

National Assembly for Wales
Finance Committee

Report on the Financial Implications
of the Proposed Rights of Children
and Young Persons (Wales) Measure

October 2010



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Finance Committee

The Finance Committee's remit is to ensure that proper scrutiny is given to the budget and expenditure of the Welsh Government, the Assembly Commission, the Ombudsman, the Children's Commissioner, the Older People's Commissioner and various Welsh Government Sponsored Bodies and NHS Bodies.

The Committee has, in broad terms, three main functions:

- to consider and report on Assembly budget proposals;
- to consider and, where it sees fit, report on the financial information presented in support of Assembly Measures;
- to consider any other matter relating to, or affecting, expenditure by the Government or out of the Welsh Consolidated Fund.

Powers

The Committee was established on 26 June 2007. Its powers are set out in the National Assembly for Wales's Standing Order 14. These are available at www.assemblywales.org

Committee Membership



Angela Burns (Chair)
Carmarthen West and South
Pembrokeshire
Welsh Conservative Party



Lorraine Barrett
Cardiff and South Penarth
Labour



Peter Black
South Wales West
Welsh Liberal Democrats



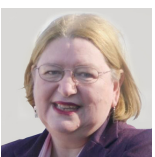
Andrew Davies
Swansea West
Labour



Chris Franks
South Wales Central
Plaid Cymru



Brian Gibbons
Aberavon
Labour



Ann Jones
Vale of Clwyd
Labour



Nick Ramsay
Monmouth
Welsh Conservative
Party



Janet Ryder
North Wales
Plaid Cymru

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Extracts from Standing Orders:

14.2 The [Finance] Committee may also consider and, where it sees fit, report on:

- i. financial information in explanatory memoranda accompanying proposed Assembly Measures;*

.....

23.18 At the same time as [the Member in charge] introduces a proposed Measure, he or she must also lay an Explanatory Memorandum which must:

(vi) set out the best estimates of:

- (a) any administrative, compliance and other costs to which the provisions of the proposed Measure would give rise;*
- (b) the timescales over which such costs would be expected to arise; and*
- (c) where the costs would fall;*

Introduction

1. The Finance Committee considered the proposed measure at its meeting on 30 September 2010. Unfortunately, due to ill health, the Deputy Minister for Children was unable to meet the Finance Committee that day and in his absence his officials presented the proposed Measure and answered Members' questions. The Chair subsequently wrote to the Deputy Minister for Children about a number of outstanding issues and the Deputy Minister met the Committee on 14 October to give further oral evidence.

2. Alongside this, the Finance Committee considered the written information provided by the Deputy Minister for the Finance Committee meeting on 30 September and his subsequent letter dated 8 October. The Finance Committee also had regard to the responses received by Legislation Committee 5 in its consultation on the proposed Measure.

Background

3. The Explanatory Memorandum says¹ that the proposed Measure imposes a duty upon the Welsh Ministers and the First Minister to have due regard to the rights and obligations in the United Nations Convention on the Rights of the Child (UNCRC) and its Optional Protocols, when making decisions of a strategic nature about how to exercise functions which are exercisable by them. “Children” for the purposes of the UNCRC means those who are under 18.

4. The proposed Measure also makes related provision about:
- the preparation of a children’s scheme;
 - reports about compliance with the duty to have due regard to the UNCRC and its Optional Protocols;
 - promoting knowledge and understanding of the UNCRC and its Optional Protocols;
 - amending legislation to give further or better effect to the UNCRC and its Optional Protocols; and
 - consultation on the possible application of the proposed Measure to persons who have reached 18, but are not yet 25

Costs associated with the proposed Measure

5. The Explanatory Memorandum indicates the following costs associated with the proposed Measure:

Year 1 from July 2010 - March 2011

	Actual costs	Opportunity costs
Staffing resource (central implementation/ coordinating team plus central legal adviser) to develop and implement scheme, and internal processes.	£209,000	
Development of training and impact assessment tools	£145,000	
Total	£354,000	

¹ Proposed Rights of Children and Young Persons (Wales) Measure, Explanatory Memorandum, para 1.1

Year 2 from April 2011- March 2012

	Actual costs	Opportunity costs
Staffing to ensure implementation of the scheme and compliance including the consultation on the children's scheme	£279,000	
Legal and specialist training	£35,000	
Opportunity costs for training		£290,000
Total	£314,000	£290,000

Year 3 – ongoing

	Actual costs	Opportunity costs
Staffing to ensure ongoing support, compliance and monitoring and evaluation	£272,000	
Estimated 'opportunity' costs to discharge additional requirements to consider the "due regard" duty duties.		£299,000
Total	£272,000	£299,000

6. The "actual" costs shown amount to £270,000 - £280,000 a year for staff in WAG to implement the scheme, albeit those for year 1, which is in fact only 9 months(!) are proportionately reduced. In fact, given that the start date of July 2010 has passed, these figures may need further adjustment. Alongside this there are 'actual' costs of £180,000 for training over the first two years. On top of this there will be 'opportunity' costs of around £290,000 - 300,000 in years 2 and 3.

