



Children in Wales
Plant yng Nghymru

Children in Wales response to Stage 1 of the Social Services and Well-being (Wales) Bill

15.03.13

Introduction

Children in Wales is the national umbrella children’s charity, bringing organisations and individuals from all disciplines and sectors together. Its activity is based on the principles of the United Nations Convention on the Rights of the Child and aims to make it a reality in Wales. Children in Wales also fights for sustainable quality services for all children and young people, and special attention for children in need, as well as ensuring children and young people have a voice in issues that affect them. Its primary activity is supporting the children and families workforce to improve outcomes for children and young people.

Children in Wales has around 200 organisations in membership, including the major third sector children’s agencies, professional associations, local authorities and health bodies, as well as many smaller community groups. Children in Wales facilitates a variety of forums and networks across Wales and works in partnership with the National Children’s Bureau in England and Children in Scotland, and internationally is active in Eurochild and the International Forum for Child welfare. Children in Wales has representation on numerous Welsh Government and other working groups in Wales.

Response prepared by

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This response is not confidential

Consultation questions

1 Is there a need for a Bill to provide 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?

- a) Children in Wales strongly supports the rights based approach of this legislation as well as the principle of bringing together the duties and functions of local authorities and partners in relation to improving the well-being of children and young people. Indeed the requirements of Section 25 of the Children Act 2004 did just that and the Social Services and Well-being (Wales) Bill, (the Bill) will primarily achieve the same for adults as already exists for children. The critical issue for children and young people is their connection to non social services and health services such as education and leisure. Implementation would be more successful if the requirement to collaborate is simultaneously re-iterated in legislation/and or guidance issued to other agencies such as Police, Education and Health. Those agencies inevitably prioritise the statutory duties emanating from the government departments to whom they are directly accountable. This Bill had its origins primarily in adult social services and Children in Wales would have preferred a **consolidated Children Act for Wales** bringing together the Children Acts of 1989 and 2004 and other existing legislation and incorporating the Welsh policies that have systematically been developed based upon the United Nations Convention on the Rights of the Child (UNCRC) and including the Children and Young Persons (Wales) Measure 2011. We regret that the Welsh Government did not carry out its original plan to introduce a Children and Young Persons Bill building on the Children and Young Persons (Wales) Measure 2011. This would have been a significantly better way forward even if it had not been possible to achieve during this particular Assembly term.
- b) In line with this we would also like to have seen the **UN Convention on the Rights of the Child** on the face of the Bill as it would give a clear message about the importance of the UNCRC in conjunction with the Children and Young Persons (Wales) Measure 2011. (NB this was nearly achieved in the passage of the Children Act 2004 in the section on Wales).
- c) We believe that amendments proposed to the Children Act 2004 to align them with the Bill are unfortunately an erosion of the current 'best interests' of the Child under Article 3 of the UNCRC.

- d) We do however fully recognise the need to have a holistic approach to working with complex families, but would advocate that it is still essential that there is an understanding of the particular needs of children in terms of working with families. In its most simplistic form, knowledge of child development and how to communicate with children are essential components of working with children in order to assess their needs wherever they are – in families or outside of families. We are also acutely aware of the important issues around transition from children and young people services to adult services. However the radical shift to ‘people in need’ as opposed to ‘children in need’ appears to have been a case of family issues and transition issues dictating the design of all the other core services for children and young people. In the views of our members there is both a place for a focus on family support and also on children and young people themselves.
- e) If however the cradle to grave approach continues to be the direction of travel, we fully support the introduction of a duty on local authorities and their partners to maintain and enhance the wellbeing of people in need through identification of persons in need (needs can’t be met if they are not identified) and encouraging the provision of a suitable range of services. We anticipate however that there is a real cause for concern in that identified need may inevitably outweigh the resources available to meet those needs and expectations may be raised. We feel that there should be further consideration of managing this aspect.
- f) **Well-being** The concept of well-being is well known in the children’s sphere following the 2004 Children Act as well as all the work done at EU level in relation to child well-being indicators, (which we campaigned for through Eurochild, rather than child poverty indicators to measure the impact of the EU programme to address child poverty and social exclusion). The Welsh Government’s (WG) Child Well-being Monitor for Wales has been a good tool in beginning to address the collection of data to give a picture of the well-being of children in Wales but needs to be developed further. The Monitor is a means of comparative opportunities to see how Wales is doing on a UK and European basis. It enables data to be disaggregated, needs identified and resources deployed appropriately. The Child Well-Being monitor work has also begun to gather data that has a direct bearing on how children themselves feel through some subjective data gathering to a separate statutory Children’s Plan.
- g) Measuring well-being should be linked to agreed outcomes with service users and this will inevitably require gathering extra data that is not routinely collected at present. The Monitor also ensures effective reporting to the UN Committee on the

Rights of the Child which is the main independent monitoring mechanism along with the Office of the Commissioner for Children, of the effectiveness of government's actions. There is every chance that in reality a new threshold for access to services will be created relating to people in need without any explanation of what will underpin this and where the needs of children sit.

