

**National Assembly for Wales**  
Legislation Committee No. 5

**Proposed Carers Strategies (Wales) Measure**

Stage 1 Committee Report  
May 2010



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## **Legislation Committee No. 5**

Legislation Committee No. 5 was established by the National Assembly for Wales to consider and report on legislation introduced into the Assembly, particularly by the Welsh Government. The Committee is also able to consider and report on non-government legislation, as appropriate.

### **Powers**

The Committee was established on 4 February 2009 as one of the Assembly's legislation committees. Its powers are set out in the National Assembly for Wales' Standing Orders, particularly SO 10, 22 and 23. These are available at [www.assemblywales.org](http://www.assemblywales.org)

### **Committee membership**

<i>Committee Member</i>	<i>Party</i>	<i>Constituency or Region</i>
Mark Isherwood (Chair)	Welsh Conservative	North Wales
Eleanor Burnham	Welsh Liberal Democrats	North Wales
Alun Davies	Labour	Mid and West Wales
Andrew Davies	Labour	Swansea West
Darren Millar	Welsh Conservative	Clwyd West
Leanne Wood	Plaid Cymru	South Wales Central

### **List of relevant reports published**

<i>Report title</i>	<i>Date of publication</i>
National Assembly Wales (Legislative Competence) (Social Welfare) Order 2009	April 2009

All previous committee reports can be found at [www.assemblywales.org](http://www.assemblywales.org)

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## **The Committee's Recommendations**

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The report outlines the findings of Legislation Committee No.5's Stage 1 scrutiny of the proposed Carers Strategies (Wales) Measure.

The Committee agrees with the general principles of the proposed Measure and the need for legislation. The evidence clearly supported the requirement for carers strategies, yet the evidence also raised a number of issues for further consideration. As a result the Committee has made a number of recommendations to the Deputy Minister for Social Services, which are detailed below:

**Recommendation 1: The Committee notes and accepts the Deputy Minister's view that young carers are covered in the definition detailed in section 1. However, based on the evidence received the Committee recommends that young carers warrant an explicit mention in the definition of carers.**

**Recommendation 2: The Committee heard evidence of the important role played by secondary carers, who are often young people. The Committee recommends that to support the role played by carers in a secondary role the definition of carer should include reference to both primary and secondary carers.**

**Recommendation 3: The Committee believes that section 2(1)(c) does not provide enough detail on the face of the proposed Measure as to how consultation should be undertaken. The Committee recommends the following amendment (or words of similar effect) are inserted into the proposed Measure at section 2, page 2, line 24 after 'carers', insert 'and pay due regard to consultation responses.'**

**Recommendation 4: The Committee accepts the Deputy Minister's concerns over the impact of imposing duties on all 'relevant authorities' from the outset. However, the Committee heard from many witnesses about the importance of educational services in supporting young carers and strongly recommends that educational services are included in the first set of regulations.**

**Recommendation 5: The Committee recommends that the proposed Measure is amended to allow Welsh Ministers, by**

**regulations, the ability to add to the list of ‘relevant authorities’ detailed under section 2(3).**

**Recommendation 6: The Committee believes that the definition of ‘appropriate information and advice’ is not sufficient and therefore recommends that an amendment is made to section 3 to ensure a more comprehensive definition of “appropriate” is provided.**

**Recommendation 7: The Committee believes that the duty to consult with carers is not strong enough and therefore recommends that an amendment is made to line 20 of section 4, removing the words ‘or may’.**

**Recommendation 8: The Committee recommends section 4 should be further amended to insert a minimum standard of consultation prescribed by Welsh Ministers in the proposed Measure. This could define the consultation and the requirement to provide feedback on responses received. The Committee recommends the following amendment (or words of similar effect) is inserted into section 4 of the proposed Measure:**

**“The consultation may include (but is not limited to) stakeholder meetings, a survey of carers and their representatives and service users.”**

**Recommendation 9: The Committee does not believe that the NHS should always be the lead authority and this should be locally agreed or designated by Welsh Ministers. The Committee notes that the proposed Measure allows that Welsh Ministers may "designate an NHS organisation as the lead authority". However, there is no provision for Welsh Ministers to designate another lead authority when it may be required. The Committee recommends that the provision is added to section 5(3) to allow Welsh Ministers to designate any “relevant authority” as the lead authority.**

**Recommendation 10: The Committee accepts that strategies should be submitted to Welsh Ministers. However, the Committee recommends a minimum standard of expectation should be included in regulations, which should include an implementation plan and review plan.**

**Recommendation 11: The Committee believes section 7 allows for the very minimum promotion of the strategy and provides no obligation on authorities to promote and communicate the strategy to carers. The Committee recommends this section is enhanced by an appropriate amendment to ensure the strategies are widely available in an accessible manner, within a timescale appropriate to the needs of the carer.**

**Recommendation 12: The Committee feels there is significant potential to amend the proposed Measure through regulations; therefore recommends the first set of regulations to be passed under all sections, should be subject to the affirmative procedure.**

# 1. Introduction

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1. On 25 January 2010, the Deputy Minister for Social Services, Gwenda Thomas AM (“the Deputy Minister”), introduced the Proposed Carers Strategies (Wales) Measure (“the proposed Measure”) and made a statement<sup>1</sup> in plenary<sup>2</sup>.

2. At its meeting on 19 January 2010, the National Assembly’s Business Committee agreed to refer the proposed Measure to Legislation Committee No.5 (“the Committee”) for consideration of the general principles (Stage 1), in accordance with Standing Order 23.21. It also agreed that the Committee must report on the proposed Measure no later than 7 May 2010. The Business Committee subsequently agreed two further extensions of a week, requiring the Committee to report by 21 May 2010.

## *Terms of scrutiny*

3. At the Committee’s first meeting on 27 January 2010, the following framework was agreed within which to scrutinise the general principles of the proposed Measure:

To consider:

i) the need for a proposed Measure to deliver the stated objectives of:

- Ensuring that carers have the right information at the right time to support them in their caring role.
- Ensuring that statutory agencies properly engage with carers as partners in the provision of care involving them at all levels in the assessment, delivery and evaluation of care arrangements.

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;

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<sup>1</sup> ROP, 25 January 2010, available at: <http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop.htm?act=dis&id=163734&ds=1/2010#4> (NB: unless otherwise stated, subsequent references in this report to RoP refer to the proceedings of the Legislation Committee No.5.)

<sup>2</sup> A full meeting of the National Assembly for Wales

v) the views of stakeholders who will have to work with the new arrangements.

*The Committee's approach*

4. The Committee issued a general call for evidence and invited key stakeholders, primarily from within the field of health, local government and carers organisation, to submit written evidence to inform the Committee's work. A list of consultation responses is attached at page 53.

5. The Committee took oral evidence from a number of witnesses, details of which are attached at page 51.

6. The following report represents the conclusions and recommendations the Committee have reached based on the evidence received during the course of their work. The Committee would like to thank all those who have contributed.

## 2. Background

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

7. The principal power to enable the National Assembly to make a Measure in relation to carers strategies is contained in matter 15.9 in Field 15 of Schedule 5 to the Government of Wales Act 2006. Matter 15.9 was added by the *National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009*.<sup>3</sup>

*Explanatory Memorandum*

8. The Explanatory Memorandum<sup>4</sup> accompanying the proposed Measure states that:

“The purpose of this Measure is to enable the National Assembly to legislate to introduce a new requirement on the NHS and Local Authorities in Wales (“the relevant authorities”) to work in partnership to prepare, publish and implement a joint strategy in relation to carers.

The strategy will provide for the provision of information and advice to carers and for the effective involvement of the relevant authorities with carers when making decisions about the provision of services to or for carers or the person cared for.”<sup>5</sup>

9. The Explanatory Memorandum explains that the proposed Measure’s overall intention is to improve the lives of carers in the following key areas:

“to ensure that carers have the right information at the right time to support them in their caring role. The Carers’ Strategy Implementation Plan in Wales 2000 highlighted a need for the provision of easily accessible, relevant and factually correct information for carers, as well as acknowledging the need for a longer term view of the information needs of carers. The kind of information carers may need from time to time would

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<sup>3</sup> National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009 Available at <http://www.assemblywales.org/lco-ld7322-e.pdf>

<sup>4</sup> Welsh Assembly Government, *Explanatory Memorandum to the Proposed Carers Strategies (Wales) Measure*

<sup>5</sup> Explanatory Memorandum, paragraph 1.1

include information about financial benefits, employment provisions including flexible working, rights to a needs assessment, social services functions available to them, care planning for the person cared for, medicines management, safe handling and lifting and other matters related to the care of the person cared for.

