Welsh Parliament
Finance Committee

Financial implications of the Health and Social Care (Wales) Bill

October 2024

1. Introduction

1. The Health and Social Care (Wales) Bill[1] (the Bill) and Explanatory Memorandum[2] (EM), including the Regulatory Impact Assessment (RIA), was introduced by Dawn Bowden MS, the Minister for Social Care (the Minister) on 20 May 2024.

2. On 21 May, the Minister made an introductory statement on the Bill in Plenary.[3]

3. The Finance Committee (the Committee) took evidence on the financial implications of the Bill on 3 July 2024[4], from:

- Dawn Bowden MS, Minister for Social Care
- Alistair Davey, Deputy Director, Enabling People, Social Services and Integration Directorate, Welsh Government
- Anthony Jordan, Head of Programme and Legislative Implementation, Social Services and Integration Directorate, Welsh Government

4. Policy scrutiny of the Bill was undertaken by the Health and Social Care Committee (HSC).[5]

5. The Legislation, Justice and Constitution Committee also considered the Bill in accordance with matters which fall within its remit.[6]

[1] Health and Social Care (Wales) Bill (as introduced)
[2] Welsh Government, Explanatory Memorandum
[3] Plenary, Record of Proceedings (RoP), 21 May 2024
[4] Finance Committee, RoP, 3 July 2024
[5] Health and Social Care Committee
[6] Legislation, Justice and Constitution Committee

2. Purpose and need for the Bill

6. The EM states that the overall purpose of the Bill is to "further improve social care, and the health and social care interface, in Wales".[7]

7. The Bill proposes changes to the Social Services and Well-being (Wales) Act 2014[8] ('the 2014 Act') and the Regulation and Inspection of Social Care (Wales) Act 2016[9] ('the 2016 Act'), including to:

- eliminate private profit from the care of looked after children; and
- ensure the existing legislation is "able to operate fully and effectively".[10]

8. The RIA says the Bill will:

> *"… ensure that public money invested in care home services for children and fostering services does not profit individuals or corporate entities, but instead is spent on children's services, to deliver better experiences and outcomes for young people; support service development and improvement; and further build professional development for those providing care."*[11]

9. The Bill also enables the introduction of direct payments within NHS Continuing Healthcare (CHC), which is intended to align arrangements with those for social care.

Summary of costs

10. The RIA summary states the overall estimated cost of the Bill ranges from £429.8 million to £455.7 million over the ten-year appraisal period, from 2025-26 to 2034-35.[12] Using the value of the constituent elements, total transitional costs are calculated to range from £175.6 million to £233.1 million, with recurrent costs from £218.9 million to £262.6 million.[13]

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[7] Welsh Government, Explanatory Memorandum, page 6
[8] The Social Services and Well-being (Wales) Act 2014
[9] The Regulation and Inspection of Social Care (Wales) Act 2016
[10] Welsh Government, Explanatory Memorandum, page 4
[11] Welsh Government, Explanatory Memorandum, page 80
[12] Welsh Government, Explanatory Memorandum, page 43
[13] Welsh Government, Explanatory Memorandum, page 44

11. Table 1 provides a breakdown, with the costs by constituent element taken from the RIA summary.

Table 1: Health and Social Care (Wales) Bill: Regulatory Impact Assessment (RIA) Summary (£'m)

	Low	High
Administrative costs		
Welsh Government	4.5	4.5
Local Authorities	185.7	245.5
Local Health Boards	20.5	24.2
Care Inspectorate Wales	5.9	5.9
Total	**216.7***	**280.2***
Compliance		
Service providers total	0.1	0.2
Other costs		
Service providers total	177.7	215.3
Total cost (calculated from above)	**394.5**	**495.7**

Total cost (RIA Summary)	**429.8**	**455.7**
Difference	**(35.3)**	**40.0**

**Totals may not agree due to rounding*

12. When asked why the sum of these elements (administrative, compliance and other costs but excluding savings) does not agree with the total cost of the Bill noted in the RIA summary, the Minister's official explained that:

> *"... we have projected two scenarios for providers transiting across into becoming not-for-profit. Sorry, we've projected three, but based on our assessment of likelihood, we have focused our assessment on two of those, which we think are the more likely ones. We think somewhere between those scenarios is probably what will actually play out. Those scenarios are scenario B, which is the more optimistic of the two, which is that 25 per cent of for-profit providers transition and 75 per cent do not; and then scenario C, which is the most pessimistic, is no providers transition, so 100 per cent leave.*

So, where that takes us is into assumptions about provider behaviour as they gear up to leave the sector, and our assumption of that behaviour is that providers who are leaving the sector will seek to increase the fees they charge to maximise the amount of otherwise lost profit that they can recoup during the period in which they're allowed to continue existing. And this is the bit where it gets particularly complicated. We are working on the basis that there will be more aggregate lost profit under the more favourable scenario, because there will be a lower number of providers raising their fees to recoup, because there will be 25 per cent of providers who don't need to do that because they're finding ways of existing in the new ecosystem, if I can call it that. So, the way that plays through into the figures is, if scenario B eventuates, then for the most part, the figures that you see in the RIA summary will be at the lower end of the range, but for lost profit they will be at the higher end. So, that has informed our aggregate summary of what the overall lower end estimate is, and then it flips the other way, so if all providers exit, then we would calculate the lower end of lost profit, because they'll be raising their costs."[14]

13. The Minister agreed to write to the Committee to provide a further explanation, which stated that:

"The range £429.8M to £455.7M does not feature in the RIA summary … to calculate minimum or maximum costs for the eliminating private profit section of the RIA, the estimated costs of different scenarios need to be considered collectively, rather than simply adding all the lowest figures from the ranges together, or all the highest figures from the ranges."[15]

14. The letter goes on to state that adding together the upper end of the private sector cost range and the upper end of the public sector cost range "leads to an incorrect total, because they are derived from different scenarios and different sets of modelling assumptions".[16]

[14] Finance Committee, RoP, 3 July 2024
[15] Letter from the Minister for Social Care to the Finance Committee, July 2024
[16] Letter from the Minister for Social Care to the Finance Committee, July 2024

15. In her letter, the Minister also notes "£2.3M of administrative cost-savings [are] identified in the RIA"[17], which are expected to be made by Care Inspectorate Wales and Social Care Wales as a result of the policy proposals. The Minister says the "total cost as given in the RIA summary is reached on the basis of the net administrative costs, i.e. the administrative costs less the administrative cost savings".[18]

16. On 3 October 2024, the Minister wrote, again, to the Committee about the financial implications of the Bill. She noted:

> *"As we approach the end of stage one, we have been reviewing the Bill documentation, including the Regulatory Impact Assessment (RIA) and the correspondence to committees.*
>
> *Unfortunately, we have identified a factual error in our 26 July Q1(a) response to your letter of 8 July. I apologise for this and for any confusion this may have caused the committee."*[19]

17. The Minister went on to confirm the costs of the Bill, which ranged from £429.8 million to £455.7 million. She added the "range of £394.5M to £495.7M does not feature in the RIA summary".[20]

18. The Minister explained the reasons for the difference were twofold. Firstly, the total was a net cost, reflecting the administrative savings. More significantly, the costs of the proposal to eliminate profit from the care of looked after children did not reflect the sum of the lowest and highest cost elements respectively. Rather, they had been summarised to reflect the scenario adopted for modelling the financial implications of the proposal. This approach is not explained in the RIA summary.

19. The Minister acknowledged that "it could have been explained more fully in the RIA summary" and committed to providing additional narrative to clarify the approach in the revised Explanatory Memorandum, following completion of Stage 2.[21]

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[17] Letter from the Minister for Social Care to the Finance Committee, July 2024
[18] Letter from the Minister for Social Care to the Finance Committee, July 2024
[19] Letter from the Minister for Social Care to the Finance Committee, October 2024
[20] Letter from the Minister for Social Care to the Finance Committee, October 2024
[21] Letter from the Minister for Social Care to the Finance Committee, October 2024

20. The Minister's letter included a table to summarise the financial implications of the Bill:[22]

Table 2: Health and Social Care (Wales) Bill: Regulatory Impact Assessment (RIA) Summary (£'m), as revised in the Minister's letter to the Committee

	Low	High
Administrative costs:		
Welsh Government	4.5	4.5
Local Authorities	185.7	245.5
Local Health Boards	20.5	24.2
Care Inspectorate Wales	5.9	5.9
Administrative cost-savings	-2.3	-2.3
Net administrative costs	**214.3**	**227.8**
Compliance costs	**0.1**	**0.2**
Other costs (to private providers)	**215.3**	**177.7**
Total costs	**429.8***	455.7*

* *The estimated total cost figure does not match the component costs exactly, due to rounding*.

