

Agenda – Children, Young People, and Education Committee

Meeting Venue:	For further information contact:
Hybrid – Committee room 4 Tŷ Hywel and video conference via Zoom	Naomi Stocks Committee Clerk
Meeting date: 27 April 2022	0300 200 6565
Meeting time: 09.30	SeneddChildren@senedd.wales

Private pre-meeting

(09.00 – 09.30)

1 Introductions, apologies, substitutions and declarations of interest

(09.30)

2 Papers to note

(09.30)

2.1 Tertiary Education and Research (Wales) Bill

(Pages 1 – 12)

Attached Documents:

Letter from the Minister for Education and Welsh Language – CYPE(6)–09–22
– Paper to note 1

2.2 Tertiary Education and Research (Wales) Bill

(Pages 13 – 18)

Attached Documents:

Letter from the Minister for Education and Welsh Language to the Chair of
Finance Committee – CYPE(6)–09–22 – Paper to note 2



2.3 Tertiary Education and Research (Wales) Bill

(Pages 19 – 23)

Attached Documents:

Letter from the Minister for Education and Welsh Language to the Chair of the Legislation, Justice and Constitution Committee – CYPE(6)–09–22 – Paper to note 3

2.4 Forward Work Programme

(Page 24)

Attached Documents:

Letter from the Chair of the Children, Young People and Education Committee to the Minister for Education and Welsh Language – CYPE(6)–09–22 – Paper to note 4

2.5 Forward Work Programme

(Page 25)

Attached Documents:

Letter from the Chair of the Children, Young People and Education Committee to the Deputy Minister for Climate Change – CYPE(6)–09–22 – Paper to note 5

2.6 Welsh Government Draft Budget 2022–23

(Pages 26 – 27)

Attached Documents:

Letter from the Minister for Health and Social Services – CYPE(6)–09–22 – Paper to note 6

2.7 Peer on peer sexual harassment among learners

(Page 28)

Attached Documents:

Additional information from the National Association of Head Teachers (NAHT) Cymru – CYPE(6)–09–22 – Paper to note 7

2.8 Peer on peer sexual harassment among learners

(Page 29)

Attached Documents:

Additional information from the Association of School and College Leaders (ASCL) Cymru – CYPE(6)–09–22 – Paper to note 8

2.9 Peer on peer sexual harassment among learners

(Pages 30 – 31)

Attached Documents:

Additional information from Professor EJ Renold – CYPE(6)–09–22 – Paper to note 9

2.10 Peer on peer sexual harassment among learners

(Page 32)

Attached Documents:

Additional information from Parentkind – CYPE(6)–09–22 – Paper to note 10

2.11 Peer on peer sexual harassment among learners

(Page 33)

Attached Documents:

Additional information from the Welsh Local Government Association – CYPE(6)–09–22 – Paper to note 11

2.12 Welsh Government Draft Budget 2023–24

(Pages 34 – 36)

Attached Documents:

Letter from the Chair of the Finance Committee – CYPE(6)–09–22 – Paper to note 12

2.13 Forward work programme

(Pages 37 – 38)

Attached Documents:

Letter from the Chair of the Children, Young People and Education Committee to the Minister for Education and Welsh Language – CYPE(6)–09–22 – Paper to note 13

2.14 Mental health inequalities

(Pages 39 – 53)

Attached Documents:

Letter from the Chair of the Health and Social Care Committee – CYPE(6)–09–22 – Paper to note 14

2.15 Forward work programme

(Pages 54 – 55)

Attached Documents:

Letter from the Chair of the Children, Young People and Education Committee to the Minister for Education and Welsh Language – CYPE(6)–09–22 – Paper to note 15

2.16 Forward work programme

(Pages 56 – 57)

Attached Documents:

Letter from the Chair of the Children, Young People and Education
Committee to the Deputy Minister for Social Services – CYPE(6)–09–22 –
Paper to note 16

2.17 Forward work programme

(Pages 58 – 59)

Attached Documents:

Letter from the Chair of the Children, Young People and Education
Committee to the Minister for Education and Welsh Language and the Deputy
Minister for Climate Change – CYPE(6)–09–22 – Paper to note 17

2.18 Forward work programme

(Pages 60 – 61)

Attached Documents:

Letter from the Chair of the Children, Young People and Education
Committee to the Minister for Social Justice – CYPE(6)–09–22 – Paper to note
18

2.19 Forward work programme

(Pages 62 – 63)

Attached Documents:

Letter from the Chair of the Children, Young People and Education
Committee to the Deputy Minister for Mental Health and Wellbeing – CYPE(6)–
09–22 – Paper to note 19

2.20 Scrutiny of the Future Generations Commissioner

(Page 64)

Attached Documents:

Letter from the Chair of the Equality and Social Justice Committee – CYPE(6)–09–22 – Paper to note 20

3 Motion under Standing Order 17.42(ix) to resolve to exclude the public from the remainder of the meeting

(09.30)

4 Qualifications Wales – update on priorities

(09.30 – 10.30)

(Pages 65 – 67)

Attached Documents:

Research Brief

Break

(10.30 – 10.40)

5 Peer on peer sexual harassment among learners – findings from the engagement with children and young people

(10.40 – 11.15)

(Pages 68 – 78)

Attached Documents:

CYPE(6)–09–22 – Private paper 1

6 Peer on peer sexual harassment among learners – consideration of the evidence

(11.15 – 11.45)

(Pages 79 – 88)

Attached Documents:

CYPE(6)-09-22 - Private paper 2

CYPE(6)-09-22 - Paper to note 1

Jeremy Miles AS/MS
Gweinidog y Gymraeg ac Addysg
Minister for Education and Welsh Language

Jayne Bryant MS
Chair
Children, Young People and Education Committee
Senedd Cymru



Llywodraeth Cymru
Welsh Government

29 March 2022

Dear Jayne,

Tertiary Education and Research (Wales) Bill

I would like to thank you for your cogent contributions to the general principles debate of the Tertiary Education and Research (Wales) Bill (“the Bill”) following publication of your committee’s Stage 1 report on the Bill on 4 March 2022.

Further to my letter of 14 March, I have set out responses to the remaining recommendations of the Committee in the Annex to this letter. It has not been possible for me to accept all of the committee’s recommendations in full, however, I have carried the principles and underpinning reasoning through as far as possible.

I hope this letter is helpful in setting out responses to the Committee’s Report. I will also be writing to the Chairs of the Legislation, Justice and Constitution Committee and the Finance Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

I look forward to continuing to work with Members as the Bill progresses through the Senedd process.

Yours sincerely,

Jeremy Miles AS/MS
Gweinidog y Gymraeg ac Addysg
Minister for Education and Welsh Language

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Recommendation 1. That the Senedd agrees the general principles of the Tertiary Education and Research (Wales) Bill.

I **note and welcome this recommendation** and the support of the Committee for the general principles of the Bill. I would like to thank each member of the Committee for their considered and thorough scrutiny of the Bill.

Recommendation 2. That the Explanatory Memorandum is updated to list the policy objectives for the Bill and how the Bill's provisions seeks to meet them.

I **note this recommendation** and will ensure consideration is given to how best the Explanatory Memorandum could be expanded, when it is updated after Stage 2, to provide further clarity on this matter.

Recommendation 3. That the Welsh Government sets out clearly to the Committee, the Commission and the wider sector how they define parity of esteem, what delivering on parity of esteem would look like, and how they expect the post 16 sector to achieve this.

The reforms brought about by the Bill will enable parity of esteem between vocational and academic pathways to be advanced in a number of ways:

- Firstly, by bringing universities, colleges, and work-based training providers together under a single funder and regulator, it ensures that the main providers of vocational and academic pathways are considered under a single policy umbrella. By facilitating collaboration between schools, colleges, universities and training providers, CTER will discourage competitive behaviour which can create perceived imbalances of esteem between different qualification pathways.
- Secondly, the Commission will have a strategic duty to promote "a variety of levels of study and types of qualification", "a variety of educational settings and modes of study" and "facilitates movements of learners" between different parts of the system. CTER will need to consider equal esteem for all provision and qualification pathways which it funds.
- Thirdly, we intend any changes to the 16-19 curriculum to follow from the Curriculum for Wales reforms by ensuring that students and learners have a wide range of options for progression from 16 onwards in both academic and vocational knowledge, experiences and skills that develop engaged, employable and entrepreneurial citizens.

Recommendation 4. That the Welsh Government publishes a revised Equality Impact Assessment which takes account of the issues raised by the EHRC before Stage 2 proceedings.

I **accept this recommendation** and will publish a revised Equality Impact Assessment.

Recommendation 5. That the Minister provides more information to the Committee and Universities Wales on why they believe the Internal Market Act does not have any implication for this Bill.

I have considered the provisions of the Bill in light of the Internal Market Act and do not consider there to be any implications for this Bill.

Recommendation 6. That the Minister brings forward Amendments to Schedule 1 at Stage 2 to place a requirement on Welsh Ministers that they must have regard to the need to ensure that the Board (as a whole) reflects the breadth of education provision and research, and the diversity of Wales. This should encompass the appointment of all members to the Commission including associate members.

I recognise the intention behind this recommendation, however I do not consider that an amendment to the Bill is necessary. Firstly, as public appointments these will meet the existing protections in relation to equality and diversity and the government's Diversity and Inclusion Strategy for Public Appointments in Wales.

Secondly, Schedule 1 (paragraph 2(2)) provides for a list of skills and experience the Welsh Ministers must have regard to in appointing members of the Board. I am currently considering amendments intended to expand the list of experiences detailed here.

Thirdly, in taking a nation and system-wide approach through the bill and establishing the commission, we are moving away from (the risks of) a silo approach. The approach set out in Schedule 1 reflects this, and is intended to provide for a Board that represents the needs of sector as a whole. Board members are not intended to be appointed as representatives for the traditional individual sectors, institutions or providers. Whilst I recognise the intent underpinning this recommendation, I am concerned that the approach it recommends risks hard-wiring an approach based on individual representatives for each of the traditional sectors.

Recommendation 7. That the Minister brings forward amendments at Stage 2 to increase the worker and learner representation on the Commission, and to make explicit in the Explanatory Memorandum the Government's expectation that the Commission should be seeking to go beyond the minimum set out in the legislation.

I recognise the intention behind this recommendation but I do not accept the need to bring forward an amendment. The Bill provides for minimum membership level in respect of associate members and the option remains to provide for a higher number of such members.

As part of updating the Explanatory Memorandum after Stage 2 I will consider options in respect of setting out expectations in respect of the Commission going beyond the minimum.

Recommendation 8. That the Minister brings forward amendments at Stage 2 to give the learner and worker associate members voting rights on the Commission.

I do not accept this recommendation. The inclusion of advisory board members ('associate members') of learners, staff member trade unions and members of the wider tertiary education workforce trade unions, will enable those most affected by the establishment of the Commission to have an opportunity to influence and advise its Board.

A key benefit of associate members not having voting rights on the Commission is the avoidance of a conflict of interest through the separation between the activities required of those individuals as a member of the Commission and the wider activities of the trade union, NUS or learner representative body itself. There is potential for conflict of interest should the advisory board members have a vote.

Whilst unable to formally vote, their valuable role will be to influence and advise the board representing the views of the workforce and learners. In order to ensure a balance of skills and representation within the Board's membership at present associate board members are in addition to the Board's minimum number.

Recommendation 9. That the Welsh Government ensures that the appointment process for the Chair of the Research and Innovation Committee includes a pre-appointment process by the relevant Senedd Committee.

I note this recommendation and will consider how this recommendation can best be addressed. I do not consider that any provision needs to be made on the face of the Bill to provide for this matter.

Recommendation 10. That the Minister brings forward amendments at Stage 2 to include a strategic duty to promote collaboration and competitiveness in research and innovation.

I agree with this recommendation and am already exploring options for bringing forward an amendment in this areas following consideration of the evidence provided by stakeholders.

Recommendation 11. That the Minister brings forward amendments at Stage 2 to include researchers within section 5(2) regarding the capability of the tertiary education and research workforce.

I note the recommendation and am considering this matter further.

Recommendation 12. That the Minister brings forward amendments at Stage 2 to add a general duty to protection the institutional autonomy of tertiary education providers.

I accept this recommendation. Whilst the Bill already contains a number of provisions which make clear the already well established autonomy of tertiary education providers in their governance and management, I note the views of stakeholders and the Committee and am already exploring options for bringing forward an amendment in this area.

Recommendation 13. That the Minister brings forward amendments at Stage 2 to expand academic freedom beyond higher education provision to include research and innovation, and, to suitably future proof the legislation, provision in all other tertiary education settings.

I do not accept this recommendation. The protections described as 'academic freedom' under this section relate to specific matters including the freedom of providers to determine the content, teaching, assessment of and admissions to higher education courses, and the appointment of academic staff. The latter would incorporate staff appointed for the purposes of research and innovation.

However, the other specific provisions are not appropriate to research and innovation or to other forms of tertiary education. For instance, the assessment of many further education courses is not subject to 'academic freedom', because it is determined by qualification awarding bodies, and the content of many further education courses is subject to local curriculum requirements, both of which are inconsistent with section 15(2)(a).

Admissions to further education courses or apprenticeships may sometimes be determined by policy decisions made by government (and in the future the Commission) in respect of funding or progression, which would be inconsistent with section 15(2)(b).

In addition, teaching staff in the further education sector are regulated by the Education Workforce Council, which is inconsistent with section 15(2)(c).

Recommendation 14. That the Minister brings forward amendments at Stage 2 to ensure that academic freedom covers individual academics, both in their teaching and research.

I recognise the intention behind this recommendation but not consider an amendment is necessary. Section 16 provides for the academic freedom of individual academics at tertiary education providers that provide higher education to question and test received wisdom and put forward controversial ideas in whatever activity they might undertake.

Recommendation 15. That the Minister brings forward amendments at Stage 2 to strengthen the duty on the Commission to promote Welsh medium tertiary education to reflect the ambition of Cymraeg 2050 and the Commission's important role in helping to deliver on one million Welsh speakers. The duty on the Commission must be stronger and go further than "meeting reasonable demand".

I welcome this recommendation and in light of stakeholder evidence, as well as the Committee's report, am already considering options for bringing forward an amendment to this strategic duty, subject to the identification of no unintended consequences.

Recommendation 16. That the Minister brings forward amendments at Stage 2 so that the strategic duty to promote tertiary education through the medium of Welsh is broadened to include the promotion of research through the Welsh medium.

I accept this recommendation. In light of stakeholder evidence, as well as the Committee's report, I am already exploring options for an amendment.

Recommendation 17. That the Minister brings forward amendments at Stage 2 to set out how the Commission will work collaboratively and strategically with Coleg Cymraeg on the planning and delivery of Welsh medium provision, to avoid the potential for duplication.

I accept this recommendation and I am, in light of stakeholder evidence, as well as the Committee's report, already exploring options for an amendment.

Recommendation 18. That the Minister brings forward amendments at Stage 2 to add a strategic duty for the Commission to promote the learner voice.

I accept this recommendation and am already, in light of stakeholder evidence and the Committee's report, considering options for ensuring the importance of learner views is captured within the strategic duties.

