

# Agenda – Legislation, Justice and Constitution Committee

---

Meeting Venue:	For further information contact:
Video conference via Zoom	P Gareth Williams
Meeting date: 23 September 2024	Committee Clerk
Meeting time: 13.30	0300 200 6565
	<a href="mailto:SeneddLJC@senedd.wales">SeneddLJC@senedd.wales</a>

## Remote

---

### Public meeting

(13.30 – 13.55)

- 1 Introduction, apologies, substitutions and declarations of interest  
(13.30)
- 2 Instruments that raise issues to be reported to the Senedd under  
Standing Order 21.2 or 21.3  
(13.30 – 13.35)

#### Made Negative Resolution Instruments

- 2.1 SL(6)519 – The Listed Buildings (Partnership Agreements) (Wales) Regulations  
2024

(Pages 1 – 4)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-26-24 – Paper 1 – Draft report

- 3 Instruments that raise issues to be reported to the Senedd under  
Standing Order 21.7  
(13.35 – 13.40)



**Senedd Cymru**  
**Welsh Parliament**

**3.1 SL(6)509 – The Tertiary Education and Research (Wales) Act 2022  
(Commencement No. 4 and Transitory and Transitional Provisions) Order  
2024**

(Pages 5 – 8)

[Order](#)

Attached Documents:

LJC(6)–26–24 – Paper 2 – Draft report

LJC(6)–26–24 – Paper 3 – Written Statement by the Cabinet Secretary for  
Education, 18 July 2024

**3.2 SL(6)513 – The Historic Environment (Wales) Act 2023 (Commencement)  
Order 2024**

(Page 9)

[Order](#)

Attached Documents:

LJC(6)–26–24 – Paper 4 – Draft report

**4 Instruments that raise issues to be reported to the Senedd under  
Standing Order 21.2 or 21.3 – previously considered  
(13.40 – 13.45)**

**5 Inter–Institutional Relations Agreement  
(13.45 – 13.50)**

**5.1 Written Statement and correspondence from the Deputy First Minister and  
Cabinet Secretary for Climate Change and Rural Affairs: The Animal Welfare  
(Livestock Exports) Enforcement Regulations 2024**

(Pages 10 – 12)

Attached Documents:

LJC(6)–26–24 – Paper 5 – Written Statement by the Deputy First Minister and

Cabinet Secretary for Climate Change and Rural Affairs, 16 September 2024  
LJC(6)-26-24 – Paper 6 – Correspondence from the Deputy First Minister and  
Cabinet Secretary for Climate Change and Rural Affairs, 17 September 2024

**5.2 Correspondence from the Deputy First Minister and Cabinet Secretary for  
Climate Change and Rural Affairs: The Persistent Organic Pollutants  
(Amendment) Regulations 2024**

(Pages 13 – 14)

Attached Documents:

LJC(6)-26-24 – Paper 7 – Correspondence from the Deputy First Minister and  
Cabinet Secretary for Climate Change and Rural Affairs, 19 September 2024

**5.3 Written Statement by the First Minister: The Procurement Act 2023  
(Commencement No. 3 and Transitional and Saving Provisions) (Amendment)  
Regulations 2024**

(Pages 15 – 16)

Attached Documents:

LJC(6)-26-24 – Paper 8 – Written Statement by the First Minister, 19  
September 2024

**6 Papers to note**

(13.50 – 13.55)

**6.1 Written Statement by the Cabinet Secretary for Social Justice, Trefnydd and  
Chief Whip: Senedd Cymru (Electoral Candidate Lists) Bill**

(Pages 17 – 18)

Attached Documents:

LJC(6)-26-24 – Paper 9 – Written Statement by the Cabinet Secretary for  
Social Justice, Trefnydd and Chief Whip, 16 September 2024

**6.2 Written Statement by the Cabinet Secretary for Health and Social Care: The  
Health Services (Provider Selection Regime) (Wales) Regulations 2024**

(Page 19)

Attached Documents:

LJC(6)-26-24 – Paper 10 – Written Statement by the Cabinet Secretary for Health and Social Care, 19 September 2024

- 7 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting**  
(13.55)

### **Private meeting**

(13.55 – 14.50)

- 8 Health and Social Care (Wales) Bill: Draft report**

(13.55 – 14.35)

(Pages 20 – 42)

[Health and Social Care \(Wales\) Bill, as introduced](#)

[Explanatory Memorandum](#)

