

National Assembly for Wales
Legislation Committee No. 2

Proposed Children and Families (Wales)
Measure

Stage 1 Committee Report
June 2009



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Committee Members

Val Lloyd (Chair)	Labour	Swansea East
Jeff Cuthbert	Labour	Caerphilly
Paul Davies	Welsh Conservative Party	Preseli Pembrokeshire
Gareth Jones	Plaid Cymru	Aberconwy
Sandy Mewies	Labour	Delyn
Jenny Randerson	Welsh Liberal Democrats	Cardiff Central

Summary of conclusions and recommendations

Our conclusions and recommendations are as follows:

Comments on stage 1 scrutiny

1. In undertaking our stage 1 scrutiny, we were conscious that the proposed Measure is the most substantial to be introduced to date and is ambitious in terms of its scope, cutting across three ministerial portfolios – Social Justice and Local Government; Children, Education, Lifelong Learning and Skills; and Health and Social Services. (paragraph 11)

2. As such, we were disappointed with the relatively short time frame within which we had to take evidence and report, and we would call for the breadth and significance of proposed Measures to be taken into account in future when determining timetables for stage 1, to ensure the fullest and most effective scrutiny can be undertaken. (paragraph 12)

General principles of the proposed Measure and the need for legislation

3. The evidence we have received from stakeholders illustrates a general consensus in favour of the need for the proposed Measure. There was also broad support amongst stakeholders for the general principles. (paragraph 44)

4. We note the policy objectives of the proposed Measure are:

- to make new provision for the eradication of child poverty;
- to consolidate existing legislation in relation to childminding and day care;
- to make new provision to establish integrated family support teams to provide services to families where there are children in need or looked after children; and
- to make provision for play and participation opportunities for children. (paragraph 45)

5. Given the strength of the evidence from stakeholders in support of these policy objectives, we agree there is a need for this legislation. (paragraph 46)

6. Further to this, we consider there is a need for good quality and timely guidance to accompany the implementation of the proposed Measure and we recommend that such guidance should be developed in consultation with stakeholders. (paragraph 47)

7. In relation to the evidence from stakeholders on the state benefits and tax credits systems, we recognise the importance of these benefits to the overall aim of eradicating child poverty, but we are aware that, as non-devolved matters, they are not in the control of the Minister. We therefore encourage the Minister, in his discussions with his UK counterpart, to draw attention to the substantial evidence we have received on this important issue. (paragraph 48)

8. In relation to those benefits over which there is a more local level of administrative control, including housing and council tax benefits, free school meals and school breakfasts and educational maintenance allowances, we urge the Minister to do all he can to promote the highest level of take-up of these benefits. (paragraph 49)

Definition of ‘eradication of child poverty’

9. We note the evidence from some stakeholders calling for a definition of the term “eradication of poverty” to be set out in the legislation, but are persuaded by the Minister’s argument that to include this definition on the face of the proposed Measure would reduce the flexibility of Welsh Ministers to respond to changes in circumstances. (paragraph 61)

10. However, we believe it would be helpful if the Explanatory Memorandum contained a statement setting out what is meant by the term “eradicating child poverty”, and we so recommend. (paragraph 62)

Section 1: Broad aims for contributing to the eradication of child poverty

11. In relation to the broad aims provided for in section 1, much of the written and oral evidence welcomed these as a means of contributing to the eradication of child poverty. We questioned the Minister on each of the specific points raised by individual stakeholders in their evidence. We were satisfied with the Minister’s explanation that the broad aims are about services, functions and activities that public bodies would be expected, by the Welsh Ministers, to deliver and that the broad aims would be underpinned by guidance - something we consider to be very important. (paragraph 85)

12. On this basis, we do not wish to make specific recommendations for amendments to the broad aims and, as such, we are content with section 1(2) as currently drafted. (paragraph 86)

Reference to other vulnerable groups of children and young people

13. We agree with the majority of the stakeholders that the proposed Measure would not be strengthened by making specific reference to particular vulnerable groups and that to do this may have the unwanted effect of excluding other vulnerable groups. (paragraph 91)

14. However, we believe that guidance to accompany this part of the proposed Measure should refer to the significance of particular vulnerable groups, and we so recommend. (paragraph 92)

Section 1: Broad aims - Inclusion of clear targets and milestones

15. We note the evidence from stakeholders calling for the broad aims in section 1 of the proposed Measure to be accompanied by clear targets and milestones, and we acknowledge the importance of such indicators in

measuring progress against delivery, We were persuaded, however, that this information is more appropriately contained within guidance, and we so recommend. (paragraph 100)

Section 1(3)-(6): Material deprivation and median income

16. We note the evidence from some stakeholders calling for determinations of material deprivation and median income to be set out on the face of the proposed Measure, rather than in regulations as currently provided for. (paragraph 112)

17. However, we accept the Minister's argument that to make such provision in section 1 of the proposed Measure would unnecessarily limit the flexibility to vary these determinations in the future in order to ensure they keep pace with changing circumstances - something we consider to be very important. (paragraph 113)

18. As such, we do not consider that determinations of material deprivation and median income should be provided for on the face of the proposed Measure. (paragraph 114)

19. We do, however, share the concerns of some stakeholders that, in providing for Welsh authorities to make their own determination of material deprivation and median income in the absence of any regulations by Welsh Ministers, section 1(6) could create a situation where different Welsh authorities across Wales make different determinations. (paragraph 115)

20. On this point, we strongly advocate that, were this situation to arise, the Minister provide clear guidance for all Welsh authorities as to the determinations of material deprivation and median income they should be working to, in order to ensure a consistent approach is adopted across Wales which also takes account of the UK position. We would welcome a commitment from the Minister to this effect. (paragraph 116)

Section 3: Strategies prepared by the Welsh Ministers

21. We recognise the importance of regular reporting by Welsh Ministers on their progress towards eradicating child poverty, particularly in the context of the 'One Wales' commitment to eradicate child poverty in Wales by 2020. (paragraph 127)

22. On a UK level, we note there are plans to require the UK Government to report annually to Parliament on their progress towards eradicating child poverty and we understand that progress in Wales will feature as part of those annual reports. (paragraph 128)

23. On a Wales level, we are persuaded by the evidence from Barnardo's Cymru and the Minister that, because of our relatively small population and our lack of control over the tax and state benefits systems, annual figures are likely to be less informative or useful than three-yearly figures, and as such we are

satisfied that the statutory requirement in section 3 of the proposed Measure is for a three-year reporting cycle. (paragraph 129)

24. However, in order to ensure that progress on the eradication of child poverty in Wales is always at the fore and that it is regularly monitored to allow any problems to be identified at the earliest stage, we recommend that the Welsh Ministers produce an interim report on an annual basis, to be considered by the appropriate Assembly committee. We note this view to be in line with that of the Children and Young People Committee. (paragraph 130)

Involvement of the Voluntary Sector

25. In relation to the role of the voluntary sector in the drawing up and delivery of strategies under Part 1 of the proposed Measure, we accept the Minister's argument that there are limits to the statutory duties that can be placed directly on voluntary sector organisations. (paragraph 139)

26. However, we are persuaded by the evidence from stakeholders that the role of the voluntary sector in Wales in contributing to the eradication of child poverty is so important that the proposed Measure should make some provision in this regard. (paragraph 140)

27. On this basis, we believe the proposed Measure should place a duty on the Welsh Ministers and the Welsh authorities to consult with appropriate voluntary sector organisations in the preparation of their strategies under Part 1, and we so recommend. (paragraph 141)

Section 6: Local Authority duty to secure the availability of free childcare

28. We recognise the importance of accessible, affordable and quality childcare provision in contributing to the eradication of child poverty in Wales, and we acknowledge the weight of evidence from stakeholders in this regard, particularly in relation to holiday, wrap-around and pre and post school childcare. We also acknowledge the support that exists amongst stakeholders for the extension of free childcare provision to children up to 11 years of age. (paragraph 160)

29. Whilst we recognise the significance of these initiatives for the child poverty agenda, we accept that there are resource implications attached to them. We welcome the additional funding being provided by the Minister to local authorities to secure further childcare provision in their area, and we welcome her commitment to provide additional funding to promote out-of-school childcare, which she said would apply particularly to children of primary school age, after-school clubs and holiday play-care schemes. (paragraph 161)

30. In the longer term, we urge the Minister to note the weight of evidence we have received in relation to the provision of free childcare, and to give further consideration to extending this provision to benefit the greatest number of families in need. (paragraph 162)

Targeted and area based programmes

31. In relation to the targeted and area based approach to be adopted in the delivery of Part 1 of the proposed Measure, we understand the reasons why this approach was initially adopted by the Welsh Assembly Government, and we recognise the very important work being undertaken in relation to the Flying Start and Cymorth programmes and the positive impact these have had on the communities to which they apply. (paragraph 187)

32. Nevertheless, we have some concerns about the ability of the proposed Measure to enable the 2020 target of eradicating child poverty in Wales to be achieved if there is continuing reliance on this geographically targeted approach, particularly in light of the evidence from stakeholders suggesting there are more children in poverty living outside those targeted areas than inside them. (paragraph 188)

33. However, we acknowledge that resources are a key consideration and that they are not without limit. As such, we understand the importance of those resources being focussed on the most disadvantaged children and families in Wales. It is our view that, whilst the geographical targeting of services is not a perfect system, in the absence of unlimited resources it is the best system currently available for supporting the most disadvantaged children and their families. (paragraph 189)

34. We would, however, urge the Minister to consider the weight of evidence we have received on this matter and to take all possible steps to maximise the funding available to the relevant authorities to support all children living in poverty, not just those living within Cymorth and Flying Start areas. (paragraph 190)

Section 12: Welsh Authorities

35. We agree with the evidence received from stakeholders in relation to extending the list of Welsh authorities in section 12(1) and we welcome the Minister's commitment to amend section 12(1) of the proposed Measure to include the Arts Council of Wales, the National Library of Wales, the National Museum Wales and the Sports Council for Wales. (paragraph 199)

36. We note the evidence from stakeholders in relation to including transport consortia on the list of Welsh authorities in section 12(1) and we agree that, as they play an important role in contributing to the eradication of child poverty, they should be provided for. On this point, we accept the Minister's argument that transport consortia do not exist as separate legal entities, but that the authorities that make up transport consortia are already provided for by the proposed Measure. (paragraph 200)

37. Finally, in relation to the inclusion of further education institutions in section 12(1), we welcome the Minister's commitment to give this matter further consideration and we look forward to receiving an early response from him. (paragraph 201)

Section 25: Cancellation of registration

38. In relation to the registration requirements under Part 2 of the proposed Measure, we note the Minister's evidence that these provisions largely re-state the existing law and, as such, are tidying-up and consolidating provisions. We also note her statement that where changes have been made to existing legislation, these have been in an effort to enshrine existing good practice in legislation. (paragraph 221)

39. As regards section 25, particularly section 25(2)(d) and the issue of disqualification from registration for the non-payment of fees, we note the concerns of the Daycare Trust that this provision had been altered in England because it was found to be too bureaucratic, but we are satisfied with the Minister's argument that the Welsh Ministers already have the power to require registered childminders to pay fees, but that they have not done so and have no plans to do so. (paragraph 222)

Section 26: Suspension of registration

40. In relation to section 26, and the suspension of a registered childminder from the profession for a lengthy period of time, we agree with the evidence from Wrexham County Borough Council that this could result in that person lacking knowledge of current practice and legislation. (paragraph 223)

41. Whilst we welcome the Minister's commitment to consult widely on this part of the proposed Measure, and we encourage her to do so, we are conscious that section 26 does not make provision for an appropriate training course to be undertaken by a person prior to their returning to the profession after a period of suspended registration. Nor does section 26 provide Welsh Ministers with the power to make regulations to require a person returning from a period of suspension to undertake such a training course. (paragraph 224)

42. We feel strongly that, in the event of a person returning to childminding where they had been absent from the profession for a considerable period of time, they should, as a minimum requirement of their registration, be required to attend and complete an appropriate training course to ensure that their level of knowledge and expertise meets the standards in force. We call on the Minister to give consideration to making such provision. (paragraph 225)

Section 28 and 29: Protection of children in an emergency - cancellation of registration and changes to conditions

43. In relation to section 28, and the cancellation of registration as an emergency protection procedure, we note that the Magistrates Association are satisfied with the "suffering or likely to suffer significant harm" test. We also note their call for greater clarity as to the person responsible for making a finding of harm and on this point we are satisfied by evidence from the Minister that, in this case, the existing law has been re-stated and that, as a result there will be no changes to current practice in this area. (paragraph 226)

44. Finally, we note the evidence from CSSIW welcoming sections 28 and 29 in so far as they substantially enhance current emergency protection powers. We recognise these provisions will enable CSSIW to take more immediate action in the protection of children from harm. We are, therefore, content with sections 28 and 29 as drafted. (paragraph 227)

Sections 34 and 35: Inspection and powers of entry

45. In relation to the inspection arrangements under section 34, we recognise the value of rigorous inspection of childminding and day care providers. (paragraph 238)

46. Equally, we accept the points made by the National Childminding Association that overly bureaucratic inspection arrangements can serve to deter childminders from the profession. On this point, we note the Minister's intention not to alter the existing inspection arrangements. (paragraph 239)

47. Nevertheless, we urge the Minister, in making arrangements for inspection under section 34, to consider the evidence we have received on this point, particularly in relation to the difficulties experienced with the early years foundation stage in England, and to consult widely before drawing up regulations, in order to ensure that the correct balance between effective inspection and the necessary administrative arrangements is achieved. (paragraph 240)

48. In relation to the powers of entry provided for in section 35, we note the evidence from CSSIW and the Minister that the proposed Measure restates existing provisions. On this basis, we are content with section 35 as drafted. (paragraph 241)

Section 39: Penalty notices

49. In relation to the principle of fixed penalty notices being issued by Welsh Ministers in response to certain offences, we acknowledge the concerns of some stakeholders that, under existing arrangements, this would be done by a magistrate. However, we agree with CSSIW and the Minister that the ability for Welsh Ministers to issue these notices would provide a more flexible and proportionate way to deal with minor breaches of regulatory requirements, without recourse to court proceedings which may be more lengthy and expensive. (paragraph 259)

50. Further to this, we also acknowledge stakeholders' concerns that the proposed Measure does not set out the types of offences for which a fixed penalty notice may be issued. On this point, we note the Minister's intention that only offences which are minor or technical in nature would be provided for by fixed penalty notice. We wish to emphasise that we would not support more serious offences being dealt with in this way. We welcome the Minister's commitment to consult extensively in making regulations under this section. (paragraph 260)

51. Finally, as regards concerns about the lack of any appeals provision in section 39, whilst we agree with the general principle that any person found guilty of an offence should have the right to appeal against their conviction, we note that the acceptance by a person of a fixed penalty notice is an implicit acceptance of guilt by that person. Where that person does not accept the penalty notice, the matter would proceed to a court of law, where there is an established appeals procedure. In light of this, we see no need for section 39 to make provision for an appeals mechanism. (paragraph 261)

52. On this basis, we are content with the provisions of section 39 as currently drafted. (paragraph 262)

Section 41: Time limit for proceedings

53. We acknowledge the concerns of some stakeholders that extending the time limit for the bringing of proceedings for an offence under Part 2 of the proposed Measure could result in a delay to this process. We recognise the importance of swift action in relation to child protection matters and we would not wish to see any unnecessary delay here. (paragraph 267)

54. However, we are persuaded by the evidence from CSSIW and the Minister that extending the time limit from six to 12 months for the bringing of prosecutions would facilitate more effective inter-agency engagement, particularly as we understand that other agencies working with CSSIW already work to a 12-month timescale. (paragraph 268)

55. We also accept that the proposed 12-month time limit in section 41 would bring legislative arrangements for instituting proceedings for an offence into line with existing legislative provisions. (paragraph 269)

56. On this basis, we are content with section 41 as currently drafted. (paragraph 270)

Voluntary sector involvement in IFSTs and IFS Boards

57. We note the concerns of some stakeholders in relation to the lack of involvement of the voluntary sector in the establishment of IFSTs and IFS boards, and their calls for such involvement to be provided for on the face of the proposed Measure. (paragraph 280)

58. We are satisfied with the provisions of sections 52(2) and 53(3) as currently drafted, in so far as they relate to the composition of IFSTs and IFS boards. However, we recognise the invaluable contribution of the voluntary sector in providing support to vulnerable children and their families and we therefore feel the proposed Measure would be strengthened by the inclusion of provision for the involvement of the voluntary sector in relation to the work of IFSTs and the establishment of IFS boards, and we so recommend. (paragraph 281)

Section 50: Functions of IFSTs - Identifying vulnerable children

59. In relation to the role of GPs, schools and the police in identifying children at risk of harm, we note the Minister's argument that these professional bodies already have a responsibility to identify and support children who may be at risk. (paragraph 293)

60. However, we are persuaded by the evidence from stakeholders that the role these organisations play in the early identification of children at risk is vital, and as such we believe the Minister should give further consideration to making specific reference within section 50 to the role of those involved in childcare, education, health care and law enforcement in identifying children in need or at risk, and we so recommend. (paragraph 294)

Section 50: Functions of IFSTs / Definition of 'abuse'

61. We note that evidence from some stakeholders suggested there was some confusion surrounding the term "abuse" in section 50. (paragraph 299)

62. We welcome the clarification from the Deputy Minister that the definition of "abuse" within the proposed Measure relates to abuse of an adult, not abuse of a child and, as such, we are content with section 50 as drafted. (paragraph 300)

IFS boards

63. We note that some stakeholders were concerned as to how the new IFS boards would integrate with existing boards. However, we are satisfied with the Deputy Minister's evidence that the IFS boards will have distinct statutory functions relating to the operation and performance of IFSTs, and that these are clearly set out in section 54. (paragraph 314)

64. In relation to the evidence from CSSIW on arrangements for IFS boards where two or more local authorities act together to establish one IFST, we note the Minister's evidence and are satisfied that, in these circumstances, section 53(2) requires authorities to establish one IFS board. (paragraph 315)

65. Finally, in relation to remuneration and allowance provisions for IFS board members, we note that section 53(7) gives discretion to local authorities to pay such remuneration and we are satisfied that this should remain a matter for local authorities. (paragraph 316)

Pioneer Schemes

66. In relation to the proposed IFST pioneer schemes, we note that stakeholders had mixed views as to whether the Minister should wait for the evaluation of the pioneer schemes before legislating in this area. In particular, we note the calls from the WLGA for a legal safeguard to be put in place to provide for the relevant provisions of the proposed Measure to not be enacted if the pioneer schemes prove to be unsuccessful. (paragraph 331)

67. The Deputy Minister has presented us with the evidence she used to underpin the development of the IFSTs, and we are satisfied with her reassurances that she is confident the pioneer schemes will be successful. (paragraph 332)

68. On balance, we are content that legislative provision for IFSTs will be in place prior to the evaluation of the pioneer schemes. We trust the Minister will work closely with relevant stakeholders in the evaluation of these schemes and in any wider roll-out of them, and we accept that, should the pioneer schemes prove to be unsuccessful, the relevant parts of the proposed Measure would remain dormant or be repealed, as appropriate. (paragraph 333)

Section 59: Family social work standards officers

69. We note the evidence from the WLGA, questioning the need for a family social work standards officer in each local authority. However, we are satisfied with the Deputy Minister's argument that this new provision transfers a body of research and evidence into practice, and that this role would be better suited to a designated officer, as part of a ring-fenced post, rather than an existing officer exercising several roles. (paragraph 349)

70. We agree with stakeholders that there is a need for the family social work standards officers to have the appropriate level of independence and seniority within the local authority in order to sustain a working level of objectivity, whilst also maintaining a suitable relationship with line-management and colleagues. (paragraph 350)

71. We consider the responsibility for ensuring that standards of care services are progressively raised should lie with the local authority. Accordingly, we consider that the proposed Measure should make provision to ensure that, while it will be the responsibility of the family social work standard officers to report their findings to the authority, the responsibility to raise standards in social work practice ultimately lies with 'the authority' as a whole, and we so recommend. (paragraph 351)

Section 60: Local authority duties in respect of play opportunities for children – assessing sufficiency

72. In relation to section 60(3), we have given careful consideration to the inclusion of the wording "so far as reasonably practicable" with regard to the duty on local authorities to secure sufficient play opportunities for children. Whilst recognising the concerns of some stakeholders about the use of this wording, we are satisfied with the Minister's explanation that it provides discretion for local authorities to prioritise and target resources as they see fit and, as such, we are content with section 60(3) as drafted. (paragraph 367)

73. Whilst we are content with the requirement in section 60(5) for local authorities to "have regard to" the needs of disabled children in performing their duties under that section, we believe that guidance brought forward by the

Minister should emphasise the importance of local authorities' consideration of the needs of children with disabilities when securing play opportunities, and we so recommend. (paragraph 368)

74. We note the concerns of some stakeholders that the definition of "sufficient" in section 60(6), in relation to the assessment of play opportunities, lacks detail. On this point, we welcome the Minister's commitment to consult with stakeholders, as well as with children and young people, to develop a shared understanding of what constitutes sufficient play opportunities. (paragraph 369)

75. Further to this, we were persuaded by the evidence from stakeholders that the definition of "sufficient" in section 60(6) in relation to play opportunities should include a requirement to have regard to accessibility, as well as quantity and quality, and we so recommend. (paragraph 370)

Section 60: Definition of "play"

76. In relation to the definition of "play" in section 60(6), whilst we acknowledge the Minister's evidence about the difficulty of defining play in legal terms, we are persuaded by the weight of evidence from stakeholders that the definition in section 60(6) should mirror the existing definition in the Welsh Assembly Government's Play Policy, and we so recommend. (paragraph 379)

77. We welcome the Minister's commitment to provide guidance on play and recreational activity in the context of the Welsh Assembly Government's Play Policy. (paragraph 380)

Section 61: Participation of children in local authority decision making

78. In relation to section 61, we note the evidence from stakeholders calling for greater clarity as to what, in section 61(1), constitutes "participation" by children in decisions of local authorities. (paragraph 398)

79. Whilst we acknowledge the evidence from the Minister on this point, in order to ensure consistency, we recommend that the provisions relating to "participation" in section 61(1) be aligned with the existing Welsh Assembly Government description of participation which states that "participation means it is my right to be involved in decisions, planning and evaluating an action that might affect me". (paragraph 399)

80. Furthermore, we are persuaded by the evidence from stakeholders that the phrase "as it considers suitable" in section 61(1) in relation to local authority arrangements for participation is open to interpretation. We therefore recommend that the provisions of section 61(1) be strengthened accordingly. (paragraph 400)

Inspection and enforcement

81. We note the evidence from stakeholders supporting the inclusion of appropriate inspection and enforcement provisions in the proposed Measure relating to play and participation. (paragraph 409)

82. We welcome the correspondence from the Minister for Social Justice and Local Government, stating that he is currently giving consideration to this matter and we look forward to an early response from him. (paragraph 410)

Subordinate legislation provisions and the report of the Subordinate Legislation Committee

83. We note that the Subordinate Legislation Committee was largely satisfied with the subordinate legislation provisions within the proposed Measure, subject to their fourth recommendation regarding regulations made under section 60, and the procedure applying to them. (paragraph 427)

84. We support the Subordinate Legislation Committee's conclusions and recommendations. (paragraph 428)

85. Further to this, and in view of the weight of evidence received, we urge the Minister to undertake full consultation with appropriate stakeholders in the drawing up of regulations under the proposed Measure. (paragraph 429)

Financial implications and the report of the Finance Committee

86. We note the body of evidence from stakeholders stating that resources are key in terms of the delivery of the provisions contained within the proposed Measure, and we welcome the Minister's commitment to provide additional resources in relation to some services, including the new IFSTs. (paragraph 441)

87. We also note the views of a number of stakeholders who suggested that 'more resources' does not necessarily mean new money, and we would therefore encourage the Minister to look at ways of maximising existing resources. (paragraph 442)

88. In the longer term, in view of the weight of evidence we have received and the 2020 target of eradicating child poverty, we would urge the Minister to give early consideration to the question of future resources. (paragraph 443)

89. We note that, subject to some observations, the Finance Committee concluded there is no reason on financial grounds to object to the proposed Measure being approved. (paragraph 444)

90. We support the Finance Committee's conclusions. (paragraph 445)

1. Introduction

Background

1. On 2 March 2009, the Minister for Social Justice and Local Government, Dr Brian Gibbons AM, introduced the proposed *Children and Families (Wales) Measure* ('the proposed Measure') and Explanatory Memorandum and made a statement in plenary the following day.

2. The proposed Measure was referred to Legislation Committee No. 2 ('the Committee') by the Business Committee on 3 March 2009 to "consider and report on the general principles of the proposed Measure"¹ no later than 12 June 2009.² This reporting deadline was subsequently extended to 19 June following a request from the Committee.

3. The member in charge of the proposed Measure is Dr Brian Gibbons AM, Minister for Social Justice and Local Government. The two other Ministers with portfolio responsibility are Jane Hutt AM, Minister for Children, Education, Lifelong Learning and Skills and Gwenda Thomas AM, Deputy Minister for Social Services. References to the Minister as "he" or "she" in this report should be taken to mean the Minister with relevant portfolio responsibility.

Committee Approach

4. The Committee consulted widely, issuing an open call for written evidence and taking oral evidence from a range of external stakeholders. We received evidence from over 40 organisations and individuals and a list of those who contributed to our work is included at Annex A. We had to conduct our scrutiny in a relatively short time and are grateful to all those who gave evidence, particularly at short notice. Their contribution, both to our work and the consideration of the proposed Measure, has been invaluable.

5. The evidence we received inevitably reflected the wide range of interests of the respective organisations involved in the areas of child poverty, children's services, childminding and day care, and play. In reporting on the proposed Measure, we have taken account of the views of each of the distinct groups involved in these areas and have sought to reflect the key issues in relation to the content of the proposed Measure, adopting a consensual approach.

6. The Subordinate Legislation Committee and the Finance Committee have also reported on the proposed Measure. Their reports are at Annexes J and K respectively.

¹ In accordance with Standing Order 23.23

² Reporting deadline set by the Business Committee.

Scope of the Committee's Scrutiny

7. At our first meeting on 11 March 2009, we agreed the scope of our scrutiny, as set out below:

To consider:

- i) the need for a proposed Measure to deliver the stated objectives of:
 - contributing to the eradication of child poverty;
 - making provision in relation to child minding and day care for children between certain ages;
 - establishing integrated family support teams to provide services to families where there are children who need to be, or who are, looked after, and this is related to needs on the part of their adult carers (such as dependence on drugs and alcohol);
 - securing sufficient play opportunities for children; and
 - ensuring participation of children in local authority decision making.
- ii) whether the proposed Measure achieves its stated objectives;
- iii) the key provisions set out in the proposed Measure and whether they are appropriate to deliver its objectives;
- iv) potential barriers to the implementation of the key provisions and whether the proposed Measure takes account of them;
- v) the views of stakeholders who will have to work with the new arrangements.

Evidence

8. We issued a general call for evidence and invited key organisations to submit written evidence to inform our work. A list of consultation responses is attached at Annex A.

9. We took oral evidence from a number of stakeholders, details of which are attached at Annex B.

10. This report represents the conclusions we have reached based on the evidence received during the course of our work.

Comments on stage 1 scrutiny

11. In undertaking our stage 1 scrutiny, we were conscious that the proposed Measure is the most substantial to be introduced to date and is ambitious in terms of its scope, cutting across three ministerial portfolios – Social Justice and Local Government; Children, Education, Lifelong Learning and Skills; and Health and Social Services.

12. As such, we were disappointed with the relatively short time frame within which we had to take evidence and report, and we would call for the breadth and significance of proposed Measures to be taken into account in future when determining timetables for stage 1, to ensure the fullest and most effective scrutiny can be undertaken.