- to ensure that statutory agencies properly engage with carers as partners in the provision of care involving them at all levels in the assessment, delivery and evaluation of care arrangements.”<sup>6</sup>

10. The Explanatory Memorandum also outlines the powers to make subordinate legislation contained within the proposed Measure. In respect of each of these powers the rationale for the application of subordinate legislation rests upon the need to avoid inappropriate detail on the face of the Measure and to provide flexibility to revise the types of information to be made available to carers, and the detail to be included in the strategy, as necessary.

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<sup>6</sup> Explanatory Memorandum, paragraph 1.1

### 3. General Principles and the need for legislation

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#### *Background*

11. The purpose of the proposed Measure is to enable the National Assembly for Wales to legislate to introduce a new requirement on the NHS and Local Authorities in Wales (“the relevant authorities”) to work in partnership to prepare, publish and implement a joint strategy in relation to carers.

#### *Evidence from Witnesses*

12. The majority of evidence received in relation to the general principles of the proposed Measure was positive. Most witnesses agreed with the need for legislation to introduce the requirement for the relevant authorities to work in partnership to produce carers strategies.

13. Carers Wales said the proposed Measure was “essential” and referred to their evidence submitted when scrutinising the *National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009*<sup>7</sup> relating to carers, where they stated “we thought that there was a gap in the legislation, particularly in relation to the engagement of the NHS. So, we support it wholeheartedly and think that it is necessary.”<sup>8</sup>

14. Similar support was received from the Welsh NHS Confederation who said it “supported the overall aims” of the proposed Measure and thought it was “good to see recognition of this hugely valued group of people”<sup>9</sup>

15. The Welsh Local Government Association (WLGA) said they “have believed from the beginning, in dialogue with our members, that there is a need for this proposed Measure.”<sup>10</sup>

16. Children’s advocate groups also supported the proposed Measure in providing support for young carers. The Children’s Commissioner for Wales stated there was a need for the legislation and that the

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<sup>7</sup> National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009 Available at <http://www.assemblywales.org/lco-ld7322-e.pdf>

<sup>8</sup> RoP, paragraph 129, 3 March 2010

<sup>9</sup> *ibid*, paragraph 7

<sup>10</sup> RoP, paragraph 7, 10 March 2010

proposed Measure is “an opportunity to incorporate the United Nations Convention on the Rights of the Child [UNCRC] as far as young carers are concerned.”<sup>11</sup>

17. Barnardo’s Cymru also supported the need for carers legislation stating:

“The short answer is that we do believe that there is a need for the proposed Measure and its overall aims..... We welcome the initial point of information, advice and the development of a strategy.”<sup>12</sup>

18. However, some witnesses, whilst supporting the principles of the legislation raised concerns that the effectiveness of the legislation would greatly depend on the detail contained in regulation arising from the proposed Measure. Wales Neurological Alliance stated:

“We endorse the aims of the legislation fully. It is very difficult to argue against it; it is a comparatively short enabling piece of legislation and certainly the Wales Neurological Alliance supported the LCO prior to this and gave evidence on that. However, we generally welcome this proposed Measure at the moment, although obviously the proof of the pudding is in the eating—in this case, the regulations that will follow.”<sup>13</sup>

19. Whilst the WLGA welcomed the duties imposed on the NHS and the impact on joint working, it felt that a requirement to produce another strategy contravenes an agreement on plan rationalisation. They said:

“...we are disappointed that a Measure is being used to prescribe a requirement for the production of another strategy. This contravenes directly the recently signed ‘New understanding’ between National and Local Government, which recognises the primacy of the four statutory plans following plan rationalisation.”<sup>14</sup>

20. Some witnesses also referred to the opportunity this legislation provided to consolidate existing laws relating to carers. Barnardo’s Cymru stated:

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<sup>11</sup> RoP, paragraph 8, 24 February 2010

<sup>12</sup> RoP, paragraph 111, 10 March 2010

<sup>13</sup> RoP, paragraph 100, 24 February 2010

<sup>14</sup> CS7, Written Evidence

“There has been a plethora of carers legislation for England and Wales over the last 15 years, notably from 1995. We think that there is a great opportunity to clarify what the Welsh Assembly Government can do to provide good, appropriate services for carers around Wales.”<sup>15</sup>

21. Carers Wales believed there were definite advantages to consolidating the existing legislation. For example, they suggested a set of regulations covering all the rights that carers currently have under the three existing carers Acts plus the new proposed Measure.

“There are definite advantages to consolidating the existing carers Acts, one of which would be that a set of regulations would be issued that would cover all the rights that carers currently have under the three existing carers Acts plus the new proposed Measure. That might make it easier for people to understand.”<sup>16</sup>

22. However, Carers Wales also acknowledged that consolidation of existing legislation could lead to major delays with implementation.

#### *Evidence from the Deputy Minister*

23. In relation to the need to introduce legislation, the Deputy Minister explained that this Measure was intended to support carers and help them maintain their own health and wellbeing. The Deputy Minister said:

“The proposed Measure is an important and timely impetus to improve support for the many carers in Wales.”<sup>17</sup>

24. The Deputy Minister explained that consolidating existing legislation would be “very time consuming” and that:

“Even if consolidation had been a feasible option, the extent of the work involved in disapplying aspects of existing carers’ legislation, in so far as they relate to Wales, and drafting them into the proposed Measure would have significantly delayed the development and introduction of this important piece of legislation.”<sup>18</sup>

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<sup>15</sup> RoP, paragraph 111, 10 March 2010

<sup>16</sup> RoP, paragraph 190, 3 March 201

<sup>17</sup> RoP, paragraph 9, 10 February 2010

<sup>18</sup> Legislation Committee No.5 Paper LC5(3)-08-10 Paper 1

### *Our View*

**The Committee agrees with the general principles of the proposed Measure and notes the broad support for the proposed Measure in the evidence received.**

**The Committee notes that witnesses expressed concerns regarding the consolidation of legislation, and believes that the consolidation of existing carers legislation would have made the process more user friendly. However, the Committee accepts the Deputy Minister's view that consolidating existing legislation would have delayed the implementation of the aims of this Measure.**

## 4. Section 1 – Carers

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### *Background*

25. Section 1 of the proposed Measure defines a “carer” and the “person cared for”.

26. A carer is defined as someone who provides or intends to provide a significant amount of care, on a regular basis, for a disabled child or for an individual aged 18 or over.

27. It excludes carers who are employed or carry out their duties as a carer on a formal basis by way of a formal agreement. Those who are volunteer carers, for example in a charity are also excluded from the definition.

28. The person being cared for is defined as a person who is provided care by a carer, or it is intended that care will be given to that person by a carer.

### *Evidence from witnesses*

29. Some witnesses had concerns that this section did not explicitly refer to young carers.

30. The Children’s Commissioner for Wales stated “I would far prefer to see young carers included on the face of this proposed Measure.”<sup>19</sup> The Commissioner expanded on this by stating:

“There stands to be more scope for identification if they [young carers] are included, because it will focus people’s minds, whether they work in health, in local authorities, or wherever. They need to start to think through their responsibilities and pick up on the fact that they have a responsibility to children in the family as well as to the person being cared for. I do not think—in fact, I know that that is not happening sufficiently well.”<sup>20</sup>

31. The Welsh NHS Confederation, stated that they were very concerned that young carers have:

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<sup>19</sup> RoP, paragraph 26, 24 February 2010

<sup>20</sup> *ibid*, paragraph 43

“their lives taken away from them because they do not have the educational opportunities that they should have ..... we need to reinforce what we can do for children and young people, through legislation, to make their opportunities equal to those of their peers that do not have a caring role.”<sup>21</sup>

32. Whilst the Welsh NHS Confederation accepted that specifically referring to young carers on the face of the proposed Measure would not lead to all problems young carers face being addressed, they did think “it would help to ensure some kind of resolution and would allow them to have lives.”<sup>22</sup>

33. In written evidence Children in Wales stated:

“Children in Wales would want to see the development of a fully coordinated service that considers the needs of the carer whatever age, that is able to bring together services for both children and adults to provide the family with the support they need based on a holistic assessment. If the measure includes young carers explicitly it would provide the opportunity to deliver holistic, seamless services to all carers.”<sup>23</sup>

34. Action for Children believed that including young carers on the face of the proposed Measure would assist with improved and more consistent delivery of information, advice and services to young carers and the person cared for and improve local collaborative working. Action for Children stated:

“We are concerned that the Measure, if it does not refer to young carers, and if the regulations do not require the development of a Young Carers Strategy as a subset of a local Carers Strategy, may fail to secure significant improvements in outcomes for young carers.”<sup>24</sup>

35. However, some witnesses felt that the proposed Measure as drafted would cover young carers and that by explicitly referring to them, other groups could be discriminated against.