[Statement of Policy Intent](#)

Attached Documents:

LJC(6)-26-24 – Paper 11 – Draft report

LJC(6)-26-24 – Paper 12 – Letter from the Cabinet Secretary for Health and Social Care and the Minister for Social Care to the Health and Social Care Committee, 6 September 2024

LJC(6)-26-24 – Paper 13 – Letter from the Minister for Social Care, 30 August 2024

LJC(6)-26-24 – Paper 14 – Letter from the Minister for Social Care to the Finance Committee, 26 July 2024

LJC(6)-26-24 – Paper 15 – Letter from the Health and Social Care Committee to the Minister for Social Care, 26 July 2024

- 9 Monitoring report**

(14.35 – 14.45)

(Pages 43 – 68)

Attached Documents:

LJC(6)-25-24 – Paper 16 – Monitoring report

## **10 Update on Ministerial responsibilities**

(14.45 - 14.50)

## **SL(6)519 – The Listed Buildings (Partnership Agreements) (Wales) Regulations 2024**

### **Background and Purpose**

These Regulations are part of a package of secondary legislation which brings into force and implements the Historic Environment (Wales) Act 2023 (“the 2023 Act”).

The 2023 Act received Royal Assent in June 2023. It is a consolidation Act designed to restate primary and secondary legislation, and incorporate some related caselaw and practice. The package of regulations restate secondary legislation relating to the designation, protection and management of the historic environment in Wales. They also make consequential amendments to secondary legislation.

These Regulations make provision about partnership agreements relating to listed buildings in Wales, specifically about consultation and publicity requirements on making or varying such agreements. They replace the Listed Buildings (Heritage Partnership Agreements) (Wales) Regulations 2021, which are revoked by regulation 7 of these Regulations.

A partnership agreement is an agreement between the owner of a listed building in Wales and either the planning authority or the Welsh Ministers or both. There may also be additional parties to a partnership agreement, including any person who has special knowledge of or special interest in the listed building, generally or specifically. A partnership agreement may grant listed building consent under section 89(1) of the 2023 Act in respect of a programme of works specified in the agreement. The works may only be for the alteration or extension of the listed building to which the agreement applies, although a partnership agreement may relate to more than one listed building. That consent may be subject to conditions.

### **Procedure**

Negative

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

### **Technical Scrutiny**

The following 3 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

#### **1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**



The term “partnership agreement” is defined in regulation 2. However, there are numerous instances in these Regulations where variations to this term are used, specifically “agreement” and “existing agreement”. For example, “existing agreement” is used in regulations 3(2) and 6(b), and “agreement” is used in regulations 3(2)(b) and (3), and 6(b)(i) and (ii).

Similarly, the term “planning authority” is defined in regulation 2. However, there are instances where the term “authority” is used, such as in regulation 5(2)(d)(iii) and (5).

Finally, there are three instances in regulation 5(9), in the definition of “owner”, where the term “building”, rather than the defined term “listed building”, is used. There are other instances where the term “buildings” is used, rather than the defined term “listed building”, which appear appropriate as they are not used in the context of a listed building, such as when describing “buildings of architectural or historic interest more generally” in regulation 5(2)(d)(iii) and (7).

Whilst it appears in each of these instances that the intention of the relevant provision remains clear despite the use of a variant term, and it may be possible to rely on section 9 of the Legislation (Wales) Act 2019 to interpret these variations in accordance with the defined terms in regulation 2, it may have been helpful for consistency if the defined terms had been used throughout the Regulations.

## **2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

In regulation 5(2)(d), for clarity it would have been helpful for the opening text to have read, “give a copy of the notice **specified in sub-paragraph (c)** to-” (additional text emphasised), given that regulation 5(2) does not only deal with the provision of a notice and the information it must contain. For example, regulation 5(2)(a) concerns the making of certain documents available for public inspection, rather than the provision of a notice.

## **3. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

In regulation 5(9), a “long-term tenant” is defined as meaning “a tenant under a lease which is granted or extended for a fixed term that has at least **2 years** left to run” (emphasis added).

Similarly, an “owner” is defined in the same regulation as including (as well as the owner of the freehold estate) “a tenant under a lease of the building or part granted or extended for a fixed term that has at least **7 years** left to run” (emphasis added).

This appears to create a situation where a tenant under a lease for a fixed term that has at least 7 years left to run may be captured by both the definition of “long-term tenant” and “owner”, as the definition of “long-term tenant” is not limited to tenants subject to a fixed term lease of at least 2 years but less than 7 years.