21. In breaking down the constituent elements, the RIA indicates that most of the estimated administrative costs will fall to local authorities and local health boards. However it notes these are expected to be "at least partially"[23] offset by reductions in the costs of provision, which are presented as benefits.

22. Compliance costs associated with private providers needing to develop a website on which to publish their annual returns, which currently falls to Care Inspectorate Wales (CIW) on behalf of Welsh Ministers, is estimated to be between £145,000 and £247,000.

23. The RIA summary includes 'other costs', which are the profits lost by businesses in the care of looked after children when they exit the market.

Savings and benefits

24. Savings equating to £83,000 over the appraisal period are identified for CIW, which will no longer be required to check providers' annual returns. Savings are also identified for Social Care Wales (SCW) arising from the proposals to no longer

[22] Letter from the Minister for Social Care to the Finance Committee, October 2024
[23] Welsh Government, Explanatory Memorandum, page 43

having to apply to extend an interim suspension order, which is estimated to save £2.2 million over the appraisal period.

25. The RIA says total benefits range from £275.9 million to £362.2 million over the appraisal period.[24] These comprise:

- Lower local authority costs for children's care because of eliminating profit from the care of looked after children (from £184.0 million to £253.9 million);
- The residual value of residential care homes for children at the end of the appraisal period (from £64.3 million to £85.7 million);
- A reduction in local authority expenditure on social care when individuals switch to CHC direct payments (£13.7 million); and
- The lower cost of CHC direct payments to Local Health Boards for current CHC recipients and new recipients who opt for direct payments, compared with traditionally commissioned CHC. The RIA summary does not quantify this but says it is the residual value after taking account of the other benefits set out in the RIA. This suggests the reduction in CHC costs ranges from £8.9 million (high estimate) to £13.9 million (low estimate).

Unquantified costs and benefits

26. The RIA summary says unquantified costs and benefits include the cost to service providers, which are exiting the market, to provide a statement to explain how they will comply with quality standards until the service closes. The RIA includes a unit cost but notes, since it is not known how many providers will exit the market during the appraisal period, it has not been possible to estimate the associated cost.[25]

27. However, the RIA includes other unquantified costs and benefits, such as:

- The impact of the Welsh Government's policy to reduce the number of children that go into care. It says it is not possible to quantify the decrease in placements;

[24] Welsh Government, Explanatory Memorandum, page 43
[25] Welsh Government, Explanatory Memorandum, page 44

- The health and well-being outcome benefits to individuals arising from CHC direct payments and the knock-on effect for NHS services;
- The benefits for employees, employers and the HM Courts and Tribunal Services (HMCTS) of the proposals relating to the extension of interim orders during 'Fitness to Practise' Investigations; and
- The NHS costs associated with providing health services for children's residential and foster care, such as those for therapeutic care and/or nursing, which it says is included in the gross turnover for some providers. It notes, "it is not possible to estimate this from the data available".[26]

Approach to quantifying and presenting the financial implications of the Bill

28. The RIA says:

> *"The overall key guiding principle for the economic assessment is proportionality. It has attempted to strike a balance between the level of detail, the effort required to capture new data, and the range of potential outcomes that could be achieved."*[27]

29. When asked by the Committee to elaborate on what 'proportionality' meant in practical terms, and how it was applied in calculating the financial implications of the Bill, the Minister said that it referred to the "proportionality of the two big cost drivers in this provision".[28] She continued, explaining that:

> *"… firstly, the proportion of for-profit providers that would convert to not-for-profit business models and all the contingent costs that go with that; and secondly, the capital costs of purchasing and developing the children's home. Detailed consideration of those variables was needed to help to understand the cost implications."*[29]

30. The Committee questioned whether the RIA had achieved a balance between the level of detail required to provide accurate costings for legislation and the range of potential outcomes. The Minister explained that the complexity

[26] Welsh Government, Explanatory Memorandum, page 60
[27] Welsh Government, Explanatory Memorandum, page 59
[28] Finance Committee, draft RoP, 3 July 2024, paragraph 191
[29] Finance Committee, draft RoP, 3 July 2024, paragraph 191

around the figures illustrated that the legislation was moving into "uncharted territory" and as such "there is a degree of uncertainty".[30] The Minister expanded on this saying:

> *"What we're now beginning to find is that we don't really have a pattern yet emerging of how many organisations are going to move into the sector, so the scope to, potentially, update the RIA in future is around the likelihood of potential scenarios developing through continued engagement with the sector … We don't know what all of the costs are going to be, we don't know the number of organisations that are going to leave the sector, so it does mean that we've got to, probably, revisit the RIA as we're going through this and update as we're going along."*[31]

31. The RIA states that assumptions for the financial implications of eliminating profit from the care of looked after children are "based on the existing shape and balance of provision".[32] Specifically for this policy proposal, the Welsh Government commissioned the Association of Directors of Social Services (ADSS) Cymru to provide the cost estimates. The ADSS Cymru published its report, 'Eliminating Profit from the Care of Children Who Are Looked After, Contribution to the Regulatory Impact Assessment' (March 2024)[33], after the Bill was introduced, on 30 May 2024.

32. In reference to the steer given by the Minister to the ADSS Cymru to ensure the accuracy and completeness of its assessment, the Committee were told:

> *"We asked them to assess the costs and savings, and the benefits and disbenefits, over that 10-year period from 2025 to 2035, using the figures from 2022-23. We asked them to look at it in terms of the impact on providers and the third sector, but also knock-on impacts on social care and on adult care. We asked them to look at two options. The first was a 'do nothing, business as usual' option, the second was to look at the proposed legislation to eliminate profit from care."*[34]

[30] Finance Committee, draft RoP, 3 July 2024, paragraph 197
[31] Finance Committee, draft RoP, 3 July 2024, paragraph 198
[32] Welsh Government, Explanatory Memorandum, page 64
[33] ADSS Report: Eliminating Profit from the Care of Children Who Are Looked After, Contribution to the Regulatory Impact Assessment
[34] Finance Committee, draft RoP, 3 July 2024, paragraph 204

33. The Minister's official explained that "there are some degrees of uncertainty over some of the numbers, because we've had to look at a variety of options".[35] He went on to say that there were uncertainties around the number of children in care, the number of for-profit providers that would convert to not-for-profit business models, and the variability within each local authority.

34. The RIA also identifies uncertainties around the estimated costs associated with the proposals to eliminate profit from the care of looked after children and said this could have a "significant impact"[36] on the financial implications.

35. When asked by the Committee for an assurance that the figures contained in the RIA were as accurate as could be given those complexities, the Minister responded:

> *"I'm satisfied at this stage that what we've presented is as accurate as it can be. But, inevitably, things can change with something as complex as this. The commitment I would give to the committee is that, if things do change, we would obviously alert you to that and make sure that you were aware of that, so that you could consider that too."*[37]

Committee view

36. The Committee welcomes the aims of this Bill and agrees with the assertions made in the EM that there should not be a market for the care for looked after children, whereby profits made are distributed as dividends to shareholders or members, but are instead, reinvested into children's services.

37. The Committee is, however, very concerned about the quality of the financial information contained within the RIA. In too many areas, the information provided on costs and benefits is patchy, lacking in detail and clarity. The Committee has identified similar problems with a range of government Bills during the Sixth Senedd to date and it is disappointing that similar issues were evident in the estimates provided alongside this Bill.