2. Policy Background

The National Assembly's legislative competence to make the proposed Measure

13. The principal powers enabling the National Assembly to make a Measure in relation to the eradication of child poverty, childminding and day care, integrated family support teams and play and participation are contained in Matters 5.8, 5.18, 15.2, 15.5, 15.6, 15.7, and 16.1 of Schedule 5 to the Government of Wales Act 2006. These matters are set out in full in Annex C.

14. The proposed Measure is in four parts –

- Part 1 – Eradicating child poverty
- Part 2 – Childminding and day care
- Part 3 – Integrated family support teams
- Part 4 – Miscellaneous and general

Further detail on these parts is set out below.

Explanatory Memorandum

15. The Explanatory Memorandum accompanying the proposed Measure states:

“The Children and Families (Wales) Measure makes statutory provision, through a legislative framework, to take forward the Welsh Assembly Government’s commitment in terms of child poverty, and to take forward early development of its strategy for vulnerable children by bringing forward legislation to provide greater support to families where children may be at risk, and strengthened regulatory enforcement in children settings.”³

16. The Explanatory Memorandum states that the purpose of Part 1 is to:

“introduce a legislative framework which sets out:

- a range of broad aims for contributing to the eradication of child poverty;
- a duty on “Welsh authorities” to prepare and publish a strategy for contributing to the eradication of child poverty in Wales;
- (...)
- provision about the strategies to be prepared by Welsh authorities other than the Welsh Ministers and local authorities;
- a duty on local authorities to secure free childcare in accordance with Regulations and guidance;
- a local authority power to secure parental support services and health support services;
- (...)

³ Explanatory Memorandum, page (p)3

- A power for Welsh Ministers to issue statutory guidance about action to promote the broad aims for contributing to the eradication of child poverty and the exercise of functions under Section 1 to 9;
- a power for Welsh Ministers to direct the Welsh authority to take any action to secure compliance with the duty under relevant sections where it is felt that the Welsh authority is failing or is likely to fail to comply with any duty under Section 2, 6 or 9;
- the Welsh authorities subject to the duty under Section 2 of the Measure.”⁴

17. The Explanatory Memorandum states that the purpose of Part 2 of the proposed Measure, concerning childminding and day care for children, is to repeal and re-enact Part 10A of the *Children Act 1989*, together with Schedule 9A, to “improve coherence and clarity”, and to make new provision to enhance CSSIW regulation and enforcement powers to provide for -

- the ability to impose conditions of registration in an emergency;
- the imposition of fixed penalty notices on registered persons; and
- extending the time limit for prosecutions from six to twelve months.”⁵

18. It goes on:

“The majority of the provisions detailed under Part 2 of the proposed Measure are technical in nature and closely mirror the current provision made under legislation for childminders and day care providers registered under the Children Act 1989. With the exception of enhanced enforcement provisions, the Measure restates and modifies the law in a more cohesive way and does not provide for any significant burdens on childminders or providers.”⁶

19. In relation to Part 3, the Explanatory Memorandum notes that the proposed Measure:

“(...) requires local authorities to establish integrated family support teams (IFST) to provide services to families where there are children who need or who are looked after... It also provides duties on the Local Health Board to assist the local authority in establishing and resourcing an IFST”.⁷

20. It introduces new integrated family support teams (IFTs) to strengthen support to vulnerable children and families through reconfiguring services towards more targeted support delivered by multidisciplinary professional teams to improve outcomes for children and adults so that they can live safely together as a family unit.

21. The Explanatory Memorandum states that the purpose of Part 4 is to reflect the Welsh Assembly Government’s commitment to the United Nations Convention on the Rights of the Child and in particular to Article 31.1 and 2 relating to play. The proposed Measure also reflects the Welsh Assembly

⁴ Explanatory Memorandum, p3
⁵ Explanatory Memorandum, p20
⁶ Ibid.
⁷ Ibid.

Government's commitment to Article 12.1 of the Convention relating to the right of children and young people to express their views on matters affecting them.

22. It goes on:

“The following duties will be placed on local authorities:-

- duty to assess the sufficiency of play opportunities for children in its area;
- duty to secure provision of and access to sufficient play opportunities for children;
- to make arrangements to ensure participation of children in decisions of the authority which affect them.”⁸

⁸ Explanatory Memorandum, p5

3. General principles of the proposed Measure and the need for legislation

Evidence from stakeholders

23. The majority of evidence received in relation to the general principles of the proposed Measure was very positive, with most stakeholders, including Barnardo's Cymru, the WLGA, Save the Children, Children in Wales, the All Wales Association of Children and Young People's Partnership Support Officers and the Children's Commissioner for Wales, welcoming the proposed Measure as a means of raising the profile of child poverty in Wales by putting its eradication on a statutory footing.

24. The Children's Commissioner for Wales welcomed the proposed Measure as a "step in the right direction towards addressing the underlying issues that affect and impinge on child poverty."⁹ In relation to Part 1, he said that he saw the need for legislation to underpin in statute the legislative framework requiring Welsh authorities to demonstrate their contribution towards child poverty. He also told us that he welcomed Part 2 of the proposed Measure as a "move towards consolidating and modernising legislation in relation to childcare." He went on, "strengthening the regulatory enforcement in these settings is also to be welcomed."¹⁰ Children in Wales and the National Childminding Association also welcomed Part 2, saying that it "ensured standards of childminding are maintained."¹¹

25. The All Wales Association of Children and Young People's Partnership Support Officers agreed with the Children's Commissioner, saying that the proposed Measure "will provide more focus in terms of bringing poverty to the top of the agenda, rather than being something that influences everything else that we do."¹² This was echoed by the Joseph Rowntree Foundation, who said they hoped the proposed Measure would "move child poverty up the agenda" of the range of other authorities that are to be included in [the proposed Measure]. They said:

"Insofar as it will persuade those other authorities that child poverty should be a part of their core business, I believe that that would make it much more effective than what has happened previously."¹³

26. Children in Wales said they welcomed the proposed Measure because they considered that it "gives the necessary priority to child poverty and it gives support for families of disadvantaged children while recognising the poverty of play and participation within the wider scope of the proposed Measure."

⁹ Records of Proceedings (RoP), p23 , 30 April 2009, Legislation Committee No. 2

¹⁰ Written evidence, CF6

¹¹ Written evidence, CF24

¹² RoP, p23, 30 April 2009, Legislation Committee No. 2

¹³ RoP, p5, 30 April 2009, Legislation Committee No. 2

27. They said:

“This is a very important first step and we consider it to have huge potential. The Measure is ambitious in its nature with a wide scope for introducing guidance and regulations at a later date. We strongly support the need for legislation, particularly to safeguard children’s interests in the longer term.”¹⁴

28. They commented that, in relation to delivering on intended outcomes, “much will depend on strong leadership and will at a national and local level”, and they emphasised the importance of effective implementation.¹⁵ This point was echoed by Barnardo’s Cymru.¹⁶

29. Children in Wales also said there was a need for sufficient resources in many of the key areas within the proposed Measure, and a need for a robust child poverty strategy with clear milestones and targets to enable accountability and monitoring of progress.¹⁷

30. Save the Children welcomed the proposed Measure, saying that they see it as being “an important way of assisting the Welsh Assembly Government and the National Assembly for Wales to achieve its commitment to comply with the United Nations Convention on the Rights of the Child and to implement children’s rights in Wales.”¹⁸

31. They went on:

“We see a need for legislation to deliver on child poverty, looking at the opportunities for play and ensuring that all children and young people are listened to as part of decision making and that they participate in the decisions that affect their lives.”¹⁹

32. In supporting the general principles, however, Save the Children said that they did not think the proposed Measure could, in itself, achieve the aim of eradicating child poverty without a commitment, at a UK level, to certain “fiscal measures”.²⁰

33. The WLGA also expressed their support for the general principles of the proposed Measure, saying they welcomed the focus that it provides on child poverty issues and that it is in line with the views of local government.²¹

34. However, they said it was important to be realistic about what could be achieved in the current economic climate, with economic pressures being brought to bear on the public sector, including both the Welsh Assembly Government and local government.

¹⁴ Written evidence, CF43

¹⁵ RoP, p6, 14 May 2009, Legislation Committee No. 2

¹⁶ RoP, p30, 14 May 2009, Legislation Committee No. 2

¹⁷ RoP, p6, 14 May 2009, Legislation Committee No. 2

¹⁸ RoP, p4, 14 May 2009, Legislation Committee No. 2

¹⁹ Ibid.

²⁰ RoP, p5, 14 May 2009, Legislation Committee No. 2

²¹ RoP, p4, 7 May 2009, Legislation Committee No. 2

35. They said:

“As a body that represents 22 authorities across the whole of Wales, we are conscious that the challenges that authorities face differ considerably. In our relationship with the Welsh Assembly Government (...) we recognise the principle that strategy is set nationally by the Assembly Government but delivered locally by local authorities, and there is a need to have flexibility for authorities to take into account local needs, pressures and circumstances.”²²

36. Barnardo’s Cymru told us they supported the general principles of the proposed Measure, believing it to be “important as a means of embedding action on child poverty across all policy areas.”²³ They said they welcomed the introduction of the Measure in terms of strengthening safeguarding arrangements within childcare provision, and that:

“(...) the issues to be addressed through the introduction of integrated families support teams are a priority as children affected by these issues are among some of the most vulnerable children and young people in society. We know that a “team around the child” approach can be effective within family support delivery. The use of the Measure has the potential to facilitate real joint working between the local authority and the Local Health Board.”²⁴

37. Children in Wales also expressed their support for the creation of IFSTs, which they said “should enhance and support interagency and partnership working across sectors and working relations between children and adults services.”²⁵

38. Play Wales told us they welcomed the proposed Measure, particularly Part 4, which they said was:

“(...) a ground breaking development that represent[ed] a paradigm shift by Government, recognising as it does that many children in Wales in the 21st century are suffering a poverty of play experience. It represents a significant step in securing children’s right to play as conferred by Article 31 of the UNCRC.”²⁶

39. Fields in Trust supported the views of Play Wales in relation to the provision, by the proposed Measure, of play opportunities for children, saying:

“Such provision and intervention on a universal basis for all children in the country will, in our view, only be achieved and sustained with the legislative support of this measure.”²⁷

40. Whilst supporting the general principles of the proposed Measure, Barnardo’s Cymru said they had some general concerns with the legislation. They argued there was a need for robust scrutiny and accountability processes

²² RoP, p4, 7 May 2009, Legislation Committee No. 2

²³ Written evidence, CF15

²⁴ Ibid.

²⁵ Written evidence, CF43

²⁶ Written evidence, CF2

²⁷ Written evidence, CF9

to be set out in the proposed Measure “to ensure that it does not fall into the implementation gap” as some previous strategies have.²⁸ They expressed concerns about the economic downturn and the impact that would have on public spending in Wales and across the UK.²⁹

41. They also said that the role of the Westminster Government in helping to eradicate child poverty in Wales should not be forgotten and they noted that the tax and state benefits system has a significant part to play in supporting families on low incomes, but that these areas are not devolved to the Welsh Assembly Government. Shelter Cymru and Tros Gynnal made similar points in their written evidence.³⁰

42. Rhondda Cynon Taf Local Authority and the All Wales Association of Children and Young People's Partnership Support Officers also made the point about non-devolved matters, but were stronger in their views. They said that the proposed Measure was unlikely to make a significant difference to eradicating child poverty as the fundamental issues of pay, taxation and benefit levels were outside the control of local authorities and the Welsh Assembly Government.³¹

43. The Joseph Rowntree Foundation highlighted the importance of the benefits and tax credits systems in tackling child poverty, noting that these were non-devolved. Further to this, however, they said there were a number of benefits that were administered by local authorities in Wales, including housing and council tax benefits, free school meals and school breakfasts, school uniform grants, educational maintenance allowances and concessionary fares on public transport and charges for publicly run leisure and cultural activities. They said that a number of these grants and allowances available in Wales were more generous and accessible to a wider population than in England and that, as such, it was important that the Welsh authorities did all they could to encourage the take-up of these benefits.³²

Our view

44. The evidence we have received from stakeholders illustrates a general consensus in favour of the need for the proposed Measure. There was also broad support amongst stakeholders for the general principles.

45. We note the policy objectives of the proposed Measure are:

- to make new provision for the eradication of child poverty;**
- to consolidate existing legislation in relation to childminding and day care;**
- to make new provision to establish integrated family support teams to provide services to families where there are children in need or looked after children; and**

²⁸ RoP, p30, 14 May 2009, Legislation Committee No. 2

²⁹ RoP, p31, 14 May 2009, Legislation Committee No. 2

³⁰ Written evidence, CF14 and CF16

³¹ Written evidence, CF8

³² RoP, p11 and 12, 30 April 2009, Legislation Committee No. 2

- to make provision for play and participation opportunities for children.

46. Given the strength of the evidence from stakeholders in support of these policy objectives, we agree there is a need for this legislation.

47. Further to this, we consider there is a need for good quality and timely guidance to accompany the implementation of the proposed Measure and we recommend that such guidance should be developed in consultation with stakeholders.

48. In relation to the evidence from stakeholders on the state benefits and tax credits systems, we recognise the importance of these benefits to the overall aim of eradicating child poverty, but we are aware that, as non-devolved matters, they are not in the control of the Minister. We therefore encourage the Minister, in his discussions with his UK counterpart, to draw attention to the substantial evidence we have received on this important issue.

49. In relation to those benefits over which there is a more local level of administrative control, including housing and council tax benefits, free school meals and school breakfasts and educational maintenance allowances, we urge the Minister to do all he can to promote the highest level of take-up of these benefits.

50. Our more specific comments on sections of the proposed Measure are set out in Chapter 4.

4. Specific comments on sections

Part 1 – Eradicating Child Poverty

Definition of ‘eradication of child poverty’

Background

51. The Explanatory Memorandum states “the Welsh Assembly Government has made a commitment to eradicating poverty and improving the life chances of the children of Wales. This [proposed] Measure builds upon the *One Wales* commitment to, ‘(...) legislate to establish a duty on public agencies to make and demonstrate their contribution to ending child poverty.’³³

52. Part 1 of the proposed Measure is entitled ‘Eradicating child poverty’. It sets out a range of broad aims for contributing to the eradication of child poverty and includes a duty on “Welsh authorities” to prepare and publish a strategy for contributing to the eradication of child poverty in Wales.

53. There are a number of references to the term “eradication” throughout Part 1. However, the proposed Measure does not provide for a definition of “eradication”, or an explanation of what it means.

Evidence from stakeholders

54. We received evidence from Save the Children and Children in Wales calling for the proposed Measure to include a definition of “eradication” or “eradication of poverty” as a means of strengthening the legislation. This was not an issue raised by other stakeholders.

55. Children in Wales told us that, whilst there is no current agreed definition of “eradication”, the UK Government, as part of its recent consultation on ending child poverty, had proposed a definition which would measure eradication as being no more than ‘between 5-10%’ of children to be living in poverty.³⁴ In their oral evidence, they said this target was not sufficiently ambitious:

“That could result in one in 10 children being in poverty constituting eradication. That would be a vast improvement on what we have today, but it would still not constitute eradication. I think that it would be extremely helpful if WAG was clearer on how it defines what it means by ‘eradication’, so that we do not see

³³ Explanatory Memorandum, p13

³⁴ HM Government Child Poverty Unit, *Ending Child Poverty: Making it Happen*, 2009, p8
The UK Government envisages that primary and secondary legislation will be used to establish the following targets to measure success: “Reducing the proportion of children in relative low income to 5-10 per cent by 2020, which means that increases in family income keep pace with the rest of society. This range is in line with the best in Europe, reflects the fact that it will not be technically feasible to achieve zero using a survey measure, and also reflects the dynamic nature of low incomes.”

diversions from the UK line, which will undoubtedly be included in the child poverty Bill.”³⁵

56. Save the Children also raised this as an issue, saying that the proposals to drive and monitor progress on child poverty were welcome, but they suggested these could be strengthened by the inclusion of a definition of ‘eradication of poverty’ and the addition of clear interim targets with regular opportunity for reviewing performance.

Evidence from the Member in charge

57. We asked the Minister for his view on the proposed definition of “no more than between 5-10% of children to be living in child poverty” and whether “eradication” should be defined on the face of the proposed Measure. In his response, the Minister said:

“Saying ‘no more than’ is like telling a sprinter, ‘You should cover 100m in no more than 9.5 seconds’
(...) That is the point that I am trying to make. I am aware of only one country that has consistently achieved between 5 and 10 per cent in terms of child poverty, and that is Finland, and even it has struggled to sustain that. So, setting a target of 5 to 10 per cent is in line with the best practice that is out there, and, in reality, that is setting a very high bar that few countries, other than Finland, have achieved on a sustainable basis.”

58. He argued that providing for a definition in the proposed Measure would introduce a degree of inflexibility that would not allow the Welsh Ministers to respond to changes, in whichever direction, by the UK Government:

“(...) one of the reasons why we wanted flexibility was that they are very much affected by tax and benefits. The standards will be set by UK Government and we want the flexibility to be able to vary them in line with what the UK Government may do. I gather from [my lawyer] that our understanding is that the UK Government may even be considering changing these parameters by Order, whereas if we used the primary legislative process to achieve the same effect, it would deprive us of the flexibility to change in the light of changing circumstances.”

59. We pressed the Minister on this point, asking whether, for the sake of clarity, there was a case for having a statement in the proposed Measure confirming that “eradicating child poverty” meant achieving UK targets as set at the time, without making reference to specific targets.

60. The Minister responded that:

(...) the flexibility is there through regulation, but the regulation will involve consultation, impact assessment and all of the requirements for the primary legislation. All of the safeguards are included in this, but regulation is a more flexible and proportionate response to changing circumstances.³⁶

³⁵ RoP, p13, 14 May 2009, Legislation Committee No. 2

³⁶ RoP, p5-7, 21 May 2009, Legislation Committee No. 2

Our view

61. We note the evidence from some stakeholders calling for a definition of the term “eradication of poverty” to be set out in the legislation, but are persuaded by the Minister’s argument that to include this definition on the face of the proposed Measure would reduce the flexibility of Welsh Ministers to respond to changes in circumstances.

62. However, we believe it would be helpful if the Explanatory Memorandum contained a statement setting out what is meant by the term “eradicating child poverty”, and we so recommend.

Section 1: Broad aims for contributing to the eradication of child poverty

Background

63. Section 1(2) sets out areas of activity, expressed as ‘broad aims’, which are intended to contribute to the eradication of child poverty and provides a reference point for objective setting and other actions under the subsequent sections. The section does not impose duties.

64. Subsection (2)(a) - (m) provides a description of the broad aims for contributing to the eradication of child poverty and subsection (8) makes provision for the broad aims to be amended by Welsh Ministers by order.

65. Welsh Ministers and local authorities must choose a range of objectives relating to all of the broad aims for the eradication of child poverty, and other Welsh authorities must choose objectives which relate to one or more of the broad aims.

Evidence from stakeholders

66. Whilst the majority of stakeholders welcomed the broad aims set out in section 1 of the proposed Measure, there was a body of evidence suggesting these broad aims should be amended, and a number of specific points made, as follows.

67. The WLGA said that the broad aims were too prescriptive and detailed, and that a better way of capturing what was intended, whilst enabling flexibility, was to include in its place a ‘general statement on broad aims’. They suggested this general statement should be linked to the Welsh Assembly Government’s seven Core Aims for Children and Young People, and that it might be more appropriate for the level of detail provided for in section 1 as currently drafted to be set out in guidance.³⁷ Children in Wales also suggested improving and strengthening the current broad aims, or removing them and placing them in guidance, saying:

³⁷ RoP, p6, 7 May 2009, Legislation Committee No. 2

“(…) there is a clear choice: either we improve and strengthen the broad aims, so that they are realistic and that there are links to outcome measures and indicators against each one, or we remove them entirely and place them within the guidance or the strategy.”³⁸

68. Save the Children noted their general objection to the inclusion of what they termed ‘opt out’ clauses, such as “so far as reasonably practical”, used in broad aims (a) and (b) in section 1(2), wanting instead to see a clearer commitment to eradicating child poverty.³⁹

69. There were also concerns from the WLGA that, whilst many of the broad aims fell clearly within the remit of the Children and Young People’s Partnerships and related directly to services for children and young people, some were outside the scope of their current remit, for example ensuring that all children grow up in “decent housing”, where this relates to private sector dwellings.⁴⁰

70. Tros Gynnal called for the broad aims to provide for ‘emotional health’ because they believe this to be linked to “poverty of opportunity”.⁴¹

71. In relation to specific aims:

Section 1(2)(c) and (d): to promote and facilitate paid employment for parents of children

72. The Joseph Rowntree Foundation expressed concern that the term “paid employment” was not the right phrase, because research evidence has shown that low paid employment had not been enough to raise families out of poverty:

“Essentially, they [the Welsh Assembly Government] seem to be saying that getting parents into any kind of paid employment is the aim, and it is assumed that that will be sufficient to help them out of poverty. However, that goes against what we have found with the research evidence and the direction in which the policy debate is moving in many places, namely the drive to reduce worklessness over the past decade, which has been successful, to some extent, has moved a lot of families from out-of-work poverty to in-work poverty, but it has done far less to get families out of poverty. So, rather than promoting blanket paid employment, there is a need to promote sustainable, good-quality employment and possibly to promote flexible employment.”⁴²

Section 1(2)(e), (g) and (j): in relation to the use of the word “inequalities”

73. The Joseph Rowntree Foundation thought the use of the word “inequalities” was not specific enough, because one could reduce a number of inequalities (for example, between genders, locations or ethnic groups) without having any impact on child poverty. They suggested these aims could be

³⁸ RoP, p9, 14 May 2009, Legislation Committee No. 2

³⁹ RoP, p5, 14 May 2009, Legislation Committee No. 2

⁴⁰ RoP, p6, 7 May 2009, Legislation Committee No. 2

⁴¹ RoP, p26, 7 May 2009, Legislation Committee No. 2

⁴² RoP p6, 30 April 2009, Legislation Committee No. 2

worded more specifically to ensure that they were more directly related to the overall goal of reducing child poverty.⁴³

Section 1(2)(f): to support parenting of children

74. The National Deaf Children's Society recommended that this section include a specific aim to support parents of disabled children.⁴⁴

75. Children in Wales suggested amending this aim to read "support positive parenting of children".⁴⁵

Section 1(2)(h): to ensure that all children grow up in decent housing

76. Action for Children supported the content of the broad aims but said that terms such as "decent housing" should be more clearly defined.⁴⁶ The WLGA noted that local authorities cannot impose conditions on private sector dwellings and that it would be difficult to ensure that all children live in private sector dwellings of a decent standard.⁴⁷ This point was supported by the All Wales Association of Children and Young People's Partnership Support Officers.⁴⁸

Evidence from the Member in charge

77. We asked the Minister whether he would support the amendment of the broad aims in any of the ways suggested above. He said he was unconvinced of the need to do so, particularly as the evidence from stakeholders was polarised, in that some thought the broad aims too detailed and others said they were too aspirational and did not include specific targets: He went on:

"I believe that the list that we are providing is much more comprehensive and is in line with current evidence, though I do not believe that it is quite as far away from the seven aims in children and young people planning as the WLGA would suggest. You could almost map the seven aims across to this list. The broad aims include a few other things—for example, they make specific reference to paid employment for parents, and that is not strictly covered in the seven aims. There is a very good read-across, and I am not convinced of the point that has been made there."⁴⁹

78. We also questioned the Minister about Save the Children's concerns surrounding the inclusion of what they termed "opt out" clauses, such as "so far as reasonably practical", used in broad aims (a) and (b) in section 1(2). The Minister said that public authorities could only be asked to do what is feasible

⁴³ RoP, p7, 30 April 2009, Legislation Committee No. 2

⁴⁴ Written evidence, CF18

⁴⁵ RoP, p29, 14 May 2009, Legislation Committee No. 2

⁴⁶ Written evidence, CF35

⁴⁷ RoP, p6, 7 May 2009, Legislation Committee No. 2

⁴⁸ RoP, p27, 30 April 2009, Legislation Committee No. 2

⁴⁹ RoP p8, 21 May 2009, Legislation Committee No. 2

with the resources available to them, and the inclusion of the term “so far as reasonably practicable” was a reflection of this.

79. In relation to the suggestion to make provision for emotional health to be included, the Minister said that the current provision outlined in section 1(2)(g) referred to reducing “inequalities in health between children” and that the health dimension included both physical and mental health.⁵⁰

80. With regard to other specific points:

Section 1(2)(c) and (d): to promote and facilitate paid employment for parents of children

81. The Minister said that getting parents into work was a crucial part of the strategy but he also acknowledged that parents needed employment with a level of pay that was sustainable. He argued that this would be addressed in guidance.⁵¹

Section 1(2)(e), (g) and (j): in relation to the use of the word ‘inequalities’

82. We put it to the Minister that the term “inequalities” in the broad aims was not specific enough. He said he found this suggestion “strange” and that the Welsh Assembly Government had done a considerable amount of work to tackle inequalities in health and that he did not accept that the term “inequalities” with regard to health and education was unclear.⁵²

Section 1(2)(f): to support parenting of children

83. The Minister said that, whilst there was a full commitment to positive parenting, his view was that the scope of the broad aim of supporting the “parenting of children” should not be restricted. He said that, as drafted, the broad aim could encompass positive parenting, and that it would be unhelpful to make more specific provision for this. She also said that it could restrict the ability of local authorities to capture all aspects of parenting programmes in their parenting objectives. However, she acknowledged that guidance would be crucial, saying:

“When I met with Children in Wales earlier this week, we said that we should now put positive parenting into every element of guidance, and regulations and guidance emanating from the proposed Measure will include positive parenting.”⁵³

Section 1(2)(h): to ensure that all children grow up in decent housing

84. The Minister, acknowledged the aspirational nature of this aim, saying it was not a rigid target and that, if decent housing was not included as a broad

⁵⁰ RoP, p11, 21 May 2009, Legislation Committee No. 2

⁵¹ RoP, p9, 21 May 2009, Legislation Committee No. 2

⁵² RoP, p10, 21 May 2009, Legislation Committee No. 2

⁵³ RoP p16, 21 May 2009, Legislation Committee No. 2

aim, “we would have a seriously deficient proposed Measure for tackling child poverty”.⁵⁴ He said:

“Accepting the point that the WLGA, or other organisations over which we have control, will not be able to control private housing, nonetheless, through the housing quality standards, and so on, if we really made a big breakthrough on social housing, we would be capturing a very substantial number of children who are in poverty at the moment. However, this is not a target; it is not going to be mandatory. The key challenge will be to set your objectives against this aspiration and in how, in developing your strategy, you are going to work towards meeting the aspiration.”⁵⁵

Our view

85. In relation to the broad aims provided for in section 1, much of the written and oral evidence welcomed these as a means of contributing to the eradication of child poverty. We questioned the Minister on each of the specific points raised by individual stakeholders in their evidence. We were satisfied with the Minister’s explanation that the broad aims are about services, functions and activities that public bodies would be expected, by the Welsh Ministers, to deliver and that the broad aims would be underpinned by guidance - something we consider to be very important.

86. On this basis, we do not wish to make specific recommendations for amendments to the broad aims and, as such, we are content with section 1(2) as currently drafted.

Reference to other vulnerable groups of children and young people, including disabled children and carers

87. In response to some of the points raised above, we asked stakeholders whether the proposed Measure should refer specifically to certain vulnerable groups.