It is noted that this does not appear to create any inequitable consequences in practice as a planning authority is required to give a copy of a notice set out in regulation 5(2)(d) to any “long-term tenant” and/or “owner” who is not a proposed party to the draft agreement or



draft variation. But it is noted that a planning authority who is the “owner” of a listed building or buildings to which a draft agreement or draft variation relates is subject to regulation 5(7), in accordance with regulation 5(6). This does not apply to a planning authority who is a “long-term tenant”.

The Welsh Government is asked to clarify whether the intention behind regulation 5(9) is that tenants under a lease for a fixed term that has at least 7 years left to run will be captured by both the definition of “long-term tenant” and “owner” and, if that is the case, whether there are any consequences to which the Committee should be made aware.

## Merits Scrutiny

The following 2 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

### **4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd**

Regulation 4(4) provides that, during the consultation period specified under regulation 4(2)(b), the Welsh Ministers may give notice to the planning authority that they require further time in which to consider the draft agreement or draft variation. Regulation 4(5) provides that, if the Welsh Ministers give this notice, the consultation period is extended for the period specified in that notice.

It does not appear that any statutory limitation is placed on this power to extend the consultation period by notice. For example, no provision is made for a maximum period by which the consultation period may be extended by the Welsh Ministers.

Whilst it is acknowledged that regulation 5(4) and (5) is a restatement of the provision set out in regulation 5(4) and (5) of the Listed Buildings (Heritage Partnership Agreements) (Wales) Regulations 2021, the Welsh Government is asked to clarify how this power is used in practice and whether any consideration has been given to the placing of a statutory limitation on it.

### **5. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy to be of interest to the Senedd**

It is noted that some of the provisions of the 2023 Act referred to in these Regulations were not in force on the date that these Regulations were made. As an example, this includes section 76(5) of the 2023 Act, which is referred to in the definition of “listed building” in regulation 2.

However, in accordance with the Historic Environment (Wales) Act 2023 (Commencement) Order 2024, the remaining provisions of the 2023 Act (except section 147, which is not referenced in these Regulations) will come into force on 4 November 2024, the same date on which these Regulations come into force.

## Welsh Government response

A Welsh Government response is required in relation to reporting points 1-4.



**Legal Advisers**  
**Legislation, Justice and Constitution Committee**  
**17 September 2024**



## **SL(6)509 – The Tertiary Education and Research (Wales) Act 2022 (Commencement No. 4 and Transitory and Transitional Provisions) Order 2024**

### **Background and Purpose**

The Tertiary Education and Research (Wales) Act 2022 (“the Act”) provides for a new statutory framework for publicly funded tertiary education and research in Wales. In particular, the Act establishes a new Commission for Tertiary Education and Research in place of the Higher Education Funding Council for Wales (“HEFCW”).

In accordance with section 148(1) of the Act, certain provisions came into force on 9 September 2022, the day after the day on which the Act received Royal Assent. Section 148(2) provides that the other provisions of the Act come into force on a day appointed by the Welsh Ministers in an order made by statutory instrument.

The Tertiary Education and Research (Wales) Act 2022 (Commencement No. 4 and Transitory and Transitional Provisions) Order 2024 (“the Order”) is the fifth order made by the Welsh Ministers using the power in section 148(2).

Parts 2 and 3 of the Order bring into force various provisions of the Act on 1 August 2024 and 1 April 2025 respectively. Some provisions are brought into force fully, some are brought into force to the extent specified and some are subject to transitory or transitional provisions.

Part 4 of the Order makes transitory provision relating to the Act and to other associated primary and secondary legislation. According to the Explanatory Note, these are temporary modifications to legislation arising in connection with the dissolution of HEFCW and the transition to the registration system established under Part 2 of the Act.

Part 5 makes transitional provision in connection with the dissolution of HEFCW.

### **Procedure**

No procedure

### **Scrutiny under Standing Order 21.7**

The following point is identified for reporting under Standing Order 21.7 in respect of this Order.

1. It is noted that the Order, which is not subject to any Senedd scrutiny procedure, makes extensive transitory and transitional provision, including in relation to primary legislation.



## Government response

A Welsh Government response is not required.