38. We noted differences in the presentation of the financial information across the proposals for policy changes. The RIA tables for the costs and benefits expected as a result of eliminating profit from the care of looked after children do not include totals for the appraisal period nor summary tables. This is in contrast

[35] Finance Committee, draft RoP, 3 July 2024, paragraph 207
[36] Welsh Government, Explanatory Memorandum, page 59
[37] Finance Committee, draft RoP, 3 July 2024, paragraph 210

to the approach taken for the proposal to enable the introduction of direct payments for Continuing Healthcare, which includes this information for the administrative costs but not for the cost of CHC direct payment packages and the related cost savings/benefits. The Welsh Government's advice and guidance[38] states it is useful to include summary tables where a Bill involves a number of policy changes. It also says "[c]lose collaboration is required between individuals/teams working on the analyses to ensure a consistent approach across the RIA".[39] We believe that the Welsh Government should address such matters in preparing the RIA to support future Bills, ensuring totals and summary tables are included, which the Committee regards as good practice.

39. The RIA refers to the separate report, commissioned by the Welsh Government and published by the ADSS Cymru after the Bill was introduced, which sets out the ADSS Cymru's assessment of the financial implications of the proposal to eliminate profit from the care of looked after children.[40] The RIA does not confirm whether this report is publicly available, despite it being published on ADSS's website shortly after the Bill was introduced. In the Committee's view, the ADSS Cymru report provides some useful additional information to that included in the RIA. However taken collectively, the RIA and ADSS Cymru reports do not provide sufficient detail about the calculation of all costs and benefits. More significantly, the ADSS Cymru's publication of this report should not be considered an appropriate substitute for including information in the RIA.

40. We found the variance between the aggregate value of the constituent cost elements (calculated from the RIA summary) and the total cost of the Bill (taken from the RIA summary) to be, at the very least, confusing. We appreciate that the Minister, since providing oral evidence to the Committee, has written to provide additional information about the bases for some of the cost estimates and to address some of the ambiguity around them.[41] We note this included information which was not included in the RIA at the outset.

41. In terms of the total cost of the Bill, in her written evidence, the Minister said "the range £429.8 million to £455.7 million does not feature in the RIA summary". However this range is clearly stated in the first summary table headed 'Health and

[38] Welsh Government, Legislation Handbook on Senedd Bills (June 2024), page 51
[39] Welsh Government, Legislation Handbook on Senedd Bills (June 2024), page 51
[40] Welsh Government, Explanatory Memorandum, page 45
[41] Letter from the Minister for Social Care to the Finance Committee, July 2024

Social Care (Wales) Bill', which is presented as "a summary of the costs and benefits for the Bill as a whole".[42]

42. In her written evidence, the Minister confirmed the total cost of the Bill ranges from £394.5 million to £495.7 million, which we note is the sum of the low and high constituent cost elements (set out in the RIA summary), respectively.

43. The Minister's written evidence in July, also noted that the calculation of the total cost takes into account the value of administrative cost savings. However, these savings do not seem to have been taken into account in the range of total cost confirmed by the Minister, the value of which agrees to the figures in Table 1 of this report, which do not include them.

44. In her subsequent letter in October, the Minister explains that, after reviewing the Bill documentation and her evidence to Committees, she had identified further errors.

45. The Minister confirmed the total net cost of the Bill ranged from £429.8 million to £455.7 million. We welcome this clarification and note the explanation for the difference is straightforward. In our view, the RIA should have been explicit and explained that the range of total net costs reflects the scenarios adopted for modelling the financial implications of the proposal to eliminate profit from the care of looked after children. However, the range is not presented that way but rather described as the minimum and maximum costs. We welcome the Minister's commitment to address this by including additional information in the revised RIA.

46. We also welcome the summary of costs the Minister sets out in her letter. However, this issue (as well as others identified through our scrutiny of the financial implications of this Bill) would have been avoided had summary tables been included in the RIA in the first place.

47. It is difficult to understand why it has taken so long for our query to be answered satisfactorily, having been raised during our oral evidence session on 3 July and in our subsequent correspondence to the Minister. We are disappointed to receive this evidence so late during Stage one proceedings, a full three months since the Committee's session, and that it reflects such a significant correction to the evidence we received in July. This is not acceptable and such errors should have been picked up by a review process prior to the Minister sharing the

[42] Welsh Government, Explanatory Memorandum, page 42

information with the Committee. We ask that the Welsh Government reviews the quality assessment arrangements to ensure this does not happen again.

48. Furthermore, given the lack of information about the basis for their calculation, as well as apparent inconsistencies within the RIA about the value of them, we have found it difficult to scrutinise the full financial implications of the Bill. The Committee considers this to be poor practice that lacks transparency. We ask that the Minister addresses these issues when she updates the Explanatory Memorandum, which she has committed to doing.[43]

49. We note the significant uncertainty around the costs of the Bill, particularly around the number of private providers that will convert to 'not-for-profit' status. Should there be any significant variation in the costs of the Bill as it progresses, we expect the Minister to appear before the Committee again for us to scrutinise the amended figures.

Conclusion 1. The Committee is broadly content with the financial implications of the Bill as set out in the Regulatory Impact Assessment, subject to the comments and recommendations in this report.

Recommendation 1. The Committee recommends that the Welsh Government ensures a consistent approach when presenting financial information in Regulatory Impact Assessments, especially where a Bill is proposing a number of different policy changes.

Recommendation 2. The Committee recommends that the Welsh Government ensures it includes summary tables in the Regulatory Impact Assessment to demonstrate how the constituent elements agree to the range of total costs of the Bill.

Recommendation 3. The Committee recommends that the Welsh Government reviews the arrangements it has in place to quality check information prior to it being shared with the Committee, to avoid it having to subsequently correct its evidence.

Recommendation 4. The Committee recommends that the Minister updates and corrects the Explanatory Memorandum at the next opportunity to address any errors and apparent inconsistencies between the aggregate value of the annual costs and benefits with the figures in the RIA summary, as well as include information about how those costs and benefits have been calculated.

[43] Letter from the Minister for Social Care to the Finance Committee, July 2024

Recommendation 5. Given the uncertainties with the estimates, the Committee recommends that, should the costs associated with the Bill significantly change during its passage through the Senedd, updated calculations are made available and the Minister appears before the Committee for further scrutiny.

3. Eliminating profit from the care of looked after children

50. While the EM refers to the proposed change as "eliminating profit from the care of looked after children"[44], the Bill will amend the 2014 Act and 2016 Act to "restrict the making of profit in the provision of care home services provided wholly or mainly to children, secure accommodation services and fostering services (referred to as 'restricted children's services')".[45]

51. The Bill will require a provider of restricted children's services that is registered (with CIW) to be a 'not-for-profit' entity. It defines a 'not-for-profit' entity as:

- a charitable company limited by guarantee without a share capital.
- a charitable incorporated organisation.
- a charitable registered society.
- a community interest company limited by guarantee without a share capital.[46]

52. The RIA notes that this aims to satisfy the principle that providers cannot pay dividends to shareholders or members, with trading surpluses reinvested to the service.[47]

53. The Bill also states that providers should not have entered into any "unreasonable or disproportionate financial arrangements".[48]

54. In its Wales summary market study into children's social care in England, Scotland and Wales (March 2022), the Competition and Markets Authority (CMA) said its assessment was that a "ban or profit cap is not necessary to deliver a well-functioning placements market"[49] for children's residential homes. The CMA did

[44] Welsh Government, Explanatory Memorandum, page 55
[45] Welsh Government, Explanatory Memorandum, page 57
[46] Welsh Government, Explanatory Memorandum, page 11
[47] Welsh Government, Explanatory Memorandum, page 11
[48] Welsh Government, Explanatory Memorandum, page 161
[49] Competition and Markets Authority: Children's social care market study final report, Wales summary, 10 March 2022

not recommend the Welsh Government limit or ban profit-making in foster care services either. Responding to this, the Minister said:

> *"… the market for the care of looked-after children really hasn't been functioning effectively for some considerable time, and we don't believe that it is meeting the needs of many children. It's a highly dysfunctional market and, quite frankly, it's unsustainable. We've seen spending on children's service triple since 2016 …. so, what the [Competition and Markets Authority] report did highlight was … that we do have a highly fragmented and complex and dysfunctional market. That means that local authorities really are exposed and find it very hard to plan for their own residential and foster care."*[50]

55. In response to further questions about the policy proposal to restrict profit making, the Minister stated that, with it providing 80 per cent of children's residential provision, the private sector can "dictate the cost of placements and at the same time extract significant profits".[51] The Minister emphasised that, if the Welsh Government wanted to "remodel and reshape and repurpose looked-after children's services, we need to find a way of ensuring that any profit that is extracted from that is reinvested back into children's services".[52] She continued:

> *"… the only way that we can do that, we concluded, was to legislate for taking profit out of the provision of those services, so that the cost would still be the same—almost certainly the cost would still be the same—but that the profit that is made would be reinvested back into the way in which our services are delivered."*[53]

56. The Bill makes provision for local authorities to use "supplementary" for-profit providers[54], subject to approval by Welsh Ministers, where it considers none of the available 'not-for-profit' placements would be consistent with the child's well-being.