36. Barnardo’s Cymru felt that young carers did not need to be referred to on the face of the proposed Measure:

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<sup>21</sup> RoP, paragraph 21, 3 March 2010

<sup>22</sup> *ibid*, paragraph 23

<sup>23</sup> CS17, Written Evidence

<sup>24</sup> CS21, Written Evidence

“if you put young carers on there, you will need to list all the other carers that might be seen as providing different levels of care or as having different needs. You understand that the risk with listing things is that you will miss someone off and they would therefore be excluded. We would probably like to see written on the face of the proposed Measure that it relates to a 'carer of any age', rather than 'carer', so that it specifies 'any age'.”<sup>25</sup>

37. However, the Association of Directors of Social Services Cymru (ADSS Cymru) believed that because of “a very different legal situation surrounding children, as well as their different needs” that young carers should be explicitly referred to and that Barnardo’s suggestion did not put enough emphasis on young carers. ADSS Cymru suggested using the term “young carers and carers of all ages” and further clarification could be provided in guidance.<sup>26</sup>

38. The WLGA felt that the needs of young carers and other groups should be addressed through other mechanisms such as regulations. They stated that Welsh local authorities had different opinions and the WLGA have taken a consensus which is:

“Generally, we feel that the proposed Measure should confine itself to high-level principles in law and that regulations and other strategies are the best vehicles for making sure that the needs of particular cohorts of the population are met. Therefore, we took the consensus view that this was for all carers, and that the needs of specific routes could be picked up through other mechanisms.”<sup>27</sup>

39. Carers Wales supported this view and stated:

“one of the pluses of the proposed Measure as currently drafted is that it does not focus only on adult carers. The definition of 'carer' removes the age limit, and we think that that is a big step forward.”<sup>28</sup>

40. When discussing the groups which would be covered by the proposed Measure, the Committee heard evidence from young people with caring responsibilities. It was noted that often a young

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<sup>25</sup> RoP, paragraph 125, 10 March 2010

<sup>26</sup> RoP, paragraph 103, 17 March 2010

<sup>27</sup> RoP, paragraphs 25 & 26, 10 March 2010

<sup>28</sup> RoP, paragraph 142, 3 March 2010

person would not be the primary carer, but in situations where there are dependant siblings and/or parents this may result in the young person taking a role as a secondary carer. The young carers felt it was important that the role played by secondary carers is recognised. A young carer, Hannah Spokes stated:

“I personally do not get a lot of information because it all goes through my mum because she is the parent.”<sup>29</sup>

41. The Committee noted that as defined in the proposed Measure, a carer would need to be an “individual who provides a substantial amount of care on a regular basis” therefore, a secondary carer would have to show that the level of care they provide meets this definition. The Committee referred to the evidence from the Legislation Committee which considered the *National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009* on 11 Feb 2009, where the issue of what constituted “substantial and regular” was accepted as being dependent on the circumstances of the case in question.

#### *Evidence from the Deputy Minister*

42. The Deputy Minister highlighted that young carers were included in the scope of the proposed Measure. She said her aim was for relevant authorities to include an additional chapter on young carers in the strategy, to place the focus entirely on them. The Deputy Minister said:

“I am quite clear that young carers fall within the scope of this proposed Measure. Indeed, it covers carers of all ages who fall within the definition of “carer” in section 1 of the proposed Measure. There is, therefore, no need, and no drafting justification, for young carers to be explicitly referred to on the face of the Measure.”<sup>30</sup>

43. The Deputy Minister’s written paper explained:

“What I intend is that the regulation making powers in section 5 will be used to require relevant authorities to ensure that appropriate consultation arrangements are in place for young carers and that there will be a separate chapter of the strategy

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<sup>29</sup> RoP, paragraph 191, 17 March 2010

<sup>30</sup> Legislation Committee No.5 Paper LC5(3)-08-10 Paper 1, 29 April 2010

focussing on young carers, their issues and priorities and how these are to be addressed.”<sup>31</sup>

*Our view*

**Recommendation 1: The Committee notes and accepts the Deputy Minister’s view that young carers are covered in the definition detailed in section 1. However, based on the evidence received the Committee recommends that young carers warrant an explicit reference in the definition of carers.**

**Recommendation 2: The Committee heard evidence of the important role played by secondary carers, who are often young people. The Committee noted that 20 hours care for an adult could be substantial and regular, similarly 5 hours care by a young carer whether primary or secondary could also be considered substantial and regular. The Committee recommends that to support the role played by carers in a secondary role the definition of carer should include reference to both primary and secondary carers.**

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<sup>31</sup> Legislation Committee No.5 Paper LC5(3)-08-10 Paper 1, 29 April 2010

## 5. Section 2 - Duty to produce strategy

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### *Background*

44. Section 2 of the proposed Measure makes provision for Welsh Ministers, by regulations, to require two or more relevant authorities to prepare and publish a strategy setting out how they will work together to provide information and advice which is appropriate to carers.

45. In addition, the strategy must set out how the relevant authorities will ensure that before they make directions of a general nature regarding the provision of services to carers and the person they care for, they will consult carers before making such decisions.

### *Evidence from witnesses*

46. Witnesses were generally supportive of imposing a duty on local authorities and the NHS to produce a carers' strategy. Witnesses particularly welcomed a duty being placed on the NHS. Much of the evidence received maintained that Local Authorities Social Services departments were viewed as having 'responsibility' for carers and support from the NHS was limited. Pembrokeshire Association of Voluntary Services stated:

"so far it has been very difficult to get 'health' (both NHS and LHB) involved with and engaged in understanding carers issues, working in partnership with carers and carers organisations to support carers."<sup>32</sup>

47. The WLGA also felt the responsibility for carers currently rested only with local authorities and stated:

"There is currently no duty on the NHS, and we have said consistently that we feel that there should be. Given that we are trying to promote partnership working in a tangible way in Wales, we feel that it is right that a duty should be placed on those organisations."<sup>33</sup>

48. Carers Wales felt quite strongly that the NHS should have a duty imposed on it and stated:

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<sup>32</sup> CS11, Written Evidence

<sup>33</sup> RoP, paragraph 28, 10 March 2010

“There needs to be a statutory duty on the NHS and one mechanism by which we can get most effective and quick engagement from it is to make it the lead organisation. Unless there is a lead organisation, they will not take this as seriously as we think it needs to be taken.”<sup>34</sup>

49. The Welsh NHS Confederation also thought a duty would be beneficial stating “within the NHS family, we need to understand that we need to work together. If the legislation does that, yes, I think that it is important.”<sup>35</sup>

50. Stonewall Cymru, in their written evidence stated:

“We consider this requirement essential to ensuring that carers’ strategies address the real needs of carers, rather than those considered to be carers’ needs by responsible authorities.”<sup>36</sup>

51. A number of views were expressed by witnesses regarding the requirement to be placed on authorities in the proposed Measure to ensure that the authorities consult carers before they make decisions of a general nature regarding the provisions of services to or for carers and the persons they care for.