### Legal Advisers

Legislation, Justice and Constitution Committee

18 September 2024



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

Welsh Parliament

**Pack Page 6**

**Legislation, Justice and Constitution Committee**



Llywodraeth Cymru  
Welsh Government

---

## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

---

<b>TITLE</b>	<b>Commission for Tertiary Education and Research – Operational date</b>
<b>DATE</b>	<b>18 July 2024</b>
<b>BY</b>	<b>Lynne Neagle MS, Cabinet Secretary for Education</b>

This week marks a key milestone for the Commission for Tertiary Education and Research, Wales' first ever national steward for the whole tertiary education and research sector.

The Commission will be responsible for the funding, oversight and quality of the tertiary education sector. It will take a system-wide view, shaping a new structure and system that better supports our learners throughout their lives to have the knowledge and skills to succeed. It will also secure providers that are strong, independent and diverse, making significant contributions to national well-being and prosperity.

I am pleased to inform Members that yesterday I made the Tertiary Education and Research (Wales) Act 2022 (Commencement No. 4 and Transitory and Transitional Provisions) Order 2024. This Order provides for the dissolution of the Higher Education Funding Council for Wales (HEFCW) and enables the Commission to become operational on 1 August 2024. I would like to this opportunity to personally thank HEFCW for their dedication to the Higher Education sector for over 30 years. Their commitment, support and guidance during this time has played a vital role to institutions right across Wales.

The Tertiary Education and Research (Wales) Act 2022 makes provision for a registration system and associated regulatory arrangements which will provide the framework for regulatory oversight of providers of higher education in Wales.

The Order makes provision, so that whilst the registration system is being established the Commission can continue to operate the existing regulatory regime, as provided for under the Higher Education (Wales) Act 2015, so as to ensure continuity of regulation and a smooth transition for the tertiary education sector.

I have also today made the regulations voted on in plenary yesterday, namely the Tertiary Education and Research (Wales) Act 2022 (Consequential Amendments) Regulations 2024 and the Digital Government (Welsh Bodies) Regulations 2024.

As we look to the future, our priorities for the tertiary education sector are clear, and I look forward to the Commission responding to my [Statement of Priorities](#) later this year.

## **SL(6)513 – The Historic Environment (Wales) Act 2023 (Commencement) Order 2024**

### **Background and Purpose**

The Historic Environment (Wales) Act 2023 consolidates the law on the protection and management of the historic environment in Wales. It is the first consolidation Act passed by the Senedd in accordance with Standing Order 26C (Consolidation Acts of the Senedd).

Certain provisions of the Act came into force on 15 June 2023, the day after the day on which the Act received Royal Assent. The Historic Environment (Wales) Act 2023 (Commencement) Order 2024 ("the Order") brings into force all remaining provisions of the Act with the exception of section 147 (Steps for preservation of listed buildings in disrepair).

### **Procedure**

No procedure

### **Scrutiny under Standing Order 21.7**

The following point is identified for reporting under Standing Order 21.7 in respect of this Order.

1. It is noted that the Order is the first commencement order for the first consolidation Act passed by the Senedd. The effect of the Order is that the Act will be fully in force from 4 November 2024 with the exception of section 147.

### **Government response**

A Welsh Government response is not required.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**18 September 2024**





---

## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

---

<b>TITLE</b>	<b>The Animal Welfare (Livestock Exports) Enforcement Regulations 2024</b>
<b>DATE</b>	<b>16 September 2024</b>
<b>BY</b>	<b>Huw Irranca-Davies, Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs</b>

Members of the Senedd will wish to be aware that I have given my consent to the UK Government to exercise a subordinate legislation-making power in a devolved area in relation to Wales.

The Animal Welfare (Livestock Exports) Enforcement Regulations 2024 (“the Regulations”) were laid before the UK Parliament on 12 September, in exercise of powers conferred under The Animal Welfare (Livestock Exports) Act 2024 (“the Act”).

The Act makes provisions to prohibit the export of cattle and other bovine animals, sheep, goats, pigs or wild boar, and horses or other equine animals (“relevant livestock”) for slaughter, including fattening for subsequent slaughter. Where exporting is sending or attempted sending from Great Britain to anywhere outside the British Islands or the transportation or attempted transportation, or the organising or attempting to organise the transport of relevant livestock from or through Great Britain to anywhere outside the British Islands.

The Regulations establish enforcement powers, offences, and penalties relating to the prohibition on the export of relevant livestock for slaughter, including fattening for subsequent slaughter.

