Regulations? Please explain your answer.**

55. We will not restate all of our arguments that appear throughout: however, Barnardo's Cymru does not believe that the balance is right. As previously stated, we believe too much is left to regulation that may lead to change and there is not enough necessary direction. We would welcome a more balanced use of regulation "must" rather than the predominant regulation "may" and clear duties, particularly in relation to shared and partnership working and funding formulas for Safeguarding Boards.

**Powers to make subordinate legislation**

**7. What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)? In answering this question, you may wish to consider Chapter 5 of the Explanatory Memorandum, which contains a table summarising the powers delegated to Welsh Ministers in the Bill to make orders and regulations, etc.**

56. As in our answer at 6 above, we will not restate our earlier argument entirely. However, whilst recognising the need to afford some flexibility through powers for Ministers to make future regulations, we feel that the proportion of delivering the Bill's

intent is weighted too much towards subordinate legislation with too little suggestion of the affirmative procedure.

57. Additionally, we have concerns that the reliance on regulation without adequate description will impinge on members' ability to take a fully informed position when required to vote.

## **Financial Implications**

### **8. What are your views on the financial implications of the Bill?**

**In answering this question you may wish to consider Chapter 8 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the Bill.**

58. We have referred to financial considerations throughout; however, in short, in regard to partnerships, the financial assessment appears insufficient. It refers only to expenditure within Social Services' budgets. It recognises the probability of additional transitional training cost for Social Services only and expects a reduction in both administration and litigation costs. The financial analysis should factor in the need to run some services concurrently during transition and indicate costs more broadly across other sectors. It is difficult to envisage cross sector delivery without consideration of effects across multiple budgets.
59. We would question the assessment predicting no increase to expenditure with the do nothing option, when we are sure that it would continue to provide increased budgetary demand. It would be helpful if the financial assessments were more comprehensive throughout.

## **Other comments**

### **9. Are there any other comments you wish to make about specific sections of the Bill?**

60. As a member of the Committee's Third Sector Advisory group, in addition to having had sight of, or discussions about, other contributions to this consultation including that of Disability Wales, Barnardo's Cymru is in agreement that:
- The Bill does not uphold a social model of disability but rather, reinforces a medical model.

- The Bill has little focus upon re-ablement but instead focuses on passive reciprocity. As such it could be a step back rather than fulfilling the policy aims by taking a brave step forward.
- If social services are to be transformed there is a need for culture change. This should be at the heart of the voice and control section.
- Independent living should be enshrined within the wellbeing aspect of the Bill.
- The Bill needs to allow for different models of direct payments. For example, some disabled people are forming co-ops to pool their payments enabling access to niche support or interests e.g. drama coaching.
- There needs to be a duty to provide access to equipment and adaptations. This is currently provided under the Chronically Sick and Disabled Persons Act 1970 due to be repealed at Westminster. If this is not enshrined in Welsh law, there will be no duty to provide these services.
- By not having any delegated assessments, people in need may be back in the position of having repeated assessments for the same needs because social services are unable to delegate them.
- The benefit brought to children and young people of the Children in Need (Section 17 of the Children's Act) should be maintained within a People in Need process.
- The Bill, in particular Part 6, lacks reference to or fails to make provision for disabled children when in respite or alternative care.
- Greater reference should be made within the explanatory memorandum to the expected impacts of welfare reform. It appears inconceivable that the cumulative impacts will not lead to significant additional burdens on social service budgets.

### **Equal protection for children in relation to common assault**

61. Barnardo's Cymru is a founder member of the Children are Unbeatable (CAU) Alliance Cymru and we would like to confirm our full backing for the Alliance's consultation response on the need for Government to address the issue of equal protection of children from assault at this stage of the Bill. We would refer the Committee to the Alliance's response for a comprehensive critique on why the Government should act now on this issue.
62. Successive Welsh Governments for more than ten years have supported a call to repeal Section 58 of the Children Act 2004 which currently permits the defence of "reasonable punishment" if a parent hits a child. There is no such defence in law regarding



assaults on adults and it is surely incongruous (and some would say perverse) that children, the most vulnerable members of society, have less protection than adults in common assault cases. In our view this is a long standing anomaly that the Government clearly now has the opportunity to correct. The First Minister has confirmed that the Assembly now has sufficient legislative powers to repeal this section of the law and we feel the Government should, therefore, honour its long-standing commitment to this issue by including the reform in the Social Services and Wellbeing Bill.

63. As referred to above, the CAU response provides a detailed outline for the case for reforming the law on this issue in Wales. To emphasise the need for change we would wish due consideration to be given to the following points which are expanded upon in the CAU response:

- The Assembly now has the legislative powers to bring about this reform.
- The Social Services Bill is the most obvious legislative vehicle in the Welsh Government's programme to include the change in the law.
- In changing the law, the Welsh Government would be presenting a consistent approach to children's rights and be complying with its own duty of due regard to the United Nations Convention on the Rights of the Child.
- Reforming the law on this issue is fundamental to children's status in Welsh society as well as to their wellbeing, safety and protection.
- In addition to the human rights imperative to ban physical punishment, research findings increasingly show that all the elements of children and young people's wellbeing defined in Section 2 of the Bill would be improved by legal reform.
- Consultations with children and young people on the issue of smacking consistently tell us that they find the experience humiliating, distressing and painful.
- Within the European Union, 17 states have banned completely and a further 6 are also committed to a ban. This leaves the UK as only one of four member states not to make such a commitment. Legal change in those countries has not led to any significant increase in the numbers of parents being prosecuted for assault (safeguards are in place so that prosecutions cannot be pursued for example unless it would be in the best interests of the child) but it has led to comprehensive changes to the culture of how children are raised and how they are shown to be worthy of greater protection and respect within society. Research shows that

once a ban is enacted, parental support for, and use of, physical punishment rapidly diminishes. In short, a change in the law directly and quickly results in a change in behaviour.

64. In launching its five year action plan "Getting it Right" in 2009, the Welsh Government stated as one of its priorities "Working to make physical punishment of children and young people illegal in all situations." We strongly urge the current Government to be unequivocal in its support for legal reform and to honour that earlier pledge.

**Barnardo's Cymru**  
**March 2013**

# Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru)

Mawrth 2013

1. Mae Cymdeithas Llywodraeth Leol Cymru (WLGA) yn cynrychioli'r 22 awdurdod lleol yng Nghymru, ac mae'r tri awdurdod parc cenedlaethol, y tri awdurdod tân ac achub, a'r pedwar heddlu yn aelodau cysylltiol.
2. Mae'n ceisio darparu cynrychiolaeth i awdurdodau lleol o fewn fframwaith polisi sy'n dod i'r amlwg sy'n diwallu prif flaenoriaethau ein haelodau ac yn darparu amrediad eang o wasanaethau sy'n ychwanegu gwerth at Lywodraeth Leol Cymru a'r cymunedau maent yn eu gwasanaethu.
3. Mae WLGA yn croesawu'r cyfle i roi tystiolaeth ysgrifenedig ar Fil Gwasanaethau Cymdeithasol a Llesiant (Cymru), sydd wedi ei datblygu drwy ymgynghoriad agos â gwleidyddion arweiniol yr awdurdodau lleol, a'r Cyfarwyddwyr Gwasanaethau Cymdeithasol.
4. Wrth lunio'n hymateb rydym wedi gweithio mewn partneriaeth ag awdurdodau lleol, ADSS Cymru a Chyd-ffederasiwn y GIG. Hefyd rydym wedi ceisio gweithio'n agos gyda'n partneriaid yn y trydydd sector, a chyda swyddfeydd Comisiynwyr Plant a Phobl Hŷn Cymru.
5. Yn y cyflwyniad hwn, rydym yn rhoi sylwadau ar y rhannau hynny o'r Bil a fynnodd y Pwyllgor, ac wedi eu cyfyngu i egwyddorion y Bil. Rydym yn eich cyfeirio at gyflwyniad ADSS Cymru am ragor o fanylion am y goblygiadau polisi allweddol, a chefnogwn eu safbwynt proffesiynol ar y materion hyn.
6. Croesawn y cyfle a roddwyd gan y pwyllgor i roi tystiolaeth lafar ychwanegol am ddarpariaethau o fewn y Bil, fel Diogelu, ac argymhellwn roi'r un cyfle i lesiant, integreiddio, cymhwyster ac asesu hefyd, o ystyried eu pwysigrwydd i'r agenda bolisi ehangach. Mae gwaith eisoes wedi cychwyn gyda chydweithwyr allweddol ar nifer o feysydd i ddatblygu tystiolaeth fanylach, gyda Chymdeithas Trysoryddion Cymru ac ADSS Cymru ar oblygiadau ariannol y Bil, gyda'r IPC ar Asesu a Chymhwyster, gyda'r Athro Jan Horwarth ar Ddiogelu a chyda Chronfa'r Brenin ar integreiddiad ag iechyd.

7. Tasg hanfodol yw adeiladu fframwaith deddfwriaethol cadarn i gefnogi cyflwyniad *'Gwasanaethau Cymdeithasol Cynaliadwy'* gwirioneddol yng Nghymru, a rhaid cydweithio mewn partneriaeth yn y dasg hon er mwyn sicrhau ei gwneud yn gywir. Ni all gwasanaethau cymdeithasol gyflawni'r agenda hon ar eu pen eu hun a bydd cyfraniad partneriaid yn y sector cyhoeddus ehangach, y trydydd sector a'r sector annibynnol yn hanfodol wrth gyflawni'r amcanion polisi.

Am ragor o wybodaeth cysylltwch â:

Martyn Palfreman, Pennaeth y Gyfarwyddiaeth Iechyd a Gwasanaethau Cymdeithasol

Emily Warren, Arweinydd Polisi

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## **Cyflwyniad**

8. Mae'r WLGA yn croesawu ymrwymiad cyson y Dirprwy Weinidog dros Blant a Gwasanaethau Cymdeithasol i weddnewid gwasanaethau cymdeithasol yng Nghymru, a'r gefnogaeth barhaus am wasanaethau cymdeithasol fel un o swyddogaethau craidd Llywodraeth Leol Cymru.

9. Mae Llywodraeth Leol yn gwerthfawrogi ymagwedd agored ac adeiladol y Dirprwy Weinidog wrth siapio'r agenda ddiwygio ar gyfer gwasanaethau cymdeithasol yng Nghymru. Bydd y WLGA, gan weithio gydag ADSS Cymru, yn parhau i gyfrannu at ddatblygu'r fframwaith polisi cenedlaethol drwy gyfrwng fforymau fel Grŵp Polisi Gwasanaethau Cymdeithasol WLGA, Fforwm Partneriaeth Cenedlaethol Cymru a Grŵp Arweinyddiaeth Strategol ar gyfer Gwasanaethau Cymdeithasol Llywodraeth Cymru a grwpiau rhanddeiliaid thematig.

10. Edrychwn ymlaen at uchafu cyfleoedd i siapio'r rheoliadau, y canllawiau a'r codau ymarfer sydd ar ddod, drwy gyfrwng y fforymau hyn, ac adeiladu ar yr ymagwedd gydweithredol a thrawsbleidiol bresennol at wneud polisi a sefydlwyd gan y Dirprwy Weinidog.

11. Mae ADSS Cymru a'r WLGA wedi cydweithio wrth lunio'n hymatebion ysgrifenedig at y Bil, gan fod nifer o feysydd lle rhannwn yr un farn ac argymhellwn yr un atebion. Er ein bod yn cydnabod bod gennym rolau gwahanol, rhannwn yr awydd i weld llywodraeth leol yn aros wrth graidd gweddnewid gwasanaethau cymdeithasol a chyflawni system fwy effeithiol o wasanaethau cymdeithasol drwy arweinyddiaeth wleidyddol a phroffesiynol effeithiol.