- h) Whilst we are extremely positive about the concept of well-being as we know it for children, we would urge the Welsh Government to not confuse matters by having the concept of well-being using a variety of definitions placed in other pieces of legislation - eg Sustainable Development Bill, proposed Public Health Bill and the Domestic Violence Bill.
- i) **People in Need** By attempting to bring the adult legislation to where children's legislation is now, we fear all the attention will focus on adults at a cost to the children's rights agenda and the progress made over recent years. We believe we need to be building on the 1989 and 2004 Acts as there is still a huge amount to be done. There are many outstanding issues relating to the delivery of the key duties as described in the 1989 Children Act which are not being met. There is also increasing pressure on services to meet growing response in relation to Children in Need and Looked After Children. A shift to 'People in Need' will inevitably lead to increased demand.
- j) The definition of 'people in need' is based on the definition of 'children in need' used in the Children Act 1989 and is comprehensive. It is rather outdated though in that it does not completely reflect a rights based approach but more of a welfare model. Some young disabled adults have expressed concern about this term being applied to them as it has some negative connotations with disabled people being known as handicapped (from "cap in hand") and disabled people being seen as objects of charity and in need rather than having rights. They also wonder why a disabled child is covered by the definition but disabled adults aren't. It is important that there is also adequate cross referencing to existing legislation such as the Chronically Sick and Disabled Persons Act and also the UN Convention on the Rights of Persons with Disabilities.
- k) The move towards the concept of 'people in need' is also of concern to our members because unless children, young people and families are specifically mentioned, policies have historically developed on an adult model, primarily because of two reasons – the significantly larger numbers of adults and their workforce plus - the fact

that adults have influence, they have the vote whereas children do not. An example of resources following an adult based needs assessment was where the original Communities First resources allocation were based on socio economic geographical population data, but this was not the same as the needs of the child population because the distribution of need for children is quite a different geographical profile to that of adults which is affected by the profile of the elderly population.

- l) Our networks have expressed concern that the focus on 'people' will compromise the future children's agenda. This is compounded by the changes relating to multi agency planning processes such as the demise of Children and Young People's Partnerships and development of the Local Authority single plan in some areas as opposed to a separate statutory Children's Plan.
- m) There is every chance that in reality a new threshold for access to services will be created relating to people in need without any explanation of what will underpin this and where the needs of children sit.

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.

- a) The concept of well-being is effective in broadening the scope of the Bill and provides a continuum of social care involving partners that Children in Wales welcomes. It is not however as yet clear how engaged or committed other partners are to this legislation and how it cross references with legislation already affecting them directly. It actually broadens social services beyond its traditional remit into universal prevention and early intervention services.
- b) Well-being encourages focussing on what really matters to service users and not just to service providers! We do however urge Welsh Government to consider other areas of activity eg mental health, where outcomes and collaboration also feature in recent legislation. It is essential that there is coherence between the various Assembly Measures to avoid duplication or contradiction.
- c) The Bill creates an opportunity to develop a seismic cultural shift in that it is much more of a rights based approach than the existing welfare model. However whilst the rhetoric is stronger voice and control, we fear that children's voices will be lost for example in families where the adults have significant needs as well as the child. Whose voice will be heard?

- d) There needs to be a coherence between what are nationally directed services and the voice and control of service users.
- e) The emphasis on prevention and early intervention is extremely welcome and is an important step forward, especially because it addresses both access to and provision of services. Our concern however is that in the current economic climate demand will exceed supply and thresholds will inevitably rise. As previously stated we are also concerned about the impact of the extra demand on children and families. There is also inconsistency in terminology in what 'spectrum' of services is provided and also who provides them. Emphasis on the role of the third sector is important as is the concept of co-production. Third sector organisations are invariably close to the people who use services and so are well placed to promote the design of services for them.
- f) There is a considerable amount of existing children's legislation and case law has set many precedents. Indeed there is legislation currently going through Westminster at present. There are inevitably many issues of transition and repeal. For instance 'a child in need' versus 'people in need'. How will the most appropriate definition be decided upon. For Children in Wales we are unable to comment sufficiently until we have seen the detail and we understand that this may not be for some time.

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.