It is normally the policy of the Welsh Government to legislate for Wales in matters of devolved competence. However, in certain circumstances there are benefits to working collaboratively with the UK Government where there is a clear rationale for doing so. On this occasion, I have given my consent to the UK Government to make the Regulations. This approach will ensure the Regulations are introduced simultaneously across England, Wales, and Scotland, and for coherent, centrally coordinated communications with stakeholders. Livestock transport journeys can start and travel through the different countries of Great Britain to reach destination. Separate regulations, or any divergence in the coming into force of regulations, across Great Britain could lead to complexity, inconsistencies and

administrative burden for industry and enforcement agencies.

Welsh Government officials have a good working relationship with their Defra counterparts and will continue to work with them and the Scottish Government to strengthen the protection of animal welfare during transport, maintaining positive and constructive intergovernmental relations.

The Regulations were laid before the UK Parliament, using the draft affirmative procedure, on 12 September and are scheduled to come into force on 1 January 2025.

Huw Irranca-Davies AS/MS  
Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros  
Newid Hinsawdd a Materion Gwledig  
Deputy First Minister and Cabinet Secretary for Climate  
Change and Rural Affairs



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: MA/HIDCC/5128/24

Mike Hedges MS  
Chair  
Legislation, Justice and Constitution Committee  
Welsh Parliament

17 September 2024

Dear Mike,

I am writing further to my letter of 21 May where I informed you of my intention to consent to the UK Government making The Animal Welfare (Livestock Exports) Enforcement Regulations 2024 (“the Regulations”).

I have now given my consent to the UK Government to make the Regulations. I have issued a Written Statement which can be found at: [Written Statement: The Animal Welfare \(Livestock Exports\) Enforcement Regulations 2024 \(16 September 2024\) | GOV.WALES](#)

The Regulations supplement the Animal Welfare (Livestock Exports) Act 2024 by establishing enforcement powers, offences, and penalties relating to the prohibition on the export of relevant livestock for slaughter. The Regulations were laid before the UK Parliament, using the draft affirmative procedure, on 12 September and are scheduled to come into force on 1 January 2025.

I am copying this letter to Paul Davies MS, Chair of the Economy, Trade and Rural Affairs Committee

Yours sincerely,

**Huw Irranca-Davies AS/MS**

Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros Newid Hinsawdd  
a Materion Gwledig  
Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Gohebiaeth.Huw.Irranca-Davies@llyw.cymru](mailto:Gohebiaeth.Huw.Irranca-Davies@llyw.cymru)  
[Correspondence.Huw.Irranca-Davies@gov.wales](mailto:Correspondence.Huw.Irranca-Davies@gov.wales)

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.

Huw Irranca-Davies AS/MS  
Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros  
Newid Hinsawdd a Materion Gwledig  
Deputy First Minister and Cabinet Secretary for Climate  
Change and Rural Affairs

Ein cyf/Our ref MA/HIDCC/5923/24

Mike Hedges MS Chair,  
Legislation, Justice and Constitution Committee  
Senedd Cymru  
[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

19 September 2024

Dear Mike,

I am writing to inform the Committee of the intention to consent to the UK Government making and laying the Persistent Organic Pollutants (Amendment) Regulations 2024 (“the 2024 Regulations”).

The 2024 Regulations intersect with devolved policy and will apply to Wales. They will be made by the Secretary of State for Environment, Food and Rural Affairs under Articles 7(6), 15(1) and (2) and 18(1) of the Regulation (EU) 2019/1021 of the European Parliament and of the Council on Persistent Organic Pollutants (recast) (“the POPs Regulations”).

The 2024 Regulations apply in relation to England, Scotland and Wales and are subject to the affirmative procedure. They are due to be laid before Parliament on 8 October 2024. Article 2A(c) of the POPs Regulations provides that the Regulations can be made by the Welsh Ministers in relation to Wales, or by the Secretary of State with the consent of the Welsh Ministers.

A similar request for consent has been sent to Scottish Ministers and my predecessor received a letter from Lord Douglas-Miller, Minister for Biosecurity, Animal Health and Welfare requesting consent to the 2024 Regulations in March 2024. The Scottish Government has provided consent.