52. There was wide support for the duty to consult, and many respondents emphasised its importance to carers. In written evidence, Age Concern Cymru/Help the Aged in Wales stated:

“we welcome the intention to place duties on health bodies and local authorities to consult with carers before decisions are made about service provision. This will be an improvement as we regularly hear frustrations that people are only consulted after they feel the decisions have already been made.”<sup>37</sup>

53. Whilst the duty to consult was welcomed, concerns were raised over the validity of the consultation process. Barnardo’s Cymru emphasised that consultation should not be a one-off event but should form part of a long-term relationship and suggested that:

“the words ‘*at each point of review*’ should be added to the end of sections 2(1)(b) and 2(1)(c) of the proposed Measure. This would mean that it would not be a single stand-alone

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<sup>34</sup> RoP, paragraph 174, 3 March 2010

<sup>35</sup> *ibid*, paragraph 31

<sup>36</sup> CS16, Written Evidence

<sup>37</sup> CS23, Written Evidence

consultation and strategy, but a strategy that would need continual revisiting and reviewing, and carers would need to be involved in that process.”<sup>38</sup>

54. Wales Neurological Alliance suggested including a minimum standard of consultation on the face of the Measure. They stated that:

“...section 2(1)(c), where we proposed minimum standards on the face of the proposed Measure that a consultation may include, but would not be limited to, stakeholder meetings, surveys and the 28-day consultation period. That was to ensure that there was at least a minimum standard for this level of consultation, just to alleviate our fears that a future Minister might interpret the proposed Measure at the bare minimum of what is in front of us.”<sup>39</sup>

55. In written evidence from the Access for Black & Minority Ethnic Children with Disabilities and/or Chronic Illnesses (ABCD) Cymru, they stated that the section was “too vague, and certain standards need to be specifically outlined here in terms of what this consultation process would involve.”<sup>40</sup>

56. Concerns were also raised about possible breaches of confidentiality where carers may be consulted on services for the person they care for. In their written evidence the WLGA stated:

“We do have concerns about the requirement that a carer should be consulted on what services to provide for the person they care for, this may breach patient confidentiality or may not reflect the wishes of the service user, especially if they are in conflict with their carer, which is not unknown.”<sup>41</sup>

57. This view was supported by ADSS Cymru, who also asked that “consideration is given to these issues in the guidance.”<sup>42</sup>

58. Concerns were raised that the list of “*relevant authorities*” outlined in section 2(3) of the proposed Measure, did not include some local authority functions from the outset, particularly education

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<sup>38</sup> RoP, paragraph 160, 10 March 2010

<sup>39</sup> RoP, paragraph 116, 24 February 2010

<sup>40</sup> CS15, Written Evidence

<sup>41</sup> CS7, Written Evidence

<sup>42</sup> CS10, Written Evidence

services, which can play an important role in supporting young carers.

59. Barnardo's Cymru stated that:

"We think that local education authorities should be on the face of the proposed Measure."<sup>43</sup>

60. They added that:

"education is a key part of their lives and it is therefore central to the carers who we work with."<sup>44</sup>

61. Action for Children reiterated this view stating:

"we would therefore recommend that the local Education Department of the local authority and schools should also be 'responsible authorities' in the Measure as they have a crucial role in identifying and supporting young carers."<sup>45</sup>

62. Carers Wales also noted the importance of education being involved from the outset. They said:

"I personally think that education should be one of those initial groupings that are involved..... I would have thought that any partnership that wanted to be as inclusive as possible would engage with education, not only for young carers, but for everyone's sake."<sup>46</sup>

63. Whilst the Children's Commissioner for Wales felt that the list of four relevant authorities was "pretty comprehensive", he added that:

"...the list of four is fine, but the issue for the regulations is that, if we are thinking about this comprehensive service for carers, as far as young carers are concerned, almost every component of a local authority's function—education being right up there—has a responsibility to provide services and support for young carers. So, that is a key task for regulation."<sup>47</sup>

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<sup>43</sup> RoP, paragraph 151, 3 March 2010

<sup>44</sup> *ibid*, paragraph 153

<sup>45</sup> CS21, Written Evidence

<sup>46</sup> RoP, paragraph 158, 3 March 2010

<sup>47</sup> RoP, paragraph 63, 24 February 2010

64. The Committee heard evidence from two young people who are carers, the young carers spoke of their experiences of education and stated that education should be key in identifying young carers and needed to be included in the list “because every young person in the country is entitled to an education—that is where they spend most of their time”. One of the young carers, Hannah Spokes felt that schools are often unaware that pupils are young carers and therefore no allowance is made for them “I think that a lot of young carers could be missed in the identification process, because schools are not aware of them or they just label them as troublemakers.”<sup>48</sup>

#### *Evidence from the Deputy Minister*

65. In a statement in plenary on 26 January 2010, the Deputy Minister stated that:

“This proposed Measure can embrace all local government responsibilities, but the view of the stakeholder group was that a big-bang approach to this at the very beginning would be unmanageable. Therefore, we have decided to cover, in the first instance, social services and possibly housing.”<sup>49</sup>

66. In written evidence to the Committee the Deputy Minister said:

“I can confirm that local authority education functions do fall within the scope of the proposed Measure.”<sup>50</sup>

67. When questioned, the Deputy Minister said:

“I recognise what young carers say about education, and we must emphasise that local authorities currently have the responsibility to seek to identify young carers, and this proposed Measure does not take that obligation away....

However, the intention is to roll it out and to include the education service. My fear was that the big-bang approach would not have been manageable and I feel that a proper, rolled-out process with consistent development is crucial. Consistency, in my view, is exceedingly important: we do not want a patchwork, postcode thing to develop in relation to this

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<sup>48</sup> RoP, paragraph 202, 17 March 2010

<sup>49</sup> RoP, Plenary meeting, 26 January 2010

<sup>50</sup> Legislation Committee No.5 Paper LC5(3)-08-10 Paper 1, 29 April 2010

strategy. A properly developed, stepped approach is the best way to serve all carers, including young carers.”<sup>51</sup>

68. Addressing the issue of confidentiality between carer and the person being cared for, the Deputy Minister believed there should not be any issues of confidentiality and in situations where there may be a conflict, she explained:

“Where any tensions arise I would expect these to be fully explored including, if necessary considering mediation. Where consent to share personal information is withheld, carers can still be provided with as much information as can be shared without breaching confidentiality or the data protection act.”<sup>52</sup>

### *Our View*

**The Committee notes the evidence and recognises that the onus for supporting carers has previously rested with local authorities. However, the Committee believes that the NHS also has a large role to play in supporting carers, and is, therefore, pleased to see this duty being placed on the NHS.**

**The Committee is satisfied that steps will be taken to ensure there is no breach of confidentiality between the cared for and the carer.**

**Recommendation 3: The Committee believes that section 2(1)(c) does not provide enough detail on the face of the proposed Measure as to how consultation should be undertaken. The Committee recommends the following amendment (or words of similar effect) are inserted into the proposed Measure at section 2, page 2, line 24 after ‘carers’, insert ‘and pay due regard to consultation responses’.**

**Recommendation 4: The Committee accepts the Deputy Minister’s concerns over the impact of imposing duties on all ‘relevant authorities’ from the outset. However, the Committee heard from many witnesses about the importance of educational services in supporting young carers and strongly recommends that educational services are included in the first set of regulations.**

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<sup>51</sup> RoP, paragraphs 60 and 61, 29 April 2010

<sup>52</sup> Legislation Committee No.5 Paper LC5(3)-08-10 Paper 1, 29 April 2010

**Recommendation 5: The Committee recommends that the proposed Measure is amended to allow Welsh Ministers, by regulations, the ability to add to the list of ‘relevant authorities’ detailed under section 2(3).**

## 6. Section 3 - Appropriate information and advice

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### *Background*

69. Section 3 provides the Welsh Ministers with the power to make regulations setting out further provision about what constitutes appropriate information or advice as necessary.

70. Appropriate information and advice is defined in the proposed Measure as information and advice which is likely to be of interest or benefit to carers in their caring role or the person cared for. The proposed Measure provides that this information and advice should be provided free of charge.