Recommendation 19. That the Minister brings forward amendments at Stage 2 to add a social partnership strategic duty for the Commission.

I recognise, and agree with, the intention behind the Committee's recommendation, and will explore whether an appropriate amendment placing a duty on the Commission in respect of social partnership can be brought forward taking full account of the proposals for the forthcoming Social Partnership Bill.

Recommendation 20. That the Minister brings forward amendments at Stage 2 to amend section 13 of the Bill to ensure that the Commission's strategic plan cannot be changed without the agreement of the Commission.

I note this recommendation and will consider how this recommendation can best be addressed.

Recommendation 21. That the Minister brings forward amendments at Stage 2 to amend section 19 of the Bill to ensure that any general directions issued by Welsh Ministers are made by Order subject to the negative procedure.

I do not accept this recommendation. All powers within the Bill have been subject to thorough consideration in respect of the manner in which the power is to be exercised and the appropriate Senedd procedure. In doing so the nature of any existing provision, from which the power has been derived, has been considered, however the historic approach to the original power has not automatically been carried forward if doing so was not necessarily considered appropriate.

The power in section 19 enables the giving of directions to the Commission by the Welsh Ministers in relation to specific matters, as set out in section 19. As such, these directions relate to a single body and specific matters and do not provide for general law-making of a wider nature.

The requirements set out in the Bill in respect of the requirement on the Welsh Ministers to publish the direction, report to the Senedd that a direction has been given and lay of copy before the Senedd are considered sufficient to ensure the accessibility and transparency of directions given to the Commission under section 19.

Recommendation 22. That the Minister bring forward amendments at Stage 2 to provide a more consistent and wide ranging approach to the equal opportunity and widening access duties for all parts of the post-16 sector, and not just those providers who have to register.

I accept this recommendation and am exploring options for bringing forward amendments in relation to equal opportunity.

Recommendation 24. That the Minister provides absolute clarity as to whether a national body for adult community learning will be established.

My intention is to move away from a National Body for Adult Learning in Wales. All adult learning providers funded by Welsh Government, including the Chief Executive and Chair of Adult Learning Wales have been notified of my decision.

All recognise that policy considerations have moved forward since a national body was considered in 2019 with the introduction of the Tertiary Education and Research Bill, which will establish a new Commission for Tertiary Education and Research.

I have approved £2m of funding, and a terms of reference for an external group to progress the review of adult education, and to support the development of a 2 year programme of national co-ordination for adult learning. The inaugural meeting is being held 15th March, and will be Chaired by Sue Pember, from Wales Centre for Public Policy, author of the Welsh Lifelong Learning System report published in December last year. The role of chair will be rotated thereafter to ensure inclusivity across the sector.

I am pleased that key stakeholders including Adult Learning Wales, the Adult Learning Partnership Network, FE, HE and the Learning and Work Institute, among others, are coming together collaboratively to embrace this direction.

Recommendation 25. That the Minister tables amendments at Stage 2 to put a balanced funding duty on the face of the Bill.

I note this recommendation, whilst I consider that the amendment I am exploring in response to recommendation 26 will provide the reassurances being sought by this recommendation but will consider this matter further.

Recommendation 26. That the Minister tables amendments at Stage 2 to place duties on the Commission to publish the details of at least its funding allocations, funding methodologies, funding formulas, and financial outturns, as well as a duty to be transparent in its funding decisions.

I accept this recommendation and am exploring options for bringing forward an amendment.

Recommendation 27. That amendments are tabled at Stage 2 to enable the Commission to provide research and innovation fund to a limited range of non-registered bodies.

I note the recommendation and am considering this matter further.

Recommendation 28. That the Minister brings forward amendments at Stage 2 to make a clear distinction between Welsh Ministers powers to directly fund tertiary education providers to deliver employability provision and the Commission's broader funding powers.

I do not accept this recommendation. Whilst it is essential that any use of the concurrent funding powers by the Welsh Ministers is not counter to the strategic position of the Commission in respect of funding decisions, it is essential that undue restrictions are not

placed on the funding powers if the Welsh Minister due to the risk of unintended consequences.

Simply restricting the power of the Welsh Ministers to provide funding by reference to employability provision risks creating potential gaps in those funding powers that could hamper their ability to fund future employability provision. Funding in respect of employability impacts a wide range of employment sectors including for example the health and social care sector. Hard restrictions or no funding powers for the Welsh Government could affect future funding streams for employability provision, and would risk putting learners and employment sectors in a worse position.

Recommendation 29. That the Minister brings forward amendments at Stage 2 to provide additional safeguards to ensure that any plans brought forward by the Commission for changes to sixth form provision does not have a detrimental impact on Welsh medium provision or provision within a religious school setting.

I note the intention behind recommendation but do not consider further amendments to the Bill to be necessary to ensure these protections. The overarching strategic duty placed on the Commission to promote tertiary education through the medium of Welsh, and the requirement to encourage learners to study through the medium of Welsh and to take all reasonable steps to ensure that there is sufficient tertiary education provided in Wales through the medium of Welsh will apply to the Commission in discharging its functions across the post-16 sector, including any considerations in respect of maintained school sixth form provision.

Additionally, the School Standards and Organisation (Wales) Act 2013 and the statutory School Organisation Code also includes relevant protections and safeguards to ensure that Welsh language provision and provision provided by faith schools is duly considered in any proposals brought forward for re-organisation.

The provisions in the Bill amend the current Chapters 2 and 3 of Part 3 of the 2013 Act and insert a new chapter 3A which enables the Commission to take a more strategic approach and offer a wider perspective to ensure school sixth form provision in a particular area or region is sensible and coherent – this includes ensuring that appropriate provision is available to meet the demand and planned demand for Welsh language provision.

The amendments to the 2013 Act relate to those proposals which affect sixth form education, that is:

- proposals to establish or discontinue a school providing education suitable only to the requirements of persons over compulsory school age, or
- proposals that make a regulated alteration to a school, the effect of which would be that the provision of education suitable to the requirements of persons over compulsory school age at the school increases or decreases.

The Commission will be able to direct a local authority or the governing body of a foundation or voluntary school to make sixth form proposals under section 63A. Section 54 of the 2013 Act will be amended to enable the Commission, in the circumstances set out in section 54(1), to refer proposals to Welsh Ministers if they affect sixth form education.

Under the new section 63C as inserted into the 2013 Act by the Bill, the Commission may make its own proposals in accordance with a direction. In these circumstances should any

objections be raised the Commission's proposals will be subject to the arrangements for the approval by Welsh Ministers as defined in section 63F under the 2013 Act.

In addition to these safeguards and protections, section 63C (3) of the 2013 Act will require the Commission to obtain the consent of Welsh Ministers prior to making any proposal to open or close a voluntary or foundation school's sixth form provision.

Recommendation 30. That the Minister brings forward amendments at Stage 2 to delete section 105 and sets out a different approach to managing due diligence when funding is passed onto third parties.

I agree with the intention behind the Committee's recommendation and am exploring options for bringing forward an amendment to section 105 to ensure arrangements intended to protect public money do not result in unnecessary additional bureaucracy or complexity.

Recommendation 31. That the Welsh Government commissions a review of apprenticeship framework development which considers the wider context beyond the Commission.

We already have in place robust arrangements for developing apprenticeship frameworks which are founded on employer and broader stakeholder engagement.

Three years ago we introduced new arrangements to improve the development process for framework developers, centred on stakeholder consultation including employers, sector bodies, training providers and awarding bodies. Each of these parties feeds into a stakeholder evidence report and which in turn supports the development of a draft framework, prior to Welsh Government issuing the framework.

These are robust and transparent arrangements, which ensure all new and revised frameworks are developed in consultation with key stakeholders and support sectors critical to the Welsh economy. The Commission will need to consider how it wishes to continue framework development and stakeholder consultation.

Recommendation 32. That the Minister brings forward amendments at Stage 2 to ensure that learner protection plans must take account of student / learner welfare and ensuring students can continue to study through the medium of Welsh.

I accept this recommendation and will consider whether this recommendation would be best achieved through an amendment to the Bill or statutory guidance to the Commission.

Recommendation 33. That the Minister brings forward amendments at Stage 2 to section 126 so that Welsh Ministers can only request information from the Commission when it directly relates to Welsh Ministers' functions.

I recognise the intention behind the Committee's recommendation, however, I cannot accept this recommendation. The intention is for the Commission to be a data hub and to become expert in tertiary education enabling the Commission to work alongside the tertiary education providers. The Welsh Ministers will rely on the Commission to perform that role, as they do now with HEFCW. However, Welsh Ministers will be responsible to the Senedd for the spending of public money provided to the Commission and will, from time to time, require access to information on the sector.

Section 69(1)(a) of the Further and Higher Education Act 1992 (FHEA) currently requires HEFCW to provide the Welsh Ministers with such information or advice relating to the provision for their area of higher education as they may from time to time require. The drafting of section 126 is intended to operate in exactly the same way as it does currently, but with a broader scope of providers.

Recommendation 34. That the Minister brings forward amendments at Stage 2 to explicitly require the consent of, or to act on the request of a governing body of a higher education corporation to being dissolved.

I accept this recommendation and am, in light of evidence to committee, as well as the Committee's report already exploring options for an amendment

Recommendation 35. That the Minister brings forward an amendment at Stage 2 to broaden the definition to include adult community learning, in line with the definition in the Explanatory Notes

I do not consider an amendment to the definition to be necessary. Section 139 of the Bill defines tertiary education by reference to higher education, further education and training, which are each also defined in that section. I am content the adult community learning is captured within the definition of tertiary education and that no amendments are required. The current references within the Explanatory Notes to community based adult learning are intended to provide explanation and clarity in respect of the provisions to which the notes refer.

Recommendation 36. That the Welsh Government publish draft regulations on:

- **Categories of registration (section 23(2))**
- **Conditions of registration (sections 25(3); 31(1); 32)**
- **Designation of other providers of tertiary education (section 81(4))**
- **Securing and funding tertiary education (section 91(3); 91(7)(b))**
- **Apprenticeships (section 107(4))**
- **Open University (section 140(1))**

before the Stage 2 proceedings.

I cannot accept this recommendation. In order to ensure stakeholders are afforded ample opportunities to inform the development of the necessary regulations, and to ensure that those regulations reflect any refinement to the Bill following consideration of the Committee's recommendations, I do not anticipate being in a position to share draft regulations with the Committee whilst the Bill is undergoing scrutiny.

Recommendation 37. That the Minister provides greater clarity either as part of the Stage 1 debate or in writing before Stage 2 commences on how the Bill will align with the 2018 Act and will support appropriate provision and support for learners/students with additional learning needs.

It is important to recognise the distinction between the provisions and duties contained in the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (the 2018 Act) and the statutory requirements to provide strategic oversight, funding and regulation placed on the Commission while acknowledging the interdependencies and the different roles and responsibilities of those organisations involved.

Perhaps it would be helpful if I first explain the basis for the provisions contained in the Bill relating to ALN and how the 2018 Act, together with provisions in the Bill, supports learners with ALN.

The 2018 Act makes provision for supporting children with additional learning needs (ALN) and young people with ALN in, or wanting to pursue, post 16 education or training. The statutory duties to support individual learners with ALN are detailed in the 2018 Act and the subordinate legislation made under it. The 2018 Act also places more general duties on particular persons to support the effective operation of the ALN system. For example, some of those more general duties are aimed at improving and ensuring the capability of the workforce to deliver additional learning provision, including such provision in Welsh.

Those more general duties include ones on the Welsh Ministers when exercising particular functions under the Learning and Skills Act 2000 related to the provision of post-16 education and training. For example, the Welsh Ministers, in securing the provision of such facilities, must take account of the education and training required to ensure that there are employees and potential employees available who can deliver additional learning provision in Welsh (sections 31 and 32 of the Learning and Skills Act 2000 as amended by section 50 of the 2018 Act).

The approach in the Bill in respect of ALN matters is based upon the provisions of the 2018 Act. The Bill places similar duties about matters affecting the ALN system on the Commission when it is exercising functions related to the provision of further education and training. So, taking the example in the last paragraph, section 93 of the Bill requires the Commission to have regard to that matter, and other specific matters related to ALN, when discharging its duties in sections 90 to 92 to secure the provision of facilities for further education and training.

Similarly, section 99 of the Bill, like the duty on the Welsh Ministers under section 41 of the Learning and Skills Act 2000 as amended by the 2018 Act, requires the Commission, when exercising those functions to secure facilities for further education and training and particular related functions, to have regard to the needs of persons with ALN and to the desirability of there being facilities that would assist in the discharge of duties under the 2018 Act.

So the duties on the Commission related to ALN generally reflect those on the Welsh Ministers in this area as a result of the 2018 Act. There are also a few additional provisions. For example, the duty in section 99 to have regard to those matters related to ALN also applies to the Commission's function of providing financial support for the provision of information, advice or guidance about education or training. This is because those ALN matters could be relevant to the exercise of that function. Another example is the Bill's amendment to section 65 of the 2018 Act to require the Commission and the Welsh Ministers to respond to a local authority's request for information or other help for the purpose of exercising its ALN functions. For example, the Commission or Welsh Ministers may hold additional information which would help a local authority to exercise its ALN functions. The Commission and Welsh Ministers will also be required to have regard to relevant guidance in the ALN Code when dealing with any such request.

I will turn now to how, taken together, the 2018 Act and the Bill support provision for learners with ALN.

The 2018 Act places duties on the governing bodies of further education institutions in relation to meeting the needs of their enrolled students who have ALN.¹ In addition, local authorities have duties towards young people with ALN. This may entail a local authority maintaining an individual development plan for a young person enrolled at a further education institution; in some cases it may involve the local authority securing and funding specialist ALN provision at other institutions for individual learners aged 16 – 25 where this is necessary to meet the learners' reasonable needs for education or training.² Pending the implementation of these provisions of the 2018 Act, the Welsh Ministers will retain responsibility for securing such specialist placements for individual learners.

Under the Bill, the Commission (instead of the Welsh Ministers) will be responsible for securing proper and reasonable facilities for further education and training (which includes ALN provision), having had regard to various matters, including some which are relevant to ALN learners and issues. The intention is that the Commission, in deciding how to exercise these and related functions, takes account of ALN considerations and in turn makes decisions which help to support the effective operation of the ALN system.

One of the matters to which regard must be had by the Commission when securing the provision of further education and training, is the facilities that may reasonably be secured by other persons (section 93(1)(f)). Since local authorities will have ultimate responsibility for securing specialist provision for young people with ALN where that is necessary (as explained above), section 93(1)(f) expressly states that the provision that may reasonably be secured by others, includes provision secured by local authorities under the 2018 Act.

The detailed arrangements for implementing the ALN reforms for post-16 are currently being finalised. This includes the transfer of responsibility for securing post-16 specialist provision for learners with complex needs to Local Authorities. To provide clarity and transparency of approach it is important that the implementation of the post-16 aspects of the 2018 Act and the implementation of the Bill provisions continue to be developed in a joined up and co-ordinated way.

¹ There are also similar duties on the governing bodies of maintained schools about meeting the needs of their registered pupils (including any who are over compulsory school age) who have ALN.