7. In his letter of 8 October, the Deputy Minister says the funding for the £180,000 has been 'factored' into the DCELLS budget and he did not anticipate it would impact on any other programme activity.

Other costs

Consulting on children's scheme

8. In his letter² the Deputy Minister told the Committee that one of the primary tasks of the central policy team within WAG will be to

² Finance Committee FIN(3)-16-10(p2b), *Financial Implications of the Proposed Rights of Children and Young Persons (Wales) Measure – Additional written evidence from the Deputy Minister for Children*, 14 October 2010

develop, consult and publish the scheme. As such development costs are included in the central team allocation. At the previous evidence session officials³ told the Finance Committee that the costings for all this work are included in the implementation team.⁴ They said they had not planned for any extra costs over and above this.

Extension to 18 – 24

9. The Deputy Minister's officials told the Finance Committee⁵ that they had no detail on how they would go about extending the coverage of the proposed Measure to 18-24 year olds. A scheme would need to be developed with stakeholders and there would then need to be consultation on this. Following that there would be an analysis and options would be drawn up. It is at that stage that costings could start to take place. But at the present stage they are not in a position to cost those options because they do not know what they are.

10. Members were concerned that including the power to make such a radical extension as this, would be authorising substantial future expenditure for which there had been no prior financial assessment; in essence a 'blank cheque'. While the Committee might accept the present Government's assurances about its intentions, it was⁶ important not to forget that the powers might also be used by a future government that might wish to use them in a way that was never intended. Responding to this, the Deputy Minister said his understanding was that Ministers would have to publish and consult before making an order to apply the provisions to 18-24 year olds.⁷ He added that the use of the superaffirmative procedure was still under consideration. He did not agree⁸ that allowing such an extension was in any way a hostage to fortune.

11. The Deputy Minister Committee confirmed that any orders laid under the proposed Measure would be subject to a regulatory impact assessment. However, Members noted⁹ that, even if there was a regulatory impact assessment, there was no requirement under

³ RoP p219, 30 September 2010, Finance Committee

⁴ RoP p222, 225-226, 30 September 2010, Finance Committee

⁵ RoP p190, 14 October 2010, Finance Committee

⁶ RoP p186, 14 October 2010, Finance Committee

⁷ RoP p187, 14 October 2010, Finance Committee

⁸ RoP p211, 14 October 2010, Finance Committee

⁹ RoP p213-223, 14 October 2010, Finance Committee

Standing Orders for this to come before the Finance Committee for full consideration. However this was a matter for Business Committee rather than the Government.

Impact on other public bodies

12. The Explanatory Memorandum does not give any indication of the costs that will fall on other public bodies as a result of the proposed Measure. In his letter to the Committee¹⁰ the Deputy Ministers said that Ministers will receive advice on a case by case basis in relation to each strategic decision and these will have to be weighed up against other factors including the availability of resources. In his oral evidence¹¹ the Deputy Minister said that nothing in the proposed Measure removed the Assembly's well established consultation procedures with partner and other organisations which will continue as they have always done.

Requirement to report

13. Officials told the Finance Committee¹² that, in order to maximise economies of scale, they would produce a report on a five-yearly basis to coincide with the United Nations Convention on the Rights of the Child reporting. While this would look at benefits resulting from the proposed Measure it would include costs only insofar as they can be calculated. They did not think they would be able to say with any certainty what the provisions of the proposed Measure had cost.

