

**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.¹ In exercising his functions, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC).² 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.³

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.⁴

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This response is not confidential

¹ Section 72A Care Standards Act 2000

² Regulation 22 Children's Commissioner for Wales Regulations 2001

³ Section 75A (1) Care Standards Act 2000

⁴ <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 17th 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