12. Mae'r WLGA yn dymuno gweithio'n agos gyda Llywodraeth Cymru a'r Cynulliad Cenedlaethol i siapio deddfwriaeth sy'n caniatáu cyflawni Gwasanaethau Cymdeithasol gwirioneddol Gynaliadwy. Gan fod galwadau

cynyddol ac adnoddau mwy prin yn gosod gwasanaethau cymdeithasol o dan bwysau difrifol, croesawn ymrwymiad y Llywodraeth i ddeddfu, er mwyn sicrhau bod gwasanaethau cymdeithasol yn gynaliadwy i mewn i'r dyfodol.

13. Serch hynny, rydym yn bendant mai dim ond un elfen yw'r Bil o'r fframwaith polisi ehangach a bennwyd yn fframwaith polisi Llywodraeth Cymru 'Gwasanaethau Cymdeithasol Cynaliadwy; Fframwaith Gweithredu'. Rhaid peidio â gweld deddfwriaeth fel diben ynddi ei hun, ond ei defnyddio'n gymesur lle bernir mai dyletswyddau a phwerau cyfreithiol newydd yw'r dewis mwyaf priodol i gyflawni'r amcanion polisi sydd wedi eu datgan.

14. Credwn fod cyflwyno 'Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru)' yn adeiladu ar y cynnydd sylweddol sydd eisoes wedi ei wneud yng Nghymru, fel yr adlewyrchwyd gan y 'Comisiwn Annibynnol ar Wasanaethau Cymdeithasol 2010', a soniodd am '*ddatblygu'r cryfderau*'. Yn arwyddocaol, mae llawer wedi cael ei gyflawni ers hynny, o ganlyniad i gyhoeddi fframwaith polisi 2011 Llywodraeth Cymru 'Gwasanaethau Cymdeithasol Cynaliadwy; Fframwaith Gweithredu'.

15. Wrth ddangos ymrwymiad llywodraeth leol i agenda 'Gwasanaethau Cymdeithasol Cynaliadwy', mae cyhoeddiad ym mis Hydref 2012 '[Cynllun Gweithredu Llywodraeth Leol](#)' cyntaf ar gyfer 'Gwasanaethau Cymdeithasol Cynaliadwy' yn adlewyrchu ymrwymiad ac arweinyddiaeth gwasanaethau cymdeithasol o ran hybu gwelliant. Cafodd y cynllun, a luniwyd gan y WLGA ac ADSS Cymru mewn partneriaeth â'r GIG, y trydydd sector a chydweithwyr yn y sector annibynnol, ei groesawu gan y Dirprwy Weinidog am ddangos '*ymrwymiad llwyr llywodraeth leol i weddnewid gwasanaethau cymdeithasol yng Nghymru, ac i gydweithredu â'r holl bartneriaid i gyflawni'r gwelliannau mae eu hangen ar gyfer pobl y mae angen gofal a chymorth arnynt*'. Disgrifiodd y cynllun fel 'Dogfen Dirnod' a adlewyrchodd '*mai dyma garreg filltir arwyddocaol arall wrth gyflawni compact llywodraeth leol*', sydd wedi ei gwblhau ers hynny.

16. Gan adeiladu ar y cryfderau sylweddol a chydabyddedig a geir yn y gwasanaethau cymdeithasol yng Nghymru, mae'r WLGA gan weithio gydag ADSS Cymru yn bwriadu cyflawni gweddnewid y gwasanaethau, fel y nodwyd yn ein cynllun gweithredu drwy ddarparu:

- Ffocws cliriach ar well canlyniadau llesiant i'r bobl sy'n defnyddio gwasanaethau;
- Rhagor o reolaeth a dewis i ddinasyddion am y cymorth maent ei eisiau a gwell mynediad i'r cymorth hwnnw, heb fiwrocratiaeth ddiangen;
- Modelau gofal a chefnogaeth mwy effeithiol ac integredig ac amrediad mwy ymatebol o wasanaethau; a
- Gweithlu â chymwysterau gwell gyda sgiliau sy'n eu galluogi i weithio ar draws ffiniau sefydliadol.

### **Cyflawni'r nodau a enwir yn y Bil**

#### **Egwyddorion a Argymhellir**

- Rhaid i ddeddfwriaeth symleiddio'r gyfraith bresennol, a chefnogi darparu modelau gwasanaeth newydd a mwy integredig.
- Mae taro'r cydbwysedd cywir rhwng deddfwriaeth sylfaenol a rheoleiddio yn hanfodol
- Mae llywodraeth leol mewn sefyllfa dda i ddarparu modelau gofal a bennir yn lleol sy'n cyd-fynd ag anghenion y boblogaeth. Rhaid i ddeddfwriaeth felly beidio â thanseilio hunan-reolaeth Cynghorau i wneud penderfyniadau ynghylch darparu gwasanaethau
- Bydd angen adnoddau i gyflawni'r amcanion polisi a enwir yn y Bil, ochr yn ochr ag arbedion effeithlonrwydd a ddarperir gan Lywodraeth leol
- Cyfrifoldeb gwasanaeth cyhoeddus yw llesiant gwell, ac er mwyn bod yn effeithiol yn ei nod, rhaid i'r Bil ddynodi'r rôl benodol a ddisgwyllir oddi wrth wasanaethau cymdeithasol



17. Ar ei ffurf bresennol mae'r Bil yn arwyddocaol o ran ei gwmpas, ac yn fwy nag unrhyw fil arall sydd wedi dod gerbron y Cynulliad Cenedlaethol hyd yma. Mae felly'n hanfodol bwysig bod modd cyflawni'r fframwaith cyfreithiol mae'n ei ddarparu, ei fod yn gymesur a'i fod yn cefnogi cynladwyedd gwasanaethau.

18. Mae'r WLGA yn edrych ymlaen at weithio'n adeiladol gyda'r Pwyllgor Iechyd a Gwasanaethau Cymdeithasol a'r Llywodraeth i sicrhau bod y Bil yn cyflawni dyheadau 'Gwasanaethau Cymdeithasol Cynaliadwy: Fframwaith Gweithredu'. I wneud hynny, credwn fod yn rhaid i'r Bil gyflawni gostyngiad mewn biwrocratiaeth, lliniaru'r galw cynyddol a galluogi cydweithrediad o fewn llywodraeth leol ac â'n prif bartneriaid. Credwn nad yw'r Bil ar yr adeg hon yn pennu sut y bydd yn cyflawni'r amcanion hyn.

19. Yn hanfodol, mae angen trafodaeth am y diwygio gwasanaethau cymdeithasol a gynigir gan y Bil, sy'n symud tuag at fwy o 'wasanaeth gofal cynhwysol blaengar'. Amheurn a oes modd trosi'r weledigaeth hon yn realiti gweithredol fel y mae wedi ei ddrafftio, a heb unrhyw adnoddau ychwanegol.

20. Mae'r Bil felly yn cynnig cyfle hanesyddol i adeiladu ar arloesi a chynnydd presennol, gan gynnig fframwaith cyfreithiol i Gymru sy'n newid sut mae gwasanaethau cymdeithasol yn cael eu darparu yng Nghymru, gan gyd-fynd ag anghenion newidiol y boblogaeth. Mae'n bwysig ein bod ni'n ei chael yn gywir, a bod y ddeddfwriaeth yn addas at y diben. Gan hynny ar y cyfnod cynnar hwn credwn fod yr amcan polisi a amlinellir yn y Memorandwm Esboniadol yn rhy eang ac yn rhy annelwig. Yn ôl y Memorandwm Esboniadol yr amcanion polisi yw *'gwella llesiant y bobl hynny y mae angen gofal a chymorth arnynt, a'r gofawyr hynny y mae angen cymorth arnynt ...'* Dyhead nid amcan yw hwn. Er mwyn sicrhau bod y Bil yn llwyddo, byddem yn awgrymu mwy o eglurdeb am beth yw'r amcanion polisi, a sut mae

deddfwriaeth yn cael ei defnyddio i gyflawni'r rhain, fel y nodir ym mharagraffau 15 ac 16 uchod.

21. Hefyd mae angen ystyried yr hollt ymddangosiadol yn y Bil, rhwng rhoi llais a rheolaeth wirioneddol i ddefnyddwyr, a threfniadau a bennir yn genedlaethol fel yr awgrymir yn y Bil ar hyn y o bryd. Mae angen fframio elfennau penodol y fframwaith cyfreithiol arfaethedig, fel y rhai sy'n ymwneud ag asesu a chymhwyster, mewn ffordd sy'n galluogi ac yn cefnogi datblygiad modelau sy'n cyflawni canlyniadau gwell i bobl mewn angen. Mae gwaith modelu cynnar gan SSIA mewn perthynas â Mynediad i Wasanaethau Gofal Cymdeithasol, ac ymgyrchoedd fel rhai Age Cymru a WCVA, yn cynnig sylfaen ddefnyddiol ar gyfer modelau newydd a fydd yn bodloni'r amcanion o fewn 'Gwasanaethau Cymdeithasol Cynaliadwy'. I'r gwrthwyneb, bydd gor-ragnodi o fewn y Bil yn gwrthdynnu oddi wrth ddatblygu gwasanaethau ymatebol sy'n bodloni anghenion a nodir yn lleol.

### **A yw darpariaethau'r Bil yn briodol?**

22. Croesawn gynnwys darpariaethau newydd yn y Bil ynglŷn â diogelu, integreiddio ag iechyd, darparu gwybodaeth a chynngor, ac asesu a chymhwyster fel bod yn rhai o gonglfeini diwygiad. Serch hynny mae risg na fydd modd cyflawni ar y Bil fel y mae wedi ei ddrafftio'n bresennol, a'i gwmpas eang, yn enwedig o ran y dyletswyddau newydd mewn perthynas â llesiant ac atal. Byddem yn argymhell bod darpariaethau trosiannol tebyg yn cael eu gosod ar y Bil, yn unol â'r argymhelliad yn yr adroddiad Cyfnod 1 Bil Safleoedd Rheoleiddiedig Cartrefi Symudol (Cymru), dan argymhelliad 8, i sicrhau bod modd ei gyflawni.

23. Mae risg hefyd y gallai'r Bil fel y mae wedi ei ddrafftio'n bresennol danseilio sofraniaeth llywodraeth leol, a'i rolau statudol ac arwain wrth ddarparu gwasanaethau cymdeithasol i gymunedau lleol. O bosibl, mae'n lleihau cyfrifolaeth a dilysrwydd democrataidd Cyngorau, trwy'r pwerau

cynyddol sy'n cael eu rhoi i Weinidogion Cymru a nodir drwy gydol y Bil. Er enghraifft yn 125 (2) darperir pŵer i'r Gweinidogion Cymru, *`gyfarwyddo'r awdurdod lleol i gymryd unrhyw gam y mae Gweinidogion Cymru yn barnu ei fod yn briodol ... yn unol â'r gofyniad yn y cod perthnasol.*

24. Yn ogystal mae'r Bil yn cyflwyno darlun cymysg o ddarpariaeth lle yn ôl pob golwg mae rhai meysydd yn gor-ragnodi. Er enghraifft credwn fod adran 8 (3) yn rhy orchmynnol, dylai gael ei adael i awdurdodau lleol benderfynu sut byddent yn darparu gwasanaeth, o fewn y dyletswyddau a ragnodir ar wyneb y Bil. Tra bod adrannau eraill fel hyrwyddo integreiddio a chydweithredu gydag asiantaethau partner wedi eu tan-ragnodi – yn aml heb unrhyw resymeg glir dros y cyfryw wahaniaethu. Rhoddwn ragor o fanylion o dan yr adran `Cydbwysedd'.

### **Costau**

25. Cred y WLGA fod rhaid i'r Bil gyflawni nod cyffredin cefnogi darpariaeth gwasanaethau sydd o ansawdd uchel ac sy'n ymatebol, ond sy'n gynaliadwy, ar adeg pwysau cynyddol ac adnoddau gostyngol. Gan gydnabod y pwysau presennol ar arian cyhoeddus, byddem yn argymhell bod y Bil yn canolbwyntio ar feysydd blaenoriaeth gweddnewid, sy'n gofyn am newid statudol, er enghraifft integreiddio a diogelu.