² See section 14 of the 2018 Act and the Additional Learning Needs (Wales) Regulations 2021, regulations 6 – 10.

Agenda Item 2.2

CYPE(6)-09-22 - Paper to note 2

Jeremy Miles AS/MS
Gweinidog y Gymraeg ac Addysg
Minister for Education and Welsh Language

Peredur Owen Griffiths MS
Chair of the Finance Committee
Senedd Cymru



Llywodraeth Cymru
Welsh Government

Dear Peredur,

29 March 2022

I would like to thank the Finance Committee for their scrutiny of the Tertiary Education and Research (Wales) Bill (“the Bill”) during Stage 1 and for the report which was published on 04 March 2022.

I welcome the conclusion that the Committee is broadly content with the financial implications of the Bill. I note that the Committee feels unable to draw a conclusion on whether the resources are adequate and reasonable to deliver the legislation due to the Regulatory Impact Assessment not being able to quantify costs to other bodies.

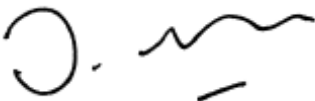
It is anticipated that if additional costs are placed on other bodies then this would be as a result of subordinate legislation. I wanted to assure the Committee that in line with standard practice, any subordinate legislation made as a consequence of this Bill would, where relevant, be accompanied by a Regulatory Impact Assessment. This would provide a comprehensive analysis of the costs, including costs to other bodies.

I have set out responses to the Committee’s recommendations in Annex A and while it has not been possible for me to accept all of the Committee’s recommendations in full, I hope you will find this useful.

I will also be writing to the Chairs of the Children, Young People and Education Committee and the Legislation, Justice and Constitution Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

I look forward to continuing to work with Members as the Bill progresses through the Senedd process.

Yours sincerely,



Jeremy Miles AS/MS
Gweinidog y Gymraeg ac Addysg
Minister for Education and Welsh Language

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Annex

Recommendation 1. Throughout this report, the Committee has identified that further financial information is required. Should there be significant changes to the Regulatory Impact Assessment, the Committee recommends the Minister appears before the Committee to consider those changes in more detail.

I note this recommendation. The Regulatory Impact Assessment will be updated in line with standard procedure after Stage 2. It will be updated with the latest information and in light of the Committee's recommendations. Cost estimates will also be reviewed to ensure they represent the most up-to-date figures. At this stage, I do not envisage this will result in significant changes to the overall figures in the Regulatory Impact Assessment because the anticipated staff numbers of the Commission, the major driver of overall cost, have not altered since November. I recognise the Committee's desire to explore the updated Regulatory Impact Assessment so will share a copy with the Committee as soon as possible after Stage 2 to give the Committee an opportunity to consider the latest information and ask any follow up questions before Stage 3.

Recommendation 2. The Committee recommends the Welsh Government undertakes further work analysing and estimating the cost benefits of the Bill. The Regulatory Impact Assessment should be updated to include further information on these benefits, how they will be analysed and when they are anticipated to be delivered.

I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation. A range of non-quantified benefits are set out in the Regulatory Impact Assessment. The benefits that will flow from the reforms will have outcomes with real-world impact, ultimately better educational outcomes for a wider range of learners and more broadly, a higher skilled workforce delivering more productivity in the economy.

The benefits of any education reform are challenging to quantify and many costs, particularly those that may be incurred by other bodies, are unknown at this stage. This means that it is not possible to set out detailed cost benefits in quantified form in the Regulatory Impact Assessment. The benefits will be tracked and analysed post-implementation and the Commission will be assessed on its contribution to these goals and the national milestones.

Recommendation 3. The Committee recommends that the Welsh Government provides as much clarity as possible about the likelihood of the risk that the Office of National Statistics could reclassify further and higher education institutions as a result of the proposals contained in the Bill, the severity of its financial impact if realised and the practical implications of reclassification on the Welsh Government and the new Commission.

I accept this recommendation. The Welsh Government believes that the risk of reclassification is low as the changes proposed in the Bill do not alter the extent of 'control' over individual tertiary education providers who will, as at present, remain autonomous bodies responsible for determining their own general policy. The Bill is concerned with the proportionate regulation of registered providers rather than control of institutions.

The Bill seeks to establish a new body, the Commission for Tertiary Education and Research, which will be responsible for the funding and regulatory oversight of tertiary

education providers in Wales. There are two main changes which will impact tertiary education providers in connection with Welsh public funding:

A change in the regulatory framework – the Bill proposes the introduction of registration system. This is similar to changes made in England following establishment of the Office for Students, this body has already been classified to the central government sector by the ONS, and will allow the Commission to ensure regulatory oversight of tertiary education providers in Wales who benefit from the automatic designation of their higher education courses for Welsh Government student support.

A change in the funding relationship – the Bill proposes the introduction of Outcome Agreements. These will be the means by which the Commission negotiates with funded providers the activities they will undertake in pursuit of the Commission's objectives in its approved Strategic Plan.

The Bill is intended to strike an appropriate balance between maintaining further and higher education institutions' independence while safeguarding the significant amount of public money invested in the tertiary education sector.

Regarding the impact of reclassification. If the arrangements between the Commission and these institutions changed to the extent that the ONS could determine that 'control' fell within the public sector i.e. the public sector had the ability to determine the general purpose or programme of these institutions, they would be reclassified to the public sector and at least some element of their transactions and balances would hit the Welsh Government Consolidated Balance Sheet. The extent would depend on whether they were classed as market bodies, i.e. fund 50% or more of their operational costs from 'sales' or not:

If the institutions do not meet the criteria to be market bodies, all of the assets & liabilities of these institutions would be "on" the WG's consolidated balance sheet, budgets for the institutions would have to be planned, managed & reported on a net resource basis and funding would only score against budget when the institutions incur the expenditure not on payment.

If the institutions did meet the criteria to be market bodies, they will be Public Non-Financial Corporations and the budget will be reported on an 'external finance basis' i.e. the budget show all transactions with the institutions on payment and, should they undertake any borrowing, the financing raised will be reported in the budget.

If the institutions were not market bodies, they would fall within the central government sector and be treated no differently to the WG itself for budgeting and accounting purposes. The institutions would need to be aligned, designated in the GOWA 2006 (budget Motions & Designated Bodies) Order, i.e. the full resources of these institutions would be included in the ambits to the budget motions and voted by the Senedd and consolidated within the WG Consolidated Accounts if they met the annual materiality threshold.

If the institutions were market bodies, they would be classified as Non-Financial Public Corporations. They would not be aligned, i.e. not designated, although they would need to provide some financial information for the WG Consolidated Accounts.

The ONS will classify the Commission once it is established. We will engage with ONS to advise them of when that will be so that ONS can include the Commission in its forward plan, which will inform us of the timescales for formal classification

Recommendation 4. The Committee recommends that the Welsh Government undertakes further work on the cost associated with the Bill and updates the Regulatory Impact Assessment to demonstrate, for clarity, to which costs the +/- 30 per cent variance applies.

I accept this recommendation and will look to include this information when the Regulatory Impact Assessment is revised following Stage 2. The revised Regulatory Impact Assessment will set out which costs are subject to up to 30% variance and why. Further work will also be undertaken on whether this percentage for the potential variance remains the most appropriate to use and if not, what percentage should be used.

Recommendation 5. The Committee recommends that detailed information is provided on the membership, work plan and intended outcomes of the strategy and implementation group. Including where the work of this group will lead to amendments to the Regulatory Impact Assessment and what the scope of those amendments might be.

I accept this recommendation. I established The Post Compulsory Education and Training (PCET) Strategy and Implementation Board to work collectively with me, the Programme's Senior Responsible Officer and Welsh Government officials to provide strategic oversight and expert advice to support the delivery of the PCET reforms and associated policy development, implementation arrangements and the establishment of the Commission. The Board also operates as a platform to raise awareness of tertiary education and research policy developments planned elsewhere in the UK and internationally and considers the potential for it to impact on post 16 learning in Wales.

All Board members are drawn from external stakeholders impacted by the planned legislative and cultural changes and all have a vested interest in the successful delivery of the reforms. Members are required to take a proactive and participatory role providing advice, guidance and constructive challenge on the proposed work required to deliver on the reforms and support the smooth transition to the Commission. This includes communicating our vision for change, advising on the long term strategic duties and objectives, highlighting potential risks to the successful introduction of the Commission and to the wider post 16 sector during implementation.

To date the group has worked collegiately to consider areas related to the strategic duties in the Bill including the high level quality principles, scope for greater collaboration and partnership working, and a duty to support Lifelong Learning. The forward work plan remains fluid and is prioritised according to need. Future discussions will include the Employability Plan, learner engagement principles, delivery and development of Welsh language provision and planned Stage 2 Bill amendments in due course. A list of the PCET Strategy and Implementation Board's external membership is attached at Annex B.

Recommendation 6. The Committee recommends that the Welsh Government provides information regarding the strategy and implementation group's consideration of the location of the Commission and staffing numbers, including details of any financial impacts arising from the group's work.

I note this recommendation, however the PCET Strategy and Implementation Board provide strategic oversight and expert advice, and it is not the intention that the Board will be involved in operational discussions and decisions. As is standard practice, there is a Programme Board to oversee the operational side of establishing the Commission. The

membership of the Programme Board includes representatives of Welsh Government, HEFCW and Trade Union Side (TUS). Operating under the Programme Board are a number of individually focused work streams that are considering the elements for establishing the Commission. These work streams are Legislation, IT, HR, Location and Finance and Governance. As more detail emerges on location and staffing numbers and the resulting financial impact, any updated information will be included when the Regulatory Impact Assessment is revised following Stage 2.

Recommendation 7. The Committee recommends that the Welsh Government undertakes further work on a location strategy, particularly the impact that COVID-19 will have on any costs associated with it, and that this information is included in a revised Regulatory Impact Assessment.

I accept this recommendation. There is ongoing work relating to the location of the new Commission, it is one of the key work streams of the implementation programme. As more detail emerges any updated information will be included when the Regulatory Impact Assessment is revised following Stage 2.

Recommendation 8. The Committee recommends that the Welsh Government provides further information relating to the financial impact of using IT consultants to undertake transferring the Higher Education Funding Council for Wales's systems and data to the new Commission and this should be included in the revised Regulatory Impact Assessment.

I accept this recommendation and will look to include this information when the Regulatory Impact Assessment is revised following Stage 2. As I said at Committee any use of consultants will be kept under review and the programme hasn't ruled out hiring permanent IT staff if that turns out to be a better value for money option. The revised Regulatory Impact Assessment will make clear, as far as possible, the financial impact and rationale of basing forecast costs on using IT consultants.

Recommendation 9. The Committee recommends that the Welsh Government reassesses the costs associated with other bodies as a result of this legislation. The costs and any financial implications should be created in consultation with the stakeholders affected and detailed in a revised Regulatory Impact Assessment.

I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation. It has not been possible to quantify any potential additional costs to other bodies as this will depend upon decisions taken by the Commission once it is established. Any assumptions or estimates made by the Welsh Government at this time would pre-empt these decisions and would not provide for accurate estimations of any potential costs. As I said in my letter to the Committee of 22 December 2021, I acknowledge that there is a potential risk, that the bill could place additional costs on the providers in the sector. This risk is managed by close monitoring and engaging closely with stakeholders, including through but not limited to the Strategy and Implementation Board to ensure any additional costs incurred due to the bill are absolutely necessary and kept to a minimum. It is anticipated that if additional costs are placed on other bodies then this would be as a result of subordinate legislation, which would, where relevant, be accompanied by a Regulatory Impact Assessment which would provide a comprehensive analysis of the costs, including costs to other bodies.

Recommendation 10. The Committee recommends that the Welsh Government continues to include post-implementation review of all Bills before the Senedd as standard practice, including information as to how value for money will be assessed.

I accept this recommendation. Post-implementation reviews play an important role in ensuring that lessons are learnt for future areas of work in both areas of maintaining good practice and where improvements could be made.

Annex B - PCET Strategy and Implementation Board External Membership

Organisation	Sector Represented
Adult Learning Wales	Adult learning
Careers Wales	All
CBI	Industry
Chairs of Universities Wales	HE
Colegau Cymru	FE
Coleg Cymraeg Cenedlaethol	HE
CYDAG	School 6 th Forms
Education Workforce Council	Regulator
Estyn	Regulator
FSB	Industry
Higher Education Funding Council Wales	HE
IOD	Industry
Learning and Work Institute	Work-based Learning
National Centre for Learning Welsh	All
National Mission Change Board	School 6 th Forms
National Training Federation Wales	Work-based Learning
National Union of Students	Social Partner
Qualifications Wales	Regulator
Quality Assurance Agency	Regulator
The Association of Directors of Education in Wales (ADEW)	Lifelong Learning School 6 th Forms
Universities College Union	Social Partner
Universities Wales	HE
WLGA	Lifelong Learning School 6 th Forms

CYPE(6)-09-22 - Paper to note 3

Jeremy Miles AS/MS
Gweinidog y Gymraeg ac Addysg
Minister for Education and Welsh Language



Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru

29 March 2022

Dear Huw,

Tertiary Education and Research (Wales) Bill

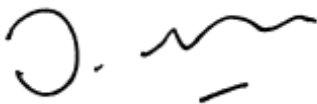
I would like to thank you for your valuable contributions to the general principles debate of the Tertiary Education and Research (Wales) Bill ("the Bill") following publication of your committee's Stage 1 report on the Bill on 2 March 2022.

Further to my letter of 14 March, I have set out responses to the remaining recommendations of the Committee in the Annex to this letter. It has not been possible for me to accept all of the committee's recommendations in full, however, I have carried the principles and underpinning reasoning through as far as possible.

I hope this letter is helpful in setting out responses to the Committee's Report. I will also be writing to the Chairs of the Children, Young People and Education Committee and the Finance Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

I look forward to continuing to work with Members as the Bill progresses through the Senedd process.

Yours sincerely,



Jeremy Miles AS/MS
Gweinidog y Gymraeg ac Addysg
Minister for Education and Welsh Language

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Recommendation 1. The Minister should use the Stage 1 debate to confirm to the Senedd whether the required consent from the UK Government in relation to section 128 has been received.

Consent has been received from the UK Government in relation to section 128, the First Minister wrote to the Llywydd confirming this on 1 March.

Recommendation 3. The Minister should provide the Senedd with draft versions of any regulations that are to be made or laid before the Senedd upon, or shortly following, the commencement of the relevant provision as soon as possible and while the Bill is under consideration by the Senedd at Stage 2 of the Bill to enable more full scrutiny of the relevant powers.

I cannot accept this recommendation. In order to ensure stakeholders are afforded ample opportunities to inform the development of the necessary regulations, and to ensure that those regulations reflect any refinement to the Bill following consideration of the Committee's recommendations, I do not anticipate being in a position to share draft regulations with the Committee whilst the Bill is undergoing scrutiny.

Recommendation 5. The Minister should ensure that the explanatory notes to the Bill make it clear that, where lists of examples are used in specific sections, such lists are not exhaustive and should not be interpreted as such.