88. The Joseph Rowntree Foundation said that it was notable that the broad aims contained no specific reference to supporting carers and families with caring responsibilities, and they called for this to be included within the broad aims.⁵⁶

89. The National Deaf Children’s Society said they would welcome a requirement for local authorities to include a strategy for improving equality of opportunity for young disabled people.⁵⁷

90. The majority of stakeholders, however, felt that to make reference to certain vulnerable groups on the face of the proposed Measure would risk

⁵⁴ RoP, p10, 21 May 2009, Legislation Committee No. 2

⁵⁵ Ibid.

⁵⁶ RoP, p10, 30 April 2009, Legislation Committee No. 2

⁵⁷ Written evidence, CF18

leaving out other vulnerable groups. On this basis, the majority of stakeholders said they would prefer no specific groups to be referred to.

Our view

91. We agree with the majority of the stakeholders that the proposed Measure would not be strengthened by making specific reference to particular vulnerable groups and that to do this may have the unwanted effect of excluding other vulnerable groups.

92. However, we believe that guidance to accompany this part of the proposed Measure should refer to the significance of particular vulnerable groups, and we so recommend.

Section 1: Broad aims - Inclusion of clear targets and milestones

Background

93. As currently drafted, the broad aims for contributing to the eradication of child poverty are not accompanied by indicators, targets or measurable outcomes.

Evidence from stakeholders

94. We received evidence from a number of stakeholders concerned that the broad aims were not linked to any indicators or milestones and that this may affect the success of their delivery.

95. Save the Children welcomed the broad aims generally, but felt that they should be strengthened so that local authorities would be clear about what they were expected to do, and by when. They argued that the inclusion of outcome measures and indicators, to be placed against each broad aim, would assist authorities in their prioritising. Children in Wales agreed with this, suggesting there should be short, medium and longer term milestones provided for.⁵⁸

96. When asked whether it would be appropriate for more detail to be included on the face of the proposed Measure, Save the Children said:

“We recognise that there needs to be further detail in the regulations and the guidance, but there needs to be more detail in the proposed Measure. It would be helpful to have a definition of ‘eradicating child poverty’ in the proposed Measure, and there should be consideration of having interim targets, and, potentially, having an interim target in or around 2015 in relation to giving us a chance to take stock in Wales.”⁵⁹

⁵⁸ RoP, p9, 14 May 2009, Legislation Committee No. 2

⁵⁹ RoP p10, 14 May 2009, Legislation Committee No. 2

97. The Joseph Rowntree Foundation was of the view that each aim should have a specific definition and indicator accompanying the proposed Measure as a way of measuring progress.⁶⁰

Evidence from the Member in charge

98. The Minister's view was that the inclusion of targets and indicators on the face of the proposed Measure would be unduly prescriptive.⁶¹

99. The Minister outlined that there was already a set of 31 indicators publicly available in the Welsh Assembly Government's document 'Eradicating Child Poverty in Wales – Measuring Success',⁶² which enabled people to assess progress. He also said:

"There is an emerging consensus, or certainly an emerging view, from the Assembly Government point of view that we need to be more sophisticated in the way in which we set performance standards and evaluate those performance standards. Simply producing a plethora of quantitative targets on their own is no guarantee that the desired outcome will be delivered. So, we need a more sophisticated and complex set of outcome indicators in relation to the way in which we deliver against the children and young people's plan and also against this particular strategy, because it is very heavily dependent on the children and young people's plan."⁶³

Our view

100. We note the evidence from stakeholders calling for the broad aims in section 1 of the proposed Measure to be accompanied by clear targets and milestones, and we acknowledge the importance of such indicators in measuring progress against delivery, We were persuaded, however, that this information is more appropriately contained within guidance, and we so recommend.

Section 1(3) – (6): Material deprivation and median income

Background

101. In setting out the broad aims for contributing to the eradication of child poverty, section 1(5) states that regulations may provide for the determination of material deprivation and median income in relation to a household for the purposes of section 1.

102. Section 1(6) states that if no regulations under subsection (5) are in force, a Welsh authority is to make its own determination of material deprivation and median income in relation to a household for the purposes of section 1.

⁶⁰ RoP, p6, 30 April 2009, Legislation Committee No. 2

⁶¹ RoP, p8, 21 May 2009, Legislation Committee No. 2

⁶² Available via Stats Wales which is part of the government's website.

⁶³ RoP, p7, 21 May 2009, Legislation Committee No.2

Evidence from stakeholders

103. In their written evidence, Rhondda Cynon Taff Local Authority and the All Wales Association of Children and Young People's Partnership Support Officers said they thought the term "materially deprived" was "highly subjective" and that, as such, they were unclear as to what action local authorities could take in this respect and the resources that would be required. They went on:

"It would be inappropriate for differing definitions of material deprivation to exist in differing local authorities across Wales and the responsibility of defining this by each local authority area is inappropriate."⁶⁴

104. We asked other stakeholders for their views on this point and particularly whether the proposed Measure should include determinations of material deprivation and median income.

105. The Joseph Rowntree Foundation said they thought it was important for there to be some definition of these terms that all partners would be able to sign up to and use, and that having something specified in the proposed Measure or guidance would be an effective way of achieving that. They thought this would also aid future accountability, in that setting these determinations at the outset would allow their progress to be judged more easily later on.⁶⁵

106. This was supported by Save the Children, Children in Wales and Tros Gynnal, who thought it would be helpful to have a determination of median income in the proposed Measure, rather than expect it to find its own level and then rely on guidance locally⁶⁶.

107. The Joseph Rowntree Foundation, however, believed that the issue of 'uprating' any determination of material deprivation, in particular, should be borne in mind. They said:

"Usually, [measuring material deprivation] is done on a basket of goods and services and you basically ask families whether or not they have certain things or are able to do certain things. Something would need to be built in to enable that to be uprated according to how public opinion and normal life changed. Therefore, having a basket specified now would not necessarily be the right basket in 10 years' time. (...) there would need to be something built in to make sure that it stayed up to date with normal life, as it were."⁶⁷

108. Barnardo's Cymru did not support this position. They were of the opinion that the proposed Measure should not make provision for determinations of material deprivation and median income in order to allow synergy with Westminster to be maintained. They said:

⁶⁴ Written evidence, CF8

⁶⁵ RoP, p8, 30 April 2009, Legislation Committee No.2

⁶⁶ RoP, p27, 7 May 2009, Legislation Committee No.2

⁶⁷ RoP, p8, 30 April 2009, Legislation Committee No.2

“Much work has been done at Westminster level on looking at different ways of measuring poverty and, for the time being, it makes sense for us to share accepted measures with Westminster and to consider this again in the future.”⁶⁸

Evidence from the Member in charge

109. In response to the question as to whether the proposed Measure would be strengthened by including determinations of material deprivation and median income on its face, the Minister said he thought that to do this would limit the flexibility afforded by the proposed Measure as currently drafted.

110. Referring to the UK Government child poverty Bill and the setting by the UK Government of the key parameters in relation to material deprivation and relative poverty, he said the Welsh Assembly Government’s intention in relation to determinations of material deprivation was to be consistent with the UK Government standards, but that he wanted some flexibility in the framing of the proposed Measure to be able to respond to any changes made by the UK Government.⁶⁹

111. He went on:

“(...) we are not obliged to track the UK position. If it was advisable to do so, rather than having to engage in a primary legislative process—which we would have to do if we wanted to change the targets if it was on the face of the Measure—the flexibility is there through regulation, but the regulation will involve consultation, impact assessment and all of the requirements for the primary legislation. All of the safeguards are included in this, but regulation is a more flexible and proportionate response to changing circumstances.”⁷⁰

Our view

112. We note the evidence from some stakeholders calling for determinations of material deprivation and median income to be set out on the face of the proposed Measure, rather than in regulations as currently provided for.

113. However, we accept the Minister’s argument that to make such provision in section 1 of the proposed Measure would unnecessarily limit the flexibility to vary these determinations in the future in order to ensure they keep pace with changing circumstances - something we consider to be very important.

114. As such, we do not consider that determinations of material deprivation and median income should be provided for on the face of the proposed Measure.

⁶⁸ RoP, p34, 14 May 2009, Legislation Committee No.2

⁶⁹ RoP, p5-6, 21 May 2009, Legislation Committee No.2

⁷⁰ RoP, p7, 21 May 2009, Legislation Committee No.2

115. We do, however, share the concerns of some stakeholders that, in providing for Welsh authorities to make their own determination of material deprivation and median income in the absence of any regulations by Welsh Ministers, section 1(6) could create a situation where different Welsh authorities across Wales make different determinations.

116. On this point, we strongly advocate that, were this situation to arise, the Minister provide clear guidance for all Welsh authorities as to the determinations of material deprivation and median income they should be working to, in order to ensure a consistent approach is adopted across Wales which also takes account of the UK position. We would welcome a commitment from the Minister to this effect.

Section 3: Strategies prepared by the Welsh Ministers

Background

117. Section 3 makes provision for child poverty strategies to be prepared by Welsh Ministers. In particular, it provides for the Welsh Ministers to publish a report in 2013, and in every third year after 2013, to assess the objectives in the strategy that have been achieved and the progress made towards achieving those objectives not yet achieved.

Evidence from stakeholders

118. The majority of evidence from stakeholders in relation to this section was in respect of the requirements for a three-year reporting cycle for Welsh Ministers.

119. Children in Wales said they thought the three-year reporting cycle was too long and noted that the recent consultation on the UK child poverty Bill proposed a three-year rolling strategy with a requirement for the UK Government to report annually to Parliament on their progress. They were of the opinion that this requirement should be mirrored in the proposed Measure to allow the Assembly to debate the Welsh Ministers' progress on an annual basis and for any issues to be followed up by the Children and Young People Committee.⁷¹

120. Save the Children agreed with the principle of regular reporting, but felt that, because of time pressures on Assembly business, the provision in the proposed Measure for a three yearly report to be produced and debated by the Assembly was appropriate. They suggested "there may be an opportunity to present an annual report to the Children and Young People's Committee and the [child poverty] expert group. That may be a solution in trying to reconcile business time with making sure that there is scrutiny and accountability on the progress of the proposed Measure."⁷²

⁷¹ RoP, p12, 14 May 2009, Legislation Committee No.2

⁷² Ibid.

121. Barnardo's Cymru did not support the proposal for an annual report to be made by Welsh Ministers to the Assembly. They said:

“In relation to the tax and benefits system, you could see a huge impact in relation to child poverty within a 12-month period, but that is obviously a non-devolved matter. So, at a Westminster level, it makes sense to have annual reporting. The three-year cycle in Wales will fit in with the children and young people’s plans reporting round and with the ‘Children and Young People’s Wellbeing Monitor for Wales’.⁷³”

Evidence from the Member in charge

122. We asked the Minister whether the proposed Measure would be strengthened if section 3 were to provide for an annual reporting cycle for Welsh Ministers rather than the 3-year cycle currently proposed.

123. The Minister expressed reservations about this, citing discussions with the UK Government, on the basis that annual figures “create a lot of noise in statistical terms, and particularly so in the Welsh context because of our relatively small population.” He argued that placing what he considered to be an undue emphasis on annual figures in Wales was unlikely to be as informative as it might be at an England level because of the relative sizes of the two countries.⁷⁴

124. Further to this, the Minister’s official said their understanding was that the UK Government would report annually to Parliament on the targets that are to be set out in the child poverty Bill and that those targets would be UK wide and would, therefore, include data from Wales.

125. She went on:

“Our thinking was that it is quite difficult to evidence change annually in meeting the policy objectives set for the Welsh Ministers in the strategy, and so, a three-yearly basis would be more effective and useful.”⁷⁵

126. In relation to the proposal for an alternative arrangement where the Welsh Ministers would appear before the Children and Young People’s Committee on an annual basis to update on progress towards eradicating child poverty, the Minister was of the view that this was largely possible at the moment.⁷⁶

Our view

127. We recognise the importance of regular reporting by Welsh Ministers on their progress towards eradicating child poverty, particularly in the context of the ‘One Wales’ commitment to eradicate child poverty in Wales by 2020.

⁷³ RoP, p32, 14 May 2009, Legislation Committee No.2

⁷⁴ RoP, p13, 21 May 2009, Legislation Committee No.2

⁷⁵ Ibid.

⁷⁶ RoP, p12, 21 May 2009, Legislation Committee No.2

128. On a UK level, we note there are plans to require the UK Government to report annually to Parliament on their progress towards eradicating child poverty and we understand that progress in Wales will feature as part of those annual reports.⁷⁷

129. On a Wales level, we are persuaded by the evidence from Barnardo's Cymru and the Minister that, because of our relatively small population and our lack of control over the tax and state benefits systems, annual figures are likely to be less informative or useful than three-yearly figures, and as such we are satisfied that the statutory requirement in section 3 of the proposed Measure is for a three-year reporting cycle.

130. However, in order to ensure that progress on the eradication of child poverty in Wales is always at the fore and that it is regularly monitored to allow any problems to be identified at the earliest stage, we recommend that the Welsh Ministers produce an interim report on an annual basis, to be considered by the appropriate Assembly committee. We note this view to be in line with that of the Children and Young People Committee.⁷⁸

Involvement of the Voluntary sector

Background

131. We received evidence from stakeholders voicing their concerns that Part 1 of the proposed Measure does not appear to provide for the role of the voluntary sector in the drawing up or delivery of strategies for contributing to the eradication of child poverty.

Evidence from stakeholders

132. In their written evidence, the Venture, Wrexham said:

“There is much evidence that [voluntary sector organisations] can be more effective than statutory bodies in reaching those children, young people and families most in need. Without their assistance as organisations of equal worth, if not equal size, significant numbers of children and young people will not achieve their full potential.”⁷⁹

133. Children in Wales supported this point, highlighting the “crucial” role of the voluntary sector and the expertise and wealth of experience that it can bring to the debate on child poverty. They strongly advocated that the involvement of the voluntary sector be encouraged in developing the proposed Measure.⁸⁰

⁷⁷ UK Government Child Poverty Bill, 1st reading, 11 June 2009

⁷⁸ Letter, 9 June 2009, Annex I

⁷⁹ Written evidence, CF17

⁸⁰ RoP, p23, 14 May 2009, Legislation Committee No.2

134. This view was echoed by the National Day Nurseries Association, who said that “more needs to be done to encourage local authorities to utilise the assets, capabilities and resources of the [voluntary] sector”.⁸¹

135. Save the Children, whilst also highlighting the important role of the voluntary sector in contributing to the eradication of child poverty, were of the opinion that the main responsibility in relation to this was with the statutory sector. They argued that the statutory sector would need to have regard to the voluntary sector in discharging its duties, but that there should not be a specific duty in the proposed Measure on voluntary and non-governmental organisations to develop strategies.⁸² They argued:

“Strategies and voluntary sector engagement would come through the partnership and it would build on its engagement anywhere at a local authority level. (...) we must guard against the proposed Measure becoming a vehicle for us all developing strategies for a long time to come. There needs to be a commitment by voluntary organisations; they need to play their part and they need to be part of developing local and national strategies.”⁸³

Evidence from the Member in charge

136. We questioned the Minister about the apparent lack of reliance in the proposed Measure on the voluntary sector in relation to drawing up child poverty strategies and their delivery.

137. In his response, the Minister acknowledged the important work undertaken by the voluntary sector in relation to the child poverty agenda, but said that Welsh Ministers were limited in the statutory duties they could place on voluntary sector organisations.⁸⁴

138. The Minister’s lawyer informed us that:

“One consideration is that the competence on which the proposed Measure draws is in matter 15.2(c) of Schedule 5 to the Government of Wales Act 2006 on the ability to legislate in relation to reducing inequalities between children and young people. That competence applies in relation to the functions of public authorities, so, as well as the policy reasons, there is a legal reason why the focus of the proposed Measure is on public authorities having a duty in relation to child poverty. There are limits to the other bodies that could be included. That does not diminish the role that they can play as partners of public authorities, and I am sure that the guidance will reflect that in due course.”⁸⁵

⁸¹ Written evidence, CF21

⁸² RoP, p23, 14 May 2009, Legislation Committee No.2

⁸³ Ibid.

⁸⁴ RoP, p14, 21 May 2009, Legislation Committee No.2

⁸⁵ Ibid.

Our view

139. In relation to the role of the voluntary sector in the drawing up and delivery of strategies under Part 1 of the proposed Measure, we accept the Minister’s argument that there are limits to the statutory duties that can be placed directly on voluntary sector organisations.

140. However, we are persuaded by the evidence from stakeholders that the role of the voluntary sector in Wales in contributing to the eradication of child poverty is so important that the proposed Measure should make some provision in this regard.

141. On this basis, we believe the proposed Measure should place a duty on the Welsh Ministers and the Welsh authorities to consult with appropriate voluntary sector organisations in the preparation of their strategies under Part 1, and we so recommend.

Section 6: Local Authority duty to secure the availability of free childcare

Background

142. Section 6 of the proposed Measure places a duty on local authorities to secure free childcare places for certain pre-school children.⁸⁶

Evidence from stakeholders

143. There were two main strands of evidence from stakeholders in relation to the provision of free childcare. The first was lack of provision for childcare outside normal working hours, such as wrap-around care or holiday care, to enable parents to find and maintain quality employment; and the second was that the provision of free childcare does not extend to a large enough age range of children. Linked to both these points was the issue of resources.

144. In relation to the lack of provision for care outside normal hours, the Joseph Rowntree Foundation told us that the Flying Start programme only focuses on pre-school children and, within those confines, it only provides in the range of 2.5 hours of childcare per day. They said this restricted the ability of parents to be able to work and that, in cases where parents had managed to find work while their children were pre-school age, they experienced difficulties sustaining that employment once their children went to school because of the lack of pre and post school childcare in their area.⁸⁷

145. Further to this, they cited research which seemed to show particular problems associated with school holidays -

“(…) in the UK [there is] evidence [of] a big spike in lone parents exiting jobs at the beginning of the summer holidays. It is probably fairly safe to assume that

⁸⁶ Explanatory Memorandum, p80

⁸⁷ RoP, p11, 30 April 2009, Legislation Committee No.2

that has something to do with their not being able to get summer holiday care.”⁸⁸

146. They said they had not looked specifically at the other school holidays, but that they thought it was fairly likely that there would be similar spikes at these times.⁸⁹

147. They were of the opinion that there is a “very strong need for more childcare for school-aged children—namely wrap-around care in the holidays and, in term time, childcare before and after school—as well as more support for pre-school children.”⁹⁰

148. This was supported by Children in Wales and Save the Children, who both said that this was particularly important in light of the welfare reform agenda which currently requires that lone parents, where the youngest child is aged 12 or older, have to provide evidence that they are looking for work, but will, by October 2011 apply to parents whose youngest child is seven years of age or older. They said that, because of this, the existing pressure on the accessibility, affordability and quality of childcare is likely to increase.⁹¹

149. Barnardo’s Cymru also supported the provision of wrap-around and pre / post school care, especially, they said, as lower-paid jobs were unlikely to offer flexible working arrangements for parents – something also mentioned by Children in Wales. Both organisations agreed this was a matter that needed recognition in relation to the provision of childcare.⁹²

150. Linked to this, the Joseph Rowntree Foundation noted that, as part of their research work on childcare, there was evidence of parents finding childcare unaffordable and providers experiencing difficulties staying in business. They said this seemed to imply a problem with the arrangements for the funding of childcare and that the current system does not address that.⁹³

151. In relation to the age-range of children for which free childcare is provided, the Children’s Commissioner agreed with evidence calling for better provision of wrap-around and pre / post school care and suggested that further thought could also be given to extending the age range of free childcare provision to include 10 or 11-year-olds because “if [childcare] is a significant issue for parents whose children are between three and five years of age, it will not go away when the children become six or seven years old.”⁹⁴

152. There was a considerable amount of support for this proposition from other stakeholders, including the All Wales Association of Children and Young

⁸⁸ RoP, p11, 30 April 2009, Legislation Committee No.2

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ RoP, p22, 14 May 2009, Legislation Committee No.2

⁹² RoP, p22 and p35, 14 May 2009, Legislation Committee No.2

⁹³ RoP, p11, 30 April 2009, Legislation Committee No,2

⁹⁴ RoP, p37, 30 April 2009, Legislation Committee No.2

People's Partnership Support Officers,⁹⁵ Barnardo's Cymru, Save the Children, Children in Wales and the WLGA.

153. On this point, the WLGA stated:

“Childcare is obviously one of the Assembly Government’s key priorities in respect of its approach to tackling child poverty. (...) for parents who go out to work and who require childcare, that need does not stop at the age of five; childcare is also required for children much older than that. On that basis, if it is to be effective in ensuring that appropriate, good-quality childcare is available for children, in which parents can have confidence so that they can happily go to work, it would need to be extended from the current age range.”⁹⁶

154. However, they emphasised that this would have resource implications and that, as such, discussions would have to be held as to the likely costs of such a provision, how it would be implemented and who would benefit from it.⁹⁷

155. Barnardo's Cymru also raised the issue of resources, saying that:

“If childcare is to be a major plank of the proposed Measure and of future policy to help to alleviate child poverty in Wales, we cannot duck the fact that it is also a resources issue. (...) There are not enough childcare places out there. They are not flexible enough for the needs of many parents, and, in many cases, childcare is too expensive. So, we need the Welsh Assembly Government to subsidise childcare for the families that need it the most, and those that are surviving on the lowest incomes.”⁹⁸

Evidence from the Member in charge

156. In relation to the provision of wrap-around childcare and pre / post school childcare, the Minister told us that the Welsh Assembly Government had given more than £3 million over three years from 2008 to local authorities to support their new duty under the Childcare Act 2006⁹⁹ to “secure the provision of childcare that is sufficient to meet the requirements of parents in their area in order to enable them to work or undertake educational training leading to work”.¹⁰⁰ She said that local authorities had now undertaken the first tranche of sufficiency audits, which were being looked at.

157. Further to this, she informed us that the Welsh Assembly Government was also allocating £4.2 million over three years to promote out-of-school childcare, which would apply particularly to children of primary school age, after-school clubs and holiday play-care schemes.¹⁰¹

158. She argued that the purpose of the proposed Measure in terms of tackling child poverty is to “ensure that we embed in local decision-making what

⁹⁵ RoP, p38, 30 April 2009, Legislation Committee No.2

⁹⁶ RoP, p11, 7 May 2009, Legislation Committee No.2

⁹⁷ Ibid.

⁹⁸ RoP, p36, 14 May 2009, Legislation Committee No.2

⁹⁹ Available at: http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060021_en.pdf

¹⁰⁰ RoP, p19-20, 21 May 2009, Legislation Committee No.2

¹⁰¹ RoP, p20, 21 May 2009, Legislation Committee No.2

we are delivering with the free childcare for two-year-olds in the areas of greatest need. Indeed, that duty is highly focused and highly targeted. It also meets the 'One Wales' commitment to progress the provision of free high quality childcare for two-year-olds."¹⁰²

159. In relation to extending the age range of children for which child care is provided, the Minister argued that:

"The key point is that we already have legislation in the Childcare Act 2006 to ensure that parents can have access to childcare to cover an older age group and not only children up to the ages of 10 and 11."¹⁰³

Our view

160. We recognise the importance of accessible, affordable and quality childcare provision in contributing to the eradication of child poverty in Wales, and we acknowledge the weight of evidence from stakeholders in this regard, particularly in relation to holiday, wrap-around and pre and post school childcare. We also acknowledge the support that exists amongst stakeholders for the extension of free childcare provision to children up to 11 years of age.

161. Whilst we recognise the significance of these initiatives for the child poverty agenda, we accept that there are resource implications attached to them. We welcome the additional funding being provided by the Minister to local authorities to secure further childcare provision in their area, and we welcome her commitment to provide additional funding to promote out-of-school childcare, which she said would apply particularly to children of primary school age, after-school clubs and holiday play-care schemes.

162. In the longer term, we urge the Minister to note the weight of evidence we have received in relation to the provision of free childcare, and to give further consideration to extending this provision to benefit the greatest number of families in need.

Targeted and area based programmes

Background

163. We understand that much of the delivery of the provisions in Part 1 of the proposed Measure is intended to be via the Cymorth and Flying Start programmes, which are area-based programmes specifically targeting the more disadvantaged communities.

164. We received a considerable amount of evidence commenting on the appropriateness of the targeted nature of these programmes.

¹⁰² RoP, p20, 21 May 2009, Legislation Committee No.2

¹⁰³ RoP, p19, 21 May 2009, Legislation Committee No.2

Evidence from stakeholders

165. The Joseph Rowntree Foundation told us that they would have real concerns about the proposed Measure's ability to address child poverty if the strategy was to rely entirely on the Cymorth and Flying Start programmes. They said that research suggested there are more children in poverty living outside the areas designated as disadvantaged than inside them.¹⁰⁴

166. They went on:

"More broadly, relying on programmes that are geographically targeted to deliver on a goal that is household-based will cause some problems. Everything points to the two programmes being very good, and doing an immense amount of good, but it seems highly unlikely that they will be sufficient in themselves to deliver on the child poverty goal. There will be families that do not fall within those criteria that really need support. (...) So I would assume that, for the delivery of the strategy, you will have to go outside those two programmes and their criteria to be effective."¹⁰⁵

167. The Children's Commissioner supported this view, saying that, in talking about the eradication of child poverty, the word 'eradication' and its associated target of 2020¹⁰⁶ goes beyond a targeted approach. He said:

"My office receives calls from families who see other families, perhaps across the road or in the neighbouring village, such is the targeting, accessing services and support that they cannot access. You can explain the targeted approach to them and why it should be the case, but (...) it does not make a lot of sense to the people living in that community or having that experience."¹⁰⁷

168. Children in Wales agreed with this, making a similar point that:

"At the very beginning, there was a need to look at where the huge deprivation was to be found and to see where we could effectively target resources first. However, Flying Start and Communities First have been in place for some years. It is time to move on and to be a bit more flexible, so that we move away from the system in which one family on one side of the street can access services, support and free childcare, but a family across the street that is in a worse financial situation cannot."¹⁰⁸

169. The All Wales Association of Children and Young People's Partnership Support Officers also supported this view, saying that, whilst Flying Start was an example of a successful targeted programme, the difference between communities deemed to be the most disadvantaged compared to those at the next level of disadvantage was very slight and yet the difference in resources available to those communities was "immense". They went on:

¹⁰⁴ RoP, p9, 30 April 2009, Legislation Committee No.2

¹⁰⁵ Ibid.

¹⁰⁶ Set out in the 'One Wales' document

¹⁰⁷ RoP, p31, 30 April 2009, Legislation Committee No.2

¹⁰⁸ RoP, p20, 14 May 2009, Legislation Committee No.2

“As per the guidance, we are maintaining a spend of more than £2,100 per eligible child in Flying Start areas. Some work was done in Rhondda Cynon Taf on the spend per child outside Flying Start areas and it was, literally, a fraction of that £2,100. Yet, the difference in disadvantage and deprivation was very slight. The challenge is to transfer the lessons that we are learning—and we are learning lots of really good lessons from Flying Start and Cymorth—to other communities.”¹⁰⁹

170. Further to this, the Children’s Commissioner expressed concerns about the problems facing children, young people and their families living in poverty in rural areas. His view was supported by Barnardo’s Cymru and Children in Wales, who said:

“That has been one of the weaknesses of the current approach, and certainly the current child poverty strategy does not take account of some of the specific challenges that children in rural areas face (...) in accessing services, welfare advice, GP surgeries, leisure centres, shops and so on, but also relating to housing availability, and after-school activities.”¹¹⁰

171. The Children’s Commissioner told us that rural areas suffered particularly because of a lack of access to services, such as transport.¹¹¹ He was of the view that, if children and young people had free transport to access services outside their local villages or communities, this would help considerably in reducing rural poverty.¹¹²

172. The All Wales Association of Children and Young People’s Partnership Support Officers supported the view that transport, particularly in terms of access and cost, was a “key issue”, saying that transport was something that they would welcome to see provided for on the face of the proposed Measure.¹¹³

173. Children in Wales also agreed with this, arguing that fuel, food and transport poverty are key areas of child poverty not recognised by the targeted approach and that “there are children and families living in non-Flying Start areas and non-Communities First areas who are not able to benefit from many of the programmes that the Government is rolling out.”¹¹⁴

174. The Children’s Commissioner said that, as currently drafted, the proposed Measure did not address these concerns, but that a way to do this would be to amend the proposed Measure to make specific provision for ‘universal access to services for children and young people living in Wales’.¹¹⁵ This proposal was supported by the All Wales Association of Children and Young People’s Partnership Support Officers, Children in Wales and Save the Children.