26. Mae'r WLGA yn amau'n sylfaenol y rhagdybiaeth o fewn y Memorandwm Esboniadol, ac wedi ei henwi gan y Gweinidog Iechyd a Gwasanaethau Cymdeithasol, y bydd y Bil yn niwtral o ran cost. Mae cydweithwyr ar draws y sector cyhoeddus, y trydydd sector a'r sector annibynnol yn cefnogi'r farn hon, ac yn rhannu safbwynt grŵp ymgynghorol y trydydd sector mai'r *`prif rwystr i ddarparu fydd rhagamcaniadau cost'*. Rhannwn eu barn bod diffyg eglurdeb, a diffyg manylion yn y Memorandwm Esboniadol, fel y mae wedi ei ddrafftio ar hyn o bryd, ac argymhellwn adolygu hyn yng ngoleuni tystiolaeth a ddarparwyd i'r Pwyllgor cyn y drafodaeth Cyfnod 1.

27. Mae tystiolaeth o weddnewid sydd eisoes yn digwydd yng Nghymru ac o newidiadau tebyg i'r isadeiledd gofal cymdeithasol sydd wedi eu cyflwyno mewn mannau eraill yn y DU yn rhoi achos cryf bod newid yn costio arian, a bod arbedion effeithlonrwydd a sicheir drwy newid yn cael eu gwireddu yn y tymor hwy ac na ellir dibynnu arnynt i yrru'r newid cychwynnol. Mewn adrannau canlyniadol yr ymateb hwn, edrychwn ar rai enghreifftiau penodol o hyn. Fodd bynnag ein galwad gyffredinol yw am drafodaeth onest ac agored am yr adnoddau mae eu hangen i yrru'r newid a ragwelir, a'r hyn sy'n gyflawnadwy yn y pen draw.

28. Mae'r astudiaeth ddiweddar gan y [Sefydliad Astudiaethau Cyllidol](#) ar ran y WLGA, o dan y teitl 'Local Government Expenditure in Wales: Recent trends and future pressures' yn awgrymu tra bod gwariant ar wasanaethau cymdeithasol yng Nghymru wedi ei amddiffyn yn gymharol, *'the expected cuts over the coming years will be increasingly hard to deliver against a backdrop of new statutory duties, and growing demand'*. Yn benodol, disgwylir i'r galw dyfu o ganlyniad i newidiadau i les sydd ar ddod, ac mae'r adroddiad yn datgan y gall y grwpiau yr effeithir arnynt fwyaf gan y toriadau budd-daliadau a chredydau treth ddod i ddibynnu'n fwy ar wasanaethau Llywodraeth leol (tai, gwasanaethau cymdeithasol).

29. Rydym yn eich cyfeirio at argymhelliad 5 adroddiad Cyfnod 1 y Pwyllgor Iechyd a Gwasanaethau Cymdeithasol, argymhellion am Adennill costau meddygol y Bil Asbestos, sy'n datgan *'Argymhellwn fod yr amcangyfrifon ariannol y seilir y Bil arnynt yn cael eu diweddarau cyn gynted â phosibl, yn ddelfrydol cyn y drafodaeth Cyfnod 1, ac yn sicr cyn ystyriaeth fanwl y Bil yng Nghyfnod 2'*.

### **Atal ac Ymyrraeth Gynnar**

30. Mae'r Bil yn canolbwyntio ar yr angen i gynyddu ymyrraeth gynnar fel y ffordd i ail-gydbwysu'r system a gwella llesiant y bobl sydd ag anghenion gofal a chymorth. Mae Llywodraeth Cymru yn disgrifio'r weledigaeth tu ôl i'r Bil fel ymateb i'r ffaith '*Nad yw trefniadau presennol yn gynaliadwy, felly mae'n rhaid i ni fuddsoddi mewn ymyrraeth gynnar ac atal i greu cynaladwyedd, caiff arbedion eu creu drwy ail-gydbwysu'r system, er mwyn sicrhau mai'r llawer ac nid yr ychydig a gaiff dderbyn gwasanaethau*'.

31. Er ein bod yn cefnogi'n llwyr yr angen i ailgydbwysu'r system i ddarparu gwasanaethau ymatebol, ychydig o dystiolaeth sydd i awgrymu y bydd ffocws ar ymyrraeth gynnar ac atal yn unig yn cyflawni'r ailgydbwysu a ddymunir, na'r arbedion hirdymor mae'r Llywodraeth yn eu rhagweld. Yn wir mae'r Memorandwm Esboniadol, sydd ynghlwm wrth y Bil, ei hun yn cydnabod na fydd yr ymagwedd hon yn dileu'r angen am ofal a chymorth parhaus yn llwyr, ac mewn rhai achosion dim ond ei ohirio a wna.

32. Cefnogir y farn hon gan ADSS Cymru, a'r Athro John Bolton, a gasglodd o waith a gynhaliwyd yng Nghyngor Coventry fod '*Evidence of savings as a result of effective prevention services is primarily related to significant reductions in potential future cost pressures rather than in existing budgets*'. Daeth negeseuon tebyg i'r amlwg o'r gwaith a wnaed gan yr Athro Bolton yng Nghymru yn ystod 2010-11, yn ei adroddiad o'r enw '*Delivering better services at a lower cost for older people*'. Fel y cyfryw ymunwn ag ADSS Cymru a chydweithwyr eraill o'r trydydd sector wrth alw am ymagwedd sy'n cydnabod yr angen am fuddsoddiad ychwanegol o'r cychwyn cyntaf, er enghraifft mewn gwybodaeth a chynghor am wasanaethau ataliol ac yn gyffredinol mewn datblygu modelau gofal newydd a mwy integredig. Mae barn y Llywodraeth bod y Bil yn niwtral o ran cost, a bod modd ail-alinio gwasanaethau heb unrhyw adnoddau ychwanegol, yn gwbl anhyfyw.

33. Gan hynny argymhellwn fod angen ymagwedd gymesur; un sy'n cydnabod pwysigrwydd ymyrraeth gynnar, ochr yn ochr â derbyn y bydd

angen gwasanaethau mwy aciwt o hyd. Rhaid mai un o ganlyniadau allweddol y Bil fydd creu pwerau newydd i awdurdodau lleol ddatblygu ffyrdd newydd o ddarparu gwasanaethau, trwy ddarpariaeth aml-sector fywiog, gan gydnabod rôl benodol y trydydd sector yng Nghymru.

34. I'r perwyl hwn croesawn gynnwys dyletswydd i hybu modelau darparu newydd, sy'n cynnwys mentrau cymdeithasol a chydweithfeydd. Fodd bynnag credwn na ddylai gael ei chyfyngu i fodolau o'r fath, gan alluogi arloesi gwirioneddol mewn partneriaeth â darparwyr yn y sector annibynnol a'r sector gwirfoddol fel ei gilydd.

### **Llesiant**

35. Mae'r WLGA yn cydnabod rôl gwasanaethau cyhoeddus mewn gwella llesiant y boblogaeth. Wrth ddiffinio cyfraniad gwasanaethau cymdeithasol, mae'r WLGA wedi argymhell rôl arweinyddiaeth gorfforaethol ddiffiniedig o'r blaen i Gyfarwyddwyr ac Aelodau Cabinet, mewn perthynas â 'chydlynu a hyrwyddo' llesiant a gynhwysir yn y Bil.

36. Fel mae wedi ei ddrafftio ar hyn o bryd, mae'r diffiniad o lesiant yn rhy eang, ac yn cyfeirio at ddyletswydd gyffredinol ar draws y sector cyhoeddus cyfan, er enghraifft mae paragraff (g) yn cyfeirio at lesiant cymdeithasol ac economaidd sy'n eang ac yn annelwig iawn. Mae'r Bil yn datgan bod y diffiniad yn ymwneud ag '*Unrhyw bersonau sy'n ymarfer swyddogaethau o dan y Ddeddf hor'* ond ni roddir y diffiniad o unrhyw bersonau. Gan hynny mae'n rhaid i'r Bil egluro rôl a dyletswyddau gwasanaethau cymdeithasol, wrth wella llesiant y sawl y mae angen gofal a chymorth arnynt.

37. Cred y WLGA y dylai Llywodraeth Cymru o leiaf ddarparu gwybodaeth neu arweiniad ychwanegol am gymhwysiad ymarferol y ddyletswydd, mewn perthynas â pharagraffau (a) i (g) adran 2(2). Fel y mae wedi ei ddrafftio, mae'r diffiniad presennol yn rhychwantu'r sector cyhoeddus, ac yn gysylltiedig

â'r dyhead polisi ehangach o wella llesiant y boblogaeth, yn hytrach na chyfraniad statudol gwasanaethau cymdeithasol.

38. Gan ein bod bellach yn gwybod y bydd y Bil Datblygiad Cynaliadwy, y Bil, Trais Domestig a'r Bil Iechyd y Cyhoedd hefyd yn cynnwys diffiniadau o lesiant, ac yn gosod dyletswyddau newydd ar wasanaethau cyhoeddus, gofynnwn i'r pwyllgor ystyried gwerth cynnwys llesiant yn y Bil hwn. Er i ni gymeradwyo ei gynnwys yn y cyfnod ymgynghori, nid oeddem yn ymwybodol ar yr adeg honno o fwriad y Llywodraeth i gynnwys dyletswyddau llesiant mewn hyd at dri darn arall o ddeddfwriaeth. Fel y cyfryw gofynnwn i'r pwyllgor ystyried defnyddioldeb ei gynnwys yn y Bil o hyd, neu gyfleoedd i sicrhau ei ail-fframio yng nghyd-destun cyfraniad gwasanaethau cymdeithasol.

39. Byddem yn croesawu cynnwys gwybodaeth ychwanegol am y ddarpariaeth hon yn y Memorandwm Esboniadol, o ran y diffiniad o lesiant, ystyr y dyletswyddau yn fwy penodol, ac ar bwy maent yn cael eu gosod. Yn ogystal byddem yn croesawu eglurhad o sut y bydd y darpariaethau hyn yn perthyn i'r rhai a fwriedir yn y tri Bil y cyfeirir atynt ym mharagraff 38.

### **Integreiddio**

40. Oni roddir pwerau deddfwriaethol pellach i iechyd a gofal cymdeithasol, gan alluogi integreiddio ar draws gwasanaethau sydd â phoblogaeth gyffredin, awgrymir gan gyrff fel ADSS Cymru y bydd cost darparu gofal cymdeithasol yn codi hyd at 84% yn y cyfnod 2010-2030. Fel y cyfryw mae'r WLGA yn croesawu'r gydnabyddiaeth bod angen pwerau statudol a dyletswyddau uwch i ddileu rhwystrau sefydliadol a pherfformiad presennol, gan wella integreiddio â gwasanaethau iechyd perthnasol.

41. Credwn yn gryf fod yn rhaid i'r GIG fod yn bartneriaid llawn a chyfartal, wedi eu mandadu drwy ddeddfwriaeth, yn natblygiad modelau gofal cwbl

integredig er mwyn i weledigaeth y rhaglen lywodraethu gael ei gwireddu, lle nodir y bydd y Llywodraeth yn *'Cefnogi moderneiddio gwasanaethau yn y GIG gan gynnwys gwell integreiddio â gofal cymdeithasol er mwyn sicrhau bod pob gwasanaeth yn ddiogel ac yn gynaliadwy mewn ardaloedd trefol ac ardaloedd gwledig fel ei gilydd'*.

42. Rhaid i unrhyw ddyletswyddau partneriaeth newydd gael eu cefnogi gan drefniadau priodol i sicrhau rhannu cynllunio, darparu ac atebolrwydd. Mae arfer da yn bodoli eisoes ledled Cymru, drwy 'fyrdau' iechyd a gofal cymdeithasol ar lefel sirol (e.e. Hywel Dda) ynghyd â thystiolaeth fanwl a gyflwynwyd mewn nifer o astudiaethau ar ofal integredig a gynhaliwyd gan gyrff fel Cronfa'r Brenin.