57. In terms of alternative options considered by the Welsh Government to achieve the same policy objectives, such as setting a maximum fee rate; setting a

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[50] Finance Committee, draft RoP, 3 July 2024, paragraph 158
[51] Finance Committee, draft RoP, 3 July 2024, paragraph 165
[52] Finance Committee, draft RoP, 3 July 2024, paragraph 165
[53] Finance Committee, draft RoP, 3 July 2024, paragraph 165
[54] Welsh Government, Explanatory Memorandum, page 12

cap on profit; and limiting the profit or dividend paid to shareholders and it funding the development of "not-for-profit" provision, the EM states:

> *"… these were rejected as being viable options due to their inability to affect the profit element/motive itself, administrative complexity, limited success in controlling costs and significant uncertainty. It was concluded that it is therefore unrealistic to expect successful change in this regard without the outside stimulus of legislation."*[55]

58. The RIA does not provide any costings for alternative options which were considered by the Welsh Government.

Transition

59. In the EM, the Welsh Government says its intention is for the provisions of the Bill to be brought into effect so that, from 1 April 2026, new providers registering with CIW will be required to have 'not-for-profit' status.

60. From 1 April 2027, existing 'for profit' providers will be subject to transitional provisions. The RIA notes the transitional arrangements will limit 'for profit' providers to accept new placements unless the local authority in Wales has sought and obtained approval from the Welsh Ministers. The Bill also gives power to the Welsh Ministers to determine the end of the transition period, as well as impose conditions on existing providers during it.

61. The RIA does not specify the assumption for the length of the transitional period, adopted for estimating the financial implications of the proposals, although the costs suggest three years. The Committee wrote to the Minister to ask for clarification about the length of the transition period and the associated financial implications if this was to be extended. The Minister confirmed the estimates assume the costs of establishing new 'not-for-profit' provision will be incurred over three years, from 2025-26 to 2027-28. The Minister added:

> *"If the transition to not-for-profit provision takes longer than forecast in the RIA it is anticipated that associated costs would be incurred over a longer period, but also that it would take longer to realise the benefits of the change."*[56]

[55] Welsh Government, Explanatory Memorandum, page 56
[56] Letter from the Minister for Social Care to the Finance Committee, July 2024

62. The Children's Homes Association (CHA) says responses to a survey following a Welsh Government workshop in November 2023 indicated no independent providers would be willing or able to transition to 'not-for-profit' status.[57]

63. In her written evidence, the Minister noted that "[p]rovider intentions regarding decisions to potentially transition to not-for-profit models are only now beginning to emerge following the Bill's introduction". She went on to say:

> *"Therefore, there is scope to potentially update the RIA in the future as our understanding of the likelihood of potential scenarios develops through continued engagement with the sector."*[58]

64. The Committee asked for the Minister's views on how the transition would be managed and resourced if a significant proportion of private providers exit the market quickly and, in particular, how capacity would be met under those circumstances. The Minister explained that:

> *"Through our existing engagement mechanisms and via intelligence from partners we would expect to have advance notice in many cases should providers elect to leave the market, enabling time to plan alternative provision. Local authorities, as commissioners, also have management processes and mechanisms in place to manage provider exit and the transfer of placements, which would be deployed in such scenarios."*[59]

65. It was also noted that:

> *"… it is probably not within providers' commercial interests to leave the sector quickly while the transitional provisions are in place. This is because the period will enable them to continue to earn a degree of income from their services (albeit subject to the permission of Welsh Ministers), while new provision is established."*[60]

The impact of eliminating profit on the market and on current providers

[57] The Children's Homes Association: Written evidence to the Health and Social Care Committee on the Health and Social Care (Wales) Bill
[58] Letter from the Minister for Social Care to the Finance Committee, July 2024
[59] Letter from the Minister for Social Care to the Finance Committee, July 2024
[60] Letter from the Minister for Social Care to the Finance Committee, July 2024

66. In its summary of responses to the consultation on its policy proposals, the Welsh Government noted that the:

> *"… proposed timing of the introduction of the requirements for existing providers of 1 April 2027 was felt to be overly ambitious and carried with it a risk to the safety of children and young people who require a good quality, registered and stable placement."*[61]

67. The Committee sought clarification as to why the Welsh Government intends to keep to this timetable, despite concerns voiced in its consultation on the proposed policy. The Minister stated in a letter to the Committee that the transitional provisions allow for existing providers to carry on accommodating new children, sought by local authorities, subject to the approval of Welsh Ministers. She continued:

> *"This carefully designed structure of transition is intended to help manage the sufficiency risk during the transition period, as not for profit provision is built up, and secure a safe, stable and equitable transition to the new system."*[62]

68. The Competition Assessment, included in the EM, says that the elimination of profit on the social care market "will profoundly impact the children's social care market".[63] The Welsh Local Government Association (WLGA) said "there is a risk of a sudden and critical shortage of placements, especially for children with complex needs"[64] if 'for-profit' providers exit the market or reduce their services.

69. The submission from the ADSS Cymru to the Committee's consultation on the Draft Budget 2024-25[65] also noted the detrimental impact the proposal was already having on the availability of placements and related financial pressures.

70. Specifically on the effect eliminating profit would have on the market, the Minister quoted from the CMA market study into children's social care in England, Scotland and Wales (March 2022), saying:

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[61] Summary of consultation responses: Proposals for primary legislation in relation to children's social care, Continuing Health Care, mandatory reporting and regulation and inspection, page 16
[62] Letter from the Minister for Social Care to the Finance Committee, July 2024
[63] Welsh Government, Explanatory Memorandum, page 130
[64] Health and Social Care Committee: Consultation on the Health and Social Care (Wales) Bill
[65] Finance Committee: Consultation on the Welsh Government Draft Budget 2024-25

"Local authorities must often take whatever placement is available, even when it is not fully appropriate for the needs of the child. This blunts the ability of local authority purchasing decisions to shape the market to provide for their true needs."[66]

71. The Minister went on to explain that this results in a "lack of placements of the right kind in the right places" often meaning that children are "being placed in establishments far away from their communities".[67]

72. Another factor the Minister suggested was affecting the volatility of the market, was that many of for-profit providers operating across Wales are "carrying significant levels of debt", creating a "significant risk" to large and highly leveraged firms "which would see the disruption of placements of children in care".[68]

73. When asked how the Minister engaged with private providers during the process to assess the costs and benefits of the proposal to 'eliminate profit', she said:

"… with the for-profit providers, we have been in consultation with them throughout every step of this process, involving them. They're part of the elimination programme board as well. We haven't seen a mass exodus from the market, even though they know this is coming. So, clearly, they are prepared to be sat around the table talking to us about how we can achieve the objectives that we're trying to achieve."[69]

74. The Minister's official added:

"We've been working with them since day one, both the not-for-profits and the for-profits … we've got a wide variety of providers on the work stream group, and we've been working with them for almost three years now … Obviously, we've got our market intelligence reports. We work closely with the 4Cs [Children's Commissioning Consortium Cymru] and we've reiterated to them throughout that we want them to look at transition … I think that we've enjoyed maybe some bumpy conversations at times, but, actually, they're still there talking to us, and we want

[66] Competition and Markets' Final Report: Market study into children's social care in England, Scotland and Wales (March 2022)
[67] Finance Committee, draft RoP, 3 July 2024, paragraph 161
[68] Finance Committee, draft RoP, 3 July 2024, paragraph 162
[69] Finance Committee, draft RoP, 3 July 2024, paragraph 179

to continue those conversations, to listen to what they have to say, to see how we can support them to transition or convert."[70]

Modelling

75. The RIA notes "Intelligence from local authorities, Foster Wales and the 4Cs (Children's Commissioning Consortium Cymru) suggests high numbers of for-profit foster care agencies and small numbers of residential children's providers will convert"[71] to 'not-for-profit' status. However, actual numbers were not known at the time the EM was prepared and so the RIA models three scenarios for children's residential services as a basis for the estimates:

- 50 per cent of existing private providers will convert to 'not-for-profit' status, which the RIA notes is the "most optimistic" (Scenario A);
- 25 per cent of existing private providers will convert to 'not-for-profit' status (Scenario B); and
- No existing private provider will convert to 'not-for-profit' status, which the RIA notes is the "least optimistic" (Scenario C).