¹⁰⁹ RoP, p32, 30 April 2009, Legislation Committee No.2

¹¹⁰ RoP, p20, 14 May 2009, Legislation Committee No.2

¹¹¹ RoP, p31, 30 April 2009, Legislation Committee No.2

¹¹² Ibid.

¹¹³ RoP, p33, 30 April 2009, Legislation Committee No.2

¹¹⁴ RoP, p20, 14 May 2009, Legislation Committee No.2

¹¹⁵ RoP, p31, 30 April 2009, Legislation Committee No.2

175. On this point however, whilst agreeing with earlier evidence on the problems associated with the targeted approach adopted by Cymorth and Flying Start, Save the Children said they thought there was a tension with regard to universality of services and targeting.

176. In their written evidence, they stated:

“Save the Children believes resources should be targeted at the most disadvantaged. While not perfect, geographical targeting is the best means currently available and can work to the advantage of the poorest children.”¹¹⁶

177. They expanded on this point in their oral evidence –

“We also need a reality check with regard to limited resources. While universal programmes might be effective, we also need to ensure that we have targeted programmes that are looking at getting resources to those who are in greatest need. There is a question about whether our universal programmes are, at the moment, reaching those in greatest need, and whether we need to have an element of targeted resources. So, in our evidence we would say that a children’s rights approach is absolutely crucial, that looking at a rights-based approach would help us to address the issue of a postcode lottery, but that we recognise that there are children in our communities who require targeted resources for them and their families”¹¹⁷

Evidence from the Member in charge

178. In light of the evidence we received from stakeholders, we questioned the Minister as to the appropriateness of continuing to use geographically targeted programmes, and asked her whether she had any plans to extend these schemes to help contribute to the eradication of child poverty.

179. She said:

“This goes back to the purpose of this proposed Measure, which is to tackle child poverty, and takes us right back to the origins of Flying Start, which was evidence-based. (...) if we wanted to tackle child poverty, we had to target our resources in the most effective way at the most disadvantaged children and families in Wales.”¹¹⁸

180. She argued that every local authority area had a Flying Start provision and that Cymorth was available in communities which are not in Flying Start catchment areas.¹¹⁹

181. However she acknowledged that, in making the decision to take a geographically targeted approach, the issue of resources had to be a consideration -

¹¹⁶ Written evidence, CF42

¹¹⁷ RoP, p21, 14 May 2009, Legislation Committee No.2

¹¹⁸ RoP, p17, 21 May 2009, Legislation Committee No.2

¹¹⁹ Ibid.

“We cannot do it all; we have to commit to targeting. We have got the evidence, and we know that this has the greatest impact on life chances. (...) at the end of the day, we know that, because of limited resources, we must make decisions, and decisions based on the best international evidence underpin this part of the proposed Measure.”¹²⁰

182. We pressed the Minister on this point, putting it to her that, although Cymorth and Flying Start were a good way to begin tackling the child poverty issue, if the 2020 target was to be achieved, these programmes must be accompanied by other measures. We suggested that the Children’s Commissioner’s proposed amendment to provide for universal access to services for children and young people living in Wales would be a way to achieve this.

183. In response, the Minister argued that to make such an amendment would “directly undermine the intention and the broad objective of the proposed Measure, which is to tackle child poverty and to ensure that local authorities have the statutory duty to tackle it, to target resources at the most disadvantaged children in their community, and to support them.”¹²¹

184. She went on:

“If you had universal access (...) there would be no requirement on local authorities to target their resources in the way that we think is the objective of the proposed Measure. It would not achieve the objective of overcoming the particular disadvantage that those children face. It would spread the resources so thinly that local authorities would not take it forward. Dilution would take away the impact of Flying Start completely.”¹²²

185. In relation to the impact of transport on child poverty and whether it should be expressly provided for on the face of the proposed Measure, the Minister argued that the Welsh Ministers had to ensure that local authorities had the discretion to decide, through their own local needs assessment, where to direct their resources, and that this might include making provision for transport.¹²³

186. She said:

“As far as I am concerned, it is a matter for regulations and guidance, as transport is just one aspect [of access to services]. It goes back to what you put on the face of the proposed Measure, and what you put in regulations. If you include transport provision in the proposed Measure, what other access issues are you leaving out?”¹²⁴

¹²⁰ RoP, p18, 21 May 2009, Legislation Committee No.2

¹²¹ Ibid.

¹²² Ibid.

¹²³ RoP, p19, 21 May 2009, Legislation Committee No.2

¹²⁴ Ibid.

Our view

187. In relation to the targeted and area based approach to be adopted in the delivery of Part 1 of the proposed Measure, we understand the reasons why this approach was initially adopted by the Welsh Assembly Government, and we recognise the very important work being undertaken in relation to the Flying Start and Cymorth programmes and the positive impact these have had on the communities to which they apply.

188. Nevertheless, we have some concerns about the ability of the proposed Measure to enable the 2020 target of eradicating child poverty in Wales to be achieved if there is continuing reliance on this geographically targeted approach, particularly in light of the evidence from stakeholders suggesting there are more children in poverty living outside those targeted areas than inside them.

189. However, we acknowledge that resources are a key consideration and that they are not without limit. As such, we understand the importance of those resources being focussed on the most disadvantaged children and families in Wales. It is our view that, whilst the geographical targeting of services is not a perfect system, in the absence of unlimited resources it is the best system currently available for supporting the most disadvantaged children and their families.

190. We would, however, urge the Minister to consider the weight of evidence we have received on this matter and to take all possible steps to maximise the funding available to the relevant authorities to support all children living in poverty, not just those living within Cymorth and Flying Start areas.

Section 12: Welsh Authorities

Background

191. Section 12(1) lists the persons / organisations that are to be deemed a “Welsh authority” for the purposes of the proposed Measure.

Evidence from stakeholders

192. We received evidence from a number of stakeholders calling for the list of ‘Welsh authorities’ in section 12(1) to be extended.

193. In their oral evidence, the Joseph Rowntree Foundation suggested that further education colleges, the Sports Council for Wales and the Arts Council of Wales be added to the list because “what they do is central to tackling child poverty (...), to helping young people in child poverty and, potentially, parents, to get work which could help lift their families out of poverty.”¹²⁵

¹²⁵ RoP, p13, 30 April 2009, Legislation Committee No.2

194. Play Wales,¹²⁶ the Children's Commissioner for Wales,¹²⁷ the All Wales Association of Children and Young People's Partnership Support Officers,¹²⁸ Save the Children¹²⁹ and Children in Wales¹³⁰ all supported this proposal.

195. The Joseph Rowntree Foundation also went on to suggest that, as transport is an important factor in enabling people to access both work and leisure, that regional transport consortia should also be included in the list of Welsh authorities in section 12(1).¹³¹

Evidence from the Member in charge

196. On 20 May 2009, we received a letter from the Minister stating that, in relation to section 12, and as a result of discussions with the Charity Commission, it was his intention to include a further four organisations within the list of Welsh authorities in section 12(1) - the Arts Council of Wales, the National Library of Wales, the National Museum Wales and the Sports Council for Wales.¹³²

197. We questioned the Minister on the evidence we had received in relation to transport consortia and further education institutions also being included in section 12(1). He argued that transport consortia did not exist as independent legal entities, but that "they are made up of local authorities and, consequently, the competent bodies that make up the transport consortia are already covered" by the proposed Measure.¹³³

198. In relation to further education institutions, the Minister's official said this was a matter they would need to consider further because:

"on one hand the Welsh Ministers have the responsibility for funding further education, so there is a responsibility on Welsh Ministers, which are already covered in the proposed Measure. We would need to look at the extent to which it would be included in that, or to what extent we might need to use the funding mechanisms as the levers for requiring what we need to do."¹³⁴

Our view

199. We agree with the evidence received from stakeholders in relation to extending the list of Welsh authorities in section 12(1) and we welcome the Minister's commitment to amend section 12(1) of the proposed Measure to include the Arts Council of Wales, the National Library of Wales, the National Museum Wales and the Sports Council for Wales.

¹²⁶ RoP, p15, 30 April 2009, Legislation Committee No.2

¹²⁷ RoP, p39, 30 April 2009, Legislation Committee No.2

¹²⁸ Ibid.

¹²⁹ RoP, p23, 14 May 2009, Legislation Committee No.2

¹³⁰ RoP, p22, 14 May 2009, Legislation Committee No.2

¹³¹ RoP, p13, 30 April 2009, Legislation Committee No.2

¹³² Letter, 20 May 2009, Annex F

¹³³ RoP, p14, 21 May 2009, Legislation Committee No.2

¹³⁴ RoP, p15, 21 May 2009, Legislation Committee No.2

200. We note the evidence from stakeholders in relation to including transport consortia on the list of Welsh authorities in section 12(1) and we agree that, as they play an important role in contributing to the eradication of child poverty, they should be provided for. On this point, we accept the Minister's argument that transport consortia do not exist as separate legal entities, but that the authorities that make up transport consortia are already provided for by the proposed Measure.

201. Finally, in relation to the inclusion of further education institutions in section 12(1), we welcome the Minister's commitment to give this matter further consideration and we look forward to receiving an early response from him.

Part 2 – Childminding and Day Care

Section 25: Cancellation of registration

Background

202. Section 25 sets out the circumstances in which Welsh Ministers may cancel the registration of a person registered as a childminder or a person registered to provide day care for children.¹³⁵ Section 25(5) provides for a new power for the Welsh Ministers to prescribe circumstances other than those listed in section 25 in which a person’s registration may be cancelled.¹³⁶

Evidence from stakeholders

203. In relation to the arrangements for cancellation of registration under section 25 of the proposed Measure, the Daycare Trust noted in their written evidence that section 25(2)(d) provides for Welsh Ministers to cancel the registration of a registered person if it appears to them that the person has failed to pay a prescribed fee.

204. They stated that similar provision in England had recently been changed because it was found to be too bureaucratic to require Her Majesty’s Chief Inspector to sign a waiver each time a person was permitted to return to the Ofsted Childcare register having been disqualified for non-payment of fees.¹³⁷

205. We questioned the Minister as to why, in light of the experiences from England, the proposed Measure included provision for cancellation of registration for failure to pay fees.

Section 26: suspension of registration

Background

206. Section 26 provides that regulations may set out the provisions under which the registration of a childminder or day care provider may be suspended, and the period of that suspension.¹³⁸

Evidence from stakeholders

207. In their written evidence, Wrexham County Borough Council called for additional information on the specific circumstances in which a registered person can suspend registration, and the time limits governing that suspension. They argued this was important so as to ensure that “people cannot suspend their registration for an unlimited or lengthy period which may result in them ‘losing touch’ with the profession and lacking the up-to-date skills and

¹³⁵ Explanatory Memorandum, p86

¹³⁶ Explanatory Memorandum, p20

¹³⁷ Written evidence, CF11

¹³⁸ Explanatory Memorandum, p86

knowledge of current legislation and practice which is needed within the childcare profession.”¹³⁹

208. Further to this, they argued that if a time limit were put on a suspension lasting more than three years, a ‘return to childminding / daycare’ training course should be considered to ensure the person returning to the profession had the relevant training and knowledge of new legislative requirements necessary for them to carry out their role.

209. In their evidence, the Magistrates Association noted that the provisions in sections 25 - 27 are similar to those in sections 68 - 70 of the Childcare Act 2006 and that, on this basis, the powers in these sections are sufficient.¹⁴⁰

Sections 28 and 29: Protection of children in an emergency - cancellation of registration and changes to conditions

Background

210. Section 28 provides for the Welsh Ministers to apply to a Justice of the Peace for an order cancelling a person’s registration if it appears that a child for whom child minding or day care is being or may be provided by that person is suffering or likely to suffer significant harm.¹⁴¹

Evidence from stakeholders

211. We asked the Magistrates Association whether the test “is suffering or likely to suffer significant harm” was sufficient. They said they did consider it to be sufficient, but that greater clarity was needed as to the person that makes the finding of harm. They argued that, currently, it is only a family proceedings court or a higher family court in England and Wales that makes such a finding and they thought it was important for a court to continue to make that finding because it gave it an independent authority.¹⁴²

212. CSSIW argued that the provisions in sections 28 and 29 were appropriate as they “substantially enhance existing powers” in that they “enable CSSIW to vary, remove or impose conditions on a registration in an emergency by immediate notice if it has reasonable cause to believe that a child will or may be exposed to the risk of harm.”¹⁴³

213. They went on:

“The ability to make immediate changes to a registration to protect children is significant because currently CSSIW has to wait 28 days before being able to serve a decision notice to change conditions in

¹³⁹ Written evidence, CF27

¹⁴⁰ RoP, p34, 7 May 2009, Legislation Committee No.2

¹⁴¹ Explanatory Memorandum, p87

¹⁴² RoP, p34-35, 7 May 2009, Legislation Committee No.2

¹⁴³ Written evidence, CF40

which time the person has the right to make representations which can further delay the process.”¹⁴⁴

Evidence from the member in charge

214. As part of the opening evidence session, we asked the Minister why she had felt it necessary to re-state the existing law in relation to registration requirements. She explained that:

“Under the Children Act 1989 (...) the provision for child minding and day care is split between Part X and Schedule 9 to the Act. The provisions have been amended on a number of occasions, but they do not reflect the fact that the function of the registration authority has passed from the National Assembly for Wales to the Welsh Ministers. So, there is no difference other than that we are using this opportunity to tidy things up, to consolidate the law in a more cohesive way, and to present it in a better way.”¹⁴⁵

215. In relation to section 24 – ‘Regulations governing activities’ - we asked the Minister why more extensive provisions had been made than those provided for under the Children Act 1989, in that they include procedures for dealing with complaints, the supervision of staff, and the keeping of records.

216. The Minister said this was in an effort to formalise existing good practice and that it addressed, amongst other matters, the concerns of the Care and Social Services Inspectorate Wales that a child-minding assistant should not be left in sole charge of children. She said section 24 also inserts a new requirement for regulations to tackle the procedures for dealing with complaints.¹⁴⁶ She gave a commitment to undertake consultation prior to the regulation making stage.¹⁴⁷

217. In relation to section 25 and the evidence from the Daycare Trust that similar provision for suspension of registration under section 25(2)(d) had been changed in England because it was considered too bureaucratic, the Minister argued that:

“The specific concerns raised relate to section 45 of the proposed Measure, which provides for regulations to set out and make provision for registered child minders to pay fees to Welsh Ministers, including the circumstances when such fees may be waived. That mirrors an existing arrangement under the Children Act 1989. Although we have this power, we do not currently require any fees, nor do we have any plans to do so.”¹⁴⁸

218. She went on:

“(...) if fees were introduced in future, we could make disqualification regulations under section 32 of the proposed Measure. We could draft regulations to make an exception to the normal position that a person whose

¹⁴⁴ Written evidence, CF40

¹⁴⁵ RoP, p28, 1 April 2009, Legislation Committee No.2

¹⁴⁶ RoP, p29, 1 April 2009, Legislation Committee No.2

¹⁴⁷ Ibid.

¹⁴⁸ RoP, p20, 21 May 2009, Legislation Committee No.2

registration has previously been cancelled for whatever reason is disqualified. So, we could look at disqualification in more detail.¹⁴⁹

219. Finally, regarding the evidence that childminders who have had their registration suspended for more than a period of 3 years should undergo an appropriate training course, the Minister said she would “consult widely” on how this part of the proposed Measure should be implemented and that if that consultation concluded that update training was required, she would support that.¹⁵⁰

220. Further to that, the Minister’s lawyer said that the powers to make regulations under section 26 do not include a power for those regulations to require a person to be retrained after a period of suspension, but that he thought this could be imposed as a condition of registration when the suspension was lifted. He argued this was within the scope of the proposed Measure as drafted.¹⁵¹

Our view

221. In relation to the registration requirements under Part 2 of the proposed Measure, we note the Minister’s evidence that these provisions largely re-state the existing law and, as such, are tidying-up and consolidating provisions. We also note her statement that where changes have been made to existing legislation, these have been in an effort to enshrine existing good practice in legislation.

222. As regards section 25, particularly section 25(2)(d) and the issue of disqualification from registration for the non-payment of fees, we note the concerns of the Daycare Trust that this provision had been altered in England because it was found to be too bureaucratic, but we are satisfied with the Minister’s argument that the Welsh Ministers already have the power to require registered childminders to pay fees, but that they have not done so and have no plans to do so.

223. In relation to section 26, and the suspension of a registered childminder from the profession for a lengthy period of time, we agree with the evidence from Wrexham County Borough Council that this could result in that person lacking knowledge of current practice and legislation.

224. Whilst we welcome the Minister’s commitment to consult widely on this part of the proposed Measure, and we encourage her to do so, we are conscious that section 26 does not make provision for an appropriate training course to be undertaken by a person prior to their returning to the profession after a period of suspended registration. Nor does section 26 provide Welsh Ministers with the power to make regulations to require

¹⁴⁹ RoP, p20, 21 May 2009, Legislation Committee No.2

¹⁵⁰ RoP, p21, 21 May 2009, Legislation Committee No.2

¹⁵¹ Ibid.

a person returning from a period of suspension to undertake such a training course.

225. We feel strongly that, in the event of a person returning to childminding where they had been absent from the profession for a considerable period of time, they should, as a minimum requirement of their registration, be required to attend and complete an appropriate training course to ensure that their level of knowledge and expertise meets the standards in force. We call on the Minister to give consideration to making such provision.

226. In relation to section 28, and the cancellation of registration as an emergency protection procedure, we note that the Magistrates Association are satisfied with the “suffering or likely to suffer significant harm” test. We also note their call for greater clarity as to the person responsible for making a finding of harm and on this point we are satisfied by evidence from the Minister that, in this case, the existing law has been re-stated and that, as a result there will be no changes to current practice in this area.

227. Finally, we note the evidence from CSSIW welcoming sections 28 and 29 in so far as they substantially enhance current emergency protection powers. We recognise these provisions will enable CSSIW to take more immediate action in the protection of children from harm. We are, therefore, content with sections 28 and 29 as drafted.

Sections 34 and 35: Inspection and powers of entry

Background

228. Section 34 provides that Welsh Ministers may make regulations in relation to the inspection of childminding and day care providers in Wales, and for the publication of inspection reports.

229. Section 35 provides for powers of entry for any person authorised by the Welsh Ministers to any premises in Wales on which childminding or day care is provided. It also sets out the powers of the person authorised to enter the premises.

Evidence from stakeholders

230. In relation to the inspection provisions in section 34, in their written evidence, the National Childminding Association said that, although effective regulation is a welcome part of the proposed Measure, there needs to be a commitment to ensuring that effective regulation does not lead to a more time consuming inspection regime that undermines the child minder’s primary task of caring for children.¹⁵²

¹⁵² Written evidence, CF26

231. They expanded on this point as part of their oral evidence, saying:

“What we mean by a ‘more time consuming regime’ is where child minders (...) spend more of their time filling out forms and covering all the detail and issues that they need to cover and not playing with the children, helping them to learn and develop.”¹⁵³

232. In support of this, they cited the example of the early years foundation stage in England which, they said, caused disruption and led many childminders to leave the profession because of the new inspection and regulation provisions.¹⁵⁴ They called for lessons to be learned from this to ensure the same problems did not occur in Wales as a result of the proposed Measure, seeking a commitment to effective regulation that is ‘proportionate, balanced and that takes account of different types of childcare provision’. They emphasised the importance of the consultation process in achieving this.¹⁵⁵

233. Further to this, the National Childminding Association advocated the importance of a standardised approach to inspection as, they argued, the inspection of people working in their home is often subjective –

“There are some obvious things that you would inspect, for example, whether they have a fireguard (...), but subjective things will also be inspected. Therefore, we need a standardised approach if people are then going to be penalised because they have not achieved that standard.”¹⁵⁶

234. CSSIW did not believe that the provisions in the proposed Measure would lead to a more time consuming inspection regime. In their evidence, they argued that the provision in the proposed Measure replicated existing arrangements and that, as a result, they did not anticipate any changes to their current practices.¹⁵⁷

235. In relation to the powers of entry provisions in section 35, the Magistrate’s Association said they thought it was important for the proposed Measure to provide a requirement for consent, or for a warrant of assistance to be granted in order to enter domestic premises where children were being cared for. They argued that, in cases where consent to inspect premises was withheld, an application for a warrant should be made in order to minimise the upset for any children being cared for on the premises subject to inspection.

236. In their evidence, CSSIW argued that existing provisions remained unchanged as a result of the proposed Measure, but that the powers were explained more succinctly.¹⁵⁸

¹⁵³ RoP, p20, 7 May 2009, Legislation Committee No.2

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ RoP, p21, 7 May 2009, Legislation Committee No.2

¹⁵⁷ RoP, p7, 11 May 2009, Legislation Committee No.2

¹⁵⁸ Written evidence, CF40

Evidence from the Member in charge

237. We questioned the Minister on the evidence we had received from stakeholders in relation to sections 34 and 35. She gave an assurance that she was not seeking to alter the current arrangements as a result of the proposed Measure, but to consolidate them. She said:

“(...) they [the provisions in the proposed Measure] will not require providers to act differently or do anything different from what they are already supposed to be doing.¹⁵⁹

Our view

238. In relation to the inspection arrangements under section 34, we recognise the value of rigorous inspection of childminding and day care providers.

239. Equally, we accept the points made by the National Childminding Association that overly bureaucratic inspection arrangements can serve to deter childminders from the profession. On this point, we note the Minister’s intention not to alter the existing inspection arrangements.

240. Nevertheless, we urge the Minister, in making arrangements for inspection under section 34, to consider the evidence we have received on this point, particularly in relation to the difficulties experienced with the early years foundation stage in England, and to consult widely before drawing up regulations, in order to ensure that the correct balance between effective inspection and the necessary administrative arrangements is achieved.

241. In relation to the powers of entry provided for in section 35, we note the evidence from CSSIW and the Minister that the proposed Measure restates existing provisions. On this basis, we are content with section 35 as drafted.

Section 39: Penalty notices

Background

242. Section 39 provides that, where the Welsh Ministers are satisfied that a person has committed a fixed penalty offence, they may give the person a penalty notice in respect of that offence.

243. Regulations may provide for the fixed penalty offence. A penalty notice is a notice offering the person the opportunity of discharging any liability to conviction for the offence by the payment of a penalty.

¹⁵⁹ RoP, p21, 21 May 2009, Legislation Committee No.2

Evidence from stakeholders

244. In relation to section 39, the National Childminding Association told us that one of their main concerns was the proposal to take the judicial power of imposing penalties from the [criminal] justice system and allocate it to Welsh Ministers in certain circumstances.¹⁶⁰ They questioned whether this would mean that the regulator of fixed penalty notices would also be the distributor of them.¹⁶¹

245. In their evidence, the Magistrates' Association went further than this, citing recent press coverage of the police issuing fixed penalty notices. They said that some of these notices were for what they considered to be quite serious offences and should therefore have come before a court, which had clear sentencing guidelines for conviction which are not set by Ministers. They argued this was a very transparent process. They felt that the offences which could be covered by section 39 "are getting into the serious level, and they should not be dealt with by fixed penalties."¹⁶²

246. CSSIW disagreed with this, saying that the provision in section 39 for Welsh Ministers to issue fixed penalty notices was "welcome and appropriate". They argued that fixed penalty notices could be seen as "less draconian, more responsive and less stigmatising"¹⁶³ and that they gave Welsh Ministers another option rather than having to pursue a full prosecution. They also said that the proposed Measure "brings this provision in line with the provision that came into force on 1 April in respect of those settings registered by the Care Standards Act 2000."¹⁶⁴

247. The National Childminding Association told us that they also had concerns that the offences which may result in a fixed penalty notice were ill-defined in the proposed Measure and that, although they could see the flexibility afforded by section 39 in that practitioners could avoid undergoing protracted judicial processes by accepting a fixed penalty notice, greater clarity was needed as to what would constitute an "offence" punishable by fixed penalty notice and what level of penalty a practitioner could expect.¹⁶⁵

248. We asked CSSIW whether they had been consulted by the Minister on the types of offences that might be dealt with by means of a fixed penalty notice. They said they had not as yet, "but at the time we come to look at [the regulations], we want to give consideration to what is being proposed, and to give a view on whether we think that that is appropriate."¹⁶⁶ They said they thought it was appropriate for this level of detail to be set out in regulations, rather than being provided for on the face of the proposed Measure.¹⁶⁷

¹⁶⁰ Written evidence, CF26 and RoP, p21, 7 May 2009, Legislation Committee No.2

¹⁶¹ RoP, p21, 7 May 2009, Legislation Committee No.2

¹⁶² RoP, p37, 7 May 2009, Legislation Committee No.2

¹⁶³ Written evidence, CF40

¹⁶⁴ RoP, p8, 11 May 2009, Legislation Committee No.2

¹⁶⁵ Written evidence, CF26 and RoP, p21 7 May 2009, Legislation Committee No.2

¹⁶⁶ RoP, p8, 11 May 2009, Legislation Committee No.2

¹⁶⁷ Ibid.

249. Finally, the National Childminding Association said they were concerned that section 39 made no provision for an appeals procedure against a fixed penalty notice –

“If CSSIW is to be made responsible for gathering evidence to support a fixed-penalty notice, then the practitioner, whether a child minder or a worker in a group setting, should have recourse to appeal.”¹⁶⁸

250. CSSIW did not support the proposal for an appeals process to be provided for on the face of the proposed Measure because they felt that acceptance of a fixed penalty notice by a person under section 39 was an admission of guilt by that person and –

“If someone admits to an offence, the appeals procedure is a little bit redundant. If someone is not in agreement, the matter would proceed to court where, through those proceedings, there is an appeals mechanism.”¹⁶⁹

251. They noted that they currently have similar powers in so far as they are able to issue a caution to a person during proceedings if that person admits to the offence in question.¹⁷⁰

Evidence from the Member in charge

252. We asked the Minister why she thought fixed penalty notices were an appropriate response to certain offences, and why they should be issued by Welsh Ministers, particularly in light of the comments from the National Childminding Association about the regulator of fixed penalty offences also being the distributor.

253. She argued that the rationale behind fixed penalty notices was to enable registration authorities to respond more flexibly to breaches of regulatory requirements, without having to use the longer term method of prosecution which, she said, could be very expensive and disproportionate in terms of the issue at hand.¹⁷¹

254. The Minister said that this linked to evidence from reviews undertaken by the UK Government¹⁷² in relation to effective regulations in, amongst others areas, health and social care, which suggested there is too much reliance on criminal prosecution and a lack of flexibility.¹⁷³

¹⁶⁸ RoP, p22, 7 May 2009, Legislation Committee No.2

¹⁶⁹ RoP, p9, 11 May 2009, Legislation Committee No.2

¹⁷⁰ Ibid.