43. Credwn yn bendant fod cynnwys pwerau uwch yn y Bil i fynnu integreiddio ag iechyd yn sylfaenol. Mae cyfle gwirioneddol i greu ymagwedd Gymreig at integreiddio, lle bo gwerth ychwanegol mewn gwneud hynny. Ond fel y mae wedi ei ddrafftio ar hyn o bryd, nid yw'r Bil yn cyflwyno gweledigaeth glir am yr agenda integreiddio, nac yn rhoi mandad cryfach na'r hyn sy'n bodoli eisoes i symud integreiddio yn ei flaen.

44. Wrth lunio'r cyfryw ddarpariaethau, bydden yn argymhell defnyddio'r dystiolaeth o ddeddfwriaeth bresennol (Ddeddf GIG 2006) a'i defnyddio i lywio gofynion. Ar hyn o bryd, mae dyletswydd i hybu cydweithrediad yn ddefnyddiol ond nid yw'n ystyrlon.

### **Canlyniadau Anfwriadol**

45. Fel y nodwyd eisoes yn y ddogfen hon, cred y WLGA y bydd y Bil fel y mae wedi ei ddrafftio ar hyn o bryd yn arwain at ganlyniad anfwriadol cynhyrchu system sy'n methu â rheoli'r disgwyl a'r galw cynyddol, a gosod pwysau ychwanegol ar gyllidebau sydd eisoes yn lleihau ac yn dynn. Credwn



fod gwerth mewn trafod sut orau i liniaru'r canlyniadau hyn, ochr yn ochr â darparu adnoddau priodol i'r dyletswyddau newydd a amlinellir yn y Bil.

46. Rhaid i'r cyfryw drafodaethau ddigwydd yng nghyd-destun gwaith a gomisiynwyd gan y WLGA oddi wrth y [Sefydliad Astudiaethau Cyllidol](#), a ragwelodd y gallai llywodraeth leol o bosibl golli hyd at bumed o'i phŵer gwario rhwng nawr a diwedd y degawd. Mae'r Adolygiad Gwariant nesaf yn debygol o fod yn dynn iawn, ac mae awdurdodau yn ei chael yn anodd cydbwysu cyllidebau yn unol â'r dyletswyddau statudol presennol.

47. Mae'r WLGA yn cydnabod y cyfyngiadau presennol ar gyllid y Llywodraeth, ac rydym yn awyddus i hyn beidio â rhwystro arloesi a diwygio. Mae'n bwysig ein bod yn gweithio gyda'n gilydd i sicrhau bod sylfaen adnoddau realistig yn cael ei sicrhau, er mwyn galluogi llywodraeth leol i gynnal y dyletswyddau statudol newydd a rydd y Ddeddf. Bydd hyn yn sicrhau hefyd y gall llywodraeth leol reoli'r disgwyliadau a'r galw uwch ar wasanaethau y disgwyliwn iddynt ddeillio o'r Ddeddf yn effeithiol. Fel y cyfryw rydym wedi galw am drafodaeth agored ac onest am lefel yr adnoddau ychwanegol y bydd eu hangen, ac asesiad ariannol manylach o fewn y Memorandwm Esboniadol. I gefnogi'r drafodaeth, mae'r WLGA gan weithio gydag ADSS Cymru a Chymdeithas Trysoryddion Cymru wedi llunio adroddiad interim sy'n rhoi manylion y goblygiadau tebygol ar adnoddu, a chaiff hwn ei ddatblygu ymhellach gan gomisiwn arbenigwyr annibynnol i ystyried goblygiadau ariannol y Bil fel y mae wedi ei ddrafftio ar hyn o bryd.

48. Cred y WLGA fod gwerth mewn cyfuno deddfwriaeth yn fframwaith cydlynus i Gymru, ac mae'n cefnogi barn Comisiwn y Gyfraith am hyn. Fodd bynnag nid yw'n haelodaeth yn teimlo bod hyn wedi ei gyfathrebu'n effeithiol yn y Bil, a byddem yn croesawu eglurdeb am ba ddarpariaethau a gaiff eu diddymu a'i disodli o fewn y Bil, er mwyn i'n Haelodau wybod yn glir paramedrau'r fframwaith cyfreithiol newydd. Bydd hyn yn osgoi unrhyw ganlyniad anfwriadol bod awdurdodau lleol yn torri'r deddfwriaeth.

49. O ran llesiant rydym yn pryderu bod hyd at dri darn o ddeddfwriaeth bosibl ar hyn o bryd sy'n creu dyletswyddau newydd mewn perthynas â llesiant, sef y Bil hwn, y Bil Datblygiad Cynaliadwy, y Bil Trais Domestig, a Bil Iechyd y Cyhoedd. Gall hyn arwain at ddryswch ac ymagwedd ddatgymalog at gyflawni gwell llesiant ar draws y boblogaeth. Gofynnwn i'r Pwyllgor ystyried yn ofalus y darpariaethau sydd wedi eu cynnwys yn y Bil, ochr yn ochr â'r ddeddfwriaeth arall a amlygwyd ac argymhell cyfuno'r dyletswyddau llesiant mewn un Bil.

50. Mae Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru) yn ddarn o ddeddfwriaeth galluogi a chyfuno, ac mae llawer o'r darpariaethau arfaethedig yn cael eu croesawu'n gyffredinol gan ein haelodaeth. Fodd bynnag wrth lunio'r Ddeddf byddem yn disgwyl gweld ymagwedd gytbwys at ddeddfwriaeth lle pennir swyddogaeth, yn hytrach na ffurf. Ar hyn o bryd mae'r Bil yn cynnig darlun cymysg, sydd mewn perygl o fod yn or-orchmynnol mewn meysydd fel asesu, mabwysiadu, diogelu a darparu gwybodaeth a chynghor. Credwn fod hyn mewn perygl o effeithio ar hyblygrwydd awdurdodau lleol fel cyrff sofran i gynllunio a dylunio gwasanaethau o amgylch yr angen lleol amlwg, ac sy'n gallu parchu diwylliannau, traddodiadau a sensitifrwydd lleol.

### **Cydbwysedd**

51. Gyda Bil mor eang ei gwmpas â hyn, mae sicrhau cydbwysedd priodol rhwng yr hyn sydd ar wyneb y Bil a'r rheoliadau yn hanfodol. Cydnabyddwn a chroesawn rôl y Cynulliad Cenedlaethol mewn bod yn rhan o weddnewid gwasanaethau cymdeithasol ac fel corff deddfwriaethol cryf. Mae'r swyddogaeth hon yn sylfaenol gyda Bil o faint a chwmpas Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru). Fodd bynnag, ynghyd â nifer o bartneriaid eraill, mae gennym bryderon bod cryn anghydbwysedd rhwng defnyddio'r

weithdrefn negyddol a'r weithdrefn gadarnhaol i gytuno rheoliadau sy'n deillio o'r Ddeddf.

52. Rydym yn eich cyfeirio at adroddiad Cyfnod 1 y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol ynghylch y Bil Cartrefi Symudol. Yn ôl casgliad rhif 3 *'Er ein bod yn cytuno mewn egwyddor y dylai newidiadau technegol a gweinyddol fod yn ddarostyngedig i'r weithdrefn negyddol, yn gyffredinol byddai'n well gennym weld bod materion pwysicach yn destun mwy o waith craffu.'*

53. Yn benodol byddem yn argymhell bod swyddogion yn edrych o'r newydd ar y tabl sy'n nodi'r pŵer i wneud is-ddeddfwriaeth cyn dechrau Cyfnod 2, yn unol â chasgliad rhif 3 uchod.

### **Barn Rhanddeiliaid**

54. Fel y corff sy'n cynrychioli llywodraeth leol yng Nghymru, adlewyrchwn farn ein haelodau, drwy grwpiau rhwydwaith fel y Grŵp Polisi Gwasanaethau Cymdeithasol, a chyfarfodydd dwyochrog â'r Dirprwy Weinidog. Sicrhawn aliniad agos â chyrrff proffesiynol fel ADSS Cymru, a Chymdeithas Trysoryddion Cymru, a gweithiwn yn effeithiol gyda phartneriaid allanol allweddol fel Cydffederasiwn y GIG ac amrediad eang o gyrff gwirfoddol. Wrth lunio'r dystiolaeth hon rydym wedi gweithio'n benodol gydag ADSS Cymru a grŵp ymgynghorol y trydydd sector ar Iechyd a Gofal Cymdeithasol.

55. Mae Cynllun Gweithredu Llywodraeth Leol yn rhoi ymrwymiad parhaus at wella llais a rheolaeth y dinesydd mewn siapio gwasanaethau, ac fel y cyfryw yn meddu ar nifer arwyddocaol o raglenni gwaith a grëwyd i sicrhau hynny. Trwy raglenni fel ei harolygon defnyddwyr gwasanaethau i blant sy'n derbyn gofal ac oedolion hawdd eu niweidio, a gwaith dan arweiniad SSIA ar [Gymorth a Gyfarwyddir gan Ddinasyddion](#), trwy eu Rhwydwaith Dysgu a Gwella, a rhaglen [Getting Engaged](#), gobeithiwn fod ein tystiolaeth yn

adlewyrchu'n gryf barn y sawl sy'n derbyn gwasanaethau cymdeithasol drwyddi draw.

### **Casgliad**

56. Mae'r WLGA yn croesawu cyflwyniad Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru) i Gynulliad Cenedlaethol Cymru. Mae ein tystiolaeth yn nodi'n safbwynt bras mewn perthynas ag egwyddorion y Bil yn unig, yn unol â gofynion y pwyllgor.

57. Croesawodd y Dirprwy Weinidog yr ymrwymiad o fewn Cynllun Gweithredu llywodraeth leol i rymuso dinasyddion, i siapio gwasanaethau ymatebol, a ddarperir yn lleol. Mae'r cynllun yn cyd-fynd â'r nodau cyffredin a rennir gan lywodraeth genedlaethol a lleol, sef rhoi llais cryfach i ddinasyddion, sefydlu tîm cyflawni cryf a phroffesiynol, gyrru cydweithrediad ac integreiddio gwasanaethau, a gwella gwaith diogelu ac amddiffyn y sawl sydd mewn risg o fewn ein cymunedau. Credwn ei bod yn briodol felly cael deddfwriaeth sy'n cefnogi llywodraeth leol a'i phartneriaid i gyflawni'r dyheadau polisi hyn mewn ffordd sy'n parchu'r angen am fodolau darparu hyblyg, wedi eu halinio i'r angen lleol, a byddwn yn canolbwyntio ar sicrhau bod y Bil yn gallu galluogi llywodraeth leol, drwy weithio gyda phartneriaid, i gyflawni'r amcanion polisi hyn.

58. Yn ein tystiolaeth rydym wedi nodi'r agweddau hynny a groesawn, meysydd y credwn y byddai'n well eu diwygio, a hefyd meysydd o bryder penodol. Credwn fod ein hymateb yn bragmatig, gan gydnabod gwerth y ddeddfwriaeth, ar yr un pryd â chanolbwyntio ar yr hyn y mae'n rhaid eu gweld yn feysydd blaenoriaeth i ddeddfu arnynt, a'r hyn y mae'n realistig ei gyflawni o fewn yr adnoddau sy'n bodoli.

59. Yn benodol croesawn y ffocws ar ddarparu rhagor o wybodaeth a chyngor i ddinasyddion, grymuso datblygiad modelau gwasanaeth newydd drwy ddileu

rhwystrau statudol presennol, a dynodi ymagwedd Gymreig at ddarparu gwasanaethau. Fodd bynnag mae gennym bryderon o hyd am osod dyletswyddau llesiant ar sail statudol, tra bod y diffiniad yn aros mor eang, a'r costau sydd ynghlwm wrth symud i wasanaeth gofal cymdeithasol sydd â dyletswyddau statudol cynyddol.