76. Table 3 shows the composition of the residential care sector by provider type under each scenario, taken from the RIA.[72] The "current position", which reflects the children in residential settings by provider type in 2021 and also taken from the RIA[73], transposes the data for local authorities and the 'not-for-profit' sector and consequently, the distribution for each scenario.

Table 3: Conversion scenario applied to residential care placement by distribution by provider type (percentage)

	Current position	**Scenario A**	**Scenario B**	**Scenario C**
Private sector	81.0	40.5	20.3	0
Not-for-profit sector	13.0	40.7	54.6	68.4
Local authority	6.0	18.0	25.2	31.6
	100.0	**100.0**	**100.0**	**100.0**

[70] Finance Committee, draft RoP, 3 July 2024, paragraph 214
[71] Welsh Government, Explanatory Memorandum, page 65
[72] Welsh Government, Explanatory Memorandum, page 66
[73] Welsh Government, Explanatory Memorandum, page 65

77. Table 4 shows the corresponding data for fostering placements, which has been taken from the RIA.[74] While the "current position" reflects the percentage of foster care children in the private sector in 2022 set out earlier in the RIA[75], this is not the case for those in local authority placements and those in the 'not-for-profit' sector. These appear to have been transposed, with an added apparent typographical error in the percentage of fostering placements in local authority placements. This impacts on the distribution in each scenario.

Table 4: Conversion scenario applied to current fostering placement distribution by provider type (percentage)[76]

	Current position	Scenario A	Scenario B	Scenario C
Private sector	35.0	17.5	8.8	0.0
Not-for-profit sector	50.0	76.2	84.2	92.3
Local authority	5.0	6.3	7.0	7.3

78. The RIA says the "costs presented under scenarios B & C are more likely"[77] and the Welsh Government has based costs on them.

Looked after children: numbers and current expenditure

79. The EM describes the care population in Wales as "disproportionately larger than elsewhere in the UK".[78] On 31 March 2023, there were 116 looked after children per 10,000 population in Wales.[79] This compares with around 71 per 10,000 population in England, using figures reported by the UK Government for the number of children in care in 2022-23.[80]

80. The EM notes the increase in the national expenditure on children's residential care and fostering services in Wales is proportionately higher than the growth in numbers over the same period. While the number of children in residential placements has increased from 355 to 590 (66 per cent) since 2016-17, spending has tripled from £65.4 million in 2016-17 to £198.3 million in 2022-23. The corresponding data for foster care showed the number of children in foster care

[74] Welsh Government, Explanatory Memorandum, page 66
[75] Welsh Government, Explanatory Memorandum, page 66
[76] Welsh Government, Explanatory Memorandum, page 66
[77] Welsh Government, Explanatory Memorandum, page 64
[78] Welsh Government, Explanatory Memorandum, page 62
[79] StatsWales, Children looked after at 31 March per 10,000 population aged under 18 by local authority and year
[80] Welsh Government, Explanatory Memorandum, page 47

increased by 11 per cent while spending increased by 23 per cent (from £116.8 million in 2016-17 to £143.8 million in 2022-23). On 6 June 2024, the Minister told the Health and Social Care Committee within another ten years, the potential costs for looked after children could approach £1bn.[81]

81. Based on this data, the Committee asked for an explanation as to why the assessment of the costs and benefits in the RIA assumes that the number of looked after children will remain constant over the appraisal period. The Minister responded saying that:

> *"… it wasn't considered proportionate to undertake an exercise that was going to be so sophisticated and complex, to take account of all those variables, on an approach that was based on a shifting pattern of provision."*[82]

82. The Minister expanded on this saying that, contained in the RIA, is the "wider transformation agenda" which is intended to:

> *"… encourage the sector to reduce the number of children that come into care and move away from the reliance on residential placements and towards other means of meeting children's needs."*[83]

83. When pressed further on this issue, the Minister's official described how the work being done around the wider transformation of services such as the "national practice framework, parental advocacy, support around early help"[84] would reduce the number of looked after children over time. He went on to explain how the purpose of reinvestment of profit back into services is to:

> *"… have that money going into those services that will either allow reunification, have better models of care so that children can be closer to home and then go home earlier, but also to reduce the number of children coming into care. So, we're modelling averages within this, I think, as we go through that period."*[85]

Administrative costs to local authorities

[81] Health and Social Care Committee, draft RoP, 6 June 2024, paragraph 54
[82] Finance Committee, draft RoP, 3 July 2024, paragraph 253
[83] Finance Committee, draft RoP, 3 July 2024, paragraph 253
[84] Finance Committee, draft RoP, 3 July 2024, paragraph 264
[85] Finance Committee, draft RoP, 3 July 2024, paragraph 264

84. The voluntary sector and local authorities will need to develop new residential and foster care services to compensate for the capacity that is lost when private providers exit the market (rather than convert to 'not-for-profit' status). The RIA estimates the capital cost of developing sufficient homes for new residential care provision under each of the scenarios.

85. The RIA sets out a range of values for the development cost, from £500,000 to £800,000 per home[86], to model the capital cost in each scenario. The RIA says it has used £700,000 as a "standard development cost per home"[87], noting this includes the cost of purchasing a property and the physical adaptations required to bring it up to regulatory and operational standards for a children's home.

86. The RIA sets out information about the calculation of the number of beds required to meet demand. This uses "nationally aggregated data provided by local authorities, as of 31 March 2023"[88] and assumes demand remains at that level.

87. Based on these figures, the estimated capital cost ranges from £107.1 million (Scenario B) to £142.8 million (Scenario C), which is expected to be incurred equally over three years, 2025-26 to 2027-28, and borne by local authorities. The ADSS Cymru report says:

> *"We are assuming that local authorities will meet the capital costs of not-for-profit organisations starting new services but have reduced operating costs accordingly. The assumption we are making is that not for profit organisations are unlikely to fund capital expenditure without direct or indirect support from local authorities."*[89]

88. The WLGA says the outlay for some local authorities is as high as £1 million per property although it notes this varies across Wales.[90]

89. The Committee asked for an explanation why the assumed cost for each new residential homes in the RIA is less than the estimate put forward by the WLGA. The Minister's official responded that, by taking the average price of a four-

[86] Welsh Government, Explanatory Memorandum, page 67
[87] Welsh Government, Explanatory Memorandum, page 67
[88] Welsh Government, Explanatory Memorandum, page 67
[89] ADSS Report: Eliminating Profit from the Care of Children Who Are Looked After, Contribution to the Regulatory Impact Assessment
[90] WLGA response to the Health and Social Care Committee's consultation on the Health and Social Care (Wales) Bill

bedroomed home in Wales as £360,000, the RIA uses a multiplier of 2 to account for adaptations. He continued, saying:

> *"… we're aware that property prices vary across Wales, and it could be much more expensive in Cardiff than Carmarthen, for example. Building costs … can vary considerably as well, in terms of the amount of adaptations. So, I don't think we would dispute that there's an average, but it could cost much more. And I think that's a figure that we'd want to work and review with local authorities as we went through."*[91]

90. The RIA summary notes the estimated cost to local authorities for implementing the policy to eliminate profit from the care of looked after children, ranges from £185.7 million to £245.5 million.[92] Of this, the RIA says £107.1 million to £142.8 million is the capital cost for developing new residential services, suggesting resource (or revenue) costs fall from around £78.6 million to £102.7 million over the appraisal period.