¹⁷¹ RoP, p29, 1 April 2009, Legislation Committee No.2

¹⁷² The Hampton Review - 'Reducing administrative Burdens: Effective Inspection and Enforcement' and the Macrory Review - 'Regulatory Justice: Making Sanctions Effective'

¹⁷³ RoP, p22, 21 May 2009, Legislation Committee No.2

255. She said:

“You mentioned the concern about the regulator being the distributor, but we are not introducing this provision because of certain concerns. We have very few prosecutions as far as child minders and day-care providers are concerned. It is about trying to ensure that enforcement is appropriate and proportionate, and that it offers the registered person an opportunity to pay a fixed penalty in respect of an identified breach instead of facing court action. It will avoid protracted court proceedings.”¹⁷⁴

256. She went on:

“I linked [the point about UK Government reviews] to the health and social care setting because there have been changes there, in the form of the Health and Social Care Act 2008, in moving to civil sanctioning powers for regulators. These have not been implemented in Wales at this point. It is about trying to ensure that we are proportionate and flexible. It is also about ensuring that we look at how these fixed penalty notices can be applied. CSSIW would look at the types of offences, and there will be extensive consultation on this.”¹⁷⁵

257. Further to this, we asked the Minister what offences she thought would be provided for under section 39.

258. She said that the offences that might be considered appropriate to be dealt with by fixed penalty notice were very minor, technical issues, such as failure to comply with requirements for keeping records, failing to provide information as required by the registration authority and failing to fully comply with all requirements for staff vetting.¹⁷⁶

Our view

259. In relation to the principle of fixed penalty notices being issued by Welsh Ministers in response to certain offences, we acknowledge the concerns of some stakeholders that, under existing arrangements, this would be done by a magistrate. However, we agree with CSSIW and the Minister that the ability for Welsh Ministers to issue these notices would provide a more flexible and proportionate way to deal with minor breaches of regulatory requirements, without recourse to court proceedings which may be more lengthy and expensive.

260. Further to this, we also acknowledge stakeholders’ concerns that the proposed Measure does not set out the types of offences for which a fixed penalty notice may be issued. On this point, we note the Minister’s intention that only offences which are minor or technical in nature would be provided for by fixed penalty notice. We wish to emphasise that we would not support more serious offences being dealt with in this way. We welcome the Minister’s commitment to consult extensively in making regulations under this section.

¹⁷⁴ RoP, p22, 21 May 2009, Legislation Committee No.2

¹⁷⁵ Ibid.

¹⁷⁶ RoP, p29, 1 April 2009, Legislation Committee No.2

261. Finally, as regards concerns about the lack of any appeals provision in section 39, whilst we agree with the general principle that any person found guilty of an offence should have the right to appeal against their conviction, we note that the acceptance by a person of a fixed penalty notice is an implicit acceptance of guilt by that person. Where that person does not accept the penalty notice, the matter would proceed to a court of law, where there is an established appeals procedure. In light of this, we see no need for section 39 to make provision for an appeals mechanism.

262. On this basis, we are content with the provisions of section 39 as currently drafted.

Section 41: Time limit for proceedings

Background

263. Section 41 of the proposed Measure seeks to extend the time available for bringing proceedings for an offence under Part 2 to 12 months. Currently, this must be done within 6 months.

Evidence from stakeholders

264. In their evidence, the Magistrates Association said they did not support extending the time limit to 12 months as they thought a case should be able to be brought within six months, and that any extension to this time would only delay the process.¹⁷⁷

265. CSSIW, however, argued that this provision brought arrangements into line with the amended Care Standards Act 2000 and that it was “more realistic given the amount of work created in the preparation of a prosecution”¹⁷⁸. They said:

“Obviously, with any proceedings, our aim is to proceed as quickly as possible. However, there have been instances where we have not been able to proceed because of the time limits. As I understand it, this time limit is afforded to other regulators. So, if we are reliant on other agencies, we are operating a different timeframe.”¹⁷⁹

Evidence from the Member in charge

266. The Minister’s evidence supported the points made by CSSIW. She said that although in the majority of cases it was possible to bring prosecutions within six months,

¹⁷⁷ RoP, p37, 7 May 2009, Legislation Committee No.2

¹⁷⁸ Written evidence, CF40

¹⁷⁹ RoP, p9, 11 May 2009, Legislation Committee No.2

“there are times when there needs to be a longer period of investigation or perhaps something has to be deferred because another prosecuting authority is involved, such as the police or environmental health. From the experience gained through practice, I think that six months is too short and sometimes you get a better outcome if you go to 12 months, which is also important for inter-agency engagement.”¹⁸⁰

Our view

267. We acknowledge the concerns of some stakeholders that extending the time limit for the bringing of proceedings for an offence under Part 2 of the proposed Measure could result in a delay to this process. We recognise the importance of swift action in relation to child protection matters and we would not wish to see any unnecessary delay here.

268. However, we are persuaded by the evidence from CSSIW and the Minister that extending the time limit from six to 12 months for the bringing of prosecutions would facilitate more effective inter-agency engagement, particularly as we understand that other agencies working with CSSIW already work to a 12-month timescale.

269. We also accept that the proposed 12-month time limit in section 41 would bring legislative arrangements for instituting proceedings for an offence into line with existing legislative provisions.

270. On this basis, we are content with section 41 as currently drafted.

¹⁸⁰ RoP, p30, 1 April 2009, Legislation Committee No.2

Part 3 – Integrated Family Support Teams (IFSTs)

Voluntary sector involvement in IFSTs and IFS boards

Background

271. Section 49 makes provision for the establishment of integrated family support teams (IFSTs). In particular, it places a duty on local authorities to establish, for its area, one or more IFST(s). It requires the Local Health Board (LHB) to participate in the establishment, under subsection (1) and (2), of one or more IFST(s) for its area.

272. Section 52(1) provides that a local authority must ensure that IFSTs include ‘prescribed persons’. Section 52(2) states that a local authority may include such other persons in an IFST as it thinks appropriate, with the consent of each LHB that relates to the team. The Explanatory Memorandum states that it is optional for local authorities to use the new power to co-opt voluntary sector practitioners to be part of the IFST.¹⁸¹

Evidence from stakeholders

273. We received a weight of evidence emphasising the importance of the voluntary sector in relation to the work of IFSTs and IFS boards.

274. Barnardo’s Cymru expressed their concern that the current arrangements as specified in the proposed Measure may preclude the involvement of the voluntary sector:

“(…) we see no mention of the voluntary sector being considered as a partner in the setting up of the IFSTs. If the proposed Measure stays like that, we think that it would be a huge mistake. Organisations such as ours bring resources and UK-wide experience and expertise to the table.”¹⁸²

275. They argued for the proposed Measure to be amended to provide for the involvement of the voluntary sector in setting up IFSTs, because of the valuable contribution this sector can make. Similarly, the YWCA hoped that IFSTs would work in partnership with voluntary organisations.¹⁸³

276. The Venture agreed with Barnardo’s Cymru, calling for a duty to be placed on IFS Boards to ensure IFSTs include staff from the voluntary sector:

“(…) we are concerned that the IFSTs and the IFSBs are constructed too narrowly. It is essential that teams and boards should contain meaningful and not token membership from the third sector/voluntary organisations. Whilst Section 52 para (2) and, to a degree, Section 53 para (3) allows the inclusion of members other than from the local authority and Local Health Board, it is by no means explicit and certainly provides no explicit encouragement let alone duty to ensure this is achieved. We suggest this should be explicit”.¹⁸⁴

¹⁸¹ Explanatory Memorandum, p76

¹⁸² RoP, p37, 14 May 2009, Legislation Committee No.2

¹⁸³ Written evidence, CF30

¹⁸⁴ Written evidence, CF17

277. The Fostering Network stated that they would welcome the inclusion of the voluntary sector on the IFS Board. More broadly, they also said that, whilst they hoped the proposed changes would make agencies work more closely together, they were concerned that the focus on supporting the delivery of the IFSTs would mean resources would be directed away from other groups, such as children in foster care.¹⁸⁵

278. In evidence taken on Part 1 relating to child poverty but pertinent to this section also, Save the Children and Children in Wales both encouraged the involvement of the voluntary sector, saying that the statutory sector would need to have regard to the voluntary sector in discharging its duties. They would not, however, support any duties being placed on the voluntary sector to develop separate and specific strategies.¹⁸⁶

Evidence from the Member in charge

279. The Deputy Minister, described the IFSTs as "a statutory vehicle" for co-ordinating better assessment and regulation of care, and care following an incident involving a vulnerable child. She acknowledged the "invaluable contribution" made by the voluntary sector in supporting children and families but stopped short of agreeing to a stronger wording requiring the involvement of the voluntary sector in the establishment of IFSTs and IFS boards:

"(...) the statutory guidelines for the teams emphasise that the third sector has a crucial role to play. It will promote cross-sector working in order to support children. Of course, that will include the important co-operation that will be needed between the professional bodies and the voluntary and independent sectors. I would like to underline the importance of working together in partnership and drawing together the different sectors so that we see this co-operation."¹⁸⁷

Our view

280. We note the concerns of some stakeholders in relation to the lack of involvement of the voluntary sector in the establishment of IFSTs and IFS boards, and their calls for such involvement to be provided for on the face of the proposed Measure.

281. We are satisfied with the provisions of sections 52(2) and 53(3) as currently drafted, in so far as they relate to the composition of IFSTs and IFS boards. However, we recognise the invaluable contribution of the voluntary sector in providing support to vulnerable children and their families and we therefore feel the proposed Measure would be strengthened by the inclusion of provision for the involvement of the voluntary sector in relation to the work of IFSTs and the establishment of IFS boards, and we so recommend.

¹⁸⁵ Written evidence, CF24

¹⁸⁶ RoP, p23, 14 May 2009, Legislation Committee No.2

¹⁸⁷ RoP, p23, 21 May 2009, Legislation Committee No.2

Section 50: Functions of IFSTs - Identifying vulnerable children

Background

282. Section 50(1) provides that an IFST must carry out the family support functions that are assigned to it by the local authority with the consent of each Local Health Board that relates to the team.

283. Section 50(6) provides that a local authority may refer a family to an integrated family support team if it reasonably believes or suspects that a parent of a child in that family (or a prospective parent) is dependent on alcohol or drugs, is a victim of domestic violence or abuse, has a history of violent or abusive behaviour, or has a mental disorder.

284. Section 50(9) provides that regulations may

- (a) assign family support functions to an integrated family support team;
- (b) allow local authorities to make referrals to the integrated family support team in circumstances not mentioned in this section.

Evidence from stakeholders

285. In his written evidence, the Children's Commissioner expressed concern that the provisions and policy relating to IFSTs do not explicitly identify the role that schools could play in identifying those children who may be at risk. He said the role of the family GP could also be crucial in this respect.¹⁸⁸ In his oral evidence, the Children's Commissioner reiterated this point, suggesting that schools, GPs, the police and the proposed family nurse service should be involved in identifying vulnerable children in need of support:

“There is absolutely no doubt in my mind that schools and school nurses in particular—we talk about family nurses, but I always think about the school nurses—and police interaction with the school, represent the first point at which assessments and identification of needs actually happen.”¹⁸⁹

286. This was supported by Tros Gynnal¹⁹⁰, Save the Children and Children in Wales¹⁹¹, who all told us that it was important for schools to be involved in identifying children at risk of harm. In their evidence, Children in Wales commented specifically on the absence of any role for education providers, particularly at primary school level, given the degree of interaction with children.¹⁹²

¹⁸⁸ Written evidence, CF6

¹⁸⁹ RoP, p40, 30 April 2009, Legislation Committee No.2

¹⁹⁰ RoP, p29, 7 May 2009, Legislation Committee No.2

¹⁹¹ RoP, p14-15, 14 May 2009, Legislation Committee No.2

¹⁹² RoP, p24, 14 May 2009, Legislation Committee No.2

287. Children in Wales said they wished to see an explicit reference to those involved in education (including school nurses and the development of the school counselling services) included in the proposed Measure.¹⁹³

288. The Children's Commissioner however said that he was not sure that provision for this needed to be included on the face of the proposed Measure but that it needed to happen in practice, although he went on to say that he supported such provision being made in the legislation if that were the only way to ensure that it happened.¹⁹⁴

289. Barnardo's Cymru also suggested that Youth Offending Teams should be included because all social care and, where appropriate, some criminal justice agencies, should be clear about their obligation to identify children at risk and to be clear about their safeguarding responsibilities.¹⁹⁵

290. However, CSSIW said they did not think there was a need for this as they do not believe there is any difficulty in identifying the children at risk, but that the difficulty lies in how best to respond to their needs. CSSIW said:

"My view is that there is no difficulty in identifying the children. We are already talking about 26,000 referrals to children's services every year. (...) So, I do not think that making it a requirement for schools or GPs would change anything, because they already identify these children and notify the agencies. This is more about how you then deal with these children and their families once you have identified them. There are, in our experience, times when various agencies will say that one party or another is not pulling its weight, but that is not to be dealt with through the proposed Measure. That may be something that you look at in other provision.¹⁹⁶

291. In their written evidence, the Association of Chief Police Officers in Wales said that their early engagement in the development of the proposed Measure is significant as it gives them the opportunity in partnership to look at the relationship that will develop between, in particular IFSTs and Local Safeguarding Children Boards. They acknowledged that this area of work should be given a high status within Local Service Boards, along with Local Health Boards and Community Safety Partnerships as all will have a role to play in either monitoring or supporting, or in a referral capacity.¹⁹⁷

Evidence from the Member in charge

292. We asked the Deputy Minister whether the proposed Measure would be strengthened by the inclusion of a role for schools, GPs and the police in identifying children at risk of harm. She responded by saying that she considered the proposed Measure to be robust enough and that the professional bodies mentioned already have a responsibility to identify and support children who are in need or at risk, and to ensure that they are brought

¹⁹³ RoP, p25, 14 May 2009, Legislation Committee No.2

¹⁹⁴ RoP, p40, 30 April 2009, Legislation Committee No.2

¹⁹⁵ RoP, p 8, 14 May 2009, Legislation Committee No.2

¹⁹⁶ RoP, p10-11, 11 May 2009, Legislation Committee No.2

¹⁹⁷ Written evidence, CF32

to the attention of social services, and, in the most difficult cases, the police. She said that general practitioners and health professionals are in a good position to identify a clear risk in a child's life, and they will have been trained to protect children across Wales.¹⁹⁸

Our view

293. In relation to the role of GPs, schools and the police in identifying children at risk of harm, we note the Minister's argument that these professional bodies already have a responsibility to identify and support children who may be at risk.

294. However, we are persuaded by the evidence from stakeholders that the role these organisations play in the early identification of children at risk is vital, and as such we believe the Minister should give further consideration to making specific reference within section 50 to the role of those involved in childcare, education, health care and law enforcement in identifying children in need or at risk, and we so recommend.

Section 50: Functions of IFSTs / Definition of 'abuse'

Background

295. Under section 50(6), a local authority may refer a family to an IFST if it reasonably believes that a parent of a child in that family or a prospective parent is a victim of "domestic violence or abuse" or has "a history of violent or abusive behaviour".

296. The definition of abuse outlined in Section 50(12) includes both sexual activity without consent and unreasonable behaviour liable to cause serious psychological harm; abuse is "domestic abuse" if it is from an individual who is associated with the victim; and "abusive" is to be interpreted accordingly.

Evidence from stakeholders

297. In their evidence, the WLGA said they thought the definition of "abuse" in section 50 should be amended to bring it in line with the definition provided for in the All Wales Child Protection Procedures¹⁹⁹ and that the consistent use of one definition in relation to this would leave no margin for error or confusion.²⁰⁰ Children in Wales agreed with this view.²⁰¹

Evidence from the Member in charge

298. The Deputy Minister was concerned about the evidence we received on this point and was very clear that, in referring to "abuse", the proposed Measure does not refer to the abuse of children:

¹⁹⁸ RoP, p14, 21 May 2009, Legislation Committee No.2

¹⁹⁹ All Wales Child Protection Procedures 2008

²⁰⁰ RoP, p15, 7 May 2009, Legislation Committee No.2

²⁰¹ RoP, p24, 14 May 2009, Legislation Committee No.2

“We are talking about the abuse of adults through domestic violence or through their own substance misuse, and how that can affect the child within a family. So, we are talking about abuse in regard to adults.”²⁰²

Our view

299. We note that evidence from some stakeholders suggested there was some confusion surrounding the term “abuse” in section 50.

300. We welcome the clarification from the Deputy Minister that the definition of “abuse” within the proposed Measure relates to abuse of an adult, not abuse of a child and, as such, we are content with section 50 as drafted.

IFS boards

Background

301. The functions of an IFST are to be carried out under the direction of an IFS board established under section 53. Each local authority must establish IFS boards in respect of the one or more teams established for its area under section 49. Section 53(3) provides that a board established under this section must include the following –

- (a) the director of social services;
- (b) if the director of social services is not the lead director for children and young people’s services (within the meaning of section 27(1)(a) of the Children Act 2004 (c.21), the lead director of children and young people’s services;
- (c) the lead officer for children and young people’s services (within the meaning of section 27(2)(a) of the Children Act 2004 (c.21) from each Local Health Board any part of whose area lies within the area covered by the team.

302. Section 53(5) states that a local authority may appoint other members to a board with the consent of each Local Health Board that relates to the IFST.

Evidence from stakeholders

303. We heard concerns from some stakeholders about the proposed governance arrangements for IFSTs and how IFS boards would fit strategically with existing boards and partnerships, such as Local Safeguarding Children Boards, Children and Young People Partnerships, Community Safety Partnerships and the health and wellbeing boards.

304. In their written evidence, Barnardo’s Cymru welcomed the duty in the proposed Measure to deliver services in partnership and to plan services in partnership but expressed concern that the proposed Measure does not appear to give sufficient clarity to the role and strategic position of those boards within

²⁰² RoP, p26, 14 May 2009, Legislation Committee No.2

existing networks. They suggested there may be a need for guidance to set out how an IFS board integrates with existing boards and groups that take responsibility for decision making. They also suggested that a review of local systems should be undertaken to ensure this 'multitude of partnership working' can function effectively.²⁰³

305. The WLGA supported this view, questioning the financial implications of these boards, and whether they 'added-value'. They recognised the need for robust governance arrangements, but suggested there might be more effective and efficient ways of achieving these governance requirements through existing arrangements.²⁰⁴

306. In their evidence, Carmarthenshire local health board said they envisaged problems for statutory partners in relation to their role as board representatives –

"The membership of the board as currently prescribed in the proposed Measure is a replication of other boards that exist. Let us take the local safeguarding children board as an example, and the children and young people's partnership. I draw you back to the fact that we have many other strategic planning partnerships that are prescribed in statute, such as the community safety partnerships and the health, social care and wellbeing partnerships for which there is a required level of membership seniority."²⁰⁵

307. In relation to the new NHS structures (i.e. the creation of seven new integrated local health boards), they said:

"We need to be mindful of the fact that the new LHB organisations will be required to link in to all those existing statutory partnerships within each of our current, existing local authorities. (...) I wonder whether there are ways of ensuring that the aims of the proposed Measure are achieved other than by prescribing the establishment of a separate board."²⁰⁶

308. In their evidence, CSSIW questioned whether, in circumstances where more than one authority had joined together to form one IFST, it would be necessary to have an IFS board for each individual authority:

"On the point about individual areas having a board, it is worth reflecting on whether one is needed for each individual area or for each individual team. I can envisage difficulties arising if a number of boards for different areas all serve one team, so you should probably look at the appropriate governance arrangements for the team as opposed to the area."²⁰⁷

309. When asked whether they envisaged any problems for the statutory partners in relation to their role as board representatives, they responded:

²⁰³ RoP, p38, 14 May 2009, Legislation Committee No.2

²⁰⁴ RoP, p14, 7 May 2009, Legislation Committee No.2

²⁰⁵ RoP, p37, 21 May 2009, Legislation Committee No.2

²⁰⁶ RoP, p37-38, 21 May 2009, Legislation Committee No.2

²⁰⁷ RoP, p7, 11 May 2009, Legislation Committee No.2

“It is proper that there be governance frameworks, and the role of the boards, as they are set up, will be really important. You need to think about how they will relate to the children and young people’s partnerships, the local safeguarding children’s boards, community safety partnerships, the health and wellbeing boards, and a number of others.”²⁰⁸

310. Further, in relation to the IFS Boards, the WLGA and All Wales Association of Children and Young People Partnerships Support Officers said that they disagreed with the remuneration provisions in section 53, as similar boards already in existence did not receive any remuneration. The WLGA stated:

“(...) we disagree with the inclusion, under section 53(7), of the provision that a local authority may pay people who sit on that board. That goes against what happens with the boards that are already in existence whose members do not receive remuneration. (...) these are professionals who are undertaking a role, and I do not see why they would receive remuneration for doing their job.”²⁰⁹

Evidence from the Member in charge

311. The Deputy Minister outlined the difference between the role of the IFSTs and other partnerships and boards:

“It is important here to stress the difference between the IFS boards and the children and young people’s partnerships and the local safeguarding children boards, for example. They have a co-ordinating role, which they carry out very well. However, the IFS boards, through the proposed Measure, will have a distinct statutory function for the operation and performance of integrated family support teams, and, of course, they will be accountable (...) for the intervention and quality of service provided by those teams.”²¹⁰

312. We questioned her on the points made by CSSIW that it may not be necessary to have one IFS board per authority. She said:

“Joint bids can be made by two or more authorities, where it is thought that that would best serve the local interest. However, the intention is to have one local IFS board for each team, and we do not envisage that necessarily leading to the creation of a board in each local authority. If local authorities get together in some instances to make a bid, one board will serve that IFST.”²¹¹

313. In relation to remuneration, the Deputy Minister said the proposed Measure provides for there to be local discretion for remuneration arrangements. She argued that this local discretion was being made available because of the considerable expertise available outside the statutory sector, particularly with regard to domestic abuse and substance misuse.²¹²

²⁰⁸ RoP, p15, 11 May 2009, Legislation Committee No.2

²⁰⁹ RoP, p14, 7 May 2009, Legislation Committee No.2

²¹⁰ RoP, p27, 21 May 2009, Legislation Committee No.2

²¹¹ RoP, p28, 21 May 2009, Legislation Committee No.2

²¹² RoP, p27, 21 May 2009, Legislation Committee No.2

Our view

314. We note that some stakeholders were concerned as to how the new IFS boards would integrate with existing boards. However, we are satisfied with the Deputy Minister's evidence that the IFS boards will have distinct statutory functions relating to the operation and performance of IFSTs, and that these are clearly set out in section 54.

315. In relation to the evidence from CSSIW on arrangements for IFS boards where two or more local authorities act together to establish one IFST, we note the Minister's evidence and are satisfied that, in these circumstances, section 53(2) requires authorities to establish one IFS board.

316. Finally, in relation to remuneration and allowance provisions for IFS board members, we note that section 53(7) gives discretion to local authorities to pay such remuneration and we are satisfied that this should remain a matter for local authorities.

Pioneer Schemes

Background

317. The Explanatory Memorandum states that the legislation to require local authorities and LHBs to establish IFSTs should deliver positive outcomes for vulnerable children and their families. It further states that IFSTs will stimulate action by local authorities and LHBs to reconfigure services towards prevention and earlier intervention, thereby stemming the numbers of children and young people entering care and the youth justice system:

“Research shows that providing a range of universal and targeted interventions can have a positive impact on both child welfare and significant cost savings...It is therefore imperative that local authorities and their partners focus investment to develop and deploy effective interventions that have been rigorously evaluated and proven to be effective in improving outcomes”²¹³

318. On 23 March 2009, local authorities and LHBs were invited to bid for a specific Welsh Assembly Government grant to develop the IFST model.²¹⁴ The aim is to ‘pioneer’ IFSTs in three areas in Wales. The expectation is that each pioneer IFST will have the capacity to deal with at least one hundred children and family cases a year, which is based on the experience of similar schemes, such as the Cardiff and Vale Option 2 initiative. The closing date for submissions is 26 June 2009, with applicants notified of the outcome in July 2009.

²¹³ Explanatory Memorandum, p75

²¹⁴ Welsh Assembly Government, Pioneering Councils sought to support vulnerable children, 23 March 2009

319. The EM sets out that the effectiveness of the IFST will be ‘rigorously evaluated’ in terms of benefits and outcomes for children and families and best value. If the evaluation suggests that the reconfiguration of services through combined holistic targeted services for families with complex needs is improved through IFST, the establishment of IFSTs will become an all-Wales requirement.

320. The Minister’s long term aim is to extend the entitlement of individuals to access IFSTs to wider groups prescribed in the proposed Measure or in regulations made under the proposed Measure. This will require sufficient lead time to build capacity and expertise on the range of most effective interventions to be applied in the differing circumstances, for example domestic abuse.

321. The Regulatory Impact Assessment within the EM states:

“It is not possible at this stage to quantify or estimate the total cost for implementing the full range of provisions in the Measure for IFSTs”.²¹⁵

322. The EM states that a grant of £0.6m will be made available to each of the three pioneer areas for three years, and that these pioneer areas will inform the full business case. It goes on to state that:

“The commencement of section 66 of the Measure will initially be limited to referrals to IFST for substance misuse. The main cost will be the establishment of IFST where regulations require core staff. It is anticipated that the team will require at least 5 professionals. Annual salary cost for operating similar teams are in the order of £400-500k per annum”.²¹⁶

Evidence from stakeholders

323. Several organisations expressed concern that the proposed Measure makes provision to establish the IFSTs whilst they are still at the pioneer stage.

324. The WLGA, in particular, were of the opinion that the Minister should wait for the evaluation of the pioneer schemes before legislating in this area.²¹⁷

325. However, Children in Wales and Save the Children were both of the opinion that guidance would provide the opportunity to make necessary changes based on the evidence of the pilot schemes.²¹⁸

326. Save the Children said:

“While we need to learn from the research and the pilot schemes, we also need to ensure that we progress.”²¹⁹

²¹⁵ Explanatory Memorandum, p76

²¹⁶ Ibid.

²¹⁷ RoP, p13, 7 May 2009, Legislation Committee No.2

²¹⁸ RoP, p25, 14 May 2009, Legislation Committee No.2

²¹⁹ Ibid.

327. The City and Council of Swansea said in their written evidence that when the pioneer schemes go ahead, as well as the additional funding, there should be a clear requirement for supporting agencies to pool resources as part of the project. They went on:

“We should avoid similar problems experienced with Foundation Phase where the pilot had not been evaluated but the requirement was mainstreamed.”²²⁰

328. The WLGA went further in their oral evidence, calling for a legal safeguard to be in place so that, if the evaluation of the pioneer schemes suggested they were not effective, the provisions in the proposed Measure would not be enacted. They went so far as to say they would not support this part of the proposed Measure without such safeguards. When asked whether the Minister should wait for the outcome of the evaluation of the pioneer schemes before making legislative provision in this area, the WLGA said:

“It is only on that premise that we would support this. We have made it abundantly clear that we support the innovation and the model and what it is trying to achieve. We could not, in any way, support a Measure that would prescribe in legislation that everyone must have that, with the considerable costs that are attached, if we did not know that it would have a real benefit. It is absolutely essential that we look at it after a robust evaluation. If you go ahead and put the legislation in place (...)we would want clarity that there is a legal safeguard and that you would not enact the legislation without appropriate consultation and real evidence that this will work for these families. Without that, local government cannot give its support to the proposed Measure.”²²¹

Evidence from the Member in charge

329. Saying that the IFSTs have been developed with a cross-stakeholder group and that their foundation is built on the ‘strong evidence of models that have been proven to work’, such as option 2 and Think Family in Middlesbrough, the Deputy Minister was clear that IFSTs are, in her view, based on a proven model. She said that IFSTs would be rolled out,

“(...) only if the pioneer projects demonstrate the realised benefits that we expect to see - and we do expect to see them on the basis of the success of Option 2 - and only when there is additional resourcing to support the setting up of a national network of IFSTs.”²²²

330. We questioned the Deputy Minister further, asking whether the proposed Measure should contain a legal safeguard so that, in the event of the pioneer schemes proving to be unsuccessful, the relevant part of the proposed Measure would be repealed. The Deputy Minister responded that she was ‘confident’ that the pioneer schemes would be successful but that,

“As with all legislation, there is a question as to whether it will succeed when it is implemented. I am not saying that this proposed Measure is any different,

²²⁰ Written evidence, CF37

²²¹ RoP, p13, 7 May 2009, Legislation Committee No.2

²²² RoP, p26-27, 21 May 2009, Legislation Committee No.2

and, in the event that it does not succeed, I assume that the legislation could remain dormant. Nevertheless, it is my considered view that this is the way forward, that it needs to be based in statute, and that we must have the confidence to move forward with the proposed Measure".²²³

Our view

331. In relation to the proposed IFST pioneer schemes, we note that stakeholders had mixed views as to whether the Minister should wait for the evaluation of the pioneer schemes before legislating in this area. In particular, we note the calls from the WLGA for a legal safeguard to be put in place to provide for the relevant provisions of the proposed Measure to not be enacted if the pioneer schemes prove to be unsuccessful.