60. Edrychwn ymlaen at barhau i weithio'n adeiladol gyda'n partneriaid proffesiynol yn ADSS Cymru, GIG ac ar draws y trydydd sector at gymryd rhan yn y drafodaeth i wella Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru).

## Briefing Note for Health & Social Services Committee Members

### State of the Nation: Transforming Social Services in Wales

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**This briefing provides an overview of current work to transform social services within local government, demonstrating the strong political and professional leadership in evidence across local government. Members are asked to consider how far the Social Services and Wellbeing (Wales) Bill will contribute to the key task of delivering new models of services, which are more responsive to need and more sustainable in the face of increasing demand.**

1. Changing demographics and the increasingly complex nature of individual needs has led to a debate about the future of social services in Wales. Service models are being transformed across Wales to deliver more innovative and responsive models of care, which respond to the individual needs of a user and provide a seamless pathway? The Bill needs to provide added value to this, unblocking barriers and providing a modernised legal framework.
2. Improving services for citizens is our collective political and professional commitment, but we recognise social services cannot do this alone. The Bill therefore has a critical role in embedding new service models within a statutory framework which defines eligibility, and clarifies the role of public services in delivering improved wellbeing. The Bill must empower authorities to manage demand for care and support whilst empowering citizens to live more independently, and provide them with better choices and more control.

3. Against a backdrop of growing demand and reduced resources, there isn't a magic bullet. Social services are facing real and unsustainable increases in demand. The number of looked after children and those on the child protection register is growing. The number of people with a learning disability is increasing, along with greater numbers of older people, often with complex care needs, whose support needs are extensive.
  
4. Service transformation and the specific requirements of the Bill will not be cost neutral. Political Leaders from across local government have called for a debate, around how we can deliver change within the financial context. There is a strong consensus in Wales, around the principles for change, and we welcome the fact that the Bill endeavours to reflect those principles. Local government has long argued for action around these core principles and we believe they must be the cornerstone of reform, these include:
  - Simplifying legislation
  - Streamlining bureaucracy
  - Clarifying the functions of social services
  - Achieving a balance between national consistency and local autonomy
  - Requiring greater partnership working with key partner such as health
  - Providing social services with a core leadership role around wellbeing
  - Recognising the contribution of the wider public services, and third sector partners in developing and delivering preventative service
  
5. The report of the Independent Commission on Social Services, the precursor to the White Paper and Bill, stated that we are '*building from a position of strength*'. Clearly, we accept that the Bill will require Local Government to make significant further improvements, especially in reducing inconsistency. We are confident that there is strong professional and political leadership at a local level to lead that change, which must be supported by a proportionate and flexible approach.

6. Through our collective commitment to the ten-year strategy, the transformation agenda is already well established in Wales, with collaboration and co-production at its heart. Whilst the Bill will enable greater change, we are not standing still. Ambitious programmes of service redesign and reform have been established and are being driven through, with support from WLGA, ADSS Cymru, and SSIA. Already we have achieved a range of successes, but we must be clear that change is never easy and a number of barriers remain which we are looking to the Bill to unblock.
7. The Welsh Government funded SSIA has supported a range of groundbreaking work, in tandem with a range of UK wide experts, to push the boundaries of change and develop new models of service. Through the WLGA social services policy group for Cabinet Members, there has been strong political leadership, resulting in the establishment of four regional social services improvement collaboratives managed by Directors of Social Services. Annex 1 describes some of that work.
8. Building on the vision set out in 'Sustainable Social Services: A Framework for Action', local government has developed an ambitious implementation plan that the Deputy Minister describes as '*A landmark document which demonstrates the absolute commitment of local government to transforming social services in Wales*'. The plan combines the delivery of regional programmes alongside national endeavours. The WLGA have established a Local Government Implementation Board to oversee delivery.
9. To help ensure our vision becomes a reality, we are looking to the Bill to provide local government with necessary enabling powers. These powers must be focused on the principles outlined above and support delivery of new models of service, with our partners, minimising the extensive and expensive bureaucracy currently overshadowing social services, and empowering social services, to play a leadership role across the public services in improving wellbeing.



10. This will be achieved only if the Bill is developed in genuine partnership with the sector and grounded in the current reality of increasing demand and extensive pressure on budgets. Provisions in the Bill must be proportionate, to enable flexibility around local service design, but they must also be prescriptive and bold where obstacles remain, such as in integrating services and requiring other public sector bodies to play a significant role in improving the wellbeing of citizens.

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## **Annexe 1:**

### **Regional collaboration across Wales**

There are four social services regional improvement collaboratives across Wales - South East Wales (ten local authorities), Western Bay (three local authorities), North Wales (seven local authorities) and Mid & West Wales (four local authorities).

The collaboratives have the political support of Cabinet Members, and leadership and oversight is provided via the WLGA's regional Social Services Policy Group, in addition to local mechanisms. They are Director led, and each have significant programme of work in place. Two representative examples are set out below.

#### **1. The Western Bay Health and Social Care Programme (Bridgend, Neath Port Talbot and Swansea)**

##### **Key Example - The Older People's Project**

- Currently analysing need and demand for existing and future services using a Whole Systems Model to produce a business case with costed options for change.
- Developing an overarching joint Health and Social Care Western Bay Older Persons Strategy, reflecting the Bill's principles of early intervention and prevention via enhanced integrated health and social care community services.
- Governance arrangements for the Western Bay Programme and the Abertawe Bro Morgannwg University Health Board '*Changing for the Better*' Programme are being monitored and reviewed to achieve integration, collaboration, eliminate duplication and ensure interdependencies between the two programmes is managed effectively. For example closure of acute beds and reinvestment in community based services.
- The delivery / implementation plans will incorporate the principles of the Social Services and Wellbeing (Wales) Bill, and detailed guidance as it becomes available on issues such as eligibility, assessment, wellbeing, safeguarding, and take a citizen centred community based approach delivered via integrated locality based teams.
- Whole Systems Modelling of dementia care pathways will commence in March 2013 and this will inform this crucial area of work.

Other Western Bay collaborative programmes include the Mental Health Project, the Learning Disability Project, the Commissioning Project, the Integrated Family Support Service, establishing Regional Safeguarding Boards, creating a regional Adoption Service, and

regional services for children and young people with complex needs, the Youth Offending Service and Supporting People.

**2. The South East Wales Improvement Collaborative (SEWIC) (Vale of Glamorgan, Bridgend, Cardiff, RCT, Merthyr Tydfil, Blaenau Gwent, Caerphilly, Torfaen, Newport and Monmouthshire)**

Key example - **Fostering & Adoption Services Project**

Exploring the potential for collaboration, between local authorities in the recruitment, assessment and training of foster carers.

- A regional approach to marketing which would ensure consistent brand imagery for fostering across the whole of the regional.
- Economies of scale and effort through pooling all existing marketing resource and expertise currently spread across the region.
- A customer friendly efficient recruitment process which would ensure less applicants "dropping out" during the assessment process and assessments being undertaken in a shorter timescale.
- More effective collaboration between local authorities in the recruitment of carers.

Other SEWIC collaborative programmes include Extra Care Housing, Assistive Technology, High Cost Adult Regional Brokerage & Procurement Hub and Review of High Cost Adult Placements, the 4Cs Children's Placements Commissioning Unit, regional adoption services, regional safeguarding boards, the Cardiff and Vale Integrated Health and Social Care Services Programme (the Wyn Campaign for Older People, integrated mental health services; integrated learning disability services, integrated services for children with complex needs because of disability) the Gwent Frailty programme, Integrated Family Support Services, integration of services across Caerphilly and Blaenau Gwent.

**3. Mid & West Wales Health & Social Care Collaborative (Pembrokeshire, Ceredigion, Carmarthenshire and Powys)**

The Collaborative is engaged in a range of transformation projects spanning service areas, working across Councils and with Health to ensure that new service models deliver positive outcomes and achieve optimum efficiency. A particular example relates to Learning Disability, in respect of which all organisations involved are working to:

- Drive through transformational change for developing sustainable Learning Disability Services in the Region
- Develop an incremental approach towards full integration of services through consistent planning, commissioning and procurement

- Movement towards integrated delivery of health and social services for people with a Learning Disability across the Region

#### **4. North Wales Health and Social Care Improvement Collaborative (Ynys Mon, Gwynedd, Conwy, Denbighshire, Flintshire, Wrexham)**

The North Wales Collaborative is well established with a range of transformational activities. The Collaborative recently launched the North Wales Commissioning Hub, and is aligned with the North Wales Health and Social Services Programme Board established as part of the work led by Chief Executives in the region.

##### **Key Example- North Wales Commissioning Strategy**

- North Wales Commissioning Hub formally launched
- Improve capacity and quality of placements across the region
- Facilitate more effective commissioning and Procurement of places
- Project initiated to map demand, spend and usage across the 6 local authorities, to provide an options appraisal for the commissioning of IFA's
- Development of a NW strategy for in house fostering underway, looking specifically at recruitment, retention, and support to foster carers
- Development of a regional domiciliary care monitoring framework
- Mental Health and Learning Disability commissioning workshops to support development of regional strategy

##### **National initiatives**

Since its inception in 2006 the Social Services Improvement Agency (SSIA) – funded through a grant from Welsh Government and a partnership venture between Welsh Government, WLGA and ADSS Cymru – has led a number of important national initiatives, working with Councils and partners, to support service redesign, achieve step change in operational practice and further build leadership capacity at all levels to effect the culture change needed for delivery of Sustainable Social Services. It is currently leading the development of a national specification for a Citizen Portal in partnership with Councils and other agencies, and recently facilitated a number of workshops across Wales discussion from which has informed a key report on Access to Social Services and Wellbeing Services. Setting out proposed models for achieving the core ambition of the Bill for improved access for wellbeing services for people in need and citizen-led, outcomes focused assessment, the findings of the report will support wider debate across the sector in the coming period on how current processes and practice are overhauled to achieve a new way of working with users and carers.

Examples of the programmes of SSIA include:

## **1. Transforming Services for Older People**

Service transformation for older people remains a key priority for the SSIA. The current and predicted rise in demand for services, increased expectations from users and carers and unprecedented financial constraints make ever more urgent the need to radically rethink how services are delivered to older people across our communities. During 2011 the SSIA with the support of John Bolton carried out an analysis of older people's services across Wales. This work developed a suggested future model where the principles of prevention, independence and reablement are central. The 'John Bolton' model has gained currency as the recognised way forward for older people's services, delivering greater efficiency and improved outcomes for service users and carers, and is referred to within the White Paper on Sustainable Social Services.

Progress on delivering the model is advanced in many parts of Wales. All Councils have reablement services in place, and analysis to be published shortly by the SSIA will provide further information on positive outcomes, often delivered in partnership with Health and other sectors.

In addition the SSIA is taking forward key aspects of this work with a goal to share nationally the learning. The three demonstrators are:

- Carmarthenshire County Council who are focussing on dementia services across the county
- Denbighshire County Council are developing a single point of contact, information and assessment
- Ceredigion County Council in partnership with Powys who are further developing reablement services as part of a wider service remodelling initiative

SSIA continues to work with the three councils as they build on their early initial developments and successes.

## **2. Learning Disability Services in Wales – Opportunity Assessment**

The SSIA has supported 5 Councils and their partners in reviewing their current service models and identifying priorities for improvement and service development through a methodology known as 'Opportunity Assessment'. The approach has been used extensively in England to support service transformation in this area and based on a detailed assessment of commissioning and service strategies, performance data and individual case files. Six Demonstrator Sites across Wales have taken this forward (Bridgend, Caerphilly, Gwynedd, Pembrokeshire, Neath Port Talbot and Vale of Glamorgan). Emerging from the work is a 'progression'

service model which focuses on promoting and regaining independence, and looks to improve the outcomes both of those currently in care and those who have a potential future need.

Thoughts on this model are being discussed with the Deputy Minister's Learning Disability Advisory Group to inform the debate on how to take forward the transformation of Learning Disability services in Wales. Wider learning from the Demonstrators are being shared at regional learning events across Wales and a further national event is planned in the summer.