### *Evidence from witnesses*

71. The majority of respondents felt that the definition of ‘appropriate information and advice’ was too general or vague and needed further clarification. ABCD felt that “a more comprehensive definition of “appropriate” should have been provided at this stage.”<sup>53</sup>

72. ABCD went on to add that section 3 was unclear concerning what “appropriate” advice meant, which could give “agencies and authorities the opportunity to not fulfill this strategy properly if they are not given specific criteria to abide by.”<sup>54</sup>

73. Citizens Advice Cymru were concerned that information and advice for carers should be independent and impartial and suggested amending the wording “appropriate information and advice” to include the word “independent”.<sup>55</sup>

74. Aneurin Bevan Local Health Board suggested:

“it may be appropriate to determine a minimum requirement upon organisations for information for carers and the cared for, however there would need to be appropriate resource to support these responsibilities.”<sup>56</sup>

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<sup>53</sup> CS15, Written Evidence

<sup>54</sup> *ibid*

<sup>55</sup> CS22, Written Evidence

<sup>56</sup> CS3, Written Evidence

75. The WLGA also raised the issue of resources and felt that detail would be needed in regulations and that a balance was needed between what information was beneficial to carers and what resources would allow. The WLGA stated that section 3:

“...remains vague, stating that appropriate information would constitute that which is ‘*likely to be of interest or benefit to carers in their role as such*’. Regulations must ensure that relevant authorities are clear enough on what this means, in order to develop an effective information and advice service.”<sup>57</sup>

76. They added that:

“There is a need for a balance to be drawn here to ensure that the information required is derived from what carers have indicated they would find helpful, and what it is within the gift of local authorities and health to provide.”<sup>58</sup>

77. Some witnesses felt the provision in the proposed Measure for ‘*appropriate information and advice*’ was satisfactory. When asked whether the term was prescriptive enough in terms of a definition, the Welsh NHS Confederation stated “I think that it is; it is about taking planned steps regarding what information is provided.”<sup>59</sup>

78. The Welsh NHS Confederation and other witnesses felt that information should be tailored to suit individual’s needs rather than a “‘one size fits all’ approach.”<sup>60</sup> The Welsh NHS Confederation believed that whilst the principle of providing the same information to everyone was admirable, it needed to be tailored to individuals’ particular needs and should not conflict with the information that they are receiving for those who are cared for.<sup>61</sup>

79. ABCD suggested specific reference should be made to particular information needs of hard to reach groups, such as refugees and asylum seekers. They also said:

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<sup>57</sup> CS7, Written Evidence

<sup>58</sup> *ibid*

<sup>59</sup> RoP, paragraph 19, 3 March 2010

<sup>60</sup> CS15, Written Evidence

<sup>61</sup> RoP, paragraph 19, 3 March 2010

“In addition, it is important to highlight in this section that religious and cultural needs have a significant impact upon how ‘appropriate’ information is.”<sup>62</sup>

80. Children’s advocate groups supported the need for information which is audience appropriate. The Children’s Commissioner for Wales stated:

“We would seek assurances that the ‘appropriate information and advice’ would facilitate the UNCRC article 12 entitlement which would necessitate age appropriate material and appropriately trained staff to deal with young carers.”<sup>63</sup>

81. During evidence provided by young carers, Hannah Spokes explained that as advice and information was generally provided to the primary carer, a secondary carer’s needs were not always met saying “I personally do not get a lot of information because it all goes through my mum because she is the parent.”<sup>64</sup>

82. Young carers also spoke of the importance of voluntary sector services in providing information and support for young carers. Hannah Spokes said “If I need any questions answered or if I need to find anything out, I go straight to ‘young carers’<sup>65</sup> because that is the only way I know how to get information.”<sup>66</sup>

#### *Evidence from the Deputy Minister*

83. In written evidence the Deputy Minister informed the committee that:

“I am confident that the regulation making power in section 3(2) of the proposed Measure is sufficiently wide enough to encompass information which is both generic and specific in nature and to allow for ease of accessibility and availability of appropriate information and advice when and where it is needed.”<sup>67</sup>

84. The Deputy Minister said:

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<sup>62</sup> CS15, Written Evidence

<sup>63</sup> CS1, Written Evidence

<sup>64</sup> RoP, paragraph 191, 17 March 2010

<sup>65</sup> A group to support young carers provided by Barnardo’s Cymru

<sup>66</sup> RoP, paragraph 197, 17 March 2010

<sup>67</sup> Legislation Committee No.5 Paper LC5(3)-08-10 Paper 1, 29 April 2010

“I can assure the Committee that the key role of the Third Sector will be fully taken into account as we develop our implementation proposals through Regulations and guidance.”<sup>68</sup>

### *Our View*

**Recommendation 6: The Committee believes that the definition of ‘appropriate information and advice’ is not sufficient and therefore recommends that an amendment is made to section 3 to ensure a more comprehensive definition of “appropriate” is provided.**

**The Committee is reassured to hear of the Deputy Minister’s commitment to the third sector. Evidence has shown that the work of this sector is vital to carers, and statutory organisations need to ensure their continued involvement.**

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<sup>68</sup> Legislation Committee No.5 Paper LC5(3)-08-10 Paper 1, 29 April 2010

## 7. Section 4 – Consultation

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### *Background*

85. This section confers on Welsh Ministers the power to make regulations specifying in detail the steps which relevant authorities must or may take in satisfying their duty to consult carers which is contained in section 2(1)(b) and (c) of the proposed Measure.<sup>69</sup>

### *Evidence from Witnesses*

86. All the witnesses were supportive of the power conferred on Welsh Ministers to make regulations specifying steps to be taken by the relevant authorities in satisfying their duty to consult carers. However, many witnesses questioned whether more detail should be given as to how the Welsh Ministers can prescribe the steps to be undertaken when consulting carers.

87. The Wales Neurological Alliance noted that the success of this section in involving carers is largely dependent on the detail in the regulations, they stated:

“we have to see what regulations come out of the proposed Measure. As drafted, if the Deputy Minister so wishes, it has the potential to revolutionise the level at which carers are involved in looking at, for example, specific services and centres of information for them and the person they care for. So, they could be involved at the maximum level and maximum interpretation of section 2. On the other hand, a more minimalist interpretation would be that that involvement would mean a letter being sent to them to ask for their views in the form of a survey. That area in particular is one where we have to see what the regulations look like.”<sup>70</sup>

88. The Wales Neurological Alliance went on to suggest a minimum standard of consultation for the Measure:

“..... minimum standards on the face of the proposed Measure that a consultation may include, but would not be limited to, stakeholder meetings, surveys and the 28-day consultation

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<sup>69</sup> Explanatory Memorandum, page 23

<sup>70</sup> RoP, paragraph 116, 24 February 2010

period. That was to ensure that there was at least a minimum standard for this level of consultation, just to alleviate our fears that a future Minister might interpret the proposed Measure at the bare minimum of what is in front of us”<sup>71</sup>

89. However, the Welsh NHS Confederation believed that the duty to consult was strong enough.

“I do not think that you would need legislation to help you to consult with people effectively, as long as you feed back those relevant elements to them. They have a right to that, in terms of the transparent development of services, and to have their views taken into account.”<sup>72</sup>

90. The WLGA agreed with this:

“we feel that sufficient arrangements are already in place.”<sup>73</sup>

91. Witnesses also raised the issue that consultation needs to be more than a ‘tick-box exercise’ and regard needs to be given to consultation responses. The Office of the Commissioner for Older People in Wales stated:

“...it is better to make it clear that involvement is required at all stages, so that consultation does not occur only when the strategy has been well defined. That also addresses the potential difficulty that there is no provision to go back to carers to explain what has been done, or to involve carers in evaluation and in reporting once the strategy has been developed.”<sup>74</sup>

### *Evidence from the Deputy Minister*

92. The Deputy Minister explained that section 4 would allow Welsh Ministers to prescribe consultation requirements according to local circumstances. The Deputy Minister said:

“It is not our intention to allow relevant authorities to opt out of the core elements of consultation that we shall propose in draft regulations after further discussions with stakeholders, including representatives of relevant authorities and carers. An

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<sup>71</sup> RoP, paragraph 116, 24 February 2010

<sup>72</sup> RoP, paragraph 91, 3 March 2010

<sup>73</sup> RoP, paragraph 54, 10 March 2010

<sup>74</sup> RoP, paragraph 59, 17 March 2010

example of what I mean by 'core elements' could be that the person who is consulted should have the right to expect a reasoned response to the points that he or she has made. At the same time, it is important that outside these core elements, relevant authorities retain discretion to take account of particular local circumstances. I think that this is a sensible approach.”<sup>75</sup>

### *Our View*

**Recommendation 7: The Committee believes that the duty to consult with carers is not strong enough and therefore recommends that an amendment is made to line 20 of section 4, removing the words 'or may'.**

**Recommendation 8: The Committee recommends section 4 should be further amended to insert a minimum standard of consultation prescribed by Welsh Ministers in the proposed Measure. This could define the consultation and the requirement to provide feedback on responses received. The Committee recommends the following amendment (or words of similar effect) is inserted into section 4 of the proposed Measure:**

**“The consultation may include (but is not limited to) stakeholder meetings, a survey of carers and their representatives and service users.”**

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<sup>75</sup> RoP, paragraph 91, 10 February 2010

## 8. Section 5 - Further provision about strategies

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### *Background*

93. Section 5 confers on Welsh Ministers the power to make regulations containing further provisions as to how the relevant authorities are to prepare and publish their strategies.