332. The Deputy Minister has presented us with the evidence she used to underpin the development of the IFSTs, and we are satisfied with her reassurances that she is confident the pioneer schemes will be successful.

333. On balance, we are content that legislative provision for IFSTs will be in place prior to the evaluation of the pioneer schemes. We trust the Minister will work closely with relevant stakeholders in the evaluation of these schemes and in any wider roll-out of them, and we accept that, should the pioneer schemes prove to be unsuccessful, the relevant parts of the proposed Measure would remain dormant or be repealed, as appropriate.

²²³ RoP, p26-27, 21 May 2009, Legislation Committee No.2

Part 4 – Miscellaneous and General

Section 59: Family social work standards officers

Background

334. Section 59 requires local authorities to designate an officer of the authority, to be known as the “family social work standards officer”, who will have responsibility for raising standards in social work practice, raising awareness of relevant research evidence amongst persons engaged in social work, and promoting adaptation of social work practice in the light of relevant research evidence.

Evidence from stakeholders

335. We received evidence from the Welsh Local Government Association (WLGA) and CSSIW in relation to the proposed family social work standards officers.

336. The WLGA said they were not sure of the need for these officers and believed that the network for social work learning and the Social Services Improvement Agency could deliver the same objectives. They told us:

“[The Welsh Assembly Government] fund the latter specifically to give added value and co-ordinate learning across Wales, and there has not been sufficient dialogue on the opportunity to use that and the network for learning instead of prescribing these officers for every authority.”²²⁴

337. They went on to suggest that a requirement to use the existing networks would be a better way to ensure the functions of raising standards and awareness and promoting adaptation were carried out.²²⁵

338. CSSIW believed that ensuring the proposed family social work standards officers felt sufficiently secure in their ability to be openly critical of practices in their authority was important, and that arrangements should be put in place to ensure the officers were not line-managed by someone responsible for day-to-day operational services.²²⁶

339. They went on to suggest that the independence of these officers could be guaranteed by having them report directly to the Director of Social Services “to ensure that they remain objective and have sufficient independence.”²²⁷

340. CSSIW also commented that, having already established the Research in Practice all-Wales College, which all local authorities were signed up to, this

²²⁴ RoP, p15, 7 May 2009, Legislation Committee No.2

²²⁵ Ibid.

²²⁶ RoP, p15, 11 May 2009, Legislation Committee No.2

²²⁷ RoP, p16, 11 May 2009, Legislation Committee No.2

work could be given a much higher profile by having a family social work standards officer in each authority.²²⁸

Evidence from the Minister

341. In explaining why it was considered necessary to establish the new role of family social work standards officers, rather than use existing resources, the Deputy Minister said:

“It is our intention to build on the current role of network link officers, who, at the moment, are supported by the Wales college network. However, the arrangements across Wales are variable (...) and the role is not, in most cases, the officer’s main duty. The provision recognises the increasing emphasis on the use and transfer of research and evidence into practice, so that local authorities draw on what they learn from research and development and consider putting any changes into practice.”²²⁹

342. The Deputy Minister’s official went on:

“The officers will work within the service. They already exist through these [network] link officers, but they currently have several roles, so they are less effective than they could be if these were more dedicated ring-fenced posts.”²³⁰

343. To expand the role of the family social work standards officers in the future, the Deputy Minister envisaged that this officer could become a ‘champion’, who would be able to ensure that best practice was used and information shared within authorities.²³¹

344. She went on to say:

“The work of this officer will not be restricted to the work of the IFSTs; he will work across social services and share information outside social services.”²³²

345. To clarify, the Deputy Minister’s official added that these new officers would have specific duties, working with the National Institute for Social Care and Health Research and working on setting up social care excellence departments in their respective authorities.²³³

346. Whilst responding to questions regarding the independence and ability of the family social work standards officers to appropriately scrutinise practices within their authority, the Deputy Minister confirmed that:

²²⁸ RoP, p15, 11 May 2009, Legislation Committee No.2

²²⁹ RoP, p28, 21 May 2009, Legislation Committee No.2

²³⁰ RoP, p21, 1 April 2009, Legislation Committee No.2

²³¹ RoP, p20, 1 April 2009, Legislation Committee No.2

²³² Ibid.

²³³ RoP, p21, 1 April 2009, Legislation Committee No.2

“Monitoring the work of the officers will be part of the [Care and Social Services] inspectorate’s work in order to ensure that the officer is in place and that improvements are made.”²³⁴

347. With regards to management responsibility, the Deputy Minister agreed that the family social work standards officers would need a clear line of accountability and clear access to senior officers in order to successfully meet their objectives.”²³⁵

348. However, she was of the view that line management would be something on which she would want to consult in the months to come to allow flexibility in developing the role.²³⁶

Our view

349. We note the evidence from the WLGA, questioning the need for a family social work standards officer in each local authority. However, we are satisfied with the Deputy Minister’s argument that this new provision transfers a body of research and evidence into practice, and that this role would be better suited to a designated officer, as part of a ring-fenced post, rather than an existing officer exercising several roles.

350. We agree with stakeholders that there is a need for the family social work standards officers to have the appropriate level of independence and seniority within the local authority in order to sustain a working level of objectivity, whilst also maintaining a suitable relationship with line-management and colleagues.

351. We consider the responsibility for ensuring that standards of care services are progressively raised should lie with the local authority. Accordingly, we consider that the proposed Measure should make provision to ensure that, while it will be the responsibility of the family social work standard officers to report their findings to the authority, the responsibility to raise standards in social work practice ultimately lies with ‘the authority’ as a whole, and we so recommend.

Section 60: Local authority duties in respect of play opportunities for children – assessing sufficiency

Background

352. Section 60(1) states:

“A local authority must assess the sufficiency of play opportunities in its area for children in accordance with regulations.”

²³⁴ RoP, p21, 1 April 2009, Legislation Committee No.2

²³⁵ RoP, p29, 21 May 2009, Legislation Committee No.2

²³⁶ Ibid.

353. This duty will require local authorities to carry out assessments of the sufficiency of play opportunities in their area in accordance with guidance and regulations made by Welsh Ministers. The section also places a general duty on local authorities to ensure that children have sufficient access to opportunities to play, having regard to the assessment. The proposed Measure also gives Welsh Ministers powers to issue guidance in respect of this duty.

Evidence from stakeholders

354. A number of consultees, including Fields in Trust and Children in Wales, questioned whether there was enough detail in the proposed Measure as to what constitutes “sufficient” play opportunities.

355. Both Fields in Trust and Rhondda Cynon Taf Local Authority stated that it was unclear as to what would constitute play sufficiency, and that there was a need for further detail.²³⁷

356. Children in Wales questioned who would judge the level of sufficiency in an area. They said:

“(…) we need to be clear when we talk about sufficiency because if you asked an adult what constituted sufficient play provision in an area, the answer would be very different from the one that you would get if you spoke directly to children and young people.”²³⁸

357. Fields in Trust went on to suggest that sufficiency should be judged against measures of quality, quantity and accessibility.²³⁹ Play Wales, the Children’s Commissioner for Wales, and Children in Wales agreed with this point.²⁴⁰

358. Children in Wales said:

“The issue about sufficiency links very much to the fact that any piece of legislation needs to be tight enough to ensure that there is no misinterpretation of what local authorities are required to deliver by way of play opportunities.”²⁴¹

359. Their concern was that, if there is no clear definition of sufficiency in terms of targets and minimum standards for local authorities to work towards, it would be difficult to monitor the effectiveness of their delivery.²⁴²

360. Play Wales were of the view that local authorities should look at sufficiency audits in the broadest sense, taking account of children playing on pavements, in car parks, city centres, open spaces, and even derelict ground.²⁴³

²³⁷ Written evidence, CF8 and CF9

²³⁸ RoP, p27, 14 May 2009, Legislation Committee No.2

²³⁹ Written evidence, CF9

²⁴⁰ RoP, p19 and p41, 30 April 2009, Legislation Committee No.2

²⁴¹ RoP, p27, 14 May 2009, Legislation Committee No.2

²⁴² Ibid.

²⁴³ RoP, p19, 30 April 2009, Legislation Committee No.2

361. We received evidence from Cardiff and the Vale Parent's Federation who urged the Minister to remove the term "so far as reasonably practicable" from the text of section 60(3). They were concerned that local authorities "will use this caveat as a means to evade delivering what are otherwise welcome and deserving aspirations."²⁴⁴

362. In their evidence, Children in Wales expressed reservations about the requirement in section 60(5) for local authorities to "have regard to" the needs of disabled children. They said:

"We are not sure whether that is strong enough to ensure that disabled children are taken into account. Often, funding goes to certain projects and disabled children are not necessarily given their share of the opportunities."²⁴⁵

Evidence from the Minister

363. In her oral evidence on the provisions of section 60 in relation to play opportunities, the Minister stated:

"Sufficiency in play (...) is a key point that young people made to the UN Convention on the Rights of the Child committee in Geneva. Young people say that access to play is one of the most fundamental areas of policy."²⁴⁶

364. When addressing concerns regarding what was meant by the term "sufficient" and how sufficiency would be measured, the Minister said she would consult widely with stakeholders, as well as with children and young people, to develop a shared understanding of sufficiency of play, and she assured us that such consultation would cover age range, ability, range of activity and accessibility.²⁴⁷

365. In answering questions about the inclusion of the term "as far as reasonably practicable" with regard to a local authority securing sufficient play opportunities, the Minister's view was that:

"Through consultation and engagement, a local authority may have to consider reallocating its resources for play. [The term] 'as far as reasonably practicable' is included to ensure that local authorities can prioritise and target resources that are available to them."²⁴⁸

366. The Minister went on to explain why section 60(5) places a duty on local authorities to "have regard to" the needs of disabled children. She said that having regard to the needs of disabled children was a key part of the Welsh Assembly Government's seven Core Aims for Children and Young People, and that Cymorth funding focuses specifically on opening play and leisure opportunities for disabled children and young people, and therefore:

²⁴⁴ Written evidence, CF22

²⁴⁵ RoP, p6, 14 May 2009, Legislation Committee No.2

²⁴⁶ RoP, p30, 21 May 2009, Legislation Committee No.2

²⁴⁷ Ibid.

²⁴⁸ Ibid.

“(...) we would seek for our policy delivery to be underpinned in statute by this proposed Measure.”²⁴⁹

Our view

367. In relation to section 60(3), we have given careful consideration to the inclusion of the wording “so far as reasonably practicable” with regard to the duty on local authorities to secure sufficient play opportunities for children. Whilst recognising the concerns of some stakeholders about the use of this wording, we are satisfied with the Minister’s explanation that it provides discretion for local authorities to prioritise and target resources as they see fit and, as such, we are content with section 60(3) as drafted.

368. Whilst we are content with the requirement in section 60(5) for local authorities to “have regard to” the needs of disabled children in performing their duties under that section, we believe that guidance brought forward by the Minister should emphasise the importance of local authorities’ consideration of the needs of children with disabilities when securing play opportunities, and we so recommend.

369. We note the concerns of some stakeholders that the definition of “sufficient” in section 60(6), in relation to the assessment of play opportunities, lacks detail. On this point, we welcome the Minister’s commitment to consult with stakeholders, as well as with children and young people, to develop a shared understanding of what constitutes sufficient play opportunities.

370. Further to this, we were persuaded by the evidence from stakeholders that the definition of “sufficient” in section 60(6) in relation to play opportunities should include a requirement to have regard to accessibility, as well as quantity and quality, and we so recommend.

Section 60: Definition of “play”

Background

371. Section 60(6) defines “play” as “[including] any recreational activity”. In its *Play Policy*, the Welsh Assembly Government defines “play” as:

[encompassing] children's behaviour which is freely chosen, personally directed and intrinsically motivated. It is performed for no external goal or reward, and is a fundamental and integral part of healthy development – not only for individual children, but also for the society in which they live.²⁵⁰

²⁴⁹ RoP, p30, 21 May 2009, Legislation Committee No.2

²⁵⁰ Welsh Assembly Government *Play Policy*, October 2002

Evidence from stakeholders

372. We received a considerable volume of evidence from stakeholders in relation to the definition of “play” in section 60(6).

373. Play Wales said they did not believe the definition should include “any recreational activity”, They argued this had the potential to bring about significant unintended consequences, as “recreation” could be variously defined as including sport or shopping.²⁵¹

374. The same point was made by other stakeholders , including Rhondda Cynon Taf Local Authority, the All Wales Association of Children and Young People's Partnership Support Officers, Merthyr Tydfil Play Forum, Re-create, Gwent Association of Voluntary Associations, Wrexham County Borough Council, the Venture, Cardiff and the Vale Parent's Federation, Action for Children, Children in Wales and Save the Children.²⁵²

375. Play Wales said that the definition of “play” should be amended to bring it in line with the definition provided for in the Welsh Assembly Government's play policy.²⁵³ This was widely supported.

Evidence from the Minister

376. We asked the Minister whether the proposed Measure would be strengthened by amending the definition of “play” in section 60(6). She responded:

“This is where we come to the difficulty of defining play in legal terms. In general terms, we do not intend the duty on local authorities to extend to sport, but, on the other hand, we would not want to exclude duties regarding the opportunities for a child to kick a ball in a park.”²⁵⁴

377. The Minister gave a commitment to bring forward guidance on this point which would set play and recreational activity firmly in the context of the Welsh Assembly Government's play policy, and would reflect Wales' particular approach to play, including policies regarding open-access play.²⁵⁵

378. She argued:

“If it is clearly set in the guidance that this has to be in the context of our play policy, then... the legal terms will enable us to deliver on the play policy in terms of guidance.”²⁵⁶

²⁵¹ Written evidence, CF2

²⁵² Written evidence, CF8, CF5, CF34, CF36, CF23, CF27, CF17, CF22, CF35, CF43 and CF42.

²⁵³ RoP, p16, 30 April 2009, Legislation Committee No.2

²⁵⁴ RoP, p29, 21 May 2009, Legislation Committee No.2

²⁵⁵ Ibid.

²⁵⁶ Ibid.

Our view

379. In relation to the definition of “play” in section 60(6), whilst we acknowledge the Minister's evidence about the difficulty of defining play in legal terms, we are persuaded by the weight of evidence from stakeholders that the definition in section 60(6) should mirror the existing definition in the Welsh Assembly Government's Play Policy, and we so recommend.

380. We welcome the Minister's commitment to provide guidance on play and recreational activity in the context of the Welsh Assembly Government's Play Policy.

Section 61: Participation of children in local authority decision making

Background

381. Section 61(1) of the proposed Measure states:

“A local authority must make such arrangements as it considers suitable to promote and facilitate participation by children in decisions of the authority which affect them.”

382. The section places a general duty on local authorities to make arrangements to promote and facilitate participation by children in decisions of the local authority which affect them. It also requires local authorities to publish and keep up to date information about its arrangements for participation.

383. The Explanatory Memorandum states:

“The intended effect of this section is that Local Participation Strategies developed using Cymorth funding, as well as the National Participation Standards will be placed on a statutory basis by virtue of powers to issue guidance.”²⁵⁷

Evidence from stakeholders

384. We received a number of comments from stakeholders regarding the proposal to place the participation of children and young people in local authority decision making on a statutory footing.

385. In their evidence, Play Wales said:

“If there is one area in which local authorities should be involving children, it is in the direct, not the abstract, delivery of provision that will affect their opportunities to play.”²⁵⁸

²⁵⁷ Explanatory Memorandum, p24

²⁵⁸ RoP, p20, 30 April 2009, Legislation Committee No.2

386. Although there was general support for a duty to be placed on local authorities to promote and facilitate participation in decision making, some organisations voiced concerns as to how the duty would be discharged.

387. Pembrokeshire County Council said that current attempts to involve young people in decision making rarely resulted in outcomes which reflected their wishes. They suggested that any consultation with young people as a result of the proposed Measure needed to be more than a “token measure”.²⁵⁹

388. The City and County of Swansea said:

“There is a risk with this that children and young people are consulted for the sake of it and so there have to be clear intentions and effective feedback built into the processes.”²⁶⁰

389. The Children’s Commissioner for Wales was of the opinion that the participation agenda should be led by strong leadership at the local authority level. He said:

“If there is a chief executive of a local authority who understands the participation of children and gives out strong messages that that is how the authority is going to do business, that will have some impact across the board in how the authority works.”²⁶¹

390. A number of stakeholders questioned the wording used in section 61(1) in relation to the duty on local authorities to make arrangements for participation by children in local authority decisions. They suggested that “participation” needed further clarification.²⁶²

391. Save the Children said they believed the reference in section 61(1) to “as it considers suitable” should be strengthened. They argued that section 61 should be amended in line with the National Children and Young People’s Participation Standards, to read:

“61(1) A local authority must follow the National Children and Young People’s Participation Standards which are the core principles on which all participation activity within Wales are based and make arrangements to promote and facilitate participation by children in decisions of the authority which affect them.”²⁶³

392. Barnardo’s Cymru agreed with this point, and went on to say that the description of “participation” agreed by the Welsh Assembly Government included the phrase “might affect me”, whilst section 61 of the proposed Measure refers to “decisions of the authority which affect them”. They said they would prefer the proposed Measure used the same terminology that used in the government’s participation definition:

²⁵⁹ Written evidence, CF1

²⁶⁰ Written evidence, CF37

²⁶¹ RoP, p42, 30 April 2009, Legislation Committee No.2

²⁶² Written evidence, CF8, CF37, and CF38

²⁶³ Written evidence, CF42

“Using the word ‘might’ means that it is expanded across that corporate face. So, it is not about the things that are most evidently going to affect children and young people, but the decisions of the highways department, the planning department and so on, which are not necessarily that evident and, therefore, children and young people might not be involved in them. However, because the word ‘might’ is used, there is an obligation to at least consider them.”²⁶⁴

393. Rhondda Cynon Taf Local Authority, however, stated that they did not believe the use of the National Standards of Participation was appropriate because many local authorities had developed their own standards through the involvement and participation of children and young people. They suggested that:

“Imposing participation via the standards is not only counterproductive but takes away the right to ‘not’ participate.”²⁶⁵

Evidence from the Minister

394. When asked about current initiatives to engage children in local decision making and the need to place participation on a statutory footing, the Minister responded:

“We see some signs of good practice in participation, particularly because this is embodied in article 12 of the UN Convention on the Rights of the Child. This good practice is not just through the local youth fora either, as school councils and local authorities have engaged in the development of their children and young people’s plans.”²⁶⁶

395. She said that, in order to consolidate the present position across Wales and to ensure consistency, the development of local participation strategies would now be a requirement.²⁶⁷

396. With regard to Barnardo’s evidence on the reference to “participation” in section 61, the Minister confirmed that it was her intention to comply with the National Standards for Children and Young People’s Participation in Wales.²⁶⁸

397. She went on to say that the National Standards would be incorporated into statutory guidance under the provisions of section 61(3).²⁶⁹

Our view

398. In relation to section 61, we note the evidence from stakeholders calling for greater clarity as to what, in section 61(1), constitutes "participation" by children in decisions of local authorities.

²⁶⁴ RoP, p41, 14 May 2009, Legislation Committee No.2

²⁶⁵ Written evidence, CF8

²⁶⁶ RoP, p30, 1 April 2009, Legislation Committee No.2

²⁶⁷ Ibid.

²⁶⁸ RoP, p31, 21 May 2009, Legislation Committee No.2

²⁶⁹ Ibid.

399. Whilst we acknowledge the evidence from the Minister on this point, in order to ensure consistency, we recommend that the provisions relating to “participation” in section 61(1) be aligned with the existing Welsh Assembly Government description of participation which states that “participation means it is my right to be involved in decisions, planning and evaluating an action that might affect me”.

400. Furthermore, we are persuaded by the evidence from stakeholders that the phrase “as it considers suitable” in section 61(1) in relation to local authority arrangements for participation is open to interpretation. We therefore recommend that the provisions of section 61(1) be strengthened accordingly.

Inspection and enforcement

Background

401. With regard to the duties in relation to play and participation (sections 60 and 61 respectively), the proposed Measure as currently drafted does not include powers of inspection or powers of enforcement for those authorities who to fail to deliver or to discharge these duties appropriately.

Evidence from stakeholders

402. We asked stakeholders whether duties in sections 60 and 61 in relation to play and participation should be accompanied by powers of inspection and enforcement.

403. The Children’s Commissioner said there should be a duty on local authorities in relation to inspection, but there was a need to be clear about the benchmarks for inspection.²⁷⁰

404. Play Wales agreed that there should be powers of inspection and enforcement in order to give the proposed Measure “teeth”.²⁷¹ This was supported by Save the Children,²⁷² Children in Wales,²⁷³ Barnardo’s Cymru,²⁷⁴ Tros Gynnal,²⁷⁵ and the All Wales Association of Children and Young People’s Partnership Support Officers.²⁷⁶

405. Children in Wales said:

“We are talking about making local authorities and Welsh authorities more accountable for the child poverty agenda. We should certainly be holding them

²⁷⁰ RoP, p43, 30 April 2009, Legislation Committee No.2

²⁷¹ RoP, p21, 30 April 2009, Legislation Committee No.2

²⁷² RoP, p29, 14 May 2009, Legislation Committee No.2

²⁷³ RoP, p28, 14 May 2009, Legislation Committee No.2

²⁷⁴ RoP, p41, 14 May 2009, Legislation Committee No.2

²⁷⁵ RoP, p30, 7 May 2009, Legislation Committee No.2

²⁷⁶ RoP, p43, 30 April 2009, Legislation Committee No.2

to account for their delivery, with support, on the play and participation agenda.”²⁷⁷

406. We also heard evidence from the WLGA, who advocated the need for a more coherent and rationalised approach to inspection, whilst ensuring the most effective delivery possible.²⁷⁸

Evidence from the Minister

407. In correspondence with the Chair of the Committee, the Minister for Social Justice and Local Government said that he was in the process of giving consideration to the provision of powers of inspection and enforcement in relation to play and participation.²⁷⁹

408. The Minister for Children, Education, Lifelong Learning and Skills made reference to this letter in her evidence to the Committee:

“I believe that the Minister for Social Justice and Local Government wrote to you in April saying that there were some issues which we were considering in relation to the provisions of the proposed Measure, and that we would consider whether or not we needed to share Government amendments with you at an early stage. It includes those provisions on inspection of duties in relation to play and participation, and linking it to enforcement powers. So, that will be forthcoming.”²⁸⁰

Our view

409. We note the evidence from stakeholders supporting the inclusion of appropriate inspection and enforcement provisions in the proposed Measure relating to play and participation.

410. We welcome the correspondence from the Minister for Social Justice and Local Government, stating that he is currently giving consideration to this matter and we look forward to an early response from him.

²⁷⁷ RoP, p28, 14 May 2009, Legislation Committee No.2

²⁷⁸ RoP, p16-17, 7 May 2009, Legislation Committee No.2

²⁷⁹ Letter, 6 April 2009, Annex E

²⁸⁰ RoP, p31, 21 May 2009, Legislation Committee No.2

5. Subordinate Legislation Provisions and the report of the Subordinate Legislation Committee

Background

411. During our evidence sessions, we asked stakeholders if they thought the correct balance had been achieved between powers on the face of the proposed Measure and the powers given to Welsh Ministers to make regulations; and whether there should be a duty in the proposed Measure on Welsh Ministers to consult as part of the regulation / order making process.

412. In accordance with Standing Order 15.6, the Subordinate Legislation Committee considered the subordinate legislation provisions in the proposed Measure on 27 April and 11 May 2009, taking oral evidence from the Minister, Dr Brian Gibbons, and his officials at the latter meeting. The Committee laid its report before the Assembly on 5 June 2009.²⁸¹

Regulation / Order making powers

413. The proposed Measure contains a number of provisions which confer order and regulation making powers on Welsh Ministers.

414. In relation to the balance between powers on the face of the proposed Measure and powers for Welsh Ministers to make regulations, the majority of stakeholders, including the National Childminding Association,²⁸² Children in Wales,²⁸³ Play Wales,²⁸⁴ and the All Wales Association of Children and Young People's Partnership Support Officers, felt that the correct balance had been achieved.²⁸⁵

415. The National Childminding Association said:

“From our perspective, and from practitioners' perspective, as a legislative framework, it is broadly sensible as regards powers.”²⁸⁶

416. The Children's Commissioner said that he thought the balance, as currently drafted, allowed for flexibility and responsiveness. He suggested that the Assembly's Subordinate Legislation Committee should provide a 'safety net' in relation to this.²⁸⁷

417. With regard to the provisions to make regulations, a number of stakeholders, including the All Wales Association of Children and Young

²⁸¹ Available at: <http://www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid.htm?act=dis&id=111270&ds=1/2009>

²⁸² RoP, p25, 7 May 2009, Legislation Committee No.2

²⁸³ RoP, p7, 14 May 2009, Legislation Committee No.2

²⁸⁴ RoP, p18, 30 April 2009, Legislation Committee No.2

²⁸⁵ RoP, p14, 30 April 2009, Legislation Committee No.2

²⁸⁶ RoP, p18, 7 May 2009, Legislation Committee No.2

²⁸⁷ RoP, p25, 30 April 2009, Legislation Committee No.2

People's Partnership Support Officers, stated that they would want to contribute to the development of any statutory guidance.²⁸⁸

418. Save the Children, however, called for more detail on face of the proposed Measure regarding evaluation and audit of strategies. They said:

“While the Measure should be prescriptive, there needs to be a balance. We might want some of the detail at a later stage, but we would like to see more detail in the proposed Measure, particularly around audit, monitoring and evaluation frameworks, so that we can build on a robust framework.”²⁸⁹

Duty to consult

419. In relation to the duty to consult, the majority of stakeholders thought it would be preferable for the proposed Measure to include a duty for Welsh Ministers to consult on regulations. Play Wales said that a duty to consult should be included because any regulations should be “owned by the sector” which is affected by them.²⁹⁰

420. The National Childminding Association supported the inclusion of a duty to consult, and expressed concern that that were a number of areas in the proposed Measure which had not been subject to consultation or discussion prior to introduction.²⁹¹

421. They went on to say that:

“Given the extent to which it [the multi-disciplinary approach] will rely on underpinning guidance and practicality, what is missing in the proposed Measure is a requirement for Welsh Ministers to consult on its key elements. We would certainly welcome that as an addition.”²⁹²

422. Children in Wales suggested that, as some voluntary sector organisations work with the most marginalised groups and have an understanding of what is happening “on the ground”, it was important for this sector to be involved in any consultation as they had experience of “possible unintended consequences” of regulations and could therefore help inform any decision-making.²⁹³

423. We also heard from a number of stakeholders who, whilst supporting the inclusion of a duty on Welsh Ministers to consult, believed that any consultation should not adversely affect the implementation of regulations.