### **3. Developing a Social Care and Wellbeing Information Site for the Welsh Citizen**

SSIA's work in this area involves a range of partners, users and carers and is focused on developing a specification for Social Care and Wellbeing Portals which will provide information and advice to people 'in need' – i.e. who need a level of support to maintain their independence and ultimate wellbeing; this might be as a current or potential user of services, someone who cares for or is a friend or colleague of another person. The aim is to help people by providing effective information, with which they can make choices about what that may be available to them. Information on services available at national, regional and local levels will be provided in a dynamic, clear, succinct and interactive way and all in one place. This will form a key point of access to wellbeing services as set out in the Bill and an important example of how services will be adapted to give greater voice and control to citizens.

More information about any of the SSIA programmes can be found at [www.ssiacymru.org.uk](http://www.ssiacymru.org.uk)

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Leading Social Services  
in Wales

Yn arwain  
Gwasanaethau Cymdeithasol  
yng Nghymru

**ADSS CYMRU  
WRITTEN RESPONSE**

**TO THE  
CONSULTATION ON THE SOCIAL  
SERVICES & WELLBEING (WALES)  
BILL**

**March 2013**

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## INTRODUCTION

1. ADSS Cymru is the recognised professional and strategic leadership organisation for Local Authority Social Services in Wales. It comprises the statutory Directors of Social Services and all Heads of Services who have responsibility for adult services, children and young people services or business management. Our primary purpose is to promote the social well-being, protection, support and care of adults and children in vulnerable situations in Wales.
  
2. We are committed to:
  - providing modern, accessible and responsive services, which are delivered flexibly, consistently and sustainably across organisational boundaries;
  - working with all partners in the transformation of social services in Wales;
  - shaping and influencing public policy development across Wales;
  - ensuring that social services have a strong voice at the corporate centre of local government;
  - promoting public understanding of social services and the positive role it plays by engaging with the media, opinion formers and the wider public;
  - providing effective leadership for the social services work force;
  - strengthening relationships between commissioners and providers of social services; and
  - helping to ensure excellent public services as a whole.
  
3. ADSS Cymru welcomes the initiative taken by the Welsh Government in seeking to create a new legal framework for social services in Wales. This is the first opportunity we have ever been given in Wales to change the deeply confusing assortment of care and support law which exists at present. We support the ambition of the Welsh Government to introduce a Bill that draws together our legal framework for social services, in a way that both helps to bring about transformational improvements in the help available to people and also provides a clear, ambitious but realistic direction for social services.

4. In the past few years, a good start has been made in addressing the need to transform the delivery of social services, with the Welsh Government leading a programme of major reform. Local Government has demonstrated a strong commitment to delivering the changes required and to providing good leadership through its Sustainable Social Services Implementation Plan, developed by ADSS Cymru and the WLGA. The plan has been welcomed by the Deputy Minister as demonstrating *“the absolute commitment of local government to transforming social services in Wales, and to collaborating with all partners to deliver the improvements that are needed for people who need care and support.”* We believe strongly that this emphasis on co-production and collaborative working across the range of stakeholders is the key to effective delivery of policy objectives.
  
5. In developing our submission, we have involved our members and other specialist officers in local authorities. ADSS Cymru and WLGA have worked together in developing written responses to the Bill because there are a number of areas where we share the same views and advocate the same solutions. Recognising that our role is different, we share the same desire to see local government at the heart of delivering more effective systems of social services on behalf of our communities and citizens.
  
6. Social care cannot be viewed in isolation. The care and support needs of the people of Wales are affected significantly by poor levels of health and socio-economic factors such as poverty. Effective solutions require local government to work as a trusted partner of Welsh Government and other key stakeholders. Hence our commitment to developing a strategic response at national, regional and local levels to the challenges we face in achieving sustainable social care and public services. We are intent on finding new ways to ensure that all the functions of local authorities contribute to this agenda, embracing the potential of increased citizen involvement in the design and delivery of services, stronger professional delivery teams and collaboration across public services.

## Summary of key points

- We welcome the introduction of legislation to simplify the current law and to support delivery of new integrated service models.
- The Bill must be proportionate and enabling, achieving the right balance between primary legislation and regulation.
- The Bill is just one element of a bigger picture, where the care and support needs of the people of Wales are affected significantly by poor levels of health, and socio economic factors such as poverty.
- Improved wellbeing is a whole public service responsibility and, to be effective in its aim, the Bill must demarcate the specific role expected of social services.
- Local government is well placed to deliver locally determined models of care aligned to population requirements. Legislation must not undermine the autonomy of Councils to make decisions on resource allocation and service delivery as a result of needs analysis, engagement with service users and carers and democratic processes.
- Given the scale of new responsibilities and changes to current practice and patterns of service, resources will be required to deliver the policy objectives stated in the Bill, alongside efficiency savings being delivered by local government.



Phil Evans, President ADSS Cymru and  
Director Lead for the Bill



Gwen Carrington,  
Director Lead for the Bill

## WILL THE BILL ACHIEVE ITS STATED PURPOSE?

7. In our opinion, a really good start has been made. We appreciate the progress made by Welsh Government in designing and getting consensus around its ten-year strategy for major reform in social care, a programme which includes the current legislation. The values and aspirations set out in the strategy and the Bill provide essential building blocks for the framework we will need for transformational change.
  
8. Local Government has demonstrated already a strong commitment to delivering this scale of change and to providing good leadership, in part through its Sustainable Social Services Implementation Plan developed by ADSSC and the WLGA. The Plan, owned by the twenty-two Welsh councils, supports the delivery of modern, accessible and responsive services capable of meeting people's needs and of being delivered flexibly and consistently. These changes are being taken forward at a local, regional and national level. Where all the stakeholders are working together, it has been possible to take real strides in areas such as remodelling services, joint commissioning, joining up health and social care services, and improving shared responsibility for safeguarding children.
  
9. Building upon the considerable and acknowledged strengths that exist in social services in Wales and working closely with the WLGA, members of ADSSC are intent on achieving service transformation through providing:
  - a clearer focus on improved wellbeing outcomes for the people using services;
  - greater control and choice for citizens about the help they want and improved access to that help, without unnecessary bureaucracy;
  - more effective and better integrated models of care and support and a more responsive range of services; and

- a better qualified workforce with skills that enable them to work across organisational boundaries.
10. This is a comprehensive agenda, properly so in the current and future context for social care services. Radical and urgent change is needed as the numbers of people needing care and support continue to grow year-by-year. We believe, therefore, it is appropriate that the Bill is extensive in scope and that it sets out to define:
- a. who should get help and support;
  - b. what services should be available to them;
  - c. where people can expect to have control and choice about the help they get; and
  - d. how the most vulnerable groups in society will be protected from harm.
11. However, there are great hazards too if the Bill fails to provide a coherent way of providing social care fit for the 21<sup>st</sup> Century. It is essential that the changes made as a result of the Bill can become a reality on the ground, a force for positive change and not a series of promises which cannot be delivered in the even harder times that lie ahead. With great ambition comes increased risk, especially in terms of unintended consequences. Therefore, as always in looking at new laws, it is often the degree of coherence and the detail which tend to be most problematic.
12. The activities of local government are strongly shaped by the legislative context. In social services (and in contrast to some other areas such as criminal justice), we have been exceptionally fortunate in the major acts which have steered our work to date. Additionally, there is considerable experience in the task of making statute, regulations and guidance work in practice. Staff are often very idealistic, willing to embrace change where this has clear benefits for service users and carers. However, they also need to be very pragmatic, asking questions such as: what should I/we say or do to keep this person engaged and help them to achieve what they want? how do I/we help them to negotiate the

correct access, assessment and care pathway? what do the law and regulations require me/us to do in circumstances where there is conflict and risk? what does our agency say and what does evidence-based practice tell us works best? It is essential that, as far as possible, they are able to rely on a coherent framework for this work, one which is consistent and clear. Similarly, we have growing evidence about what makes for an effective social services department and here again clarity about purpose and priorities is a crucial factor<sup>1</sup>.

13. In many ways, the Bill makes a good start in providing the legislative framework needed. It defines well many of the objectives which collectively we have agreed to be necessary.

- To mitigate and manage the increasing demand for high quality social services
- To drive forward an outcomes approach and focus for users of social services
- To make savings and efficiencies at a time of acute economic pressures
- To ensure the sustainability of services with more effective models of care
- To reduce the unjustified variations in the quality of care across Wales
- To achieve a more responsive, needs led, range of services with a strong and professional delivery team that can work across organizational boundaries
- To safeguard adults, and protect children and young people more effectively
- To ensure that users of social care services have a stronger voice, and real choice and control over their lives.

14. We welcome the focus on improved wellbeing outcomes; recognition of the role of information, prevention and early intervention; the potential for changes to assessment and eligibility; increased entitlements for carers; the impetus for integrating health and social care at the service level; the move to place adult safeguarding on a sound statutory footing; the emphasis on partnership

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<sup>1</sup> For example, in 'Reviewing Social Services in Wales 1998-2008 - Learning from the Journey', CSSIW and the Wales Audit Office analysed what had been learned about organisational effectiveness from the joint review programmes. Also, to assist CSSIW in their annual performance evaluation of council social services functions, they have developed 'performance descriptors' taxonomy.

working; and greater responsibility for promoting a more diverse social care market through an enhanced role for social enterprises. These are potentially strong pillars in new models of service provision.

15. However, as we will seek to demonstrate later in this document, there are legitimate questions about whether some of the proposed solutions in these areas have been spelled out sufficiently. In our judgement, they do not yet provide a sound guide for those who will be responsible for implementation. The sheer weight of the legislation only confuses the interdependencies of many of Bill's provisions and so it can be read as a mixture of seemingly unrelated measures, with attendant difficulties in identifying a coherent thread running through it. The underpinning emphasis on sustainable social services appears to have been lost in translating the ten-year strategy into legislation. The proposed Bill sets a whole range of new challenges that will have to be met at a time of severe financial restraints for local government and social services. It is right to remain cautious about whether there will be sufficient resources available to meet all the increased commitments and expectations in the Bill in the face of growing demand for services.
16. We believe that there are reasons to question whether prevention and early intervention can deal well enough with increasing demand or act mainly to delay the need for more acute services. There is limited evidence to date whether extensive integration of health and social care services at an operational level can generate considerable savings in the Welsh context, especially as the Bill is not very ambitious in this area. The outcome may be increased competition for scarce resources which will undermine commitments to increased levels of engagement with citizens at an early stage, improved access to assessments, more services for carers and higher standards in protecting adults. Where will we find the resources needed for transformational change across so many areas of service on the scale set out in the Bill, in terms of improvement funding, bridging costs, sustained policy implementation and a determined focus on innovation with reducing numbers of staff? It is important also not to

underestimate the groundwork needed to put in place the significant changes in working practice and organizational cultures required to implement such ambitious reform.

17. We are currently conducting our annual survey of the social services budget position in each local authority. In many of them, there is a pattern of overspending against allocated budgets and SSA over many years. The pressures are across all service user groups but the position in children's services and services for people with learning disability appear to be especially acute areas in which the Bill may prompt increased expenditure, especially in the context of welfare reform and austerity measures. The impact of changes to eligibility criteria and charging regimes has not been assessed and some local authorities are still waiting to be reimbursed for significant loss of income from the First Steps requirements.
18. The case for transformational change has been well made. However, if there is to be no additional funding for implementing reforms on the scale set out in the Bill, we would want to ensure that it sets out more clearly the priority areas for change. Only in this way can we all focus on delivering a programme which is phased, properly understood and collectively promoted.
19. It is our view also that the Bill will affect profoundly local government as a whole and its key statutory partners, not only social services. The principle of wellbeing in the Bill cuts across all functions of local government, the NHS, other public services, the third or voluntary sector, independent providers of care and social enterprises. The Bill does not yet spell out in a compelling enough way their contribution to service transformation.
20. Shaping the Social Services and Wellbeing (Wales) Bill is one of the biggest challenges that the Welsh Government and the National Assembly for Wales have taken on. We are yet to be convinced that all the measures in the Bill require legislation. Some may well be redundant when they finally become law



and are implemented; others are on a relatively small scale and could be achieved by means other than legislation. This risks distracting effort from those which are crucial to the whole enterprise of reform. We believe that the Bill can only achieve its aims through a proportionate approach, legislating only where new duties and powers will support its aspirational aims.