I accept this recommendation and will ensure the necessary changes are made to the explanatory notes when they are republished after Stage 2. I will also consider whether any amendments are necessary to the Bill to ensure clarity for the reader.

Recommendation 6. The Minister should use the Stage 1 debate on the general principles of the Bill to provide a commitment that the regulation-making powers in the Bill will not be used to address inconsistencies between Welsh legislation and UK Bills; issues with UK Bills that make provision within devolved areas; or any other concerns regarding UK legislation which deals with tertiary education.

I note this recommendation, the scenarios described is not the intention of the regulation-making powers

Recommendation 7. The Bill should be amended so that the Welsh Ministers are placed under a duty to consult with the Commission and such other persons as they consider appropriate before publishing a statement under section 11.

I do not accept this recommendation. The high-level, strategic, nature of the priorities we intend to be set out in the statement to be published under section 11 will not, I consider, lend themselves to consultation.

Recommendation 8. The Bill should be amended to the effect that directions made under section 19 of the Bill are made by an order of the Welsh Ministers that is subject to the negative scrutiny procedure.

Recommendation 18. The Bill should be amended to the effect that directions made under section 106 of the Bill are made by order of the Welsh Ministers which is subject to the negative scrutiny procedure.

I do not accept these recommendations. All powers within the Bill have been subject to thorough consideration in respect of the manner in which the power is to be exercised and the appropriate Senedd procedure. In doing so the nature of any existing provision, from which the power has been derived, has been considered, however the historic approach to the original power has not automatically been carried forward if doing so was not necessarily considered appropriate.

The power in sections 19 and 106 enables the giving of directions to the Commission by the Welsh Ministers in relation to specific matters, as set out on the face of the Bill. As such, these directions relate to a single body and specific matters and do not provide for general law-making of a wider nature.

The requirements set out in the Bill in respect of the requirement on the Welsh Ministers to publish the direction, report to the Senedd that a direction has been given and lay of copy of the directions before the Senedd are considered sufficient to ensure the accessibility and transparency of directions given to the Commission under sections 19 and 106.

Recommendation 9. The Minister should use the Stage 1 debate on the general principles to clarify why registration is necessary and why, if it is possible to regulate other tertiary education providers through terms and conditions of funding, it is not possible to regulate higher education providers in the same way.

The register is necessary in respect of higher education providers, which now receive only a small proportion of their funding in the form of recurrent grants to which terms and conditions can be applied, and instead a majority of their public funding from student support.

If the register were removed from the Bill then the Commission would be unable to effectively regulate higher education providers because of this predominate reliance on student support, rather than Commission grants, and the Bill would fail to achieve a number of its key objectives.

The register also enables providers to be appropriately and proportionately regulated regardless of the sources of their funding and the relative balance of these different sources of funding.

In addition, the register creates the option of bringing all tertiary education providers into a common and coherent system of regulation in the long-term. This is not an immediate priority in the context of setting up the Commission and ensuring proper regulation of providers in receipt of student support, and so is not current government policy. However, this is a matter which we are open to exploring further with the sector through consultation and engagement.

Recommendation 10. Should section 23 remain in the Bill, the Bill should be amended to the effect that the categories of registration referred to by the Minister for the purpose of section 23 should be set out on the face of the Bill. The Bill should also be amended to provide for a regulation-making power to enable further categories (or changes to categories) to be specified in regulations that are subject to the affirmative procedure.

I do not accept this recommendation. As set out in the response to recommendation 3 it is my intention to ensure we work with stakeholders to co-construct the regulations necessary to support the implementation of the Bill. Whilst I am clear in my policy intention, as set out in the statement of policy intent, I wish to see that reviewed and refined through engagement and dialogue with stakeholders.

Recommendation 12. The Bill should be amended to the effect that regulations made under sections 39 and 41 are subject to the negative scrutiny procedure.

I accept this recommendation, having considered these provisions further I agree it is appropriate that they be subject to the negative Senedd procedure and I will bring forward an amendment to this effect

Recommendation 13. Given the Minister's explanation regarding the level of detail that may be included in a statement made under section 70 of the Bill, we believe the Bill should be amended so as to require such statements to be laid before the Senedd.

I accept this recommendation and will explore options for bringing forward an amendment to provide for the statement to be laid before the Senedd, I do not consider it appropriate for the statement to be subject to a Senedd procedure

Recommendation 15. The Bill should be amended to the effect that regulations made under section 78(1)(c) and 78(2) are subject to the affirmative scrutiny procedure.

I accept this recommendation, having considered these provisions further I agree it is appropriate that they be subject to the affirmative Senedd procedure and I will bring forward an amendment to this effect

Recommendation 16. The Bill should be amended to the effect that regulations made under section 105(1) are subject to the affirmative scrutiny procedure.

I note this recommendation, although I am exploring an amendment in response to CYPE recommendation 30 in respect of this provision.

Recommendation 19. The Bill should be amended so that requirements in relation to approved Welsh apprenticeships, for the purpose of Part 4 of the Bill, are prescribed in regulations that are subject to the negative scrutiny procedure.

I do not accept this recommendation. In respect of the apprenticeship specification, it has been the intention for some years to use the earliest primary legislative opportunity to correct provision in the Apprenticeships, Skills, Children and Learning Act 2009, which deals with the specification of apprenticeship standards.

This Act replicated for Wales the procedures for England (those provisions were repealed for England in 2015) despite there being a different regulatory structure in Wales. This meant

that there was an order-making function which was unnecessary in the Welsh context as it related to approving actions of a non-government body which did not exist in Wales.

The specification is, in effect, a long list of very detailed qualifications and grade criteria. It is of a technical nature and its development depends on specialist sector knowledge. Qualifications are fast moving and what should be included in the list can change often.

This is a technical and detailed administrative action of the Executive which often needs to be updated quickly in order to ensure that it is always up-to date. Added procedural burdens result in delays to the finalisation/updating process. That is not in the best interests of apprentices.

I do not consider that the interests of good administration are served by maintaining an unnecessarily cumbersome process which denies agility and places barriers to ensuring that the apprenticeships system is responsive to the needs of Wales, is kept as up-to-date and is fit for purpose at all times.

Recommendation 22. If preserving the existing power in section 128(2) of the Education Reform Act 1988 through section 135 of the Bill is merely desirable and not essential to the implementation of the Bill, the Bill should be amended to the effect that the power in section 128(2) of the 1998 Act is repealed, rather than expanded upon.

I note this recommendation, although I am exploring an amendment in response to CYPE recommendation 34 in respect of this provision.

Agenda Item 2.4

CYPE(6)-09-22 - Paper to note 4

**Y Pwyllgor Plant, Pobl Ifanc
ac Addysg**

**Children, Young People
and Education Committee**

Jeremy Miles MS
Minister for Education and Welsh Language

Dyddiad | Date: 31 March 2022

Pwnc | Subject: Home Education

Dear Jeremy,

Please can you provide an update on the development and introduction of legislation on home education, including a timeline for when you expect this to legislation to be considered by the Senedd.

We are aware that this has been an on-going issue, with the Children's Commissioner calling for primary legislation to deal with the issue. However, following the publication of the [Welsh Government response](#) to the Children's Commissioner's Annual Report 2020-21, we understand that the Welsh Government 'intends to use its powers under secondary legislation to implement the proposals previously consulted on in 2019 and 2020, subject to the final consideration of the consultation responses.' It would be helpful to get an update on progress on this.

I look forward to hearing from you.

Yours sincerely



Jayne Bryant MS,

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

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CYPE(6)-09-22 - Paper to note 5

Y Pwyllgor Plant, Pobl Ifanc ac Addysg

Children, Young People and Education Committee

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Lee Waters MS
Deputy Minister for Climate Change

Dyddiad | Date: 31 March 2022

Pwnc | Subject: Review of Learner Travel (Wales) Measure 2008

Dear Lee,

I understand from informal discussions with the Minister for Education, that you are responsible for the on-going review of the Learner Travel (Wales) Measure 2008. We note that the [Cabinet Statement](#) from August 2020 expanded the original scope of the review from post 16 learners, to include the 4-16 age group, and to consider the current mileage threshold. The statement said that the aim was to complete the review by the end of March 2021, but that this could be delayed by the pandemic. We would therefore appreciate any update on this review, and in particular when you expect to report the findings.

I am copying this letter to the Culture, Communications, Welsh Language, Sport and International Relations Committee, who I know share an interest in this issue.

I look forward to hearing from you.

Yours sincerely



Jayne Bryant MS,

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Agenda Item 2.6

CYPE(6)-09-22 - Paper to note 6

**Eluned Morgan AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services**



**Llywodraeth Cymru
Welsh Government**

Jayne Bryant MS
Chair of Children, Young People and Education Committee

4 March 2022

Dear Jayne,

Following the Children, Young People and Education Committee's scrutiny of the Draft Budget on 13th January, I agreed to write to you with the information we have currently available in respect of NHS expenditure on children and young people. The information that is available relates to services provided by Welsh NHS organisations, and does not include any expenditure on Welsh children treated in England.

The information is comprised from two sources:

- Welsh NHS Costing Returns which detail total specialty costs for paediatric services (paediatric medicine, paediatric surgery, child & adolescent psychiatry and all paediatric community services).
- In addition, Patient Level Costing returns which detail costs for any patients under 18 years identified from any other specialties treated in admitted patient care, outpatient or emergency department settings.

The cost data available only covers hospital-based services and some specific community services for children and young people. There is no age-related cost data available for primary care services, where we would expect the majority of healthcare for children and young people to be provided. This would include childhood immunisation campaigns for which separate cost data is not currently available.

There are also known data quality issues with the cost data we do have available, especially around population of age indicator field, so the expenditure identified from patient level costing data will be the minimum level for these services. All costs are fully absorbed and therefore include direct and indirect service costs as well as estates and other overhead costs.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

A summary of the costs for the most recent three years for which information is available is detailed below:

	2018-19	2019-20	2020-21
Specialty/Subspecialty	£000	£000	£000
NICU & SCBU	£ 46,694	£ 49,974	£ 53,365
PICU & PHDU	£ 6,954	£ 7,207	£ 7,672
Paediatric Medicine	£ 121,278	£ 133,141	£ 153,430
Paediatric Surgery	£ 6,868	£ 7,021	£ 6,748
Child & Adolescent Psychiatry	£ 46,024	£ 56,805	£ 62,742
Paediatric Medical Services	£ 15,710	£ 17,503	£ 17,787
Paediatric Community Programmes	£ 2,802	£ 1,899	£ 2,317
Paediatric Home Delivery Drugs	£ 4,683	£ 2,640	£ 7,917
Health Visiting	£ 38,760	£ 41,863	£ 45,183
School Nursing	£ 13,638	£ 14,258	£ 14,847
Child Protection & Family Health Workers	£ 7,195	£ 8,861	£ 10,876
Total for children's specialties	£ 310,605	£ 341,172	£ 382,884
Treatment of <18 in other specialties	£ 95,321	£ 92,856	£ 100,524
Total expenditure on <18	£ 405,926	£ 434,028	£ 483,407
Total expenditure on all ages	4,345,095	4,512,359	5,089,899
Percentage spend on <18	9.3%	9.6%	9.5%

Identified expenditure on children accounts for just under 10% of total NHS expenditure on the services for which cost data exists. The costs of primary care services for which no data is available accounts for approximately one third of total NHS expenditure.

I will be happy to provide further updates on NHS expenditure on an annual basis as part of our budget evidence.

Yours sincerely,



Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Agenda Item 2.7

CYPE(6)-09-22 - Paper to note 7

At the meeting on the 24 March, the headteacher unions agreed to provide a written response to the questions that were unasked.

Response from NAHT received on 6 April:

- To what extent is a lack of appropriate education, awareness and understanding a factor in some young people's unhealthy attitudes towards issues associated with relationships and sexuality?

There could always be more of this and all opportunities to raise awareness etc will improve things. However, I'm not sure that this is the main contributory factor in regard to unhealthy attitudes. As we said in the evidence it's far more to do with societal attitudes. Schools are just a mirror for the wider community

- How might the teaching of Relationships and Sexuality Education under the new Curriculum for Wales help both prevent young people sexually harassing others and protect those who might experience it?

This is important. As part of the preparation for CfW schools will be considering how they deliver the four purposes. RSE will be key to this and will provide time within the curriculum for these issues to be discussed. It will be important that high-quality RSE resources are developed and shared. There have been some good examples of this in the past, e.g "the good drug dealer" resource that raises awareness about substance misuse. However, I'd still say that although formal RSE delivery is important it's all the informal conversations that take place as part of good quality pastoral care that probably makes more of a difference. Also as we said in evidence, good quality pastoral care is expensive!

- How well placed are schools to deliver RSE in line with the statutory RSE Code from this September in primary schools and roll it out in secondary schools from September 2023? Are school staff receiving enough professional learning in this regard?

I think schools are going to be in a position to deliver RSE and there is awareness in primary and secondary schools of what needs to be done. But I think we need to note that this is yet another area of provision that we are preparing to implement alongside ALN, CfW etc. I'd be concerned that we don't maximise the opportunity with RSE because there's so much going on. I'd also say schools need more professional learning, It seems there's some work being undertaken by consortia but my RSE lead says because of the pandemic not has happened lately.

- The Children's Commissioner emphasised the importance of having an RSE lead in each school and for this to be in place by this September. What proportion of schools would you estimate have a designated RSE lead in place by now?

Agenda Item 2.8

CYPE(6)-09-22 - Paper to note 8

At the meeting on the 24 March, the headteacher unions agreed to provide a written response to the questions that were unasked.

Response from ASCL received on 12 April:

- To what extent is a lack of appropriate education, awareness and understanding a factor in some young people's unhealthy attitudes towards issues associated with relationships and sexuality?

It is a factor but not the total cause. Issues are broad and societal and are not limited to young people.

- How might the teaching of Relationships and Sexuality Education under the new Curriculum for Wales help both prevent young people sexually harassing others and protect those who might experience it?

The RSE curriculum needs sufficient delivery time and space, to be well planned and delivered by trained and confident staff and other specialist professionals. Students need to be taught how to identify and respond to abuse, on and offline.

- How well placed are schools to deliver RSE in line with the statutory RSE Code from this September in primary schools and roll it out in secondary schools from September 2023? Are school staff receiving enough professional learning in this regard?

The picture is uneven.

- The Children's Commissioner emphasised the importance of having an RSE lead in each school and for this to be in place by this September. What proportion of schools would you estimate have a designated RSE lead in place by now?

Uncertain.

Agenda Item 2.9

CYPE(6)-09-22 - Paper to note 9

At the meeting on the 24 March, Professor EJ Renold agreed to provide a written response to the questions that were unasked.

Response received on 12 April:

Can you briefly explain what effective Relationships and Sexuality Education will look like if it is delivered as you believe it should?