94. Section 5 also lists some examples of the further provisions the Welsh Ministers may make in regulations with respect to the preparation and publication of strategies.

95. The section also provides that Welsh Ministers may designate an NHS organisation as being the lead authority for each strategy, the designation of lead authority being for the purposes of co-ordinating and overseeing the preparation, publication and any subsequent review of the strategy.

### *Evidence from Witnesses*

96. Much of the evidence received stated that, the responsibility for providing support and advice to carers currently lies firmly with local authorities. However, witnesses believed that often health professionals were best placed to recognise a person with a caring role and in signposting carers to sources of support and information.

97. Carers Wales expressed concerns that if the NHS body were not the lead authority, “they will not see it as an important activity and one which they can choose to opt out of.”<sup>76</sup>

98. Barnardo’s Cymru agreed and stated that: “the patient is the route to identifying the carer. So, it makes sense to us that the health service should be the lead.”<sup>77</sup>

99. The Older People’s Commissioner for Wales supported the opportunity for the NHS to take the lead, as “health providers are generally acknowledged to be underperforming in recognising and addressing the needs of carers”.<sup>78</sup> The Commissioner felt that the NHS was often the first point of contact for carers and the cared for,

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<sup>76</sup> CS4, Written Evidence

<sup>77</sup> RoP, paragraph 137, 10 March 2010

<sup>78</sup> RoP, paragraph 33, 17 March 2010

especially for significant numbers of older people. The Commissioner suggested that an NHS lead could have the advantage of facilitating seven regionally focused strategies with a local focus provided by individual local authorities. She stated:

“health is lagging behind, but one of the key attractions for us in having health bodies as lead bodies is that, hopefully, we will have fewer strategies.”<sup>79</sup>

100. The Civil Service Pensioners’ Alliance agreed that an NHS lead body would be beneficial to older carers. They stated:

“We are especially pleased to note the duty on the NHS to work with partners to develop local information strategies. We believe that the measure proposed will be of benefit to older carers, a group which can have particular difficulties in getting the right information at the right time as their circumstances change, or they become carers for the first time.”<sup>80</sup>

101. However, other witnesses expressed reservations and felt that the lead should be agreed locally or designated by Welsh Ministers.

102. During their evidence the WLGA and Barnardo’s Cymru said that information that had been proven to work and best practice should be shared between the NHS and Local Authorities and built upon to ensure it is not lost. The WLGA stated:

“That is our main concern, rather than who has the lead: it is about ensuring that local partnerships and local planning are taken into account and are adequately reflected at whatever level the strategies are produced.”<sup>81</sup>

103. Although in favour of an NHS lead, the WLGA had concerns about the number of strategies needed and about loss of coterminous Local Health Boards/local authority boundaries. In their written evidence they stated:

“By placing the lead on the NHS it recognises that they are the agency with the majority of direct contact with carers. However this leads to obvious, and as yet unresolved questions about how this would work in practice. How many strategies would be

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<sup>79</sup> RoP, paragraph 50, 17 March 2010

<sup>80</sup> CS18, Written Evidence

<sup>81</sup> RoP, paragraph 32, 10 March 2010

required and how would this work in the context of the loss of co-terminus boundaries?”<sup>82</sup>

104.They went on to add that:

“if there are some areas where a strategy is working effectively and led by the local authority, we see no reason why that should be changed. In fact, that may be replicated in other areas where it is felt to be more appropriate.”<sup>83</sup>

105.This view was shared by Stonewall Cymru. Whilst they supported the power to designate an NHS lead organisation, they felt that Welsh Ministers should:

“encourage responsible authorities to designate lead authorities amongst themselves by agreement and to only use this power in the case that such agreement is not forthcoming.”<sup>84</sup>

106.NHS respondents were generally opposed to the proposed NHS lead. Hywel Dda Local Health Board stated:

“...colleagues in the local authorities have for years developed services, understanding and engagement with carers. The responsibility should/could lie with Partnership Boards or Local Service Boards.”<sup>85</sup>

107.NHS respondents were also concerned that there would be a lack of continuity and that good practice may be lost if local authorities did not take the lead. The Welsh NHS Confederation stated:

“...many of the statutes in place lie with local government, and I would hate to think that we would make the situation more complex by divvying that up and making health responsible, which would take away from what is already there.”<sup>86</sup>.

108.This view was shared by the Wales Neurological Alliance who stated that:

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<sup>82</sup> RoP, paragraph 137, 10 March 2010

<sup>83</sup> *ibid*

<sup>84</sup> CS16, Written Evidence

<sup>85</sup> CS3, Written Evidence

<sup>86</sup> RoP, paragraphs 31, 33 and 34, 3 March 2010

“there is real concern that good examples of best practice in local authorities will be lost if an NHS body or an LHB is designated as the lead organisation.”<sup>87</sup>

109. In relation to the provision for Welsh Ministers to make regulations as to the preparation and publication of the strategy, some witnesses emphasised the importance of maintaining a balance in regulations between central direction and local flexibility. Aneurin Bevan Health Board stated:

“It is important however that when giving national direction, that there is also adequate flexibility for the reflection of local needs.”<sup>88</sup>

110. The WLGA and ADSS Cymru were concerned that the use of regulations may micro-manage delivery at a local level. ADSS Cymru stated:

“We would refer to the agreement between the Assembly Government and local government, which is predicated on the principle that national government sets the strategic direction of policy but it is local government that delivers on that. We appreciate that the Assembly Government will want to clearly communicate its expectations.”<sup>89</sup>

111. Whilst Stonewall Cymru felt the powers conferred on the Welsh Ministers were appropriate and necessary to achieving the aims of the proposed Measure, they also felt that these powers should be utilised proportionately and that responsible authorities retained the freedom to adapt strategies to meet local area needs.<sup>90</sup>

112. Carers Wales felt that the powers for Welsh Ministers to make regulations under section 5 “are essential if the strategies are to be dynamic and become mainstreamed as a priority area of work within the NHS and the partner authorities.”<sup>91</sup>

### *Evidence from the Deputy Minister*

113. In written evidence the Deputy Minister informed the Committee that:

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<sup>87</sup> RoP, paragraph 109, 24 February 2010

<sup>88</sup> CS3, Written Evidence

<sup>89</sup> CS10, Written Evidence

<sup>90</sup> CS16, Written Evidence

<sup>91</sup> CS4, Written Evidence

“...the NHS has substantially more contact with carers than local authorities it seemed appropriate for NHS organisations to be designated as the lead.”<sup>92</sup>

114. She added that:

“However, it is important to recognise that Section 5(3) of the proposed Measure provides that Welsh Ministers may, for each strategy, designate an NHS organisation as the lead authority.... There is though the option for Welsh Ministers not to designate a lead authority and for the responsible authorities to simply work together in partnership.”<sup>93</sup>

### *Our View*

**Recommendation 9: The Committee does not believe that the NHS should always be the lead authority and this should be locally agreed or designated by Welsh Ministers. The Committee notes that the proposed Measure allows that Welsh Ministers may "designate an NHS organisation as the lead authority". However, there is no provision for Welsh Ministers to designate another lead authority when it may be required. The Committee recommends that the provision is added to section 5(3) to allow Welsh Ministers to designate any “relevant authority” as the lead authority.**

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<sup>92</sup> Legislation Committee No.5 Paper LC5(3)-08-10 Paper 1, 29 April 2010

<sup>93</sup> *ibid*

## 9. Section 6 - Submissions of draft strategy to Welsh Ministers

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### *Background*

115. Section 6 enables the Welsh Ministers, by regulations, to make provision as to how and when the responsible authorities must submit their strategies to the Welsh Ministers and publish them.

116. Responsible authorities must not publish a strategy in its final form, until such time as they have sent a draft strategy to the Welsh Ministers, and the Welsh Ministers are satisfied that the draft strategy complies with the requirements, or if the Welsh Ministers upon receipt of a draft strategy, have issued directions stating what the responsible authorities must do in order to ensure that the strategy does comply with the requirements, that such directions have been complied with.

117. This section also confers on the Welsh Ministers the power to make regulations specifying how and when the provisions of this section 6 must be complied with.