21. A serious concern is that a significant part of the legislation is coming forward as delegated legislation and as powers for Ministers. The legislative framework is broad and lacking in detail; detailed changes will be set out later in regulations, guidance and codes of practice. This is even the case with issues such as eligibility criteria, an area which Welsh government insists that local authorities should debate through transparent political processes, to ensure proper accountability and scrutiny. We do worry that there is too much scope for frequent amendments to secondary instruments, thereby undermining the stable direction which is needed.

22. Will the Bill achieve its stated purpose? Our current answer is “potentially and perhaps but this is not yet proven”. There is a serious risk that we are willing the ends without proper regard to means. Therefore, we would welcome the opportunity to provide further detailed evidence on specific sections of the Bill, using expert testimony from our members.

## ARE THE BILL’S PROVISIONS APPROPRIATE TO DELIVER ITS STATED PURPOSE?

25. We believe that some of the key areas in the Bill will need considerable consideration during the scrutiny process. These are:
- I. Wellbeing
  - II. Access, Assessment & Eligibility
  - III. Adult Safeguarding
  - IV. Remodelling care and support services and integrating with Health services.

## I. WELLBEING

26. In our opinion, the concept of wellbeing is a powerful one, with a wide range of uses. It can be a helpful tool in defining the role that public services as a whole can play in improving the lives of citizens. It has merit as a way of fostering discussion about how far the state can and should take responsibility for such amelioration and what is the role of the individual or family. We should aspire to giving Welsh citizens, in the circumstances in which they are born, grow, live, work and age, better life chances and the opportunity to flourish in sustainable, cohesive communities. There is some consensus about the determinants of wellbeing. Use of the concept is not new in local government (as in the 2000 Act) and we know that Welsh Government may soon have two other Bills in which it is a key tenet. The concept of wellbeing is also embedded in the Government's anti-poverty agenda.
27. It is essential that social services are acknowledged as having a key role in this agenda. Social care and support services can be designed around and judged by their contribution to improved wellbeing. The Bill reflects the World Health Organisation's definition of the term. Consequently, this gives greater potential for local government and key partners such as the NHS to 'own' the definition and to generate a common understanding about need that supports joined up, outcome based planning and commissioning of service, as well as promoting good working.
28. However, perhaps we need to be somewhat wary as well about a term which appears to be so plastic and ubiquitous. It is hard to understand differences between its use at a population level and at the individual level. People generally do not approach local authorities or social services with a request for help that will improve a specific aspect of their wellbeing and they tend to use the word, if at all, as a general measure. It risks, therefore, confusing the dialogue between practitioners and potential service users and carers while increasing the numbers of people seeking help without being given any clear

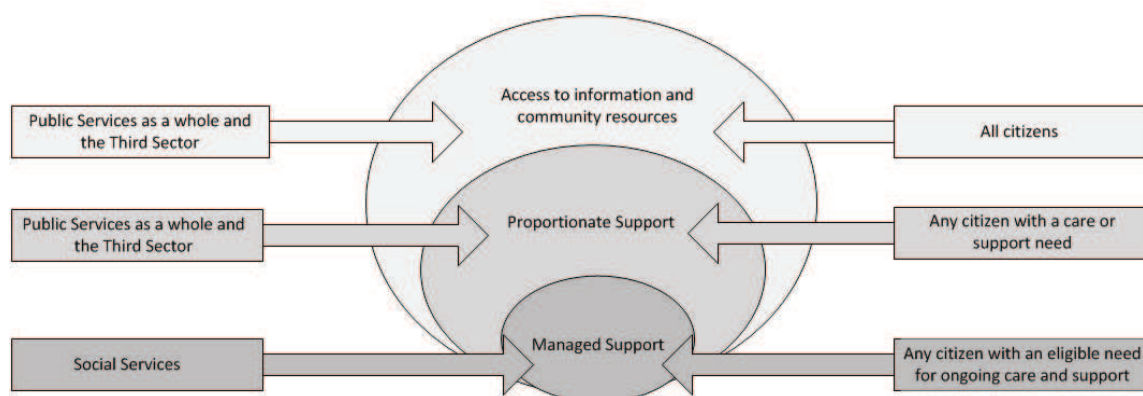
idea about what and why. Are social services being given paramount responsibility for wellbeing or primarily for the wellbeing of those who may need care and support? This could be especially problematic if the definition includes economic wellbeing. Social services operate very rarely as a means of income maintenance, perhaps only for young people leaving care.

29. In these circumstances, there is a risk that the term will achieve limited congruence with other key aspects of the proposed legislation. In many places, it appears to be overtaken by reliance on the provision of information and prevention as the passport to social services. We are not entirely reassured when the Explanatory Memorandum outlines that the Welsh Ministers will publish at some point a statement of the outcomes to be achieved in terms of wellbeing for people who need care and support, and carers who need support.
30. ADSS Cymru believes there is scope for improvement. By placing the provision for wellbeing at the corporate centre of local government and partners such as the NHS, (but not on social services *per se*), public bodies can work together to improve 'wellbeing' in their local communities. We support WLGA's general thrust that it is local government and other public bodies that must manage the wellbeing agenda in Wales. Legislation then becomes an enabling tool to pursue an outcome based approach to the creation of social services, based on the concept of social wellbeing but not constrained by tight bureaucratic definitions. The Bill's provisions could then become largely a means of improving performance, accountability, and consistency in service provision. This shift in thinking provides empowerment and choice<sup>2</sup> for the users of social services, because measures of outcome will be firmly centred on the concept of social care interventions having value for users in ways that they themselves define.

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<sup>2</sup> Forgeard M, Jayawickreme E, Kern M and Seligman M, 'Doing the right thing: Measuring wellbeing for public policy', *International Journal of Wellbeing*, 1(1), 2011, pp 79-106.

31. The following diagram is intended to clarify this issue about how we might demarcate more precisely the specific role of social services vis-à-vis other public services while still acknowledging the place of local authorities in providing leadership for the wellbeing agenda in their own area.



**Diagram 1:** Specific role of social services vis-à-vis other public services

## II. ACCESS, ASSESSMENT AND ELIGIBILITY

32. The current system of access, assessment and eligibility has considerable flaws. It provides differential rights of access to care and support across different service user groups, consumes considerable resources with limited evidence of impact upon outcomes and acts to deter people seeking to arrange early intervention and prevention.
33. There is considerable consensus about the principles that should underpin new arrangements. Staff from local authorities have been working with the Social Services Improvement Agency (commissioned by Welsh Government) to develop and test out a new model which takes into account the requirements of the ten-year strategy. The report should be available soon.

34. If the national framework for these areas of work is to ensure a consistent approach to the way in which local authorities and partners interact with citizens and promote more responsive services, there is general agreement that the new arrangements should:
- begin with the provision of comprehensive information and advice, including what help is available within communities;
  - allow access to early intervention and prevention services, without complex assessment processes;
  - Offer proportionate assessment for those who may require managed care and support.
35. Changes of this kind are starting to emerge in practice with developments such as intermediate care and reablement, communication hubs and integrated hospital discharge services, Flying Start and Families First initiatives. However, we are learning too about how big is the gap between where we are now and where we will need to be in order to meet the statutory requirements set out in the Bill. The new model has considerable implications for all the stakeholders.
36. If we are to avoid duplication and confusion, the provision of information and advice needs to be managed in a unified way across the public sector and with partners. It is difficult to discern how costs can be apportioned and shared between those organisations that are resourced as universal providers of services and those who have a residual and rationing role. There is a need for further consideration about how systems for children and adults will align. In particular, the Bill as it stands appears to pay little attention to the complex interface between needs, problems, risk, capacity and outcomes. There will be people for whom there is prescribed duty to assess and plan.
37. One of our major concerns is with the next stage in the process when issues of eligibility become more central and centralised. The Bill provides for a new National Eligibility Framework which will introduce a uniform threshold for

people to access publicly funded state support wherever they live in Wales. This addresses the problem of substantial variability in adult services across council areas under the current system (i.e. the Fair Access to Care Services or FACS framework). However, in our opinion, national eligibility criteria should be applied initially to a small range of services, to allow a managed period of transition but also to ensure that a worthwhile goal (consistent eligibility) does not undermine another valuable principle (local determination about the best models of service that can be put in place in response to particular circumstances in the local context).

38. ADSSC broadly supports the modernisation of the system through these provisions but, as stated earlier, we do have some reservations about the anticipated outcomes from the Bill's drive on early intervention and prevention approaches in order to rebalance the system and make immediate savings. There is some evidence that, if poorly managed, such work can create unrealistic expectations, increase levels of dependency, and accelerate a "care career" which requires unnecessary provision of long-term support. Timely early intervention is critical to preventing high end, high cost interventions in some circumstances. For children and families, timely intervention depends on the coping capacity of the family and what is needed are the resources to determine when intervention will likely reduce escalation of need and therefore service demand. Greater access to assessment, even if assessment itself is more proportionate and less bureaucratic, risks taking capacity away from work that is geared towards assessing and managing risk and protection at a time when these are already stretched thinly.
39. Evidence of savings as a result of effective prevention services is primarily related to significant reductions in potential future cost pressures (for example, John Bolton's work in Coventry council<sup>3</sup>) rather than in existing

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<sup>3</sup> <http://ssrg.org.uk/wp-content/uploads/2012/01/2006files/10JohnBolton.pdf>

budgets for acute needs can be reduced. We advocate, therefore, an approach which recognises the need for additional investment in information and prevention services alongside the development of outcome based, citizen centred/integrated models of care that prevent institutionalised care, support people in their own homes, and provide for integrated care pathways.

40. To be effective, the Bill has to encourage financial remodelling across the public sector to create sustainable investment in early intervention and prevention. This means ensuring good joint commissioning processes and the use of an appropriate range of delivery mechanisms (to include social enterprises, co-operatives and user-led initiatives]).
41. As Professor Bolton points out, there is an important link between prevention and outcomes but that does not always sit well with increased entitlement to assessment and eligibility. These complexities must be fully understood. Alignment of outcomes through a whole systems approach from delivery through to regulation including social care and health will minimise unintended consequences of some of the provisions in the Bill (elaborated later in this evidence).
42. The parallel system of eligibility that determines access to fully funded NHS continuing health care operates under a different legal and operational framework, and so creates another set of challenges to be resolved. The development of appropriate secondary legislation offers the opportunity for addressing some of the longstanding issues here.
43. There is a perception, also, that the proposed model of access, assessment and eligibility in the Bill is too focused on adults and that current legislation already allows children and families to benefit from a proportionate assessment response in relation to need (based upon development of the CAF and the team around the family approach). There may be greater benefit from

focusing attention on provisions that deal with the transition of young people from children's services to adult services.

### III. SAFEGUARDING ADULTS

44. The Bill provides for putting on a statutory footing our work to safeguard adults at risk. ADSSC welcomes this new provision but believes that the Bill could further develop the parameters of a comprehensive framework for adult safeguarding and protection. If adult protection is to gain further force in policy and practice, the right to protection and the right to take risks have to be balanced. Reconciliation between prioritising protection and the role of choice in risk assessment and the management of risk is not easy. For example, aligning potentially competing needs of a carer and the person being cared-for can be a critical component in the management of risk. The Bill rightly emphasises the right to self determination, independent control over one's own life (except for those without capacity) and so the right to take reasonable risks. However, an individual is also entitled to protection from undesirable risks. The draft legislation is relatively weak on this very important matter, particularly when risk management can either viewed as a strategy for eliminating risk or a strategy for empowering an individual to take control. We would be concerned about replicating the development of children's safeguarding where a series of tragedies brought about more and more prescription in terms of process and procedures which acted to marginalise the voice of the child.
45. Unlike the legislation successfully enacted in Scotland in 2007, the new provisions in the Bill for safeguarding and protection have no new resources identified to support the implementation of the new framework or the new structures. Furthermore, the Bill does not acknowledge its lack of legislative competence over non-devolved partners such as the police and probation so these professional bodies are not required to contribute to the funding of the boards and may not be fully accountable to multi-agency boards. The absence



of a national funding formula will increase the financial burden on local authorities and may limit what the boards can deliver.