424. Save the Children said that although they would want key stakeholders to be consulted on what will be contained in any regulations:

²⁸⁸ RoP, p25, 30 April 2009, Legislation Committee No.2

²⁸⁹ RoP, p7, 14 May 2009, Legislation Committee No.2

²⁹⁰ RoP, p14, 30 April 2009, Legislation Committee No.2

²⁹¹ RoP, p19, 7 May 2009, Legislation Committee No.2

²⁹² RoP, p20, 7 May 2009, Legislation Committee No.2

²⁹³ RoP, p8, 14 May 2009, Legislation Committee No.2

“(…) given that the best interests of children and families are paramount, where the process of consultation would slow down effective action, consultation may not be appropriate and Ministers should have the power to act.”²⁹⁴

Report of the Subordinate Legislation Committee

425. The Subordinate Legislation Committee undertook detailed scrutiny of the proposed procedures for the making of subordinate legislation in the proposed Measure. Their full report is attached at Annex J.

426. The Committee concluded that they were largely content with the subordinate legislation provisions in the proposed Measure (see recommendation 4). Their recommendations were:

Recommendation 1: Notwithstanding the evidence and other information before it, the Committee recommends that a duty to consult should be added to the Measure. To ensure that minor technical amendments can be made without consultation the Committee further recommends that appropriate exceptions are identified.

Recommendation 2: The Committee notes that the Child Poverty Bill has not yet been introduced. Nevertheless, the Committee recommends that clarification is provided in respect of the impact the Child Poverty Bill will have on this Measure either by way of an addendum to the Explanatory Memorandum or other readily available publication.

Recommendation 3: The Committee recommends that Part 2 of the proposed Measure is not commenced until it is clarified how the proposals would work in the field of care standards.

Recommendation 4: The Committee considers that as regulations made under section 60 (power to make regulations about the assessments which local authorities must make on the sufficiency of play opportunities in their area), would effectively set out the substantive detail of the duty, regulations made under Section 60, should be subject to the affirmative procedure.

Our view

427. We note that the Subordinate Legislation Committee was largely satisfied with the subordinate legislation provisions within the proposed Measure, subject to their fourth recommendation regarding regulations made under section 60, and the procedure applying to them.

428. We support the Subordinate Legislation Committee’s conclusions and recommendations.

²⁹⁴ RoP, p7, 14 May 2009, Legislation Committee No.2

429. Further to this, and in view of the weight of evidence received, we urge the Minister to undertake full consultation with appropriate stakeholders in the drawing up of regulations under the proposed Measure.

6. Financial implications and the report of the Finance Committee

Background

430. During our evidence sessions, we asked stakeholders for their views on the cost assessments accompanying the proposed Measure, and whether they anticipated any resource issues as a result of the new provisions.

431. In accordance with Standing Order 14.2, the Finance Committee considered the detailed financial implications of the proposed Measure on 7 May and 11 June 2009, taking oral evidence from the Minister, Dr Brian Gibbons, and his officials. The Committee laid its report before the Assembly on 12 June 2009.²⁹⁵

Evidence from stakeholders

432. We received a body of evidence from stakeholders stating that resources were key in terms of the delivery of the proposed Measure. Several organisations, including Save the Children and the Joseph Rowntree Foundation, said that legislation alone would not eradicate child poverty, and that the proposed Measure needed to be backed up by appropriate action and additional resources.²⁹⁶

433. In their evidence, the WLGA said they were concerned that there had been no realistic assessment of costs undertaken in terms of the impact of legislative changes in the Measure and that there was no detail on the longer term financial implications of the proposed Measure.²⁹⁷

434. However, there was an acknowledgement by some stakeholders, including the Children's Commissioner, that additional resources did not necessarily require the input of new money – "it is about making the best use of the resources that we have".²⁹⁸

435. The WLGA agreed with this and said that they would need to look to use the resources that were already available in a better way to ensure any additional investment was used in the best possible way.²⁹⁹

Evidence from the Minister

436. When questioned on the concerns expressed by stakeholders, the Minister said that the proposed Measure had been introduced at a time when extra resources were being added to services / areas such as childcare and the

²⁹⁵ Available at: <http://www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid.htm?act=dis&id=132611&ds=6/2009>

²⁹⁶ Written evidence, CF42, CF4 and CF6, and RoP, p11, 30 April 2009, Legislation Committee No.2

²⁹⁷ RoP, p8, 7 May 2009, Legislation Committee No.2

²⁹⁸ Written evidence, CF4 and CF42, and RoP, p28, 7 May 2009, Legislation Committee No.2

²⁹⁹ RoP, p8, 7 May 2009, Legislation Committee No.2

foundation phase, while the budgets for getting people into work were also increasing.³⁰⁰

437. The Minister said he supported some of the evidence we received and agreed any additional funds needed to be utilised to the best effect. He suggested that the proposed Measure would allow the increasing budget to be used more effectively to tackle child poverty in Wales.³⁰¹

438. When asked as to how local authorities would devise strategies under Part 1, given the resources available to them, the Minister said:

“If anyone devises a strategy that does not recognise the financial resources available to them, the strategy is useless. There is no point in a strategy that is not underpinned by resources.”³⁰²

Report of the Finance Committee

439. The Finance Committee undertook detailed scrutiny of the financial implications of the proposed Measure. Their full report is attached at Annex K.

440. The Committee’s conclusions are set out below:

“The purpose of the proposed Measure is to create, for the first time, a coherent legislative framework on child poverty across all public agencies in Wales. Many of the proposals involve bringing together existing provisions and involve very few direct costs for authorities that are already in compliance with existing requirements. Where these do lead to costs they are relatively small and are unlikely to have any significant impact on other budgets or programmes.

The Measure also provides for some new initiatives such as the introduction of Integrated Family Support Teams and the appointment of Family Social Work Standards Officers. These will involve additional costs, which could be significant, but it will not be possible for the Government to prepare reliable estimates of these until further work has been done to develop the evidence base further.

The Committee has sought clarification of many of the costs and the Minister had provided further evidence to support his estimates where this is possible. The Finance Committee is grateful for this additional information and reassured that where it is possible to provide estimates these appear reasonable.

The Committee notes that some elements of the proposed Measure are largely indicative of approaches to development and are subject to further development and refinement. More accurate costing of these will only be possible when this work is complete and the Committee accepts

³⁰⁰ RoP, p15, 21 May 2009, Legislation Committee No.2

³⁰¹ Ibid.

³⁰² Ibid.

that in these cases the Government is so far unable to provide other than very broad costings. In some senses this is disappointing and leaves the Finance Committee unable to judge the full impact of the proposed Measure and, in turn, the rate at which it might be implemented. This places the emphasis on the rate at which the Government can and does make budgetary provision to implement the Measure and this is particularly relevant in the current economic recession. Nonetheless, subject to these observations, the Committee has concluded that there is no reason on financial grounds to object to the proposed Measure being approved.”

Our view

441. We note the body of evidence from stakeholders stating that resources are key in terms of the delivery of the provisions contained within the proposed Measure, and we welcome the Minister’s commitment to provide additional resources in relation to some services, including the new IFSTs.

442. We also note the views of a number of stakeholders who suggested that ‘more resources’ does not necessarily mean new money, and we would therefore encourage the Minister to look at ways of maximising existing resources.

443. In the longer term, in view of the weight of evidence we have received and the 2020 target of eradicating child poverty, we would urge the Minister to give early consideration to the question of future resources.

444. We note that, subject to some observations, the Finance Committee concluded there is no reason on financial grounds to object to the proposed Measure being approved.

445. We support the Finance Committee’s conclusions.

**Legislation Committee No 2
Proposed Children and Families (Wales) Measure**

Consultation responses

Responses	Organisation
CF1	Pembrokeshire County Council
CF2	Play Wales
CF3	Association of Teachers and Lecturers (ATL) Cymru
CF4	Joseph Rowntree Foundation
CF5	All Wales Association of Children and Young People's Framework Partnership Support Officers
CF6	Children's Commissioner for Wales
CF7	Royal College of Nursing
CF8	Rhondda Cynon Taf Local Authority and Children and Young People's Partnership
CF9	Fields in Trust
CF10	Caerphilly County Borough Council Directorate of Social Services
CF11	Daycare Trust
CF12	Amgueddfa Cymru National Museum Wales
CF13	Caia Park Early Years Forum
CF14	Shelter Cymru
CF15	Barnardo's Cymru
CF16	Trosgynnal
CF17	The Venture
CF18	National Deaf Children's Society Wales
CF19	Magistrates Association
CF20	Carmarthenshire Children's Partnership
CF21	National Day Nurseries Association
CF22	Cardiff and Vale Parent's Federation
CF23	Gwent Association of Voluntary Organisations
CF24	The Fostering Network Wales
CF25	ContinYou Cymru
CF26	National Childminding Association
CF27	Wrexham County Borough Council
CF28	Pembroke Dock Town Council
CF29	Funky Dragon
CF30	YWCA England and Wales
CF31	Family Planning Association
CF32	Association of Chief Police Officers (ACPO) Cymru
CF33	Rhondda Cynon Taf Play Association
CF34	Merthyr Tydfil Play Forum
CF35	Action for Children-Gweithredu dros Blant
CF36	Re-create, Cardiff & Vale Play Services Association
CF37	City and County of Swansea
CF38	Welsh Local Government Association
CF39	Scope Cymru
CF40	Care and Social Services Inspectorate Wales (CSSIW)

CF41	Countryside Council for Wales
CF42	Save the Children
CF43	Children in Wales
CF44	NSPCC Cymru

Responses to the consultation can be found at:

<http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-cf/business-legislation-measures-cf-responses.htm>

**Legislation Committee No.2
Proposed Children and Families (Wales) Measure**

Schedule of Oral Evidence

Date	Witnesses
25 March 2009	<ul style="list-style-type: none"> ▪ Member in charge of the proposed Measure - Dr Brian Gibbons AM, Minister for Social Justice and Local Government ▪ Ministers with portfolio responsibility - Jane Hutt AM, Minister for Children, Education, Lifelong Learning and Skills; and Gwenda Thomas AM, Deputy Minister for Social Services
1 April 2009	<ul style="list-style-type: none"> ▪ Member in charge of the proposed Measure - Dr Brian Gibbons AM, Minister for Social Justice and Local Government ▪ Ministers with portfolio responsibility - Jane Hutt AM, Minister for Children, Education, Lifelong Learning and Skills; and Gwenda Thomas AM, Deputy Minister for Social Services
30 April 2009	<ul style="list-style-type: none"> ▪ Joseph Rowntree Foundation ▪ Play Wales ▪ Children's Commissioner for Wales ▪ Children and Young People's Framework Partnership
7 May 2009	<ul style="list-style-type: none"> ▪ Welsh Local Government Association ▪ Association of Directors of Social Services ▪ Society of Local Authority Chief Executives ▪ National Childminding Association ▪ Trosgynnal ▪ Magistrates Association
11 May 2009	<ul style="list-style-type: none"> ▪ Care and Social Services Inspectorate Wales
14 May 2009	<ul style="list-style-type: none"> ▪ Save the Children ▪ Children in Wales ▪ Barnardo's Cymru
21 May 2009	<ul style="list-style-type: none"> ▪ Member in charge of the proposed Measure - Dr Brian Gibbons AM, Minister for Social Justice and Local Government ▪ Ministers with portfolio responsibility - Jane Hutt AM, Minister for Children, Education, Lifelong Learning and Skills; and Gwenda Thomas AM, Deputy Minister for Social Services ▪ NHS Confederation

Transcripts of oral evidence sessions can be found at:

<http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-cf.htm>

The National Assembly's legislative competence to make the proposed Measure

The principal powers enabling the National Assembly to make the proposed Measure are contained in Matters 5.8, 5.18, 15.2, 15.5, 15.6, 15.7, and 16.1 of Schedule 5 to the Government of Wales Act 2006.

Matter 5.8

Provision about the provision of services that are intended to encourage, enable or assist people -

- (a) to participate effectively in education or training,
- (b) to take advantage of opportunities for employment, or
- (c) to participate effectively in the life of their communities.

Matter 5.18

The provision of any of the following for children or young persons -

- (a) facilities for social or physical training;
- (b) educational activities.

In this matter "children" and "young persons" have the same meaning as in field 15.

Interpretation of this field

In this field -

"nursery education" means education suitable for children who have not attained compulsory school age

"post-16 education" means -

- (a) education (other than higher education) suitable to the requirements of persons who are above compulsory school age, and
- (b) organised leisure-time occupation connected with such education;

"post-16 training" means -

- (a) training suitable to the requirements of persons who are above compulsory school age, and
- (b) organised leisure-time occupation connected with such training.

"pre-16 education or training" means education or training suitable to the requirements of persons who are of or below compulsory school age.

"relevant independent educational institution" means an institution other than a school which -

- (a) provides part-time education for one or more persons of compulsory school age ("part-time students") whether or not it also provides full-time education for any person, and

(b) would be an independent school but for the fact that the education provided for the part-time student or students is part-time rather than full-time.

For the purposes of the above definition of “relevant independent educational institution”, an institution provides “part-time” education for a person if -

- (a) it provides education for the person, and
- (b) the education does not amount to full-time education.

References in this field to an institution concerned with the provision of further education are references to an educational institution, other than a school or an institution within the higher education sector (within the meaning of the Further and Higher Education Act 1992), that is conducted (whether or not exclusively) for the purpose of providing further education.

Expressions used in this field and in the Education Act 1996 have the same meaning in this field as in that Act.

Matter 15.2

Functions of public authorities relating to -

- (a) safeguarding children from harm and neglect;
- (b) safeguarding and promoting the well-being of vulnerable children;
- (c) reducing inequalities in well-being between children or young persons.

This matter applies to the functions of public authorities whose principal functions relate to any one or more of the fields in this Part.

Matter 15.5

Social care services for any of the following -

- (a) children;
- (b) persons who care for, or who are about to care for, children;
- (c) young persons;
- (d) persons formerly looked after -
 - (i) who have attained the age of 25, and
 - (ii) who, immediately before attaining that age, have been pursuing, or intending to pursue, education or training.

Matter 15.6

Co-operation and arrangements to safeguard and promote the well-being of children or young persons.

This matter applies to co-operation by, and arrangements made by, -

- (a) public authorities whose principal functions relate to any one or more of the fields in this part;
- (b) police authorities and chief officers of police for police areas in Wales;

- (c) the British Transport Police Authority;
- (d) local probation boards for areas in Wales;
- (e) the Secretary of State, in relation to the Secretary of State's functions under sections 2 and 3 of the Offender Management Act 2007, or any provider of probation services under arrangements made under section 3(2) of that Act;
- (f) youth offending teams for areas in Wales;
- (g) the governors of prisons, young offender institutions or secure training centres in Wales (or, in the case of contracted out prisons, young offender institutions or secure training centres or contracted out parts of such institutions, their directors);
- (h) persons other than public authorities who are engaged in activities relating to the well-being of children or young persons.

Matter 15.7

Planning by local authorities for the discharge of their functions relating to the well-being of children or young persons.

Matter 16.1

The provision of recreational facilities and activities for children or young persons.

In this matter "children" and "young persons" have the same meaning as in field 15.

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

Annex D



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Eich cyf/Your ref
Pwyllgor Deddfwriaeth Rhif.2
Legislation Committee No.2

Val Lloyd AM
Chair
Legislation Committee no.2
Cardiff Bay
CF99 1NA

16/03/2009

Dear Val

I am pleased to accept the invitation to attend Legislation Committee No.2 on 25 March, to give oral evidence on that part of the Children and Families (Wales) Measure which relates to the arrangements to provide for Integrated Family Support Teams and related matters

A handwritten signature in cursive script that reads "G. Thomas". The signature is written in black ink on a light-colored background.

Gwenda Thomas AC/AM

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Brian Gibbons AC/AM
Y Gweinidog dros Gyfiawnder Cymdeithasol a Llywodraeth
Leol
Minister for Social Justice and Local Government

Annex E



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Mrs Val Lloyd
Chair of Legislation
Committee 2
National Assembly for Wales
Cardiff Bay
CF99 1NA

April 2009

Dear Val,

Children and Families (Wales) Measure

My fellow Ministers and I are delighted to see that the Measure has started its progress through the scrutiny process and we are pleased to have been able to respond positively to the committee's request to attend a second preliminary session to assist this. We welcome what the committee will bring to the legislation as it goes through the scrutiny process.

There are a number of issues which are under consideration in relation to the provisions of the Measure or related areas which fellow Ministers and I continue to consider and which I hope it is helpful to share with the Committee at this stage. The purpose in doing this is to make the issues known to the committee because there may be issues on which the committee will wish to express views and it may also assist the committee if knowledge of these issues is available to the various stakeholders from whom the committee will be taking evidence.

I will set out some of these points as they relate to the different parts of the Measure. Consideration is being given to the following matters-

Part 1

- application of the Child Poverty duty to public bodies such as the Arts Council for Wales and the Sports Council for Wales which are charities and if so whether the duty could apply in its present form or some modified form to take account of their charitable status;
- provision expressly linking duties under sections 6-9 to existing inspection powers and linking this to the appropriate enforcement provisions;

Part 2

- modification of section 29 so that the threshold for imposing conditions by written notice is the same as the threshold for the making of an urgent order for cancellation by magistrates under section 29 (risk to a child of "significant harm");

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- inclusion of a power to allow the registration authority to apply to magistrates for a warrant to gain entry to premises where entry has been or is likely to be denied;

Part 3

- the need to ensure that health and social work professionals working with adults who are parents have regard to the need to refer children who may have needs as a result of their parents' health or social care needs. One way this might be achieved is through imposition of an appropriate duty in the measure;

Part 4

- provision about inspection of the duties in relation to play and participation and linking this with appropriate powers of enforcement.

I trust that sharing these issues at an early stage will assist the committee in its work and look forward to further opportunities to respond to issues which you and your colleagues may wish to raise.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brian Gibbons', with a long, sweeping flourish extending to the right.

Brian Gibbons AM/AC

Brian Gibbons AC/AM
Y Gweinidog dros Gyfiawnder Cymdeithasol a Llywodraeth
Leol
Minister for Social Justice and Local Government

Annex F



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Ein cyf/Our ref LF/BG/0042/09

Val Lloyd AM
Chair of Legislation Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

20 May 2009

Dear Val

Inclusion of additional public bodies within Section 12 of the Children and Families (Wales) Measure

Further to my letter dated 6 April 2009 regarding issues that required further consideration, I write to provide you with an update on the application of the Child Poverty duty to other public bodies within Section 12 of the Children and Families (Wales) Measure.

Discussions have taken place with the Charity Commission and as a result it is our intention to include a further four organisations within the list of Welsh authorities in Section 12. The duty would apply in its present form and the organisations are:

- The Arts Council of Wales
- National Library of Wales
- National Museum Wales
- Sports Council for Wales

I thought it would be helpful to share this information with you in advance of the Committee meeting scheduled for 21 May 2009, and I will be happy to discuss this matter with you and committee members at the meeting.

Yours sincerely

Brian Gibbons AM/AC

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Minister for Social Justice and Local Government



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Welsh Assembly Government

Mrs Val Lloyd
Chair of Legislation
Committee 2
National Assembly for Wales
Cardiff Bay
CF99 1NA

22nd May 2009

Dear Val,

Children and Families (Wales) Measure - Clarification of Mental Disorder

I am writing to follow up on the issue raised by the Committee on 25th March 2009 in relation to the meaning of the term "mental disorder" in section 50 of the measure.

It relates to a question raised by Jenny Randerson AM in the context of the groups of people to whom the Integrated Family Support Team (IFST) could provide support to. The issue is whether the term "mental disorder" includes within its ambit "learning disability" (paragraphs 137 to 142 of transcript of 25/3/09 refers). Reference is made to the proposed National Assembly for Wales (Legislative Competence) (No 6) Order 2009.

Section 50(12) of the Measure defines "mental disorder" as "any disorder or disability of the mind". This is very similar to the definition of "mentally disordered persons" in article 2(3) of the Mental Health Legislative Competence Order, which defines them as "persons having any disorder or disability of the mind".

"Mental disorder" is the term used in section 1 of the Mental Health Act 1983. This section has recently been amended specifically in relation to the overlap between the concept of "mental disorder" and "learning disability". The effect of the amendment is to ensure that those whose mental disorder is something which comes within the concept of a learning disability cannot be detained (or be made subject to certain other provisions) under the Act unless the learning disability is associated with abnormally aggressive or seriously irresponsible conduct.

This confirms that the concept of "learning disability" does come within the concept of "mental disorder". If it did not there would be no need for the section to be amended as it has.

We are content therefore that section 50 (12) of the Measure does give the IFS teams scope to take on referrals for cases where adult carers suffer from a learning disability

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I trust the Committee will find this helpful and I apologise for the delay in clarifying this matter.

Yours sincerely

A handwritten signature in cursive script, appearing to read "Brian Gibbons".

Brian Gibbons AM/AC

Jane Hutt AC/AM

**Y Gweinidog dros Blant, Addysg, Dysgu Gydol Oes a Sgiliau
Minister for Children, Education, Lifelong Learning and Skills**

Annex H



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Ein cyf/Our ref : LF/JH/0037/09

Val Lloyd
Chair of Legislation Committee No. 2
National Assembly For Wales
Cardiff Bay
Cardiff
CF99 1NA

3 June 2009

Dear Val,

**LEGISLATION COMMITTEE NO. 2 MEETING OF 21 MAY 2009 –
Proposed Children and Families (Wales) Measure**

At the meeting of Legislation Committee No. 2 on 21 May 2009, I undertook to provide the Committee with the following additional information:

- The references for the evidence based research and literature review of the impact of early years provision on young children (Annex A) ; and
- A list of statutory underpinning duties relating to advocacy for vulnerable children and young people, including what will come through the proposed Education (Wales) Measure (Annex B).

Please find attached.

A handwritten signature in black ink that reads "Jane Hutt".

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

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Flying Start – evidence

International research demonstrates the potential short and long term economic paybacks for early years investment. This has been summarised in the National Audit Office's report "A Literature review of the Impact of Early years provision on young children, with emphasis given to children from disadvantaged backgrounds", which in turn draws on the EPPE long term study into the effectiveness of pre-school services and the similar EPPNI study in Northern Ireland.

<http://www.literacytrust.org.uk/socialinclusion/earlyyears/epperesearch.html>

EPPE - Effective Provision of Pre-School Education Project (E. Melhuish and others)

EPPENI - Pre-School Experience and Social / Behavioural Development at the Start of Primary School, Northern Ireland (E Melhuish and others)

Annex B

Advocacy Vulnerable children and young people

The term 'vulnerable children and young people' as defined within a Legislative Competence Order relating to Vulnerable Children and Child Poverty is:

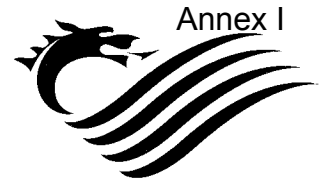
- Any child in need (including disabled or very sick children).
- Children on the periphery of care, in care, or who have left care.

The following table shows groups of children and young people who have a statutory entitlement to an advocacy service (usually for specified reasons) under current legislation:

Vulnerable Children and Young People	Legislation regarding advocacy
Children and Young People up to the age of 18yrs in care of NHS i.e. in Hospital or primary care (family doctor, dentist, etc)	<p>- Statutory duty on the Welsh Ministers under Section 187 of the National Health Service (Wales) Act 2006 - provision of independent advocacy for people wishing to make a complaint about the health service</p> <p>Community Health Councils (CHC) in Wales already provide an advocacy service on behalf of the Welsh Ministers to anyone wishing to make a complaint. As part of other changes being proposed to the role of CHCs, they will continue to provide a complaints advocacy services for adults wishing to complain about an NHS service. Arrangements for children and young people's advocacy will need to be made via the new Model through the Children and Young People's Partnerships. The intention is to issue Directions to Local Health Board to require them to make these arrangements.</p>
Children and Young People Leaving Care	<p>Children (leaving Care) Act 2000 – all care leavers can access advocacy services in making representations about a local authority's leaving care services</p>
<p>Children and Young People Looked After Children and Young People in need which includes children and young people.....</p> <ol style="list-style-type: none"> 1. <i>with mental health problems</i> 2. <i>with a disability (within definition of Children Act 1989 opposite)</i> 3. <i>excluded from school</i> 4. <i>who are asylum seekers or refugees or unaccompanied minors</i> 5. <i>in refuge due to homeless status</i> 6. <i>who are homeless or in unsatisfactory accommodation</i> 7. <i>away from home in residential accommodation, schools, Secure Units and custodial settings or independent Hospitals</i> 8. <i>who are in the Youth Justice System</i> 9. <i>who are young carers</i> 10. <i>who have been or who are at risk of being abused or neglected</i> 11. <i>who are school age mothers</i> 	<p>Children Act 1989 (section 26A) – provision of advocacy for representation or complaints by a child in relation to services received either as a looked after child or a child in need. A "looked after" child is a child who is either in the care of a local authority or is provided with accommodation under a local authority's functions under part 3 of the Children Act 1989. A child "in need" is defined in section 17 as follows -</p> <p>(10) For the purposes of this Part a child shall be taken to be in need if—</p> <ol style="list-style-type: none"> (a) s/he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision of services by a local authority under this Part; (b) his/her health or development is likely to be significantly impaired, or further impaired, without the provision for such services; or (c) s/he is disabled, <p>(11) For the purposes of this Part, a child is disabled if he is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed; and in this Part—</p> <p>"development" means physical, intellectual, emotional, social or behavioural development; and</p> <p>"health" means physical or mental health.</p>
Children and Young People with Mental Health issues, including young people who are detained	<p>Mental Health Act 2007</p>
Children and young people with Special Educational Needs	<p>Education (Wales) Measure (yet to be passed). This seeks to extend the right of children and young people to have access to an advocate to appeal against the SEN tribunal decision in their own right</p>

Y Pwyllgor Plant a Phobl Ifanc

Children and Young People Committee



Cynulliad National
Cenedlaethol Assembly for
Cymru Wales

Val Lloyd
Chair, Legislation Committee 2
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

Cardiff Bay
Cardiff
CF99 1NA

9 June 2009

Dear Val,

The Proposed Children and Families (Wales) Measure and the Children and Young People Committee Report “Child Poverty in Wales: Eradication through Education?”

As you will recall, I copied you into my correspondence of 28 April 2009 to the Minister for Social Justice and Local Government, regarding the impact of the Proposed Children and Families (Wales) Measure, on the Welsh Government’s response to the Children and Young People Committee Report “Child Poverty in Wales: Eradication through Education?”

I attach a copy of the Minister’s reply to my correspondence, dated 22 May 2009.

I welcome much of the detail in the Minister’s letter and annex. I was, initially, disappointed at the limited explanation as to why the Proposed Measure would only require Welsh Ministers to report once every three years on the extent to which the objectives, outlined in their strategy for contributing to the eradication of child poverty, have or have not been achieved. In the Children and Young People Committee’s report, we had recommended that such reports should be made on an annual basis and accompanied by an annual plenary debate during Government time.

Croesewir gohebiaeth yn y Gymraeg a'r Saesneg / We welcome correspondence in both English and Welsh

Y Pwyllgor Plant a Phobl Ifanc / Children and Young People Committee
Gwasanaeth y Pwyllgorau / Committee Service

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However, I have also noted the following exchange at the Legislation Committee 2 meeting of 21 May 2009:

“Jenny Randerson: We have heard evidence from a number of organisations questioning the rationale behind the three-year reporting cycle. It has been suggested that it is at odds with the proposed requirement in the Westminster legislation to report to Parliament annually. Concerns have also been raised that a three-year interval could mean that problems are not identified quickly enough. Save the Children suggested a full report on a three-year cycle be made to the National Assembly as a whole, while interim annual reports could be presented to the Assembly’s Children and Young People Committee. What are your views on that?”