Duty to promote knowledge and understanding of the convention

14. The Explanatory Memorandum to the proposed Measure does not indicate any costs for this duty but notes that knowledge and understanding of the convention are at a low baseline in Wales.¹³ Officials told the Finance Committee¹⁴ that the Government already had commitments to the dissemination of information to children and wanted this sort of work to evolve in a way that includes the convention. Essentially they were mainstreaming it. In his paper to

¹⁰ Finance Committee FIN(3)-16-10(p2b), *Financial Implications of the Proposed Rights of Children and Young Persons (Wales) Measure – Additional written evidence from the Deputy Minister for Children*, 14 October 2010

¹¹ RoP p161, 14 October 2010, Finance Committee

¹² RoP p173, 14 October 2010, Finance Committee

¹³ Proposed Rights of Children and Young Persons (Wales) Measure, Explanatory Memorandum, para 3.37

¹⁴ RoP p295-7, 14 October 2010, Finance Committee

the Committee¹⁵ the Deputy Minister said that the proposed Measure formalised previous commitments under article 42 of the UNCRC and the work programme being taken forward under the Getting it Right UNCRC action plan with funding of approximately £300,000 currently being allocated to this work.

Funding for the Measure:

15. The ‘actual’ costs associated with the Measure will be funded from the DCELLS budget through the ‘normal’ allocation process. The Deputy Minister told the Finance Committee¹⁶ that that he was not able to say whether any other programmes would suffer as a result of diverting resources from them to the proposed Measure. He said that they had a budgetary process and that decisions would be made in the normal way that decisions have been made over the last decade or so. Officials added¹⁷ that there will be process for prioritising which programmes will be taken forward in the light of whatever funding is allocated to the Department.

16. The ‘opportunity’ costs will come from what the Deputy Minister described¹⁸ as ‘slightly more nebulous’ and are the costs involved in wider staff involvement across the Welsh Assembly Government, training and compliance with the duty, and so on. What they have done is include the development cost of the training and the cost of the delivery of the training, which would be met in the future from central budgeting.

Discussion

17. This is another proposed measure for which there is very little financial information on the costs involved. The Explanatory Memorandum indicates that there will be ‘actual’ costs at a rate of around £270,000 - £280,000 a year for staff in WAG to implement the scheme although the figure in the first year may be proportionately lower depending in when the work starts. In addition there will be ‘actual’ costs of £180,000 over the first two years for training. These

¹⁵ Finance Committee FIN(3)-15-10(p2a), *Financial Implications of the Proposed Rights of Children and Young Persons (Wales) Measure – Further information from the Deputy Minister for Children*, 30 September 2010

¹⁶ RoP p250, 14 October 2010, Finance Committee

¹⁷ RoP p251, 14 October 2010, Finance Committee

¹⁸ RoP p240, 14 October 2010, Finance Committee

will be funded from within the DCELLS budget but it is not possible to identify specifically from where the money will come other than it will be through the process of setting departmental priorities.

18. The proposed Measure will also lead to ‘opportunity’ costs of just under £300,000 in years 2 and 3.

19. The main DCELLS funding will meet all the ‘actual’ requirements of the proposed Measure including reporting on it, promoting awareness and consulting on whether to extend its provisions to 18-24 year olds. However, there has been little specific costing done on any of these activities which are seen as the core activities of the central team which will be in place to take forward this area of policy. While the Finance Committee did not examine in any detail the work that the unit will undertake, it does not see any obvious reason to challenge the Deputy Minister’s assessment.

20. The Finance Committee is also concerned about a much wider issue namely the extent to which the proposed Measure might open the door to a wide range of other action which in turn will impose burdens on other public sector bodies. The most immediate issue is the prospect of extending the coverage of the proposed Measure to 18-24 year olds and the Committee is concerned that the proposed Measure includes a provision to consult on this but ignores the costs of implementation if the consultation led to a decision to proceed with such an extension. The Finance Committee acknowledges the Deputy Minister’s assurances that an order to implement such an extension would require its own regulatory impact assessment **but notes that such an assessment undergoes a far less stringent financial assessment than a proposed Measure and, in particular, is concerned that this would not necessarily be presented to the Finance Committee.**

21. The Finance Committee welcomed the Deputy Minister’s indication that consideration was being given to requiring this to be via the ‘superaffirmative procedure’ and **recommends that this should include formal consideration by the Finance Committee.**

22. The Finance Committee notes also that the Explanatory Memorandum does not look more widely at the possibility that implementation of the proposed Measure might subsequently lead on

to additional duties and costs for other public bodies and simply asserts that these will be considered on a case by case basis as they arise. The Finance Committee would have been more reassured if there was evidence that the risk and extent of such consequences had at least been explored. **The Finance Committee is concerned that, yet again, the Government is embarking on legislation with very little analysis of its financial implications. It is additionally concerned that the lack of analysis means there is a risk of unintended consequences as a result of approving this proposed Measure.**

Conclusion

23. The Finance Committee draws these observations to the attention of members and the Assembly.

Angela Burns
Chair, Finance Committee