46. We welcome the creation of National Independent Safeguarding Board which should help to provide consistent leadership to drive forward the transformation of social care protection systems. ADSS Cymru and WLGA have jointly commissioned a study from the University of Sheffield to consider the benefits of regional boards. Our initial reservation is that the Bill focuses on creating structures for collaborative working at a strategic level rather than focusing on safe and effective practice. For this reason, we welcome the Committee's invitation to contribute to the thematic oral evidence session on safeguarding in May.

#### **IV. SERVICE REMODELLING AND INTEGRATING SOCIAL CARE AND HEALTH SERVICES: COLLABORATING FOR SERVICE IMPROVEMENT AND BETTER OUTCOMES**

47. A national policy goal is for closer and more effective integration of social care and health services, rightly regarded as crucial to the sustainability of services and to improving health and wellbeing outcomes for service users. ADSSC welcomes the requirement for local authorities to promote partnership working and making arrangements to promote co-operation with partner bodies, as set out in the clauses of Part 9 of the Bill.
48. Whilst we support the Bill's emphasis on the role of local government in championing the needs of the local population and those in need of help, we are concerned that the Bill does not contain sufficient detail making explicit the requirements on key partners. The evidence from our own consultation with stakeholders views the lack of well defined statutory duties on the NHS as a major challenge to the delivery of the Bill's stated purpose.

49. Sustainable Social Services: A Framework for Action is prompting a radical change in the way that we organise and manage social care and health services. This is in response to wide range of issues, including an unsustainable current pattern of social care services which has the potential for increasing the costs of provision by 84% over the period 2010-2030. Specific tasks include:
- developing new service models for adults and older people predicated on principles of prevention and reablement and designed to improve outcomes for individuals while reducing demand for core services.
  - reforming the commissioning and purchasing of Adult Social Care, through the potential use of joint commissioning arrangements and promoting the development of social enterprises;
  - building management capacity to meet the challenges of the emerging agenda.
50. This agenda is being delivered in so far as it can be without a fundamental overhaul designed to overcome many of the formidable challenges and barriers to change, especially the difficulties both the NHS and local authorities are experiencing in their genuine efforts to work together effectively. This includes factors such as:
- meeting the costs of service transformation;
  - the scale of the agenda, with a need to focus on innovation and continuous improvement in all areas of service design, delivery and evaluation;
  - securing the right service scale - balance of local and regional and national
  - budgetary pressures and the need for savings
  - different funding and charging;
  - the risks of cost shunting between partners and the potential for a breakdown in trust between partners
  - finding the resources required to bring about transformational change
  - effective leadership across all sectors
  - difficulties experienced by Health Boards in shifting resources from acute services to community health and prevention.

- local authorities and health boards have their own local political, corporate, performance and improvement priorities
48. Only if working together on service remodelling and integrating services is seen as a joint statutory obligation and policy imperative is it likely that these challenges can be met. The current Bill is seen as too weak a tool to tackle such entrenched difficulties which undermine the key purpose of integration which is to deliver new service models, better citizen experiences of services and improved outcomes in terms of independence and wellbeing. In our opinion, it allows too much opportunity for silo working, rather than joint accountability for securing appropriate and high quality provision across health and social care in the local authority area. Government needs to be sure that the NHS is obliged to participate fully and not only to co-operate *when required* to do so by local government. Otherwise, the Bill's provision runs the risk of disengagement by the NHS leading to disjointed assessment processes, confusion over who is accountable for the provision of services for agencies and for service users, an increase in complaints due to unworkable care and support plans, an incomplete local offer to citizens and limited use of joint commissioning and pooled budgets where these are appropriate. Social care has to be regarded as having equal status with health, not a subordinate one, if partnership working is to be a joint responsibility and to have positive outcomes.
49. Government needs to consider the practicalities that will realise the vision of the Bill in relation to provisions to promote partnership working. We know that outcomes for adults and children can be vastly improved by integration on different levels, allowing for a range of professional perspectives to shape and develop effective models of intervention. But aligning the agendas of both health and local authorities does not happen automatically; it requires conscious effort to develop a matrix of management arrangements, resource alignment, shared policies, and a shared language about holistic outcomes for service users. Despite acknowledged difficulties, in our opinion, rebalancing

the burden of responsibility across partner agencies in the Bill is critical to the principle of integrated health and social care, and the success of this legislation.

50. The NHS has the power for pooling budgets but it is not used properly. Local authorities and the NHS have different financial arrangements and different regimes; at present, it can be very difficult to reconcile these differences. Government may need to reflect on the mechanisms that need to be in place in order for the provisions in the Bill to deliver its vision. For example, the Bill should place a duty on the NHS to participate in joint assessments and discharge other functions efficiently and effectively, such as the provision of information in the Carer's Measure, to address present variations across Wales.
51. We share the belief that good partnership working with health will strengthen the role and impact of the Bill's prevention agenda. There is a real opportunity here for public health to play a key role in addressing the wider social determinants of ill health through the full range of local government functions and partnerships. We know that ill health can potentially escalate both the clinical and social care needs of vulnerable individuals. In England, for example, Professor Michael Marmot's Review<sup>4</sup> noted that only 4% of NHS funding is at present spent on prevention. Partnership working between primary care, local authorities and the third sector is proven to deliver effective universal and targeted preventative interventions for those most in need.<sup>5</sup> ADSS Cymru recommends that the present Bill should provide for a more inclusive role by Public Health Wales.

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<sup>4</sup> <http://www.instituteofhealthequity.org/projects/fair-society-healthy-lives-the-marmot-review> .

<sup>5</sup> Strategic Review of Health Inequalities in England Post 2010. Marmot Review. P.32

## IMPLEMENTATION OF THE BILL – POTENTIAL BARRIERS

### I. FRAGMENTED POLICY

52. There is body of evidence that points to disjointed policy initiatives in social care as a critical factor and a root cause in tackling crises of unsustainable cost increases, poor quality and inequity. Unfortunately, a series of narrowly-focused provisions in the Bill will serve further to fragment social care policy and may possibly undermine the Bill's broad vision or strategy for efficiently delivering a national social care system. The proposals for direct payments are a good example. The overly prescriptive approach taken in the Bill without due consideration to the wider policy context in which direct payments operate (that is, citizen centred support) means that the use of direct payments to encourage and support self determination and self management of social care needs loses its flexibility and become less responsive to the assessed needs of an individual. The danger of over-prescription is potentially the 'undoing' of complex whole system arrangements already in place on the ground. ADSSC advocates that legislative prescription on this scale should not be on the face of the Bill.

### II. RESOURCES & FUNDING

53. ADSS Cymru would welcome a more evidenced appraisal of the resources and funding consequences of the provisions in the Bill. There is a real danger in creating increased expectations and duties at a time of depleting resources and the absence of an agreed funding formula for social services that we simply will not be able to meet the expectations of our citizens and deliver on the Act.
54. We are working with WLGA to produce more detailed financial modelling of the impact of the welfare reform and an interim report on likely resource implications of the Bill as currently drafted. We would appreciate a more

detailed assessment within the Explanatory Memorandum to support the assertion that in some areas costs are minimal or cost neutral.

## UNINTENDED CONSEQUENCES

### I. RISK TO LOCALISM

55. We do not feel that the provisions made on the face of the Bill are in keeping with the localism agenda and there is no guarantee that secondary legislation will acknowledge the potential differences between local areas, so that each area has a measure of flexibility to mitigate risks when implementing the Act. This is in keeping with the greater emphasis in the ten-year strategy on strong national leadership but there has been little debate about the potential impact of moves towards a national care service. Involving communities, adults, children, young people and carers in the development of 'local offers' is critical to successful wellbeing outcomes.
56. The Bill presents a mixed picture of provision where some areas (such as assessments, direct payments, safeguarding and adoption) appear to be overly prescribed and others (such as promoting integration and co-operation with partner agencies) are under-prescribed – often without any clear rationale for such differentiation. We believe that the Bill risks overriding the legitimate autonomy of sovereign bodies to plan and design services around local need which respects geographical terrain, diversity, local demographic profiles and local cultural sensitivities.
57. The Simpson report<sup>6</sup>, commissioned by the Welsh Government in March 2011, made a valuable contribution to the debate on 'what services should be delivered where and on what scale'. There is much work being done to agree what services should be delivered at national, regional or local levels, within the limits of current governance arrangements. The Bill appears to

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<sup>6</sup> <http://wales.gov.uk/docs/dsjlg/publications/localgov/110325Inrservicesv2en.pdf>

shed little light on this area apart from prescribing a national adoption service. We recognise the need to increase the pace of collaborative activity and our regional improvement collaboratives are making a significant contribution. The Bill gives Welsh Ministers substantial powers to pre-empt and override decisions which may be strongly grounded in local political and professional judgements about complex interdependencies of policy and practice at the point of service delivery.

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## II. CONSEQUENCES OF A DISJOINTED APPROACH

58. The interface of this Bill with the Sustainable Development Bill and the Public Health Bill suggests that the Welsh Government is working towards a holistic approach to sustaining people and place, helping communities to help people and communities to help themselves. However, it has not explicitly stated or debated its conclusions. Similarly, the recent Welsh Government White Paper on 'Ending Violence against Women, And Domestic Abuse' has crossovers with this Bill. It would be helpful to see an explanation of how the Government sees the provisions in this Bill sitting alongside those in other existing Acts and forthcoming Bills.
59. The Bill takes on board the Law Commission's recommendation to consolidate and simplify existing adult social services law into a single legal framework for Wales. We support this endeavour. However, while acknowledging that this Bill will work alongside the majority of the provisions contained in the Children's Act, it does struggle to connect coherently systems that will have to cater for a whole range of ages, from unborn babies to the very oldest people in our population. There are many common factors but different groups of service users also have different rights, different needs and different potential solutions for meeting needs for care and support.
60. We would want to ensure that the Bill is clear about (a) which provisions in other legislation have been repealed or transferred to this Bill so that local government might act lawfully and (b) provisions for the transfer of

responsibility for assessing needs and providing services for young people from children's services to adult services, between the ages of 14 to 25 years. The success of such transition planning and programmes are crucially dependent on collaboration between children's and adult services and a multi-agency, integrated approach is required to ensure clinical, educational and social outcomes for young people<sup>7</sup>. The journey from adolescence to adulthood can be a challenging time for young people, (especially young carers and those with complex needs). As they move between different services, they find significant differences in the expectations, style and culture of these services while their own care needs are evolving at the same time. We recommend that the Bill takes these issues into consideration more explicitly.

61. It is understandable perhaps that the Bill makes little reference to the social care workforce, given the commitment to producing a White Paper on Regulation and Inspection. However, it would be helpful to see a better understanding in the Bill of the role played by strong professional teams across social care and health (many of which now operate in a very integrated way) and the need for training them to meet the changes and challenges it introduces. Associated with this issue is the future of training funds for the workforce which is under review currently.

## ACHIEVING A REASONABLE BALANCE IN THE PRIMARY AND SECONDARY LEGISLATION

62. Given the complexity of what the Bill is aiming to achieve, ADSSC would welcome the opportunity to engage in debate about effective secondary legislation as this is material to the Assembly's understanding of how the legislation will operate successfully for individual citizens as well as on a theoretical level.

**END**

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<sup>7</sup> <http://www.everychildmatters.gov.uk/>



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