There isn't a brief response to this, other than to re-state that a whole school approach to RSE is the single most important factor in building high quality RSE. The new guidance is very clear on what constitutes high quality RSE and their six underpinning principles, if implemented, have the potential to provide effective RSE provision. However, please also see written response regarding the need for robust and pan Wales professional learning opportunities and a dedicated RSE policy/practice/research network (SRE expert panel's recommendations in this area have yet to be implemented). Building capacity will take time, resources and a clear strategy for implementation. The following recommendations are yet to be acted upon (<https://gov.wales/sites/default/files/publications/2018-03/the-future-of-the-sex-and-relationships-education-curriculum-in-wales.pdf>, page 23-24)

Key Area 3: Training and Standards

Recommendation 6: Welsh Government to establish a SRE professional development pathway, differentiated for stage of education, to be incorporated into ITE and professional learning courses.

This pathway would provide an opportunity to further progress their professional development and specialise in SRE, allowing scope for the workforce to achieve a Masters level SRE qualification.

Recommendation 7: All schools should have a specialist trained SRE lead with access to resources and guidance to co-ordinate a rights and gender-equity based curriculum. Hours for delivery across the key stages should be equitable with other curriculum subjects. This role should involve embedding SRE in a whole school approach.

Recommendation 9: For Estyn to build on recent changes to the inspection framework to consider the inspection of SRE as part of aligning new inspection arrangements to the new curriculum.

Recommendation 10: Welsh Government to consider establishing a SRE excellence mark to highlight exemplary whole school approaches to gender equality and equity and SRE.

Key Area 4: Research and Support

Recommendation 11: Welsh Government to establish a SRE Hwb Zone to support high quality SRE in school and to service a SRE research, practice and training network, aimed at facilitating provision of up to date research and training opportunities and creation of a Wales SRE community of practice.

How confident are you that this will happen?

Statutory RSE for primary schools begins in 2022. The current guidance is not sufficient to support schools to build and develop their RSE curriculum. We (with McGeeney and Coll) have been delivering Professional Learning (see CRUSH resource) for over 4 years. However, we don't know of any other sustained professional learning opportunities in Wales that specifically supports schools to prepare for the new statutory RSE (beyond topic focused training). We are also still waiting for Welsh Government to establish a pan Wales RSE network.

What potential barriers are there to the successful implementation of Relationships and Sexuality Education under the new Curriculum for Wales?

Key potential barriers include dedicated time for schools to plan, prepare and deliver the new RSE curriculum; enduring impact of COVID pandemic; pan-Wales professional learning opportunities for all RSE leads/working groups in schools; research-based resources that are aligned with the underpinning principles of the new curriculum for Wales (e.g. www.agendaonline.co.uk/crush), including bi-lingual resources); strategic leadership that ensures coherence of understanding and provision across local authorities and consortia.

Can you expand on your comment in your paper that this is a "curriculum panic zone"?

In our professional learning programme (www.agendaonline.co.uk/crush) we facilitate an activity called, 'comfort, stretch, panic' to explore teacher confidence levels in key areas of the curriculum. Sex, gender sexuality; violence, safety and support, and sexual health and well-being are often in the stretch and panic zones.

Agenda Item 2.10

CYPE(6)-09-22 - Paper to note 10

At the meeting on the 24 March, Parentkind agreed to provide a written response to the questions that were unasked.

Response received on 11 April:

To what extent is a lack of appropriate education, awareness and understanding a factor in some young people's unhealthy attitudes towards issues associated with relationships and sexuality?

There are certainly gaps in what schools teach and support young people with, and the lived experience of young people represented in our research findings. For example, while 70% of parents reported that their child's school had an inclusive environment, this leaves 30% who don't feel that schools are doing enough to allow young people to feel supported and nurtured.

Similarly, Parentkind research results point to a mean age of 11 when it comes to experiencing pressure to constantly engage with social media. This highlights the eye-opening fact that there will be a sizeable chunk of children younger than 11 who feel a pressure to engage in platforms that, in most cases, simply were not designed with their safety and healthy development in mind. What this means, is that a balanced view of social media and the impact it can have would need to be a feature of education around the age of 11, if not before.

How might the teaching of Relationships and Sexuality Education under the new Curriculum for Wales improve things?

Parentkind welcomes the work done around Curriculum for Wales, and in particular the commitments made toward parental participation and consultation. In reality, however, a multi-agency and cross-departmental approach needs to be taken. When it comes to relationships and sexuality, of course education has a key role to play, but that work must be supported by actions and interventions in healthcare provision and the media landscape. Quite simply, we mustn't expect teachers to be able to solve issues that reflect how we live as a society at large. Parentkind, of course, is not best placed to advise in those spaces, but we would point to our recommendation at committee to orchestrate a communications campaign focussing on sexual harassment and abuse taking place online.

Agenda Item 2.11

CYPE(6)-09-22 - Paper to note 11

At the meeting on 10 March, the WLGA agreed to provide an update to the Committee on any discussions that has taken place with the Local Government Association in England regarding the Online Safety and Harms Bill.

Response received on 5 April:

WLGA circulated their views back in November 2021 to the LGA which led on this area. We had a particular interest as it covered abuse of candidates/elected politicians as well as online harms re. children and vulnerable people too. The LGA has produced some resources: [Must Know: Online harms | Local Government Association](#).

Agenda Item 2.12

CYPE(6)-09-22 - Paper to note 12

Senedd Cymru
Y Pwyllgor Cyllid

—
Welsh Parliament
Finance Committee

Chair, Children, Young People, and Education
Committee

Chair, Climate Change, Environment, and
Infrastructure Committee

Chair, Culture, Communications, Welsh Language,
Sport, and International Relations Committee

Chair, Economy, Trade, and Rural Affairs Committee

Chair, Equality and Social Justice Committee

Chair, Health and Social Care Committee

Chair, Legislation, Justice and Constitution Committee

Chair, Local Government and Housing Committee

11 April 2022

Dear Committee Chairs

Welsh Government Draft Budget 2023-24: Engagement

At our meeting on 25 March 2022, the Finance Committee (the Committee) considered its programme of engagement for the forthcoming Welsh Government's Draft Budget 2023-24, ahead of the Committee's Plenary debate on spending priorities, provisionally scheduled for 13 July. I am writing to Chairs of subject committees to share our thinking.



The Committee has agreed to undertake a number of engagement activities prior to the publication of the Draft Budget, in the autumn. These include, a stakeholder event, focus groups held with the general public, and working with the Youth Parliament.



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Stakeholder Event

Following the restrictions over the past two years, the Committee is delighted to be able to return to holding an in-person stakeholder event to hear directly from interested organisations/individuals on the expected draft budget proposals, as well as the Welsh Government's approach to setting the budget and prioritising resources.

Cross-Committee engagement with stakeholders on the budget is crucial to effective scrutiny and therefore I would like to invite Committee Chairs or a Member of your Committee to join the event which will take place on the morning of Wednesday 15 June at Llanhilleth Miners Institute, Abertillery, Blaenau Gwent. If Chairs or Members are interested in attending, please contact the clerking team seneddfinance@senedd.wales by 1 June 2022.

Focus groups with the Welsh public

On behalf of the Committee, the Senedd's Citizens Engagement Team will be holding a series of focus groups on the Draft Budget with the Welsh public. The team undertook a similar exercise last year and will facilitate focus sessions over the summer term, asking the same or similar questions posed last year. The aim of this work is to improve public understanding and engagement with the Welsh Budget process. In addition, over the longer-term we hope to form a longitudinal study to allow the Committee to monitor perspectives and attitudes over time. Participants will be sourced through similar partner organisations to cover the same demographics as last year, and groups will be organised to focus on particular policy areas.

The Citizens Engagement Team will circulate the dates of sessions to all Committees, should any Members wish to participate. This will allow an opportunity for Members to hear first-hand from the citizens of Wales where spending should be prioritised.

Youth Parliament

To further complement our engagement work, the Committee has agreed to work with the Youth Parliament. Members of the Youth Parliament will be invited to take part in their own focus group session before the summer. It is hoped this will allow the best opportunity for Youth Parliament Members to influence the Welsh Government spending priorities.

Finance Committee Plenary Debate on the Welsh Government spending priorities

As mentioned above, the Committee intends to hold a Plenary debate on Wednesday 13 July on the Welsh Government's spending priorities for 2023-24. The outcomes of our engagement work will inform and feed into this debate. We



believe this debate allows the best opportunity for Members to potentially influence the Welsh Government's spending priorities prior to the formulation of the Draft Budget in the autumn.

Approach to Budget scrutiny

I will shortly be writing to Chairs, with regard to the Committee's approach to budget scrutiny, including information on the consultation and timetable. Whilst the Finance Committee's core function is to undertake financial scrutiny of the Welsh Government and associated public bodies, financial scrutiny should be embedded into the scrutiny work undertaken by all Committees. Therefore, I would welcome suggestions from Chairs to explore ways of working collaboratively to ensure the most effective financial scrutiny of the Welsh Government.

If you have any questions about any aspect of the Draft Budget process, please feel free to contact me or the Clerk to the Finance Committee, Owain Roberts, 0300 200 6388, seneddfinance@senedd.wales.

Yours sincerely



Peredur Owen Griffiths MS
Chair of the Finance Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



CYPE(6)-09-22 - Paper to note 13

**Y Pwyllgor Plant, Pobl Ifanc
ac Addysg**

**Children, Young People
and Education Committee**

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Jeremy Miles MS
Minister for Education and Welsh Language

Dyddiad | Date: 7 April 2022

Pwnc | Subject: Pupil absence

Dear Jeremy,

The Committee discussed its forward work programme on 31 March. We have agreed to undertake a range of work on different issues, including pupil absence. We will be undertaking a short and focussed inquiry on this over the summer term.

We are aware from your [statement last October](#) that this is a matter of concern for the Government, and that you have instructed officials to undertake a comprehensive review of attendance patterns, to inform development of future policy interventions. We understand that this work was going to include working with education stakeholders to collect intelligence on the emerging situation and what measures/interventions are needed to better re-engage learners.

In order to help inform our approach to our work, we would like to seek an update on this review, any initial findings and what are the next steps for developing future policy interventions on this important issue. We will be considering our terms of reference for this inquiry in early May, so it would be helpful to have a response by 29 April, if possible.

I look forward to hearing from you.

Yours sincerely



Jayne Bryant MS,

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

CYPE(6)-09-22 - Paper to note 14

**Y Pwyllgor Iechyd a
Gofal Cymdeithasol**

**Health and Social Care
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Jayne Bryant MS

Chair, Children, Young People and Education

Committee Jenny Rathbone MS

Chair, Equality and Social Justice Committee

John Griffiths MS

Chair, Local Government and Housing Committee

5 April 2022

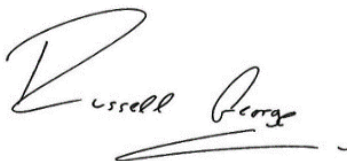
Dear Jayne, Jenny and John

Health and Social Care Committee inquiry into mental health inequalities

Further to my [letter of 14 December 2021](#) to the Children, Young People and Education Committee and the Equality and Social Justice Committee, I am writing to update you on the next steps for the Health and Social Care Committee's inquiry into mental health inequalities.

The evidence we have already heard clearly demonstrates the cross-cutting nature of the determinants of mental health inequalities, and the potential solutions. I was pleased that members of the CYPE and ESJ Committees were able to participate in some of the focus groups we arranged in February. I look forward to continuing to work with you and your Committees to identify areas of mutual interest and opportunities to work together.

Yours sincerely



Russell George MS

Chair, Health and Social Care Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg. We welcome correspondence in Welsh or English.

Health and Social Care Committee inquiry into mental health inequalities: update

Work to date

The Health and Social Care Committee launched an inquiry into mental health inequalities in January 2022. The terms of reference were very broad, seeking to identify which groups were most likely to experience mental health inequalities, what barriers they face, whether Welsh Government policy does enough to recognise and address these groups' needs, and what more needs to be done.

So far, we have gathered evidence by:

- Launching an open call for written evidence, which received over 90 responses. A summary of the written evidence prepared for internal use by the HSC Committee is attached in confidence.
- Running a digital communication campaign to promote the inquiry and encourage people to share their views.
- Working with twelve partner organisations to arrange a series of thirteen focus groups and two in depth interviews with participants across Wales. In total 77 people from across Wales took part. The focus groups and interviews were facilitated by the Senedd's Citizen Engagement Team, and, where possible, attended by members of the HSC, CYPE and ESJ Committees. A report summarising the findings has been published.
- Holding oral evidence sessions on 24 March with the Centre for Mental Health, the Mental Health Foundation, the Children's Commissioner for Wales and the Older People's Commissioner for Wales.

Emerging themes

Having reflected on the evidence we have gathered so far, we now plan to explore four key emerging themes in greater detail:

1. **Mental health and society:** the wider determinants of mental health, and the role of society and communities in promoting and supporting mental health.
2. **Community solutions:** the role of communities in promoting and supporting mental health, and social prescribing.
3. **The impact of mental health inequalities on people with neurodiverse conditions:** we have heard significant concerns about this group in the evidence that we have gathered so far. This is also a diverse group, many of whom may also experience inequalities relating to their other characteristics. The evidence suggests that some of the barriers experienced by



this group—such as a lack of joined up services, limited awareness and training, and diagnostic overshadowing—may also be experienced by other groups and communities. Looking at the experience of people with neurodiverse conditions will therefore also help us to explore broader themes that affect other groups.

4. **Role of the healthcare and wider workforce:** including mental health and equality awareness across the whole workforce, training, joined up working within the health service and with other organisations, and the role of GPs as the ‘front door’ to mental health services.

We plan to gather evidence on these themes through a range of mechanisms, including formal oral evidence, visits and further engagement activity. This will help us to hear a wide range of voices, including people with professional and lived expertise and experience of the matters we are considering.

Welsh Government

We will hold an oral evidence session in the autumn with the Welsh Government. During this session we will draw on all of the evidence we have gathered during our inquiry, including issues raised in our initial focus groups and written evidence submissions, as well as the evidence we gather during the summer term in respect of our four emerging themes.

As previously agreed, we will also coordinate with the CYPE Committee to seek a written update from the Welsh Government on progress made on key recommendations made by Fifth Senedd committees in respect of mental health.

Advisory group

To ensure that lived experience is at the heart of our inquiry, we will establish an online advisory group. The group will include 10 to 15 people with lived experience of mental health inequalities, who will be asked to consider discussion topics at key milestones during the inquiry and provide us with summaries of their views. This is likely to include, for example, before and after the Ministerial evidence session, before we finalise our report, and before any Plenary debate on our report.

We'll be working with partner organisations to identify and support advisory group members, drawing where possible from the pool of people who took part in our initial focus groups, and taking account of characteristics such as geographical location, sex, age, and membership of specific communities such as neurodiversity, minority ethnic, sensory impairment, LGBTQ+ and unpaid carers.

Welsh Youth Parliament

As the Welsh Youth Parliament has identified ‘Our mental health and wellbeing’ as one of its priorities, we also plan to look for opportunities to work with WYPMs as appropriate.

Mental health inequalities

Pwyllgor Iechyd a Gofal Cymdeithasol | 24 Mawrth 2022

Health and Social Care Committee | 24 March 2022

Reference: RS22/2284

Introduction

The **Centre for Mental Health** describes a ‘triple barrier’ of mental health inequality, which affects large numbers of people from different sections of the population:

- i. Some groups of people are **disproportionately at risk of poor mental health**. This is often linked to inequalities in society.
- ii. Groups with particularly high levels of poor mental health can have the most **difficulty accessing services**.
- iii. When they do get support, their **experiences and outcomes are often poorer**.