### *Evidence from Witnesses*

118. The Local Health Boards generally favoured submitting strategies to the Welsh Minister as consistent with current practice on Health, Social Care and Well Being Strategies. Aneurin Bevan Local Health Board stated:

“These arrangements would be consistent with the duty of care placed on both the National Health Service and Local Authorities in the development of Health Social Care and Well Being Strategies. However, in this scenario, we believe, strategies are submitted to Welsh Assembly Government as opposed to direct to the responsible Minister.”<sup>94</sup>

119. The Wales Neurological Alliance believed submission to the Deputy Minister would be a good provision as it would lead to a more uniform standard of delivering the strategy.

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<sup>94</sup> CS3, Written Evidence

120. However, concerns were raised by the WLGA and ADSS Cymru that the requirement was “delving into micro-management” which may undermine local discretion.<sup>95</sup> The WLGA went on to add:

“We also feel that the Assembly Government’s role is to set the strategic context and then, through clear regulations and guidance, allow the lead statutory agencies to deliver on that. We also question it with regard to capacity, namely whether or not that is an appropriate use of the resource.”<sup>96</sup>

121. The WLGA also felt that to ensure all 22 local authorities have similar strategies, the regulations should define what should be included as well as good practice and collaboration.

“There is a lot of evidence now of where authorities and agencies are using good practice and templates and are sharing information among themselves and collaborating in a way that produces consistency. There are also inspection regimes both in the NHS and in local government that will take that into account and they spend a vast amount of time reviewing documents and commenting on consistency or lack of it. The Deputy Minister would have all that available and that is why we said that if the Deputy Minister requires a certain level of scrutiny to satisfy itself that this has been achieved, there are other mechanisms that she can use.”<sup>97</sup>

122. Barnardo’s Cymru, suggested that an implementation and scrutiny plan should be on the face of the proposed Measure. They stated:

“We believe that the proposed Measure should call for the delivery of a strategy, an implementation plan and a scrutiny plan to Welsh Ministers. That scrutiny plan should tell Welsh Ministers how it is intended that the implementation and the strategy will be scrutinised, so that it is signed off as a package.”<sup>98</sup>

123. Princess Royal Trust for Carers and Crossroads Care shared this view, stating:

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<sup>95</sup> RoP, paragraph 36, 10 March 2010

<sup>96</sup> *ibid*

<sup>97</sup> *ibid*, paragraph 38,

<sup>98</sup> RoP, paragraph 116, 10 March 2010

“The requirements for monitoring, review and implementation will be critical to successful delivery of information to carers at the right time and place to aid them and the person they care for.”<sup>99</sup>

### *Evidence from the Deputy Minister*

124. In written evidence the Deputy Minister stated that:

“My aim is to use the regulation making powers in the proposed Measure to establish a monitoring and evaluation framework for the strategies that focuses mainly on appropriate and proportional arrangements to ensure local accountability. Under section 6 of the proposed Measure Welsh Ministers have no role in formally approving any draft strategy. Their role is restricted to ensuring that any draft strategy complies with the requirements imposed by or under the proposed Measure.....

The strategies will fall within the inspection remit of both the Care and Social Services Inspectorate Wales and the Healthcare Inspectorate Wales.”<sup>100</sup>

### *Our View*

**Recommendation 10: The Committee accepts that strategies should be submitted to Welsh Ministers. However, the Committee recommends a minimum standard of expectation should be included in regulations, which should include an implementation plan and review plan.**

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<sup>99</sup> CS13, Written Evidence

<sup>100</sup> Legislation Committee No.5 Paper LC5(3)-08-10 Paper 1, 29 April 2010

## 10. Section 7 - Public access to strategy

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### *Background*

125. This section details how the strategies should be made available to the public. Section 7 requires each authority responsible for a strategy to make a copy available for inspection at the principal office.

### *Evidence from Witnesses*

126. Most witnesses did not comment on this section. However, Stonewall Cymru raised concerns that this section did not go far enough, and stated:

“there will be no obligation placed upon responsible authorities to ensure that the strategy is widely promoted and known to carers. This again does not contribute to increasing the involvement of carers in the strategies and to ensuring that strategies are responsive to the needs of carers.”<sup>101</sup>

127. Stonewall continued with concerns about the section:

“Additionally the requirement to make the strategy available for inspection ‘at all reasonable hours’ could exclude some carers from accessing the strategy, due to the timing of their caring responsibilities.”<sup>102</sup>

128. To ensure wide availability, most witnesses addressed the need for information to be accessible in a number of formats. The Older People’s Commissioner for Wales said that “...we must ensure that the information is provided in many ways.”<sup>103</sup>

129. Children in Wales indicated that:

“The information available should be part of the generic information developed for all carers, but needs to be available in a format accessible to young people, and needs to address issues including education, leisure and family support.”<sup>104</sup>

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<sup>101</sup> CS16, Written Evidence

<sup>102</sup> CS16, Written Evidence

<sup>103</sup> RoP, paragraph 71, 17 March 2010

<sup>104</sup> CS17, Written Evidence

130. Jemma England (private individual) suggested that information should be available:

“...through as many mediums as possible, such as the internet, telephone information line and printed information.”<sup>105</sup>

#### *Evidence from the Deputy Minister*

131. The Deputy Minister suggested that the requirement on authorities to promote and ensure the strategy is known to carers would be developed as regulations were introduced. The Deputy Minister stated:

“we will embrace, within regulations, the obligation to raise awareness of the strategies and the monitoring and evaluation of the strategies as well. I do not have personal concerns about what you have just said because we can embrace that within regulations.”<sup>106</sup>

#### *Our View*

**Recommendation 11: The Committee believes section 7 allows for the very minimum promotion of the strategy and provides no obligation on authorities to promote and communicate the strategy to carers. The Committee recommends this section is enhanced by an appropriate amendment to ensure the strategies are widely available in an accessible manner, within a timescale appropriate to the needs of the carer.**

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<sup>105</sup> CS14, Written Evidence

<sup>106</sup> RoP, paragraph 87, 29 April 2010

## 11. The power to make subordinate legislation

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### *Background*

132. The proposed Measure contains enabling powers for Welsh Ministers to implement and set out the detail of the preparation and publication of strategies for carers in regulations and orders.

133. The Explanatory Memorandum to the proposed Measure states:

“Given the nature of the proposed subordinate legislation, being concerned primarily with the administrative arrangements governing the preparation and publication of the strategy, the legislation will be subject to the **negative procedure**.”<sup>107</sup>

### *Evidence from Witnesses*

134. There was some concern that the proposed Measure contained insufficient detail, and that too much was being left to subordinate legislation. The Wales Neurological Alliance was critical of the balance of power between the legislature and the Welsh Minister. They stated:

“This proposed Measure is very much an enabling Measure—it is only five pages long. However, what could come out of that by regulation could make a real change to how carers across Wales are treated.”<sup>108</sup>

135. The Wales Neurological Alliance believed that due to the detail which would be contained in the first set of regulations, these regulations should be subject to enhanced scrutiny arrangements:

“we feel that the affirmative procedure should be used in the first instance, and we are not alone in holding that view.”<sup>109</sup>

136. Barnardo’s Cymru and the Children’s Commissioner for Wales agreed the affirmative procedure should be utilised for the first set of regulations.

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<sup>107</sup> Explanatory Memorandum, paragraph 5.3

<sup>108</sup> RoP, paragraph 132, 24 February 2010

<sup>109</sup> *ibid*

137. The Office of the Older People's Commissioner for Wales suggested that if more detail was contained on the face of the proposed Measure the regulations could be subject to the negative procedure.

“So much detail is needed at the moment that we would probably favour going down the affirmative route. However, if there were a few more details on the face of the proposed Measure, perhaps the negative route could be used more effectively.”<sup>110</sup>

138. However, some organisations felt the first set of regulations did not need to be subject to the affirmative procedure. The Princess Royal Trust for Carers and Crossroads Care stated:

“We feel that the negative resolution procedure is fine in this case as we believe there is nothing within the scope of this Measure that requires the prior approval of the National Assembly for Wales. The responsible Minister will be in a position to make necessary changes, provided carers and carers services are appropriately consulted with and listened to.”<sup>111</sup>

139. The WLGA said there was not a consistent view from the local authorities but there was a view that it is not necessary for the first set of regulations to go through the affirmative procedure as:

“.....the proposed Measure has been fully consulted on and signed up to, so this level of detail does not need to go through the affirmative process. However, we do not have a formal view on that.”<sup>112</sup>

140. In accordance with Standing Order 15.6, the Constitutional Affairs Committee has considered the subordinate legislation provisions contained in the proposed Measure, and taken evidence from the Member in charge. The Committee has produced a separate report on these provisions.