- a) There is no doubt that early intervention and prevention are both effective and economic in the longer term. However it does mean that the culture of putting the service user and carer at the centre of service design and delivery has to become key and this requires a considerable culture shift.
- b) Sustainability will depend very much on the engagement of partner agencies and sectors in the delivery of integrated services for the cohort of people involved with social services – usually the most vulnerable in society. It will also depend on the empowerment of service users and carers and their active involvement in the design of services and identification of meaningful outcomes.
- c) Transformation of social services will require a seamless connection between universal and targeted services from all agencies involved and particularly the involvement of the third sector in co-production in relation to services in which they

have particular expertise. It appears to us that partner agencies have had little involvement in the development of the Bill and this would need to be implemented in practice to avoid the legislation becoming purely aspirational. It is also critical that there is clarity about where the responsibility of social services lies and where the responsibility of the wider local authority or health boards lie in relation to the early intervention and prevention agenda. Social Services do not have the capacity to deliver this vast agenda alone.

- d) Accurate correlation to other UK legislation and Welsh Measures such as the Mental Health Measure are essential for sustainability. As previously stated we are concerned that the 'people in need' definition may water down the rights of children, such as disabled children who are entitled to services under section 17 of the Children Act 1989. Similarly children 'looked after may be adversely affected.
- e) We welcome the concept of a stronger voice but are not convinced that this applies to children and young people and we wonder if the Bill has in fact been examined against the UNCRC in line with the due regard duty in the Children and Young Persons Measure.
- f) Finally, the issue of charging for services must be dealt with carefully as not all services, eg safeguarding, may lend themselves to charging.

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

- a) The Bill will increase the scope of social services considerably and this will require much more joined up working across agencies if duplication and confusion are to be avoided and integration achieved.
- b) It will also refocus the priorities towards outcomes for people which they have been involved in developing. There will be significant transformation required of the workforce in terms of cultural shift from a welfare to a rights based model of practice.
- c) As yet it is unclear how a national eligibility framework will affect thresholds and thus affect delivery.
- d) The changes for children and families will largely depend on subordinate legislation

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

- a) Lack of accurate information about care and support needs both nationally and locally.
- b) Demand outstripping supply because of assessments
- c) Overall increased volume of demand due to external factors such as welfare reform, family justice reform etc
- d) Charging policies – more consideration needs to be given to this in relation to children’s services
- e) Contraction of many third sector services through reduced funding

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?

- a) We believe that there is too much left to regulation- especially in the children’s field. We would also like to see more ‘must’ than ‘may’ in the regulation. This for instance would be significant in relation to funding safeguarding boards.
- b) There is a critical balance between what is in statute and what is in a statutory code of practice. Recognition of the fact that authorities under financial pressure will primarily deliver statutory requirements should be considered even though case law can use guidance regarding judgments on thresholds for instance as in the Gloucester case. By widening the range of people within the ‘people in need’ group there will inevitably be increased demand especially if there is more access to assessment.
- c) We support a code of practice providing it is realistic and based on evidence with a view to continuous monitoring and updating according to the realities in practice. This would assist in getting consistency in implementation.

6 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)?

- a) This is an extremely interesting area which we do as yet not have a clear position on. There are clearly issues of failing services to be addressed, but there are also existing methods of Welsh Government intervention.
- b) It is clearly a risk for Ministers to have potential to issue subordinate legislation too freely without parliamentary process. It is also not generally our view that Welsh Government should become an operational body. CAFCASS Cymru was taken into

Welsh Government and is under the Deputy Minister, but this is an exception. Without more information on this area we are unable to comment further at this time.

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 9the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the Bill.

- a) Children in Wales fundamentally questions the assumption in the Explanatory Memorandum that the Bill will be cost neutral. Many times in the past there have been attempts to move from crisis services to preventive services and this has required management of change processes including detailed costs.
- b) Whilst we are totally committed to the preventative agenda, this, combined with the likely increase in demand due to the assessments will inevitably incur costs as the transformation takes place in the initial stages.

8 Are there any other specific comments you wish to make about specific sections of the Bill?

- a) Children in Wales is a leading member of Sdim Curo Plant/ Children are Unbeatable Cymru and as such fully supports the abolition of the physical chastisement of children and we wish to ensure equal protection for children in the law on assault. We fully endorse the evidence submitted by Sdim Curo Plant/ Children are Unbeatable Cymru and believe that the Assembly has opportunity of showing its total commitment to children's human rights.
- b) The importance of the National Outcomes Framework is fundamental to the success of improving children's lives. This needs close scrutiny and there can't be more than one outcomes framework for all agencies to work towards without causing confusion.
- c) As the trend towards 'family' continues we wish to point out that Looked After Children are a significant group who are not in 'families' as such. Existing legislation is strong for them as children 'in need'. This should not be diluted. We also are concerned that advocacy doesn't feature on the face of the Bill as this is a key service for vulnerable children and funds follow statutory requirements.