During this **first phase of evidence gathering**, the Health and Social Care Committee issued an open call for evidence between 10 January – 24 February 2022. We received 92 written responses, from a wide range of individuals and organisations.

Our Citizen Engagement team also ran a series of focus groups to gather the lived experiences of diverse groups of people. A report on this engagement activity is included with the papers for today’s meeting. Many of the issues highlighted reflect what stakeholders are telling us in their consultation responses.



Summary of consultation responses

Who is most at risk?

Stakeholders highlight a range of groups who may be at particular risk of mental ill health. These include:

- People from socioeconomically disadvantaged backgrounds
- Ethnic minority communities/racialised communities (communities subject to racial inequality), including gypsy and traveller communities
- Older people
- Children and young people (both as a broad, general group and also in relation to factors such as adverse childhood experiences (ACEs), experience of care, school exclusion, and protected characteristics)
- People with autism/other neurodivergent conditions including ADHD
- People with a learning disability
- People with sensory impairment/loss
- LGBTQ+ people
- Pregnant women/new mothers (the 'perinatal' period)
- Disabled people
- People living with a chronic health condition
- Carers (including those caring for someone with a chronic/terminal illness, and those supporting a family member with mental health difficulties)
- People with communication and speech and language difficulties
- People with substance misuse issues
- People with serious mental illness
- Women as a broad group
- Men, including young men, middle-aged men, unemployed men
- Refugees and asylum seekers
- People who've experienced trauma, including sexual violence/domestic abuse
- Homeless people
- Offenders
- People living in rural areas
- Agriculture and fishing communities
- Health and care workforce
- Education workforce

A key point is that the **relationship between mental health and inequality is complex**; the factors involved are interrelated and may be two-directional. For example, poverty can be both a cause and a consequence of mental ill health (for further information on this see Senedd Research's article: **Poverty and mental health**).

For many of the groups listed, **common factors** contributing to worse mental health include: impact of discrimination and fear; feelings of shame/humiliation; income uncertainty; loneliness and isolation; trauma (e.g. from abuse, violence, ACEs (adverse childhood experiences), and; lack of voice, choice and control.

There's a clear view that as well as identifying 'who', there must also be focus on 'why' - the circumstances that cause mental health inequality. The Centre for Mental Health and Society at Bangor University told us "Inequality has an impact on society as a whole, and not just on discrete disadvantaged groups. (...) All sectors of society would experience tangible benefits from reductions in inequality" (MHI43).

It was widely acknowledged that the **COVID-19 pandemic** has made existing inequalities worse. It has had an adverse impact on population mental health, and particularly those people already subject to mental health inequality.

Barriers to accessing effective mental health support

Responses highlight the following barrier to seeking and/or receiving appropriate, effective support:

- Stigma. Fear of being judged, losing existing support or being penalised (e.g. children being taken into care)
- Discrimination (e.g. age discrimination)
- Cultural barriers, language issues
- Lack of trust in services. Previous negative experiences, feeling not listened to/dismissed
- Not knowing what help is available or how to access it
- Lack of capacity within existing services, long waiting times and high thresholds for access
- Gaps/variability in provision, including lack of specialist services
- Services aren't flexible enough, there's a 'one size fits all' approach
- Being excluded from services, due to a focus on an individual's 'main' diagnosis
- Lack of clarity about referral processes/'restrictive' referral processes

- Geographic issues/rurality
- Digital exclusion

While some of the issues raised by stakeholders are more relevant to specific groups, many are common themes which apply more broadly.

Key themes

People struggle to access support appropriate to their needs

Responses describe a **lack of provision** across the spectrum of need, from early intervention through to specialist and crisis services. Long waiting times are a significant issue. Stakeholders highlight gaps in provision for certain groups (e.g. older people). Services need to be more **accessible** (e.g. for people with sensory loss), and better at **recognising and meeting needs** of ethnic minority communities for example. There's a lack of services in the **Welsh language**. NHS support is often **time-limited** (e.g. an offer of six counselling sessions only). There's a lack of **follow-up/ongoing support**.

Some stakeholders describe people being **'bounced' between services**, including between primary and secondary care where an individual is "too ill for primary care/not ill enough for secondary care" (MHI92). People may be unable to access much-needed support because they don't fit into existing service set-ups. Llamau gives an example – "You must attend an anxiety group even if you don't trust people and are suicidal, before we can offer anything else" (MHI56).

Often people aren't aware of the support available or how to access it. There's a need for improved **signposting and accessible/inclusive information** about services. To reach a wider range of people, Care and Repair Cymru suggests that the Welsh Government work with organisations such as Welsh Water to include information on mental health support with their customer literature (MHI39).

We have an outdated, 'medical model' for mental health which fails to address broader needs

Mental health services tend to be based on a **medical model of illness**. The 'diagnosis' therefore leads the support/treatment provided, but the human needs underlying a person's mental health difficulties are often ignored or under-explored.

Current policy and practice doesn't adequately reflect a **trauma-based understanding** of people's needs. Psychologists for Social Change says "This perpetuates mental health inequity as it obscures the necessary solutions from

view” (MHI36). Many stakeholders agree we need a trauma-informed approach across all public services.

Note: **Trauma** results from an event, series of events, or set of circumstances that an individual experiences as physically or emotionally harmful or life-threatening, and that has lasting, adverse effects on the individual’s functioning and mental or physical wellbeing.

‘Trauma-informed approaches’ are ways of supporting people that recognise the impact of past or ongoing trauma, and the specific needs a person may have as a result.

Stakeholders have previously described the impact of the pandemic as ‘population-level trauma’.

Services need to be **person-centred**, with support designed around the needs of each individual, “rather than fitting people into a limited range of expected services” (MHI61). Stakeholders describe key features of a more person-centred approach to service provision, including:

- greater **flexibility** (in terms of how services are accessed, opening hours etc.);
- they are **co-produced** (designed and developed with service users and people with direct lived experience);
- there’s a **‘no wrong door’** approach to accessing support;
- services are **joined-up** and communicate effectively (e.g. so people don’t have to repeat their story multiple times).

The Royal College of Psychiatrists provides an example of how a more holistic approach to meeting people’s needs might work (MHI54):

Advice services should be co-located in mental health settings, so that people with practical problems, such as financial and housing concerns, can receive the right support at the right time and the root cause of their problem can be dealt with appropriately.

A key concern raised by a number of respondents is an **over-reliance on medication**, often without discussion of talking therapies or other options. Limited availability of alternative options is also a clear factor here. Adferiad tells us that antidepressants are widely prescribed for problems which actually require

practical support (e.g. housing issues, unemployment, abusive relationships). “In some disadvantaged communities antidepressants are seen as the only “answer” to a poor quality of life, especially for women” (MHI62).

People with co-occurring conditions or ‘dual diagnosis’ are often denied support

This may be a particular issue for people with neurodivergent conditions or learning disabilities, people with dementia, and for people with substance misuse issues.

Parents Voices in Wales CIC says that mental health problems are regarded as an “inevitable consequence” of neurodivergence, and mental health referrals for people with such conditions are often declined (MHI08). Mencap agrees that a **focus on an individual’s ‘primary diagnosis’** can lead to people being denied mental health support. A person’s behaviour, even when experiencing a mental health crisis, is seen as part of their learning disability/condition. (MHI32).

Substance misuse is often a symptom and a consequence of poor mental health, but **siload ways of working** can mean that support for mental health is denied until substance misuse issues have been addressed. The Wallich tells us that treatment pathways for ‘dual diagnosis’ (i.e. problems with mental health and substance use) do exist but aren’t working effectively across Wales (MHI60).

The mental health impact of living with a physical health condition is under-recognised

This includes where conditions are **undiagnosed**, involve **long waits** for treatment, or there’s a **lack of rehabilitation support**.

RNIB Cymru says “While the emotional impact of sight loss is well documented, in practice it is often overlooked (...). Treatment and support is more focussed on the physical impacts” (MHI58). Endometriosis UK calls for mental health support to be **incorporated into care pathways** to improve access for those who need it, including prior to diagnosis (MHI19).

The wider, often **hidden impacts** of inadequately-supported health conditions were highlighted. Specsavers says that undiagnosed and/or untreated hearing loss can impair education, employment and social activities, leading to isolation, and physical and mental ill-health (MHI11). The ADHD Foundation describes the “unseen costs” of unmanaged ADHD for other areas of healthcare, education, social services, and the criminal justice system (MHI01).

Points made reflect evidence received during the Committee's 'waiting times' inquiry.

Greater awareness of equality issues among the healthcare and wider workforce is needed

A number of responses describe a lack of capacity in the **mental health workforce**. Recruitment and retention issues pre-date the COVID-19 pandemic, but staff are experiencing increased burnout and attracting staff to train and work in mental health is challenging.

There was significant comment about the need for more **awareness and training among frontline staff**, not just for mental health/healthcare staff, but across education, social services and other public-facing roles. Stakeholders highlighted a range of issues. Lack of understanding about **autism/neurodiversity** was a key area. Other **training 'gaps'** included the mental health needs of older people, people with sensory impairment/loss, personality disorders, carers' needs, the impact of grief, of women's health issues, and suicide prevention awareness. To address some of the barriers to effective mental health support, services and staff need to be **culturally-sensitive, trauma-informed**, and better at recognising signs of poor mental health and people's needs for support.

GPs are often the first port of call for someone struggling with a mental health issue, but a number of responses suggest this is a key professional group where improved training and awareness is needed, in relation to mental health generally and also **equality issues**. The Welsh Police Forces' submission says "Training for GP's needs to be increased as 1 in 3 persons who attend have hidden mental health issues which manifest in physical health symptoms" (MHI28). The Centre for Mental Health highlights that people from racialised communities are less likely to be referred for mental health support by their GP (but are more likely to come into contact with services via the police) (MHI80).

Respondents highlighted Healthcare Education and Improvement Wales and Social Care Wales' current consultation on a **mental health workforce plan** for health and social care, saying this provides a "real opportunity to remodel current provision and create sustainable services which ensure that all people in Wales can access appropriate mental health support" (MHI83).

The potential for more community solutions should be explored, including social prescribing schemes

There was significant comment about the need to **invest in communities** to promote and support good mental health, and build the capacity of local

voluntary/community groups to develop and deliver services. This includes improving access to community hubs.

The Welsh Local Government Association calls for the **role of local government** to feature more strongly in conversations about improving and delivering mental health support - “for example, broadening the use of parks and green space, championing wellbeing in new planning requirements, supporting adult learning, improving access to leisure centres and sports facilities, or improving community links with local artists and cultural events” (MHI55).

There’s a need for stronger **links between mental health services and wider community support**. Platform says “Practitioners need to consider how to tackle loneliness and isolation, encourage people to participate in social activities (arts, culture, community etc)”. While this has been difficult to do during the pandemic, Platform says this has always been a “neglected factor” (MHI79). Further responses describe the need to ‘unlock the potential’ of **social prescribing schemes**. Although schemes are in place in some parts of Wales, there are differences in approach and levels of service available (MHI75).

A significant number of responses raise the issue of **short-term funding**. Diverse Cymru for example tells us “Longer term funding of services, including services commissioned from third sector and community groups and organisations, is vital to ensuring that services can focus on meeting the needs of different groups and communities and developing specialist services, rather than winding up and down every 3 years” (MHI61).

More detailed data would give us a clearer understanding of where equalities lie

We don’t have **adequate data** to understand the extent of mental ill health among the population in Wales, or how well different groups are able to access mental health services and have their needs met. Mind Cymru tells us “there is no routine, reliable and comparable measure of the prevalence (both treated and untreated) of mental health problems within the Welsh population. As a result, the true scale of mental health problems, inequalities between groups and changes overtime remains unclear (MHI47)

Stakeholders highlight limited availability of **demographic data**, including information on socio-economic disadvantage, ethnic minorities, lack of data on mental ill health in the older population, autistic people, and people with sensory impairment/loss. There also remains a focus on outputs rather than outcomes.

The development of a **mental health core dataset** in Wales is welcome, but there are concerns about delays to this work. Additionally, more data is needed about the long term impact of the COVID-19 pandemic on mental health.

Policy needs to be more joined-up and resources focused according to level of need

While a number of responses welcome the Welsh Government's vision and policy intent for improving mental health in Wales, a key concern is the **"translation of policy into practice"** (MHI85).

The Government's 'Together for mental health' strategy is being reviewed (the existing delivery plan ends this year), and stakeholders see this as an **opportunity to address the needs of a wider range of communities** who experience discrimination and/or disadvantage. Examples given of groups not specifically covered by the current delivery plan include older people, gypsies and travellers, and people living with chronic conditions. Any new strategy or delivery plan must be informed by **learning from the COVID-19 pandemic**, particularly "the entrenched and widening existing economic, social, cultural and environmental inequalities that have led to poorer mental health" (MHI55).

Stakeholders describe the need to **link together the various action plans/policies** in relation to mental health and different protected characteristics groups and communities who experience discrimination and disadvantage. A number of Royal Colleges are jointly calling for a **cross-government strategy** on health inequalities. The Royal College of Physicians says (MHI15):

The Welsh government should take cross-government action to tackle mental health inequalities by pulling together a delivery plan that outlines the action being taken across all government departments, how success will be measured and evaluated, and how individual organisations should collaborate across Wales to reduce health inequalities and tackle the cost-of-living crisis.

Many responses highlight the need for increased **funding** for mental health, but we also need to look at **value for money** and what outcomes are being achieved (MHI28).

To tackle mental health inequalities, the Mental Health Foundation and others call for a **'proportionate universalism'** approach, which balances universal actions (for everyone) with targeted actions (for specific groups), and allocates resources according to level of need (MHI90).

Under this approach, action should be taken for everyone, but the scale and intensity of interventions should be proportionate to the level of disadvantage experienced.

For more information contact:

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Agenda Item 2.15

CYPE(6)-09-22 - Paper to note 15

Y Pwyllgor Plant, Pobl Ifanc ac Addysg

Children, Young People and Education Committee

Minister for Education and Welsh Language
Jeremy Miles MS

22 April 2022

Service children

Dear Jeremy,

During a discussion about the Children, Young People and Education Committee's forward work programme during our meeting of 31 March 2022, Members considered the well-being and educational outcomes of Service children.