91. The RIA includes tables to show the annual 'transitional costs' under each scenario for local authorities.[93] They include the resource costs for new residential homes, such as start-up, legal and commissioning costs, and the start-up costs for new fostering services.

92. The aggregate value of the annual start-up, legal and commissioning costs for new residential and fostering services suggests the costs range from £65.0 million (which is £13.6 million lower than the low estimate in the RIA summary) and £86.7 million (which is £16.0 million lower than the high estimate in the RIA summary).

93. The RIA does not set out any information about the assumptions adopted for these costs. Some information is, however, included in the ADSS Cymru report.

94. The CHA says its "evidence-based view [is] that the financial, social, and human costs of eliminating profit have been dangerously underestimated".[94] It argues some key costs have not been factored into the assessment, or have been underestimated, including:

[91] Finance Committee, draft RoP, 3 July 2024, paragraph 264
[92] Welsh Government, Explanatory Memorandum, page 42
[93] Welsh Government, Explanatory Memorandum, page 75
[94] The Children's Home Association: Written evidence to the Health and Social Care Committee on the Health and Social Care (Wales) Bill

- workforce and training costs;
- wastage;
- project management costs from inception to services being online and operational;
- operating costs pre-opening;
- transition costs for providers; and
- the costs associated with increased unregulated and unregistered placements will increase substantially.

95. Other potential local authority costs which are not referred to under 'transitional costs' in the RIA, including:

- preparing an annual sufficiency plan;
- making applications to the Welsh Ministers for supplementary placements;
- preparing an annual report on their duty to secure accommodation; and
- recruiting, developing and training the social care workforce to mitigate any shortfalls.

96. However, the Minister said that the areas highlighted had been considered in the RIA and stated:

> *"The start-up costs prior to a new children's home opening have been considered, including the need for full staff teams; transition costs for providers choosing to move to a not-for-profit model also factored into the calculations, in the form of increased fees, to offset additional costs … and also factored in to transition costs are increased fees to local authorities' use of costs associated with decommissioning by private providers."*[95]

97. When asked to elaborate further about the assumptions made in the RIA and whether the calculations for the costs and benefits of the proposal to

[95] Finance Committee, draft RoP, 3 July 2024, paragraph 244

eliminate profit from the care of looked after children is sufficiently transparent for scrutiny, the Minister's official said:

> *"… our approach in developing the RIA was to try and provide our best estimate of cost savings and other impacts, to comply with the requirements of Standing Orders, which we think we have done, and to assess that in terms of both pursuing the legislative changes and the status quo option … we did also work with ADSSC, to make sure that the underpinning information was available in the public domain. But I think, if the Minister's content, that's obviously a point that we can look at again, as we consider how we revise the explanatory memorandum and RIA for Stage 2, if that would be a helpful point."*[96]

Benefit to local authorities

98. The RIA summary says local authorities are "expected to benefit from lower outturn costs for children's care"[97], which are estimated to range from £184.0 million to £253.9 million over the appraisal period. The RIA sets out the estimates in the tables for 'transitional costs' for each scenario, alongside the capital and resource cost estimates. The sum of the annual values suggest a net saving over the appraisal period that ranges from £170.4 million for Scenario B to £237.9 million for Scenario C in total for residential and fostering services. Therefore, £13.6 million less for Scenario B and £16.0 million less for Scenario C than set out in the RIA summary.

99. In its 'Wales summary', the CMA said:

> *"… our evidence suggests that the cost to local authorities of providing their own children's home placements is no lower than the cost of procuring placements from private providers, despite their profit levels."*[98]

100. In contrast, the CMA noted its evidence suggested there was indicative evidence that local authorities may be able to provide some placements more cheaply than by purchasing them from independent fostering agencies. The CMA recommended that the Welsh Government "run pilots in certain local authorities

[96] Finance Committee, draft RoP, 3 July 2024, paragraph 251
[97] Welsh Government, Explanatory Memorandum, page 42
[98] Children's social care market study final report Wales summary, page 8

to test the potential to make savings by bringing more fostering placements in-house”.[99]

101. The WLGA stated that the reduction in outturn will be cost avoidance rather than cashable savings.[100] It said the ADSS Cymru report highlighted some of the operational savings are contested.[101]

102. When the Committee put these views to the Minister, the Minister wrote to the Committee saying:

> *“The projections include the cost of the development of new local authority and not-for-profit provision in the transitional costs, including capital costs (e.g. for residential care homes for children). Developing their own new local authority provision means that, on an ongoing basis, local authorities do not need to pay for using these capital assets (except depreciation costs).”*[102]

103. The Minister went on to say that:

> *“I acknowledge the WLGA’s concerns, particularly around the cost of residential care, however while this was not within the RIA costings, our transformation agenda does anticipate less reliance on residential care in the future. Nevertheless, I do appreciate that there will probably be a significant level of upfront capital investment required in some areas and we will continue to work with local government colleagues to ensure this is factored-in to their planning.”*[103]

104. The Committee sought clarification from the Minister about whether the Welsh Government had conducted pilots for testing the indicative evidence that local authority could provide some fostering services more cheapy in-house than it can purchase them from independent fostering agencies, as recommended by the CMA. In her written evidence, the Minister did not confirm this was the case.

Other costs

[99] Children’s social care market study final report Wales summary, page 8
[100] WLGA response to the Health and Social Care Committee’s consultation on the Health and Social Care (Wales) Bill
[101] WLGA response to the Health and Social Care Committee’s consultation on the Health and Social Care (Wales) Bill
[102] Letter from the Minister for Social Care to the Finance Committee, July 2024
[103] Letter from the Minister for Social Care to the Finance Committee, July 2024

105. The CMA's Children's Social Care Market Study final report notes average operating profit margins of:

- 22.6 per cent for children's homes. Average operating profit increased from £702 per placement per week in 2016 to £910 in 2020.
- 19.4 per cent for fostering agencies. Average operating profits remained broadly flat from 2016 to 2020 at £159 per placement per week.

106. The EM notes the market in Wales includes a "broad spectrum of businesses differing in size, scope, and objectives with vastly different commercial models".[104]

107. The RIA summary notes the total profit to be lost when private providers leave the market is estimated to range from £177.7 million to £215.3 million over the appraisal period.[105] The EM includes a table that sets out the estimates of the profits to be lost for each year.[106] The aggregate value of these ranges from £172.1 million (scenario C) to £202.9 million (scenario B).

108. The Committee sought an explanation for the difference in these ranges and other apparent inconsistencies. In her written evidence, the Minister noted the "values included for Scenarios B and C for the financial year 2034-5 are incorrect – these should be -£32,809,000 for both scenarios." [107] She clarified the error had not been reflected in the total costs and confirmed the EM would be corrected "at the next opportunity, after Stage 2 proceedings are completed".[108]

109. In terms of the evidence base and how the estimates of the profit to be lost had been calculated, the RIA said only:

> *"This has been calculated by looking at the lost profits, as for-profit providers exit the market, and adding the increased profits gained during the transitional period as for-profit providers increase fees."*[109]

110. The Minister reiterated this during oral scrutiny, going on to say:

> *"… the estimate of the profit providers are expected to lose because of the proposals was not used in the calculations to*

[104] Welsh Government Explanatory Memorandum, page 131
[105] Welsh Government Explanatory Memorandum, page 43
[106] Welsh Government Explanatory Memorandum, page 67
[107] Letter from the Minister for Social Care to the Finance Committee, July 2024
[108] Letter from the Minister for Social Care to the Finance Committee, July 2024
[109] Welsh Government Explanatory Memorandum, page 67

> *estimate the cost and benefits to the public sector. These calculations were separate. That is, the profit lost as a result of the legislation would not simply be gained by local authorities."*[110]

111. The ADSS Cymru report does not set out any information about the evidence base and the calculation.[111]

Committee View

112. We are supportive of the Welsh Government's aim to take transformative action to improve social care services for children and their families. However the Committee is conscious of the need to achieve these aims in the most financially sustainable way, while ensuring the stability and quality of services for our looked after children, which they and our communities depend upon.