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<sup>110</sup> RoP, paragraph 61, 17 March 2010

<sup>111</sup> CS13, Evidence Written

<sup>112</sup> RoP, paragraph 77, 10 March 2010

### *Evidence from the Deputy Minister*

141. The Deputy Minister stated that the subordinate legislation arising from the proposed Measure would be subject to the negative procedure, as the provisions would relate to administrative arrangements to facilitate the implementation of the strategies. The Deputy Minister continued to state she would consider using the affirmative procedure “if the Committee were to recommend this approach.”<sup>113</sup>

142. When questioned on this point, the Deputy Minister reiterated her opinion relating to the use of the affirmative procedure:

“My thoughts were that what we are doing is developing an administrative process and that that would be adequately dealt with by the negative procedure. However, if the Committee wants to make that point, I am prepared to consider it.”<sup>114</sup>

### *Our View*

**Recommendation 12: The Committee feels there is significant potential to amend the proposed Measure through regulations; therefore recommends the first set of regulations to be passed under all sections, should be subject to the affirmative procedure.**

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<sup>113</sup> Legislation Committee No.5 Paper LC5(3)-08-10 Paper 1

<sup>114</sup> RoP, paragraph 91, 29 April 2010

## 12. Financial Implications

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### *Background*

143. The Regulatory Impact Assessment states that:

“There would be implementation and administrative costs for local authorities and the NHS in Wales associated with the proposed Measure.... It is likely that there will be an incremental implementation of the strategies....we estimate the administrative and other implementation costs across Wales will be some £0.9 million in year 1; £1.7 million in year 2 rising to £3.2 million in year 3.

The Scottish Executive provides the only other example in the UK of an administration adopting a similar approach for authorities to devise carers’ strategies. In Scotland, these arrangements have been in place since 2006 and the Scottish Executive has provided some £9 million in funding for the 3 years commencing 2008-09 (£1 million in year 1; £3 million in year 2 and £5 million in year 3). The population of Wales is some 60% of the population of Scotland.

For illustrative purposes only, within Wales there are 22 local authorities and 7 Local Health Boards. Dividing the estimate of implementation costs (set out in section 8.11 above) equally between these 29 authorities gives a figure of some £31,000 per authority in year 1; £59,000 per authority in year 2 and £110,000 per authority in year 3.<sup>115</sup>

144. The consultation undertaken by the committee asked what are the financial implications of the proposed Measure for organisations.

### *Evidence from witnesses*

145. Most witnesses who commented on the financial implications were concerned about the financial provisions contained in the proposed Measure and believed that money available could be best directed into front-line services. The Welsh NHS Confederation stated:

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<sup>115</sup> Explanatory Memorandum, paragraphs 8.6, 8.12 and 8.13

“that money is best directed into front-line services as opposed to co-ordinating a glossy document.”<sup>116</sup>

146.The WLGA agreed with this and stated:

“At a time when we are drastically cutting allocations to front-line services, we are surprised at the level of money being allocated to this. Other central grants are being cut, both within the NHS and local authorities. We strongly urge the Assembly Government to look again at the funding implications to see whether there is another way of delivering this that does not divert money away from front-line services.”<sup>117</sup>

147.ABCD stated:

“This links to the question of what financial implications this Measure will have on other organisations. For example, the authorities involved may have to make significant cuts in other services in order to accommodate the strategies.”<sup>118</sup>

148.However, some witnesses felt that investing in a carers’ strategy now could save money in the future. Barnardo’s Cymru stated:

“...adequate and early support is likely to reduce demand on future health budgets and promote the economic activity of carers.”<sup>119</sup>

149.This view was shared by Carers Wales:

“We do not have the expertise to comment meaningfully on the details of the financial implications of the costs outlined. However we believe that, in the medium and longer term, with the demographic changes affecting Wales, the costs of not supporting carers and investing in the sustainability of family support for an increasing elderly population could be devastating.”<sup>120</sup>

150.In accordance with Standing Order 14.2, the Finance Committee has considered the financial provisions contained in the proposed Measure, and taken evidence from the Member in charge. The Committee has produced a separate report on these provisions.

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<sup>116</sup> RoP, paragraph 66, 3 March 2010

<sup>117</sup> RoP, paragraph 79 10 March 2010

<sup>118</sup> CS15, Written Evidence

<sup>119</sup> CS8, Written Evidence

<sup>120</sup> CS4, Written Evidence

### *Evidence from the Deputy Minister*

151. The Deputy Minister stated:

“...we have assessed the cost on the basis of the Scottish strategy and the views of the stakeholders that we have consulted as to what they expect of the strategy.”<sup>121</sup>

152. When questioned on whether the money available would be allocated from existing schemes or a completely new allocation, the Deputy Minister stated:

“To the best of my knowledge, this is new money identified within the budget of the Minister for Health [and Social Services].”<sup>122</sup>

### *Our View*

**The Committee has noted the evidence provided and whilst the Committee supports the aims of this proposed Measure, there are concerns that other budgets and front line services will be cut to implement the aims of this proposed Measure. The Committee seeks the Deputy Minister’s assurance that the aims of the proposed Measure are fully funded and will not lead to cuts from other budgets.**

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<sup>121</sup> RoP, paragraph 136, 10 February 2010

<sup>122</sup> *ibid*, paragraph 151

## Witnesses

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The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-perm-leg/bus-committees-third-lc5-agendas.htm>

### *10 February 2010*

Gwenda Thomas AM	Deputy Minister for Social Services, Welsh Assembly Government
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### *24 February 2010*

Keith Towler	Children's Commissioner for Wales
Joseph Carter	Wales Neurological Alliance
Carol Thomas-Wyllie	Motor Neurone Disease Association

### *3 March 2010*

Dr. Edward Roberts	Abertawe Bro Morgannwg Local Health Board (Welsh NHS Confederation)
Peter Llewellyn	Hywel Dda Local Health Board (Welsh NHS Confederation)
Roz Williamson	Wales Carers Alliance and Carers Wales

### *10 March 2010*

Beverlea Frowen	Welsh Local Government Association
Tim Ruscoe	Barnardo's Cymru
Menna Thomas	Barnardo's Cymru

### *17 March 2010*

Ruth Marks	Older People's Commissioner for Wales
Alun Thomas	Office of the Older People's Commissioner for Wales

Moyna Wilkinson	Social and Housing Services, Monmouthshire County Council
Robert Gatis	Community Care, Rhondda Cynon Taf
Muz Ramzan	Barnardo's Young Carers
Hannah Spokes	Barnardo's Young Carers
Richard Andrews	Barnardo's Cymru
<i>29 April 2010</i>	
Gwenda Thomas AM	Deputy Minister for Social Services, Welsh Assembly Government

## List of written evidence

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The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at [http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/bus\\_legislation\\_meas-cs/bus\\_legislation\\_meas-cs-responses.htm](http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/bus_legislation_meas-cs/bus_legislation_meas-cs-responses.htm)

<i>Name / Organisation</i>	<i>Reference</i>
The Children's Commissioner for Wales	CS 1
Wales Neurological Alliance	CS 2
Welsh NHS Confederation	CS 3
Carers Wales and the Wales Carers Alliance	CS 4
Neil Thomas	CS 5
Linda Parsons	CS 6
Welsh Local Government Association	CS 7
Barnardo's Cymru	CS 8
Older People's Commissioner for Wales	CS 9
Association of Directors of Social Services Cymru	CS 10
Pembrokeshire Association of Voluntary Services	CS 11
Carers Outreach Service	CS 12
The Princess Royal Trust for Carers and Crossroads Care	CS 13
Jemma England	CS 14
Access for Black & Minority Ethnic Children with Disabilities and/or Chronic Illnesses (ABCD) Cymru	CS 15
Stonewall Cymru	CS 16
Children in Wales	CS 17
Civil Service Pensioners' Alliance	CS 18
Abertawe Bro Morgannwg University Health Board	CS 19

Hafal	CS 20
Action for Children	CS 21
Citizens Advice Cymru	CS 22
Age Concern Cymru and Help the Aged in Wales	CS 23
Royal College of Physicians	CS 24
Public Health Wales	CS 25
Action for Children	CS 26
MS Society, Cymru	CS 27