We would appreciate information from you about the following:

- i. An update on the Welsh Government's progress in enabling the collection of data on Service children in schools through the Pupil Level Annual School Census, in line with the previous Welsh Government's 2019 Commitment.
- ii. The Welsh Government's engagement with the Armed Forces Covenant Fund, including the extent to which the Welsh Government is involved in developing the projects to be funded, and how the Welsh Government ensures that Welsh Armed Forces families receive a fair share of UK-wide funding.
- iii. The most up-to-date data, broken down by local authority, on:
 - the number of schools with service children and the number of service children attending those schools;
 - absence rates for Service children (and of all pupils for comparative purposes);
 - the proportion of Service children who are entitled to Free School Meals (and of all pupils for comparative purposes);

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- the proportion of Service children with additional learning needs (and of all pupils for comparative purposes); and
 - average attainment of Service children at GCSE-level, as measured by the percentage of entries achieving A*-C or whichever suitable measure (and of all pupils for comparative purposes).
- iv. Your views on the effectiveness of the Regional School Liaison Officers for Service children project since its inception in September 2020, the Welsh Government's current position on the future of Regional School Liaison Officers for Service children post September 2022, and your views on the effectiveness of the Supporting Service Children in Education Cymru (SSCE) project more generally.
- v. Whether any consideration has been given to extending eligibility for the Pupil Development Grant to Service children, as is the case with the Pupil Premium in England.

I would be grateful for this information no later than Friday 27 May 2022.

Yours sincerely,



Jayne Bryant MS

Chair of the Children, Young People and Education Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Agenda Item 2.16

CYPE(6)-09-22 - Paper to note 16

**Y Pwyllgor Plant, Pobl Ifanc
ac Addysg**

**Children, Young People
and Education Committee**

Deputy Minister for Social Services
Julie Morgan MS

22 April 2022

Child sexual abuse

Dear Julie,

During a discussion about the Children, Young People and Education Committee's forward work programme during our meeting of 31 March 2022, we considered the issue of child sexual abuse. We discussed its significant impact on children and young people and looked at some of the work being done to prevent, support and protect them. We also considered a request from the NSPCC for the Committee to launch an inquiry into child sexual abuse in Wales.

We would appreciate the following information to help inform our decision-making in this area:

- i. How the Welsh Government responds to the evidence from the NSPCC that "lockdowns in response to COVID-19 and subsequent isolation from support heightened the risk of CSA for some children". What steps the Welsh Government has taken - and will take - to ensure that the relevant authorities have the capacity and expertise to respond appropriately to all cases of child sexual abuse?
- ii. Any trends the Welsh Government has identified in the numbers of children on the child protection register, taken into care, and in need of care and support by the local authority during the 2019-20, 2020-21, and 2021-22 financial years?
- iii. An update on the Welsh Government's review of evidence on the impact of its National Action Plan: Preventing and Responding to Child Sexual Abuse, scheduled to begin from 31 January 2022, and its plans to engage with Safeguarding Boards and other stakeholders on any next steps.

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- iv. The Welsh Government's view on calls from the NSPCC for "a Welsh Government Online Safety Plan exclusively focussed on children and young people that connects all partners in a pan-Wales protection and prevention approach".
- v. The Welsh Government's views on:
- the findings of the Child Sexual Abuse Independent Inquiry's work in relation to Wales to date generally including its investigation and research reports;
 - how the findings of this UK wide inquiry feed into Welsh policy and practice.
 - the performance of public authorities outlined in the February 2022 report into organised networks within the City and County of Swansea Council; and
 - the UK Home Secretary's response to that report., including the commissioning of a national inspection into police response to child sexual abuse.

I would be grateful for this information no later than Friday 27 May 2022.

Yours sincerely,



Jayne Bryant MS

Chair of the Children, Young People and Education Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Agenda Item 2.17

CYPE(6)-09-22 - Paper to note 17

**Y Pwyllgor Plant, Pobl Ifanc
ac Addysg**

—
**Children, Young People
and Education Committee**

Lee Waters MS
Deputy Minister for Climate Change

Jeremy Miles MS
Minister for Education and Welsh Language

22 April 2022

Online Safety Bill

Dear colleagues,

During a discussion about the Children, Young People and Education Committee's forward work programme during our meeting of 31 March 2022, Members considered a range of issues relating to the impact of social media on the lives of children and young people.

While we recognise its many benefits, we remain concerned about the impact of social media and inappropriate online content on the safety and wellbeing of children and young people. Much of the evidence we are currently receiving in relation to peer on peer sexual harassment among learners highlights the role of social media in providing a platform for sexual harassment, and the negative implications of age-inappropriate online content for some young people's relationships and sexual behaviour.

As you will know, the Online Safety Bill is currently having its second reading in the House of Commons. Please can you set out:

- i. the Welsh Government's views on the principal clauses of the Online Safety Bill;
- ii. the extent to which the Welsh Government has engaged with the UK Government in relation to the Bill (either during its development or after it was introduced) and the nature of that engagement;

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- iii. whether the Welsh Government intends to push the UK Government for any specific amendments to the Bill as it passes through UK Parliament;
- iv. whether, in light of the Online Safety Bill or otherwise, you intend to update the Welsh Government's **digital resilience in education action plan to protect children and young people online** which was last updated in April 2021 (for example by recording progress against the actions listed within that plan), and when you intend to do so.
- v. your views on calls from NSPCC Cymru for a new Online Safety Plan, exclusively focussed on children and young people, that takes a cross-sector approach spanning: health, education, law enforcement, social services, youth services, education, industry and the third sector.

I would be grateful for this information no later than Friday 27 May 2022.

Yours sincerely,



Jayne Bryant MS

Chair of the Children, Young People and Education Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Agenda Item 2.18

CYPE(6)-09-22 - Paper to note 18

**Y Pwyllgor Plant, Pobl Ifanc
ac Addysg**

**Children, Young People
and Education Committee**

Jane Hutt MS
Minister for Social Justice

22 April 2022

Powers of the Children's Commissioner for Wales

Dear Jane,

Following our annual scrutiny of the Children's Commissioner in December 2021, the Commissioner shared with us a paper outlining views on the legal powers and remit of the Commissioner's office. We understand that this paper, which is attached, has already been shared with you.

The paper outlines how, despite being world leading when the office of the Children's Commissioner for Wales was established, there are now some significant gaps which hinder the Commissioner's ability to advocate and support children in Wales. During the annual scrutiny session, the Commissioner cited a recent example, where she was only able to intervene in relation to significant issues in a private school in north Wales because it had a residential element to the school. She told us that, had it been a day school, she could have not intervened. If so, this is clearly an anomaly. She also cited her inability to intervene in private children's homes or mental health institutions.

The Commissioner argues that some of the gaps are the result of omissions and inconsistencies in the original legislation, which have become apparent over time. Others have arisen because of changes to the devolution settlement since her office was established. However, the paper also outlines other concerns, including the on-going debate about who should be responsible or appointing the Commissioner. Both the previous CYPE Committee and ourselves believe that this appointment should be made by the Senedd. Our views were informed by our involvement in the pre-appointment scrutiny process for the new Commissioner. We also note that an independent review commissioned by the Welsh Government in 2014 also recommended transfer of the appointment to the Senedd.

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The paper also calls for a review into the incorporation of the UNCRC in Wales, and how full incorporation could potentially be taken forward alongside the necessary legislative changes to the Commissioner's remit and powers.

We note that the House of Lords is currently [undertaking post legislative scrutiny of the Children and Families Act 2014](#), including a question as to whether the Commissioner in England has the correct remit and powers.

We would welcome your views on the issues raised by the Commissioner in the paper, and what plans the Welsh Government has to address these. Once we have received this, we will consider what further work we may wish to do in this area.

I am copying this letter to the Children's Commissioner, and the Equality and Social Justice Committee.

I would be grateful for your response no later than Friday 27 May 2022.

Yours sincerely



Jayne Bryant MS,

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Paper on the Children's Commissioner for Wales' legal powers and remit

November 2021

In 2021, the Children's Commissioner for Wales (CCfW) undertook a formal review of the Welsh Government Ministers' exercise of their functions in respect of two education policy matters, using the power in section 72B of the Care Standards Act 2000. The [report](#) of that Review sets out a number of areas in which we identified difficulties or deficiencies in the exercise of our formal powers. This paper develops those points further, and should be read in conjunction with the published report of the Review.

In response to that Review, the Welsh Government rejected the Commissioner's calls in respect of her legal powers, but, following further discussion with the Children and Families Branch of Welsh Government, the CCfW was asked to submit reflections on areas for potential change or enhancement to the Commissioner's legal powers.

By way of background, there is a published summary of our existing powers on our website [here](#)

Relevant legislation

[Care Standards Act 2000, Part V](#) and associated Schedules to the Act

[The Children's Commissioner for Wales Act 2001](#)

[The Children's Commissioner for Wales Regulations 2001](#)

[The Social Services and Well-being \(Wales\) Act 2014](#) and the [Part 6 Code of Practice](#)

Background / Context

The CCfW was the first Commissioner post created in Wales, and the first Children's Commissioner role in the UK. It was also the first 'Wales only' piece of primary legislation passed since devolution for Wales. As such, the role is underpinned with what was then pioneering legislation.

In the two subsequent decades, there is much that can be learnt from other legislation that has since been developed in relation to the other UK Children's Commissioners, and Wales' other statutory Commissioners. The CCfW legislation has at times been used as a blueprint or starting point for other Commissioners' offices. So why the need to take another look at the extent and reach of the Commissioner's legal remit and powers now?

It is vital that Wales keeps pace with developments in other UK nations. It is right to be proud of being the first UK nation to create such a post but other nations have since stepped beyond the role and powers that were created in Wales.

The legislation in other UK nations and in Jersey for the appointment of a Children's Commissioner drew on, but has enhanced and strengthened, aspects of the CCfW legislation in order to create a more effective basis for Commissioners to fulfil their remit. The omissions identified in the legal basis for CCfW highlight that a review of legislation should be undertaken, with a view to

strengthening the safeguards that the Commissioner provides to the rights and welfare of children and young people in Wales.

Recent cases have also highlighted clear deficiencies in the powers or barriers as to how the Commissioner may intervene to safeguard and protect the rights of all children in Wales, in any setting. The Covid-19 pandemic has also brought into stark view the inequalities and disadvantages children in a wide range of settings have experienced and the importance of an independent champion to help them access their rights where these have been curtailed or overlooked.

This paper is not intended to be exhaustive, but it considers how the process of change might be advanced, suggesting also that the legislation should be developed by the Senedd, rather than the Welsh Government.

Strengths of the current CCfW legislation

- Historic legislation that has led the way for other nations to follow;
- Responded directly to the Waterhouse Inquiry and as such the powers have a particular focus on children in receipt of services from local authority social services;
- Strong legal powers in some scenarios to undertake formal case examinations such as the Clywch Inquiry;
- Jurisdiction covering a broad range of devolved public services;
- The ability to support individuals to progress their cases or complaints at the lowest level possible, without always having to resort to legal routes of resolution, thus improving and speeding up the outcomes for the benefit of children and their families;
- Grounded in international human rights, with a requirement for regard to the United Nations Convention on the Rights of the Child in exercising all functions.

Apparent gaps or anomalies – *these are explored further within this paper*

- Appointment is by the Executive and not the Legislature; this is not the recommended practice for independent human rights institutions;
- A mixed picture on how the different powers can be exercised, with some lacking the operational or practical details needed to make them viable;
- Changes to organisations' roles and remits and new organisations created since the post was enacted, that do not fall within the Commissioner's existing remit;
- Lack of information on how the Commissioner can require access to documentation and settings in discharging their functions;
- Inability to intervene in certain settings due to the current devolution settlement.

These gaps inhibit the Commissioner's ability to discharge their statutory remit in full, as the protection of children's rights requires access to institutions and documentation in order to understand how due regard has been paid to children's rights in Wales. This, therefore, means that for some children, the Commissioner is unable to support them or investigate their concerns, because of the type of setting in which they have occurred or because the legislation doesn't give the power to receive papers or enter premises.

Commentary during the passage of the original legislation

It is notable that discussion of the Children's Commissioner for Wales Bill 2001, in the House of Lords, as recorded in Hansard¹, highlighted how there was a determination to pass the Bill without delay and prior to the next election. Baroness Gale summarised that the Bill "may not contain everything that everyone wants, but I am sure that all the organisations and those concerned about the well-being and rights of children would prefer it rather than the alternative." Lord Hoosan also observed that "The worst thing that we could have is an ineffective commissioner, because that would bring the whole system into disrepute."

The decision to curtail the Commissioner's remit to devolved services only was noted on behalf of the Government by Baroness Farrington of Ribbleton to be "one of policy rather than constitution". It was also a Government decision in relation to rights of access, which a number of Lords raised in their contributions to the Bill's passage. The Government response was that "they want to ensure that the commissioner has all the powers necessary to be effective but do not believe that right of access is necessary." The original legislation pre-dated the extension of the devolution settlement in Wales, but the parallel post for England, enacted subsequently, does confer a power of entry, in Section 2E of the Children Act 2004 (as inserted by the Children and Families Act 2014). It is notable that the powers of the post holder in England were reviewed and revised 10 years following the creation of the office; it has been over 20 years since the post was created in Wales, with no substantive amendments made to the legislation beyond consequential amendments.

In the House of Commons, the then Secretary of State for Wales, in response to questions from members, affirmed that "the commissioner will have oversight of all public bodies in Wales, especially those that are dealt with by the National Assembly".² (At this point there was no separate Welsh Government). Whilst this may have been the original intention, it is unfortunately not the case that the Commissioner's powers extend to all public bodies in Wales.

An amendment tabled in the National Assembly for Wales at this time also stated: "the Assembly affirms its beliefs that the Children's Commissioner for Wales should have statutory powers across all areas affecting all children in Wales, and that his or her powers should include:

- Power to require inquiries
- Powers to order disclosure of information
- Powers to require action to be taken by public authorities and bodies, in accordance with their own duties."

The amendment was passed unanimously by all four parties in the Assembly. It is timely to reflect on that intent and to ensure that the legislation supports the Commissioner to undertake their duties to the fullest of their ability.

Set out below is more detail on these individual anomalies or gaps, as well as the case for change.

¹ https://api.parliament.uk/historic-hansard/lords/2001/feb/19/childrens-commissioner-for-wales-bill#S5LV0622P0_20010219_HOL_229

² https://api.parliament.uk/historic-hansard/commons/2000/dec/13/childrens-commissioner#S6CV0359P0_20001213_HOC_15

Proposed changes to the CCfW legislation

Operational matters:

- Each of the different powers in the Commissioner's legislation comes with a differing level of detail in relation to how that power is exercised.
 - In relation to case examinations (s.74 Care Standards Act 2000), there is extensive detail in the Regulations as to the relevant procedure, and the process for gathering evidence, including the assumption of quasi High Court powers in respect of witnesses.
 - In relation to reviewing the arrangements for whistleblowing, advocacy and complaints (section 73 Care Standards Act 2000), there is procedural detail, which includes the setting of Terms of Reference and requiring organisations to submit evidence within set timescales.
 - The power under section 72B Care Standards Act 2000 (review of exercise of functions of designated bodies) is not expanded upon; the legislation is silent as to how this power is exercised.

It could be considered that this was intended to be a strength at the time of drafting, so as not to curtail the Commissioner in how the s.72B power would be exercised. However, through our use of this particular power in the recent Review, it became apparent that this presented a barrier to the safe sharing of relevant papers in order to complete the review of how Welsh Government's functions had been exercised. Children and young people's rights cannot be fully protected by the Commissioner's office without access to all relevant documentation to understand the processes undertaken and the decision making history. The Government will not be able to hold up the Commissioner's office as an example of detailed scrutiny of them, if the legislation remains as drafted, thus allowing requested documentation to be withheld.