113. We note the results of a survey, as set out in the Children's Home Association's (CHA) submission to the Health and Social Care Committee's consultation on the Bill,[112] which showed at that stage that no independent providers would be willing or able to convert to 'not-for-profit' status. However, given the uncertainty about whether private providers will exit the market, the Committee welcomes the inclusion of different scenarios for modelling the financial implications of the provisions in the Bill, which provides a range of potential costs.

114. The Minister notes in her letter to the Committee that, following the Bill's introduction, evidence is emerging about private providers' intentions to convert to 'not-for-profit' status. However, the Minister did not explain what this evidence is indicating and the implications of it. The Committee is therefore recommending that, as provider intentions become clearer, cost estimates are updated and made available to the Senedd.

115. The proposed timetable for implementing the provisions means that the transitional arrangements will be introduced for existing private providers in less than three years' time, in April 2027. The EM says it is "self-evident ...[the policy proposals] will profoundly impact the children's social care market".[113] We are

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[110] Letter from the Minister for Social Care to the Finance Committee, July 2024
[111] ADSS Report: Eliminating Profit from the Care of Children Who Are Looked After, Contribution to the Regulatory Impact Assessment, page 30
[112] The Children's Home Association's submission to the Health and Social Care Committee consultation on the Health and Social Care (Wales) Bill, page 5
[113] Welsh Government Explanatory Memorandum, page 130

concerned about the risks to the sufficiency of supply of placements, how these will be managed and the impact on our looked after children.

116. We note the Minister says extending the transitional period beyond three years will result in costs being spread over a longer period and it will take longer for related benefits to materialise. The ADSS Cymru submission to this Committee's consultation about the Welsh Government's Draft Budget for 2024-25 noted the policy proposals was already having a detrimental impact on the availability of placements and increased financial pressures.[114] We believe there is a risk that costs will increase over this period and we are not assured that the possible consequences of this are reflected in the RIA. The Committee asks that the Minister considers this for the revised EM.

117. We are also concerned about the assumption that the number of looked after children and the balance of provision across fostering and residential care will remain constant over the appraisal period . We note the difficulties involved in quantifying the variables which impact the number of children who are placed in care. However the evidence points towards the number increasing and not flatlining. While we are, of course, supportive of Minister's aim to reduce the number of looked after children, the Welsh Government's proposals for wider transformation of children's services is not reflected in this Bill. Given this, we believe the assumptions about the number of looked after children should have been made based on historic data. We ask that the Minister considers this when revising the EM.

118. We welcome the Minister's confirmation that the EM will be updated at Stage 2 to correct the errors identified in the table that shows the estimate of the annual profit lost by private providers exiting the market. However, we have also noted apparent inconsistencies between the value of resource costs and the reduction in outturn for local authorities in the RIA summary as a result of the provisions in the Bill. We believe that the Minister should review these costs and provide an update to the Committee.

119. In terms of the expected reduction in local authority outturn, we welcome the additional information in the Minister's written evidence. However, we are not convinced such benefits will materialise given the views of the CMA and the local authority sector. We are also not clear how a reduction in outturn aligns with the Minister's evidence, which suggested taking profit out of the provision of services

[114] The Association of Directors of Social Services Cymru submission to the Finance Committee's consultation on the Welsh Government Draft Budget 2024-25, paragraph 30

would result in the same costs of those services.[115] We believe this should have been better explained in the RIA and ask that the Minister clarifies this at the earliest opportunity.

120. We note the Minister's written evidence did not confirm whether the Welsh Government has conducted pilots to test the potential for local authorities to make savings by delivering more fostering services in-house, as recommended in 2022 by the CMA. Data from such pilots would have provided valuable evidence to inform the proposals, as well as support the estimated financial implications of them. We ask that the Minister confirms whether the Welsh Government has implemented the CMA's recommendation, providing information about the results of the pilots if it has, and an explanation if it has not.

121. The RIA sets out information about the methodology adopted to calculate the capital costs for local authorities to purchase and refurbish new residential homes and the assumptions adopted for them. We are disappointed that this is not the case for the other costs for local authorities and the benefits they are expected to accrue. As such, it is not clear which costs have been included in the RIA and what assumptions have been adopted for those which have not. This is particularly concerning given the evidence from the CHA which suggested key costs have not been factored into the assessment. While the RIA refers to the ADSS Cymru report, we do not consider that this provides sufficient information to demonstrate how the costs and benefits have been calculated. As noted earlier in this report in Chapter 2, the ADSS Cymru report should not be regarded as an alternative to including information in the RIA and we expect the Minister to include further detail when the RIA is updated.

122. The absence of information in the RIA about how the estimates of local authority outturn have been calculated means the Committee does not know what assumptions have been adopted for the fees to be charged to local authorities by private providers for looked after children. We are concerned that the fees could increase significantly and we ask that, as well as set out the underlying assumptions, the Minister provides information about the planned processes to monitor, and the measures to be put in place to mitigate, increases.

123. We are also disappointed that the financial implications of alternative options to achieve the policy objectives are not included in the RIA for comparison purposes. The Committee feels that providing costings for options

[115] Finance Committee, draft RoP, 3 July 2024, paragraph 165

referenced in the RIA, such as setting a cap on fees in particular, represents a missed opportunity.

124. We are pleased to hear that, under the proposals of the Bill, any profit made by providers, would be reinvested back into services with the aim of improving outcomes for children, rather than distributed as dividends. We would however like to see more detail around how it is envisaged profits would be spent to improve the services delivered and how this would be measured.

Recommendation 6. The Committee recommends that the Minister provides an update about the latest evidence on whether private providers are expected to convert to 'not-for-profit' status, and that this information is included in a revised Regulatory Impact Assessment.

Recommendation 7. The Committee recommends that, in revising the Explanatory Memorandum, the Minister should model the financial consequences of extending the transitional period beyond three years.

Recommendation 8. The Committee recommends that the Minister revisits the assumptions made about the projected number of looked after children in the Regulatory Impact Assessment to ensure the costs of the proposals to eliminate profit from their care are as accurate as possible, and based on historical and empirical evidence.

Recommendation 9. The Committee recommends that the Minister reviews the apparent inconsistencies between the aggregate value of the annual resource (or revenue) costs expected to be incurred by local authorities and the reduction in their outturn as a result of the provisions in the Bill to eliminate profit from the care of looked after children, with the values reported in the Regulatory Impact Assessment summary, and provides an update to the Committee.

Recommendation 10. The Committee recommends that the Minister further clarifies how the proposals to eliminate profit from the care of looked after children will result in a reduction in local authority outturn for residential care and fostering services.

Recommendation 11. The Committee recommends that the Minister confirms whether she has implemented the recommendation by the Competition and Markets Authority to conduct pilots to test the potential for local authorities to make savings by bringing some fostering services in-house:

- if so, the Minister should publish the results of the pilots;

- if not, the Minister should explain why the Welsh Government did not implement the recommendation.

Recommendation 12. The Committee recommends that, in updating the Regulatory Impact Assessment, the Minister includes information about:

- the component elements of the resource (or revenue) costs expected to fall on local authorities as a result of the proposals to eliminate profit from the care of looked after children to better demonstrate which have been included in the estimates; and
- how these revenue costs, and the reduction in the outturn for both children's residential and foster care, have been calculated.

Recommendation 13. The Committee recommends that the Minister provides information about the planned processes to monitor, and the measures to be put in place to mitigate, increases in the fees charged to local authorities by private providers for placements.

Recommendation 14. The Committee recommends that, in updating the Regulatory Impact Assessment, the Minister provides information on:

- the alternative models considered to achieve the policy objective of eliminating profit from the care of looked after children, including the associated costs; and
- why the options for alternative models were rejected and not included in the Regulatory Impact Assessment.