“Brian Gibbons: That is largely possible at the moment. We have published the child wellbeing monitor, which is a fairly substantial overall view of how children are getting on in Wales. We have also published the 31 targets of ‘Eradicating Child Poverty in Wales— Measuring Success’, and perhaps Jeff or Gareth can say something about that. That happened only last October or November. So, effectively, that is what we will have. We will have the child wellbeing monitor, which, if you remember, is not just a collection of statistics, as it also includes a commentary on what those statistics mean. We already have the big three-yearly report and the more quantitative specific targets in relation to measuring progress. If the Children and Young People Committee wants us to go before it so that Members can ask about either of those datasets, we would be more than pleased to do so. I think that we have the essential tools in place as we speak.”

The Children and Young People Committee would be content with this arrangement, which goes some way to allaying our concerns over the Welsh Government’s reporting arrangements.

I would be grateful if your Committee would take this correspondence into account in your consideration of the Proposed Measure.

Yours sincerely

Helen Mary Jones AC / AM
Cadeirydd / Chair
helen-mary.jones@wales.gov.uk

Subordinate Legislation Committee

Appropriateness of the subordinate legislation provisions in Proposed Children and Families (Wales) Measure

1. Standing Orders

1.1 The Committee has the following powers under Standing Orders:

- Standing Order 15.6 (ii) stated that the Subordinate Legislation Committee may consider and report on 'the appropriateness of provisions in proposed Assembly Measuresthat grant powers to make subordinate legislation to the Welsh Ministers'.
- Whilst it is not part of the Committee's remit to comment in the merits of the proposal which the proposed Measure is intended to implement, Standing Order 15.6(v) states that the Committee may consider and report on 'any legislative matter of a general nature within or relating to the competence of the Assembly or Welsh Ministers'.

1.2 The purpose of this report is to inform the Assembly's Stage 1 debate on the general principles of the proposed Measure and subsequent legislative stages.

2. Consideration

2.1 On the 27 April 2009 the Committee considered the 'Proposed Children and Families (Wales) Measure' and decided to give further consideration to the subordinate legislation provisions in the proposed Measure. To gather further information on the proposed Measure the Committee invited Dr Brian Gibbons AM, Minister for Social Justice and Local Government, to give evidence to the Committee on 11 May 2009.

3. Background

3.1 The Welsh Assembly Government introduced the Proposed Children and Families (Wales) Measure to the Assembly on 2 March 2009. A Stage 1 Committee has been established to consider the general principles of the proposed Measure.

3.2 The Explanatory Memorandum that accompanies the proposed Measure states:

"The Children and Families (Wales) Measure makes statutory provision to take forward the Welsh Assembly Government's commitment in terms of child poverty and to take forward early development of its strategy for vulnerable children by

bringing forward legislation to provide greater support to families where children may be at risk, and strengthened regulatory enforcement in children settings.”

4. Subordinate Legislation Making Powers and Procedures

4.1 The Children and Families (Wales) Measure makes statutory provision, through a legislative framework, to take forward the Welsh Assembly Government’s commitment in terms of child poverty. It also intends to take forward early development of the Government’s strategy for vulnerable children by bringing forward legislation to provide greater support to families where children may be at risk together with strengthened regulatory enforcement in children settings.

4.2 The Proposed Measure is in four Parts:-

- Part 1: Eradicating Child Poverty – sections 1 to 12
- Part 2: Child Minding and Day Care for Children – section 13 to 48
- Part 3: Integrated Family Support Teams – sections 49 to 58
- Part 4: Miscellaneous and General – sections 59 to 68

Additionally the Proposed Measure contains two Schedules: Schedule 1 deals with Minor and consequential Amendments and Schedule 2 with Repeals.

4.3 Part 1 – Eradicating Child Poverty

The purpose of Part 1 of the Proposed Measure is to introduce a legislative framework requiring Welsh authorities (as defined in section 12) to make and demonstrate their contribution towards eradicating child poverty by requiring the production and publishing of strategies reflecting the broad aims contained in section 1 of the Proposed Measure for contributing to the eradication of child poverty in Wales. These strategies will provide a reference point for objective setting and other actions.

4.4 Part 2 – Child Minding and Day Care for Children

The current legislation relating to childminding and regulation of day care is found in Part 10A of and Schedule 9A to the Children Act 1989. The purpose of the Proposed Measure is to repeal and re-enact the current provisions (which are mainly technical in nature) to ensure that the range of regulatory enforcement options is available to all establishments and agencies that the Welsh Ministers regulate and to introduce a new regulatory option, namely a penalty notice, which will allow the Welsh Ministers to take a quick and proportionate response to a regulatory breach. The Proposed Measure seeks to restate and modify the law in a more cohesive way and does not provide for any significant burdens to be placed upon child minders or day care providers.

Part 3 – Integrated Family Support Teams

The purpose of Part 3 of the Proposed Measure is to introduce new integrated family support teams to strengthen support to vulnerable children and families through reconfiguring services towards more targeted support delivered by

multidisciplinary professional teams to improve outcomes for children and adults so that they can live safely together as a family unit.

Part 4 –Miscellaneous and General

The purpose of the Proposed Measure is to reflect the Welsh Assembly Government's commitment to the United Nation Convention on the Rights of the Child and in particular to Article 31.1 and 2 relating to play. The Proposed Measure imposes a duty on local authorities to carry out assessments of the sufficiency of play opportunities in their areas in accordance with regulations made and guidance issued by Welsh Ministers.

The Proposed Measure also reflects the Welsh Assembly Government's commitment to Article 12.1 of the United Nation Convention on the Rights of the Child relating to the formation and expression of views. The Proposed Measure places a general duty on local authorities to make arrangements to promote and facilitate participation by children in decisions of the local authority which affect them.

5. Provisions conferring power to make subordinate legislation

5.1 The measure contains a number of provisions which confer on the Welsh Ministers, a power to make regulations and orders in relation to certain functions under the Proposed Measure. The power in each case is to be exercised by the Welsh Ministers by statutory instrument.

5.2. The following provisions contain powers to make **regulations**:-

Part 1

Section 1(5): power to make regulations for the determination of material deprivation and median income;

Section 4(3): under strategies prepared by Welsh children's services authorities, amends section 26 of the Children Act 2004, giving the Welsh Ministers power under that act to make regulations in relation to children's plans;

Section 5(3): power to make regulations in relation to strategies prepared by other Welsh authorities, including the period of the strategy; its publication; review and consultation before publication;

Section 6(1)(a): power to make regulations in relation to a local authority duty to secure availability of free childcare; prescribe the type of childcare; prescribe the description of children entitled to it and their age;

Section 9(1): power to make regulations to impose duties on local authorities in relation to the provision of particular sorts of parental support services and health support services for particular sorts of children or parents; power to require that the duty triggered by the making of regulations under section 6(1) or a duty in relation to parental support services or health support services, is to apply in one or more parts of a local authority area;

Section 9(2): power to make regulations about the areas in which services specified by the regulations are to be provided either in the regulations or by requiring that the authorities themselves specify the areas.

Part 2

Section 18(2)(a) and (c): power to make regulations to prescribe the information to be provided by applicants for registration as a childminder and the relevant fee;

Section 19: power to make regulations to prescribe further information to be provided by applicants for registration as a childminder;

Section 20(2)(a) and (c): power to make regulations to prescribe the information to be provided by applicants for registration as a day-care provider and the relevant fee;

Section 21: power to make regulations to prescribe further information to be provided by applicants for registration as a day-care provider;

Section 22: power to make regulations to prescribe information about prescribed matters, to be included on a certificate of registration: power to prescribe fee for replacement of lost certificate of registration;

Section 24(1),(2),(3) and (4): power to make regulations governing activities of persons registered as childminders or day-care providers, including welfare and development of children; suitability; qualifications and training; maximum numbers of children cared for; staffing levels; premises; complaints procedure; staff supervision; records; provision of information; obligations of third parties (under section 23(3)) and (under section 24(4)), offences and penalties;

Section 25(5): power to make regulations to prescribe the circumstances under which a person's registration may be cancelled;

Section 26(1): power to make regulations to prescribe the circumstances under which a person's registration may be suspended;

Section 32(2),(3),(4) and (5): power to make regulations in relation to the disqualification of a person from registration (section 32(2)); to prescribe particular circumstances in which a person may be disqualified from registration (section 32(3)); further provision in relation to a person living in a household where a person has been disqualified (section 32(4)) and power of Welsh ministers to consent to a person not being disqualified (section 32(5));

Section 34(1),(2) and (3): power to make regulations in relation to inspection of childminding and day-care; publication of reports (section 34(1)); inspection by Welsh Ministers or Chief Inspector of Education and Training or another (section 34(2)) and application of section 29(2) to (4) of the Education Act 2005 to reports published under the regulations (section 34(3));

Section 37(1),(2) and (3): power to make regulations in relation to supply of information to local authorities; Welsh Ministers to supply prescribed information to local authorities on taking certain steps;

Section 39(2) and (5): power to prescribe offences which are fixed penalty offences; period in which proceedings for an offence may not be instituted;

Section 40(1) and (2): power to make regulations making supplementary provision with respect to penalty notices; amounts payable under fixed penalties;

Section 44(1)(a) and (b): power to make regulations to require a local authority to secure information and advice as to childminding and day-care; training in to childminding and day-care;

Section 45(1) and (2): power to make regulations as to payment of fees by registered persons: amount and waiver of fees;

Section 48(1) and (2): power to make regulations to provide for death of registered person;

Part 3

Section 50 (2) and (9): power to make regulations to say which health and social services functions can be assigned to an IFS team by a local authority and power to assign functions to the team and to allow referrals to IFS teams in different circumstances.

Section 51(2): power to make regulations in relation to the way the Integrated Family Support Teams are funded.

Part 4

Section 60: power to make regulations about the assessments which local authorities must make on the sufficiency of play opportunities in their area.

5.3 The procedure for these regulations is the **negative procedure**. Use of the negative procedure is justified in the Explanatory Memorandum on the following grounds:-

5.4 Regulations under these powers relate to matters which are technical or procedural in nature or will set out detail. The nature and content of the provisions made by any such regulations would not appropriate to be included on the face of the Measure. It is also desirable that the Welsh Ministers have the flexibility to amend provisions about matters such as those relating to the regulation of childminding and daycare quickly. The negative resolution procedure affords the Assembly a degree of scrutiny appropriate to the limited type of provision that can be made in these regulations.

5.5 In each of the cases detailed above, the rationale for the application of subordinate legislation rests upon the need to avoid excessive detail or to allow for flexibility, within the confines of the principles presented within the

Measure itself. As these regulations will contain considerable detail, and will be subject to periodic review and amendment if required, it is held to be more appropriate that they be contained within subordinate legislation than appear on the face of the Measure.

5.6 The following sections contain powers for the Welsh Ministers to make **orders**:-

Part 1

Section 1(7): provides power to amend those things identified as “broad aims” contributing to the eradication of child poverty in section 1(2).

Section 2(5): provides power to make regulations to specify objectives for a Welsh authority which relate to the broad aims in section 1 and the Welsh authority’s functions. Section 2(6) provides that the regulations may also disapply the authority’s choice of objectives to the extent specified.

Section 12(2): provides power to amend the list of bodies named as “Welsh authorities” and who are subject to the duty to prepare and publish a child poverty strategy.

Part 2

Section 13(4): provides power to amend the definition of what constitutes “childminding” and “day care” and so makes the person providing those services liable to register with the registration authority.

The procedure which applies to these regulation making powers is the **affirmative procedure**. In each case they provide power to amend a particular aspect of the Measure itself. The potential effect of amendments made under these powers is more far-reaching whether in relation to the child poverty duty or the regulation of the childminding and day care sector.

Section 67 contains a power for the Welsh Ministers to make an order to commence provisions of the Measure. As is normal practice for commencement orders, **no procedure** will apply to such orders.

5.7 The Proposed Measure also provides for the Welsh Ministers to issues guidance and directions.

6. Issues raised in evidence and recommendations of the Committee

6.1 In taking evidence from the Minister the Committee sought clarification and further details on:

6.2 Scope of the proposed measure

- Appropriateness of specifying objectives in regulations
- The possibility of having different objectives across different authorities
- Appropriateness of affirmative procedure
- If the Measure will lead to significant policy or legislation divergence from England, and the consequences for tackling child poverty
- Discussions with relevant UK Ministers regarding the Child Poverty Bill

6.3 In response to these issues the Minister stated that he did not envisage setting objectives for local authorities, as this would be a reserve power used when authorities were failing to comply. The Minister said that it was inevitable that there would be a variation across Wales in terms of objectives; this is due to the different urban and rural authorities and the different challenges faced by these authorities. The Minister stated that as yet there was no final form on the Child Poverty Bill, but the main focus would be on non-devolved areas and this provides justification for a different Welsh Measure. The Committee notes the procedures intended to be applied to the making of subordinate legislation and the reasons given in the Explanatory Memorandum for the application of a particular procedure to a particular power.

Committee's view

The Committee noted the evidence received, On the basis of the evidence received, the Committee are content with the procedures proposed for the making of subordinate legislation subject to the exception detailed in Recommendation 4.

6.4 Regulation Making Powers

- Balance between powers on the face of the proposed Measure and powers to make regulations
- Consultation process when making regulations
- Timescales for publishing guidance and bringing regulations into force

6.5 The Minister felt that the balance between powers on the face of the proposed Measure and the power to make regulations was balanced and the detail would be seen in regulations, the Minister stated that this was always a challenge and there was a requirement for a balance between the legislative framework and regulation. In response to specific questions the Minister stated it was standard practise not to have a duty to consult.

6.6 The Committee notes there is no statutory duty to consult. However, a duty may be conferred in specific instances. *Craies on Legislation*¹ states:

“It is common for the Minister in whom a power to make delegated legislation is vested to be under a statutory duty to consult before he exercises it. Failure to consult will generally render voidable any purported exercise of the delegated power. While a duty to consult falls short of a duty to comply with the wishes of the consultee, it is more than a pure formality, requiring the person consulting to give his mind in a genuine way to matters raised by those consulted”

6.7 Section 65(3) of the Government of Wales Act 1998 included the following provision:

¹ A Practitioners' Guide to the Nature, Process, Effect and Interpretation of Legislation

“(3) The subordinate legislation procedures must also include provision for securing that, if a regulatory appraisal indicates that the costs of complying with any proposed Assembly general subordinate legislation are likely to be significant—

(a) appropriate consultation (including consultation with representatives of business) is carried out, and

(b) the regulatory appraisal is published,

before a draft of the statutory instrument containing the subordinate legislation is laid before the Assembly.”

This provision was repealed by the Government of Wales Act 2006.

Recommendation 1: Notwithstanding the evidence and other information before it, the Committee recommends that a duty to consult should be added to the Measure. To ensure that minor technical amendments can be made without consultation the Committee further recommends that appropriate exceptions are identified.

6.6 Eradicating Child Poverty

- The broad aims set out for eradication of child poverty, if these are capable of amendments and use of affirmative procedure
- The use of regulations to specify levels of material deprivation and median income, whether it would be more appropriate for this determination to appear on the face of the Measure.
- Final impact for local authorities as a result of changes to the current policy framework

6.7 The Minister responded that the broad aims were evidence based and felt they would only be amended in certain circumstances, such as if there is a clash with the Child Poverty Bill. The Committee felt this was a contradiction to the evidence previously given (6.3), but the Minister felt that there would be significant differences in Wales which would complement Westminster. The Minister stated that the specified median income was well established and had been used for a number of years. The Minister also stated that the changes to the policy framework would not have any financial implications for local authorities.

Recommendation 2: The Committee notes that the Child Poverty Bill has not yet been introduced. Nethertheless, the Committee recommends that clarification is provided in respect of the impact the Child Poverty Bill will have on this Measure either by way of an addendum to the Explanatory Memorandum or other readily available publication.

6.8 Child Minding and Day Care for Children

- Whether Part 2 is considered to be ‘skeletal’ when setting out the proposed new regime for the regulation of childminding and day care

- Reasons for re-enactment of current law relating to childminding and day care.
- Consultation which has taken place with childcare and day care providers.
- The broad discretion conferred on Welsh Minister in respect of the circumstances for when a person is disqualified from registration as a childminder and day care provider
- Timescales and resources allocated to bring into force the regulations relating to the inspection of childminding and day care.
- Delegated power to prescribe fixed penalty offences and issue fixed penalty notices, and whether relevant offences should be ordered according to the official Magistrates Court Sentencing Guidelines and not be determined by regulations
- The type of offences considered suitable to be dealt with by fixed penalty notices and whether these should be prescribed on the face of the Measure

6.9 The Minister stated that Part 2 of the Measure is a consolidation of existing legislation, with some added improvements. The Minister said the broad discretion conferred on Welsh Ministers regarding the disqualification of childminders and day care providers mirrors the current situation; similarly the inspection regime also consolidates the current situation. The Committee is given to understand that that a system of fixed penalty notices is to be introduced in respect of establishments regulated under the Care Standards Act 2000. The Minister stated that minor breaches should not be subject to Court proceedings and not every breach would be subject to a fixed penalty, although serious breaches would not be acceptable and would be dealt with by way of court proceedings.

Recommendation 3:

The Committee recommends that Part 2 of the proposed Measure is not commenced until it is clarified how the proposals would work in the field of care standards.

6.10 Integrated Family Support Teams (IFST)

- Difficulties for stakeholder commenting on provisions in relation to IFSTs because so much of the work around IFSTs will be found in secondary legislation
- Whether the structure and functions of IFSTs should be prescribed in order to provide a consistent approach to service delivery
- Whether a list of prescribed persons should be included on the face of the Measure
- Requirement to consult with relevant stakeholders on proposals to change the composition of an IFST

6.11 The Minister stated that there was an understanding on IFSTs and they would be run on a pioneer basis and the regulation would be prescriptive. The Minister did not feel there was a need for a list of prescribed persons on the face of the Measure, as there was a need to be flexible, and the Measure

already identifies the types of people who would be considered as prescribed persons. The Minister stated that there has been two years of extensive consultation with relevant stakeholders.

Committee's view

The Committee is content with the provisions outlined within Part 3 relating to Integrated Family Support Teams.

6.12 Miscellaneous and general

- use of negative procedures under section 60 and whether Welsh Ministers will not consult fully on any amendments to provisions in relation to sufficiency of play opportunities

6.13 The Minister stated that there was on going consultations and discussion which will be used when bringing forward statutory duties for play opportunities and the use of the negative procedure was appropriate as it does not affect the operational delivery of the Measure.

Recommendation 4: The Committee considers that as regulations made under section 60 (power to make regulations about the assessments which local authorities must make on the sufficiency of play opportunities in their area), would effectively set out the substantive detail of the duty, regulations made under Section 60, should be subject to the affirmative procedure.

NATIONAL ASSEMBLY FOR WALES
REPORT FROM THE FINANCE COMMITTEE

Report on the financial implications of the Proposed Children and Families (Wales) Measure

Background:

1. Standing Order 14.2 states:

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

(i) financial information in explanatory memoranda accompanying proposed Assembly Measures;

Evidence

2. At its meeting on 7 May 2009, the Finance Committee considered the proposed Measure, the accompanying Explanatory Memorandum and a further paper from the Minister for Social Justice and Local Government: FIN(3) 08-09 (p4) proposed *Children and Families (Wales) Measure*. It also received oral evidence from the Minister and officials:

- Brian Gibbons, Minister for Social Justice and Local Government
- Michael Lubienski, Welsh Assembly Government Lawyer
- Tracey Breheny, Head of the Child Poverty Unit, Welsh Assembly Government
- Elizabeth Williams, Head of Children and Young People Strategy Division, Welsh Assembly Government
- Donna Davies, Head of Children First Branch, Welsh Assembly Government

3. The Committee also had regard to the evidence submitted to Legislation Committee No.2 as part of its consultation on this proposed Measure.

4. Following the evidence session the Chair wrote to the Minister seeking clarification of various issues and the Minister responded on 15 May¹.

The proposed Measure:

5. The Welsh Assembly Government introduced the proposed *Children and Families (Wales) Measure* to the Assembly on 2 March 2009.

6. The proposed Measure makes statutory provision, through a legislative framework, to take forward the Welsh Government's commitment in terms of child poverty, and to take forward early development of its strategy for vulnerable children by bringing forward legislation to provide greater support to families where children may be at risk, and strengthened regulatory enforcement in children settings. The Measure is cross-cutting with the Departments for Social Justice and Local Government, Children, Education, Lifelong Learning and Skills and Health and Social Services.

7. The proposed Measure is in four parts.

8. Part 1 - Eradicating Child Poverty – this part of the proposed Measure places a duty on authorities to produce and review strategies contributing to the eradication of child poverty. The Explanatory Memorandum states that this will lead to compliance costs which will have resource implications for the Welsh Assembly Government. This will involve strengthening the Child Poverty unit which is estimated will cost £55,000.

9. The Minister told the Committee² that a great deal of the work that the proposed Measure requires from local authorities should already be being done if an authority is fulfilling its statutory duties. The EM states³ that for

¹ FIN(3) 09-09 (p3)

² Record of Proceedings FIN(3) 08-09 [145]

³ FIN(3) 08-09 (p3)

those authorities who have entered into an arrangement under section 25 of the *Children's Act 2004*, the duty to prepare and publish a strategy for contributing to the eradication of child poverty would be discharged if the strategy is an integral part of a plan published under section 26 of the *Children's Act 2004*. In this case there would be no additional costs. For the other authorities (those set out in Section 12 of the proposed Measure) there would be some additional costs in preparing and publishing a strategy but it is anticipated these will be minimal and could be met from existing budgets.

10. The Minister emphasised⁴ that the purpose of this part of the proposed Measure is to create a coherent legislative framework. It was being introduced⁵ in the context of a range of policies to which extra resource is being given at the moment. He said⁶ that a considerable amount of thought had been given to ensuring the proposed Measure did not create any additional burdens.

11. Part 2 – Child Minding and Day Care for Children – this part of the proposed Measure relates to child minding and regulation of day care for children. It seeks to ensure that enforcement practices are consistent across all settings and agencies regulated. The Explanatory Memorandum (p74) states that the proposals will not impact the ability of persons to register with Welsh Ministers under part 10A of the *Children's Act 1989* and will also not impose any additional regulatory costs or compliance costs. The Explanatory Memorandum says the Government does not consider a regulatory assessment is required. The Minister confirmed⁷ that from the point of view of service users the regime is going to be exactly the same⁸ and, while there were fees in the existing system, there is nothing intrinsic in the proposed Measure that is going to change them.

⁴ Record of Proceedings FIN(3) 08-09 [85]

⁵ Record of Proceedings FIN(3) 08-09 [104]

⁶ Record of Proceedings FIN(3) 08-09 [91]

⁷ Record of Proceedings FIN(3) 08-09 [160]

⁸ Record of Proceedings FIN(3) 08-09 [165]

12. There is the potential for costs in relation to the power to impose fixed penalty notices in certain circumstances. These could involve costs to administer the process. The Minister agreed⁹ that this was the case but noted that there was also the potential for savings – and that the number of cases, and the overall costs, were small. He commented also¹⁰ that if a substantial number of cases led to court proceedings the cost could be substantial but he did not think this was the situation.

13. Part 3 – Integrated Family Support Teams – this part of the proposed Measure provides a legal framework to introduce new integrated family support teams (IFSTs) to strengthen support for vulnerable children and families. The Explanatory Memorandum states (p22) that IFSTs will be implemented in 3 pioneer areas across Wales starting in 2010. The Minister's subsequent note¹¹ states that a budget of up to £0.6m will be available annually to each of three IFST pioneer areas who will initially focus on the area of substance misuse. The cost allows sufficient funds for a well resourced team of multi-disciplinary professionals and support administrators. It also provides for team members to have delegated budgets to allow them to buy-in key services.

14. The Minister said¹² that his estimate for a universal service would be of the order of £10m to £15m but the speed with which they would get there would depend on the experience gained from these pioneer programmes. In his subsequent note¹³ he confirmed that the estimated cost of £10m - £15m is for the full annual cost of IFST when implemented across all of Wales and operating in the full range of circumstances listed in section 50(6) (a - d) such as domestic violence, mental health, learning disability and drug and alcohol abuse. This estimate is stated to be based on the population levels of children in need and in local authority care, and the establishment of sixteen IFSTs across Wales (with smaller areas working together in collaboration).

⁹ Record of Proceedings FIN(3) 08-09 [174]

¹⁰ Record of Proceedings FIN(3) 08-09 [177]

¹¹ FIN(3) 09-09 (p3)

¹² Record of Proceedings FIN(3) 08-09 [183]

¹³ FIN(3) 09-09 (p3)

However, the Minister recognised that the information from the pioneer areas would allow a more robust estimate of the financial implications to be made.¹⁴

14. Part 4 – Miscellaneous and General – this part of the proposed Measure places a duty on local authorities to appoint a Family Social Work Standards Officer; a duty to assess the sufficiency of play opportunities and to secure sufficient play opportunities in its area (as far as is practicable) and a duty on them to make arrangements to promote or facilitate participation by children in the decisions of the authority which affect them.

15. The Explanatory Memorandum does not provide a cost for appointing Family Social Work Standards Officers, but in his oral evidence¹⁵ the Minister said he recognised there was likely to be a cost involved in this of between £0.5m and £1m potentially. His subsequent note set out the basis on which this had been estimated and noted that the wide range of this estimate was to make allowance for a number of variables.

16. The Explanatory Memorandum (p63) states that the proposed duties on local authorities in respect of play would not place any new burdens on authorities beyond those associated with delivery of related elements of the Cymorth and Flying Start programmes.

17. The Explanatory Memorandum does not give any estimates of the costs of make arrangements to promote or facilitate participation by children in the decisions of the authority. The Minister said¹⁶ that many local authorities are striving to do this and that well over three quarters of authorities had participation policies in place at the moment. He also said that something like £3m or £4m in Cymorth is earmarked for this kind of activity. Officials commented that, while there is a resource issue attached to this, the main aim was to change the way people do things.

¹⁴ FIN(3) 09-09 (p3)

¹⁵ Record of Proceedings FIN(3) 08-09 [187]

¹⁶ Record of Proceedings FIN(3) 08-09 [206]

Conclusions

18. The purpose of the proposed Measure is to create, for the first time, a coherent legislative framework on child poverty across all public agencies in Wales. Many of the proposals involve bringing together existing provisions and involve very few direct costs for authorities that are already in compliance with existing requirements. Where these do lead to costs they are relatively small and are unlikely to have any significant impact on other budgets or programmes

19. The Measure also provides for some new initiatives such as the introduction of Integrated Family Support Teams and the appointment of Family Social Work Standards Officers. These will involve additional costs, which could be significant, but it will not be possible for the Government to prepare reliable estimates of these until further work has been done to develop the evidence base further.

20. The Committee has sought clarification of many of the costs and the Minister had provided further evidence to support his estimates where this is possible. The Finance Committee is grateful for this additional information and reassured that where it is possible to provide estimates these appear reasonable.

21. The Committee notes that some elements of the proposed Measure are largely indicative of approaches to development and are subject to further development and refinement. More accurate costing of these will only be possible when this work is complete and the Committee accepts that in these cases the Government is so far unable to provide other than very broad costings. In some senses this is disappointing and leaves the Finance Committee unable to judge the full impact of the proposed Measure and, in turn, the rate at which it might be implemented. This places the emphasis on the rate at which the Government can and does make budgetary provision to implement the Measure and this is particularly relevant in the current economic recession. Nonetheless, subject to these observations, the

Committee has concluded that there is no reason on financial grounds to object to the proposed Measure being approved.

Angela Burns

Chair, Finance Committee