The s. 72B power enables the Commissioner to review the functions of the Welsh Government, amongst other bodies. However, the Government also appoints the Commissioner and provides annual funding for their office. The s.72B power does not include the power to review the functions of the Senedd.

This is why there should also be a central role for the Senedd in the appointment and funding of the Commissioner's office. There is an inherent conflict of interest in the body that is being scrutinised and held to account (WG) being the holder of the purse strings and in control of how the Commissioner may exercise their full powers. Moving the appointment process to the legislature and not the executive would provide a clear separation between operational and financial matters, and the scrutiny role.

In the case of the s.72B Review, officials had suggested use of the Freedom of Information framework as a potential compromise in this regard. Whilst the suggestion of alternative arrangements was welcome in terms of pragmatism, this in practice would not have allowed for any additional papers/content of papers to be disclosed to the office. In addition, as documented in the Review report, this does not give the Commissioner any greater access to papers than that which a

member of the public could obtain. We do not think that that is the aim or spirit of this power in the Commissioner's legislation.

The Paris Principles³ require that National Human Rights Institutions have 'adequate powers', so that they can initiate inquiries and investigations, gather the evidence and documents they need, consult with NGOs and State institutions and publicise their reports, findings and recommendations. It cannot be said at present that the Commissioner's office and remit fulfils that important principle, while access to institutions and documentation is in effect curtailed through the absence of clarity in the legislation.

The Commissioner should be appointed by the Legislature (Senedd) and not the Executive (Government) in order to maintain separation from those who fall within the Commissioner's scrutiny and powers.

We also recommend, as a minimum, that the CCfW Regulations aligned to the exercise of the S.72B power are reviewed and revisited, to create a process for sharing documentation in a transparent and legal way.

In addition we recommend consideration of the issues below to enable the Children's Commissioner to exercise their powers fully, for the benefit of children in Wales.

Policy areas:

- **Private provision for children:** The Commissioner does not have legal powers to enquire or investigate in relation to all schools in Wales despite education being devolved. As the 2019 case in north Wales illustrated, we were limited in our powers in relation to independent schools. We identified through legal advice that we would have some powers in relation to regulated services provided in Wales, namely boarding accommodation being provided as part of a school. By virtue of this being a boarding school, the school in question *did* fall within our remit, and the intervention of CCfW was a key factor in safeguarding children in this setting, but an independent day school currently would not fall within our remit.

Similarly, private children's homes (which make up the majority of children's homes provision in Wales) and private children's mental health settings do not fall within our remit. We have concerns currently about specific provision in each of those categories.

We recommend widening the categories of services and organisations in Wales over which the Commissioner has remit under Schedules 2A and 2B of the Care Standards Act 2000, in recognition of the needs and rights of children in all settings in Wales to be kept safe and supported.

³ <https://ganhri.org/paris-principles/>

- Related to this, the Older Person's Commissioner has a power of entry⁴ into any premises other than a private dwelling at any reasonable time, for the purposes of interviewing an older person in relation to their powers to review organisations' discharge of their functions. The Children's Commissioner for England has powers of entry to settings⁵ also, and in fact would have more powers of entry to visit children in secure settings in Wales than the CCfW. A similar power for CCfW could be an alternative way to alter the Children's Commissioner's powers in respect of independent schools, but also this would bring in other closed settings such as youth justice/custody provision which currently sits outside of the Commissioner's remit. Whilst we enjoy productive working relationships with the two custody settings in Wales (HMP Parc YOI and Hillside Secure Children's Homes), they are not required to co-operate with the office and could not be compelled to do so should a serious incident be suspected or alleged. With work taking place currently on new safe therapeutic accommodation and new accommodation settings under the Youth Justice Blueprint for Wales, it is timely to consider how children's rights in such settings will be protected and underpinned.

Powers of entry and access to records would be the key elements to consider, in our view.

We recommend consideration of how the CCfW remit may be extended to include power of entry into any premises other than a private dwelling at any reasonable time, for the purposes of speaking with a child or young person in relation to their powers to review organisations' discharge of their functions.

- The CCfW office was set up in response to findings of the Waterhouse inquiry, and due to the context of that particular inquiry we have enhanced powers in respect of children that are owed continuing duties by social services beyond the age of 18. This highlights two relevant issues when considering the Commissioner's powers at the present time:
 - The wording of this power in our legislation is linked back to the Social Services and Well-being (Wales) Act 2014 and the associated duties to support care leavers post 18. For some young people this goes up to the age of 25 but for others the official position in the legislation is that that support ends at age 21. Whilst we've welcomed and supported Welsh Government's direction to social services that they should now be funding Personal Advisers for all care leavers up to the age of 25⁶, until the relevant legislation is amended to reflect this, it affects the interpretation of this power in the Commissioner's legislation. We have taken a purposive interpretation to this; continuing to support care leavers up to the age of 25 and challenging local authorities who are not complying with the WG direction, but in the event of a complaint the formal position of the legislation does not currently back this up. We are aware of plans to bring forward legislation to correct this, but we simply make this point here to highlight our existing calls from successive annual reports in this regard.

⁴ <https://www.legislation.gov.uk/ukpga/2006/30/section/13>

⁵ https://www.legislation.gov.uk/ukpga/2004/31/pdfs/ukpga_20040031_en.pdf section 2(8) Children Act 2004

⁶ In response to our [Hidden Ambitions](#) report

- In addition, there may be the need for consequential amendments to be made to our legislation, in light of the new Additional Learning Needs legislation which extends duties up to the age of 25. Currently we are unable to support children and families once their child attains the age of 18; whereas formal education continues for many with additional learning needs up to at least the age of 19. It should be noted that support for children with SEN/ALN has been a consistently high area of our office's casework year on year.
- Developing and implementing a Youth Work Strategy for Wales which extends to age 25 may also be of interest when considering the limits of the Commissioner's remit, in order to ensure that the office can support young people receiving youth work services where there are problems or difficulties arising, and hold relevant organisations to account in doing so.

We would be open to discussions in relation to the age related restrictions of our remit, in the context of specific pieces of legislation or strategies. It is noted that this may require amendments beyond the Commissioner's Regulations themselves, and also would inevitably increase the resource requirements of the office.

Wider issues:

The Public Services Ombudsman for Wales (PSOW) legislation was amended in 2019, to create new powers for the Ombudsman to:

- accept oral complaints;
- undertake own initiative investigations;
- investigate private medical treatment including nursing care in a public/private health pathway;
- undertake a role in relation to complaints handling standards and procedures.

The Ombudsman's previous legislation that was amended dated from 2005. By contrast, the CCfW legislation has not been revisited since it was enacted in 2000 and 2001.

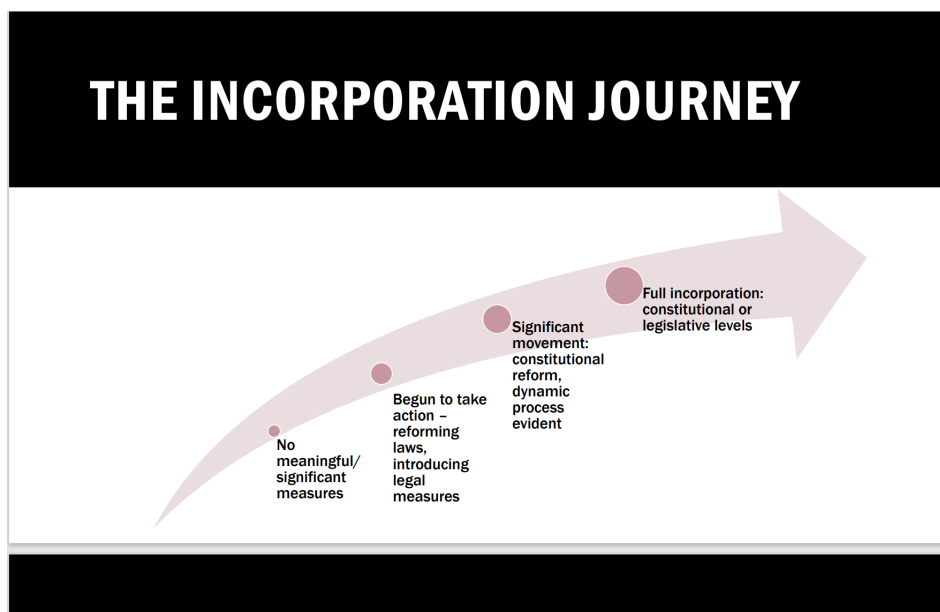
It took several years for the PSOW's amendment legislation to be passed; we therefore believe that there is a need for swift action in this regard. We believe that this paper and our Statutory Review report provide a compelling case for change, to ensure that all children in Wales are protected and in receipt of their rights, wherever they may live or receive services. That was the originating intention of the legislation when introduced and it is right that, twenty years on, the provisions are reviewed to ensure they give the greatest possible effect to the operation of the legal powers designed to protect those children's rights.

In 2021, the Scottish Parliament unanimously passed a Bill to fully incorporate the UNCRC into their domestic law. The Bill was challenged by the UK Government in the Supreme Court on constitutional grounds; the judgment in September remitted the Bill back to the Scottish Parliament but on the grounds that certain sections sought to restrict the UK Government's legislative powers. Such a provision was not compatible with the devolution settlement, in which the UK Government's did **not** take issue with the Scottish Parliament's decision to incorporate the UNCRC and this was

“recognised to be a matter for the Scottish Parliament”⁷. Any changes required to the Bill do not relate to full incorporation of the UNCRC and the implementation of the UNCRC within Scotland and by devolved public bodies.

The Scottish Bill would further advance the protections for children’s human rights in Scotland, going beyond the arrangements here in Wales under the Rights of Children and Young Persons (Wales) Measure 2011, which amounts to partial incorporation only. There remains a compelling argument for further incorporation of the UNCRC here in Wales.

At a webinar event in October 2021⁸, Professor Kilkelly presented the findings of her recently published book 'Incorporating the UN Convention on the Rights of the Child', the first comprehensive analysis of progress across the world towards giving legal effect to the CRC. Professor Kilkelly shared insights about the challenges and successes different countries have faced when incorporating the Convention in their own unique contexts. In this international event, she highlighted how Wales is only at the second stage of the incorporation journey, as illustrated on the following diagram:



The powers of the Commissioner in relation to public bodies in Wales are only as strong as the other legislative provisions underpinning how they work. Although the Commissioner can review public bodies’ exercise of their functions, there is not currently a duty on bodies such as health boards and local authorities to act compatibly with children’s rights or to demonstrate how they have done so. Examples during the pandemic such as the continued closure of parks and leisure centres in some

⁷ REFERENCES (Bills) by the Attorney General and the Advocate General for Scotland - United Nations Convention on the Rights of the Child and European Charter of Local Self-Government (Incorporation) (Scotland) [2021] UKSC 42 (06 October 2021) (bailii.org) paragraph 4 of the judgment

⁸ <http://www.crae.org.uk/news/rock-event-on-incorporating-the-un-convention-on-the-rights-of-the-child-into-national-law-with-ursula-kilkelly/>

local authority areas demonstrate how, provided LAs have *considered* children's rights in reaching their decisions, there is little that the Commissioner can challenge even if the ultimate decision does not uphold children's rights. The same can be said of the 'due regard' model that applies to Welsh Ministers under the 2011 Measure; regard to rights is not the same as acting compatibly with them.

It is only full and direct incorporation of the UNCRC into Welsh domestic law that will ensure a shift in public bodies' practices, including those of the Welsh Government. This will also allow the Commissioner, but also members of the public, to hold those bodies to account more effectively where they have not acted compatibly with children's rights. But more importantly, it will shift how public bodies think about and apply rights in their decision making, thus ensuring a better experiences for children and their families.

We recommend a review of incorporation of the UNCRC in Wales to date, and for further incorporation of the UNCRC to be taken forward in conjunction with changes to the Commissioners' remit and legislation. This would fundamentally improve children and families' direct experiences when in receipt of services from public bodies in Wales, and/or their ability to effectively challenge where this experience is not compatible with their rights.

CYPE(6)-09-22 - Paper to note 19

**Y Pwyllgor Plant, Pobl Ifanc
ac Addysg**

**Children, Young People
and Education Committee**

Lynne Neagle MS
Deputy Minister for Mental Health and
Wellbeing

22 April 2022

Eating Disorder Services in Wales

Dear Lynne,

The Committee discussed its forward work programme on 31 March. As part of this discussion, we agreed to write to you to seek an update on eating disorder services in Wales.

We noted the recent report published by Beat "[The Welsh Eating Disorder Service Review: 3 years on](#)". Beat set out some clear recommendations to improve services and ensure greater equity of support across Wales, including the need for a new national service model with clear timelines and a stronger focus on early intervention,

As you will be aware this report noted the progress that has been made since the Eating Disorder Service review three years ago. However, it also noted that progress has been "very uneven" and that there continue to be inequities in service provision across Wales. It identified a number of factors that may have impacted on progress, ranging from the time it took the Government to respond to the initial review, through to funding and broader resourcing issues, and, of course, the pandemic. We note that in response to a question about this issue in Plenary on 19 January 2022, you committed to using the report to inform work going forward. We would appreciate if you could provide us with your response to these recommendations, and how you seek to address the issues raised by the report.

You also highlighted in Plenary that the national lead had left their post and that you were "looking at a new model" to ensure improvements are delivered on a national basis. The Beat report talks of the importance of having a National Lead in place. Please can you provide us with an update on your

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thinking around this new model, including the issue of how it would be led, and when it is likely to be implemented?

I am copying this letter to the Health and Social Care Committee and Beat.

I would be grateful for your response no later than Friday 27 May 2022.

Yours sincerely



Jayne Bryant MS,

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

CYPE(6)-09-22 - Paper to note 20

**Y Pwyllgor Cydraddoldeb
a Chyfiawnder Cymdeithasol**

**Equality and Social Justice
Committee**

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Chair, Children, Young People and Education Committee
Chair, Climate Change, Environment and Infrastructure Committee
Chair, Committee for the Scrutiny of the First Minister
Chair, Culture, Communications, Welsh Language, Sport, and
International Relations Committee
Chair, Economy, Trade and Rural Affairs Committee
Chair, Finance Committee
Chair, Health and Social Care Committee
Chair, Legislation, Justice and Constitution Committee
Chair, Local Government and Housing Committee

11 April 2022

Dear Chair,

Annual scrutiny of the Future Generations Commissioner: update report

The Equality and Social Justice Committee held its annual scrutiny session with the Future Generations Commissioner on 7 February 2022. Following the session, we agreed to publish a short report highlighting some of the key themes that arose during our scrutiny, which is available online.

We have set ourselves the objective of championing equality, social justice and the well-being of future generations across the Senedd, including its Committees. Our intention is to request a Plenary debate on the issues raised in our report, but in the meantime we would like to draw it to your attention as some of the issues raised warrant further consideration by Members in their scrutiny work.

Yours sincerely,



Jenny Rathbone
Chair, Equality and Social Justice Committee

Agenda Item 4

By virtue of paragraph(s) vi of Standing Order 17.42

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