Recommendation 15. The Committee recommends that the Minister provides further information to illustrate how reinvestment of any profit made by providers will improve services for looked after children and how this will be measured.

4. Continuing Healthcare Direct Payments

125. The Bill amends the National Health Service (Wales) 2006 Act ('the 2006 Act') to enable the introduction of direct payments for Continuing Healthcare (CHC), with the Welsh Ministers specifying, under regulations, the details and conditions about when they can be made.

126. CHC is provided when an "individual has a primary health need which outweighs their needs for other care and support, and is subject to regular reassessment".[116]The health and care needs are paid by the NHS in their entirety under the 2006 Act. This does not permit direct payments, which contrasts with social care where they are permitted, which allows individuals more of a choice in how, and by whom, the care is delivered.

127. The RIA says "there is evidence that some people with complex health conditions are refusing CHC assessments".[117] Among other things, this is because they do not want to lose the voice and control they have through local authority direct payments and the further feeling of loss of independence.[118]

128. Initially, it is anticipated that CHC direct payments will focus on adults receiving CHC in their own homes only, as "this is where stakeholder feedback has indicated the most demand for increased voice and control exist currently".[119]

129. The Welsh Government intends to implement the proposal in spring 2026. The RIA says:

> *"A transitional period of three years (2025-26 to 2027-28) is envisaged during which Welsh Government will provide financial support to cover the costs [for implementing and administering CHC direct payments]."*[120]

130. The RIA notes the movement from social care to CHC direct payments is "likely to take some time", involving a "good deal of preparation and set-up".[121] When asked to explain the estimates in the RIA in relation to the transition, the Minister said:

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116 Welsh Government, Explanatory Memorandum, page 12
117 Welsh Government, Explanatory Memorandum, page 13
118 Welsh Government, Explanatory Memorandum, page 13
119 Welsh Government, Explanatory Memorandum, page 14
120 Welsh Government Explanatory Memorandum, page 97
121 Welsh Government, Explanatory Memorandum, page 92

> *"The cost estimates have been made on the basis of the first CHC payments being made in the last quarter of 2025-26 and that individuals who are moving over would do so gradually in the course of around two years, rather than all at one time. From engagement with bodies that we've had in the NHS in England, we understand that there's been a gradual increase in the uptake of direct payments via their personal health budgets. So, that's really our assumption in terms of how that will be introduced in the timescale."*[122]

131. In total, implementing and administering the proposals are estimated to cost £3.2 million over the three years, 2025-26 to 2027-28 and will be met by the Welsh Government. They include staffing costs of 5.5 full-time equivalent (FTE) specialists in a central hub, to manage the direct payment element. These will cost £357,000 per year or £1.1 million over 2025-26 to 2027-28.

132. The RIA does not explain how the implementation and administration costs have been calculated. It notes the staff numbers for the hub are based on "other similar models".[123]

Costs to Local Health Boards

133. After the transition period (from 2028-29), the administrative cost of CHC direct payments will transfer to the Local Health Boards. This is estimated to cost £7.1 million over 2028-29 to 2034-35. The RIA notes, except for insurance for Personal Assistants ('PAs') and enhanced DBS checks, these costs have been calculated on the same basis as those estimated for the Welsh Government. It adds "It is envisaged that the costs associated with PA insurance and DBS checks will be incorporated by the health boards into the care package costs and therefore they are not shown separately".[124]

134. The cost of CHC direct payment packages, to be met by Local Health Boards, assumes that approximately five individuals per local authority are delaying or refusing to transfer to CHC. This equates to 110 people across all local authorities, although the RIA says it is possible that some local authorities will see fewer transferring.

[122] Finance Committee, draft RoP, 3 July 2024, paragraph 165
[123] Welsh Government, Explanatory Memorandum, page 96
[124] Welsh Government, Explanatory Memorandum, page 100

135. On 12 June 2024, Disability Wales told the Health and Social Care Committee this estimate seemed "quite low" since "there are a lot of people that have been on the cusp of needing CHC, but, because of the lack of voice and control, have refused it".[125]

136. In response to these statements, the Minister explained that the number of people to transfer is based on information received from local authorities' direct payments officers and heads of adult services.[126]

137. The RIA states that the average cost will be £50,000 per person per year, as advised by the National Care Commissioning Unit, with each person assumed to be in receipt of a CHC direct payment for five years.

138. However, it also notes the cost of Personal Health Budgets (PHB) direct payments in England ranges from £46,000 to £120,000 with a median of £80,000. It says this is likely to be the same in Wales, but the RIA uses "an exemplar cost at the lower end of this scale for projected expenditure and savings for this proposal".[127]

139. When asked to clarify this methodology, the Minister wrote to the Committee explaining that the more expensive packages of care are likely to be for people in care homes, who would not be eligible for direct payments. As such, it would not be "appropriate to simply look at the most expensive and least expensive packages and split the difference".[128] The Minister went on to say:

> *"The £50,000 estimate for a CHC package of care is based on these discussions with the NCCU, who have undertaken recent work as part of the CHC Workstream of the Welsh Government Value and Sustainability Board."*[129]

140. The RIA assumes a cost reduction in CHC via direct payment compared with traditional CHC, which it says reflects the level of savings reported by NHS England for PHB: 11 per cent reduction for all PHB care packages and 16 per cent for the average saving for PHB direct payment packages.[130] It does not include a specific reference to this evidence from NHS England.

[125] Health and Social Care Committee, RoP, 12 June 2024, paragraph 177
[126] Letter from the Minister for Social Care to the Finance Committee, July 2024
[127] Welsh Government, Explanatory Memorandum, page 85
[128] Letter from the Minister for Social Care to the Finance Committee, July 2024
[129] Letter from the Minister for Social Care to the Finance Committee, July 2024
[130] Welsh Government, Explanatory Memorandum, page 91

Committee View

141. The Committee welcomes the incentive behind the proposal in the Bill to enable the introduction of Continuing Health Care direct payments so that people do not lose their voice and sense of control when they transfer from local authority provided social care to NHS funded CHC. We are however concerned about the lack of information provided in the RIA to explain how the Minister has arrived at the administrative costs. Calculations of costs in some instances seem to be based on "other similar models" rather than derived from tangible and measurable data, with no evidence to explain why this is appropriate.

142. We are particularly concerned about the estimate of the cost of direct payments packages in Wales. Although the Minister acknowledges that the range of packages are similar in variation to that in England, a much lower average has been used. The Minister has written to the Committee to explain that advice had been sought from the National Care Commissioning Unit on this matter[131], and noted the more expensive packages of care are likely to be for people in care homes, who would not be eligible for direct payments. However, the Committee would welcome evidence to support that this is the case and assurance that £50,000 for a CHC package is a reasonable estimate for the needs of people who are assumed will transfer to CHC direct payments during the appraisal period.

143. We note the RIA assumes the estimated cost of a CHC direct payment package is reduced by the level of savings reported by NHS England for PHBs. The RIA notes this is an 11 per cent reduction for all PHB care packages and 16 per cent for the average saving for PHB direct payment packages. This range of cost reduction has been used to calculate both the costs and benefits of the proposals. It is important that the RIA includes references to specific sources, such as published reports, to evidence and support the assumptions, as well as demonstrate the appropriateness of their adoption in the estimates. It is disappointing this is not the case with this assumption.

Recommendation 16. The Committee recommends that the Minister provides further information to explain how cost estimates associated with implementing and administering Continuing Health Care direct payments, expected to fall on the Welsh Government, were calculated, including details of the data and models used, and for this information to be included within a revised Explanatory Memorandum.

[131] Letter from the Minister for Social Care to the Finance Committee, July 2024

Recommendation 17. The Committee recommends that the Minister provides evidence to support its assumption that, when the cost of Continuing Health Care direct payment packages will be similar to the average costings for Personal Health Budgets in England, the Regulatory Impact Assessment notes the cost will be towards the bottom of this range.

Recommendation 18. The Committee recommends that the Minister confirms the sources used to justify modelling the financial implications of the proposals for funding Continuing Health Care direct payments in Wales on the level of savings made by NHS England after the introduction of Personal Health Budgets, and for this information to be included in a revised Regulatory Impact Assessment.