### The 2024 Regulations

The 2024 Regulations amend Annexes I, IV and V of the POPs Regulations. Amendments are required to the entries for Hexachlorobenzene, Pentachlorophenol and Perfluorooctanoic acid in Annex I to ensure that the UK continues to meet its legal obligations as signatories to the Stockholm Convention on Persistent Organic Pollutants. Annexes IV and V are amended to reflect scientific and technical progress

Annex IV is amended and new substances added to the list of those subject to waste management provisions. Article 7 of the POPs Regulations provides that *“Producers and holders of waste shall undertake all reasonable efforts to avoid, where feasible, contamination*

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Gohebiaeth.Huw.Irranca-Davies@llyw.cymru](mailto:Gohebiaeth.Huw.Irranca-Davies@llyw.cymru)  
[Correspondence.Huw.Irranca-Davies@gov.wales](mailto:Correspondence.Huw.Irranca-Davies@gov.wales)

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.

*of this waste with substances listed in Annex IV*". Regulation 7 of the Persistent Organic Waste Regulations 2007 provides it is an offence for a person to contravene Article 7. Adding substances to the list in Annex IV ultimately widens the scope of that offence.

Article 7(4)(b) of the POPs Regulations provides that in exceptional cases the competent authority may allow wastes listed in Part 2 of Annex V to contain or be contaminated by a substance listed in Annex IV up to concentrations limits specified in Part 2 of Annex V.

The 2024 Regulations amend Annex V to reduce the maximum concentration limits for Pentachlorophenol, its salts, and its esters, Dicofol, Perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds, Perfluorohexane sulfonic acid (PFHxS), its salts and PFHxS-related compounds.

The 2024 Regulations further amend the table at Part 2 of Annex V to include the following wasted from thermal processes: fly ash from peat and untreated wood and soil and stones (other than those containing hazardous substances).

### Welsh Government Position

The Welsh Government's general principle is that whilst the law relating to devolved matters should be made and amended in Wales, in certain circumstances there are benefits in doing so collaboratively with the UK Government where there is a clear rationale for doing so.

On this occasion, it is considered appropriate for the substance of the amendments to apply to Wales as there is no policy divergence between the Welsh and UK Governments in this matter. I consider that legislating separately for Wales would be neither the most appropriate way to give effect to the necessary changes, nor a prudent use of Welsh Government resources given other important priorities.

It is anticipated that the Regulations will be laid before the UK Parliament pursuant to the affirmative procedure on 8 October 2024. It is expected that the 2024 Regulations will come into force 21 days after the day on which they are then made.

Yours sincerely,



**Huw Irranca-Davies AS/MS**

Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros Newid Hinsawdd  
a Materion Gwledig

Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs

---

**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

---

**TITLE**            **The Procurement Act 2023 (Commencement No. 3 and Transitional and Saving Provisions) (Amendment) Regulations 2024**

**DATE**            **19 September 2024**

**BY**                **Eluned Morgan MS, First Minister of Wales**

**The Law which is being commenced:**

The Procurement Act 2023 (Commencement No. 3 and Transitional and Saving Provisions) (Amendment) Regulations 2024

**Any impact the Regulations may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence.**

These Regulations contain provisions that commence the practical and operational legislative requirements of the Procurement Act 2023 (the Act). Only a Minister of the Crown has commencement powers within the Act. However, in accordance with section 127(3) of the Act, UK Government are obliged to seek Welsh Ministers consent before commencing the provisions within the Procurement Act for Devolved Welsh Authorities.

**The purpose of the Regulations**

These Regulations will specify 24 February 2025 as the date in which the substantive provisions of the Act will come into force, giving the new regime legal effect.

These Regulations will also bring into force Section 93 of the Act concerning Pipeline notices and will revoke the current regulations.

A Minister of the Crown may not make specified regulations under subsection 127(2) without the consent of the Welsh Ministers.

The Regulations are available here: [The Procurement Act 2023 \(Commencement No. 3 and Transitional and Saving Provisions\) \(Amendment\) Regulations 2024](#)

There will be additional Commencement Regulations required to commence further provisions in the Procurement Act 2023, and these will also require the consent of the Welsh Ministers.

### **Matters of special interest to the Legislation, Justice and Constitution Committee**

None identified.

### **Why consent was given**

The consent of the Welsh Ministers is required for the Minister of the Crown to make these Commencement Regulations to specify the coming into force date, commencement orders and transitional arrangements.

---

**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

---

<b>TITLE</b>	WRITTEN STATEMENT – Senedd Cymru (Electoral Candidate Lists) Bill
<b>DATE</b>	16 September 2024
<b>BY</b>	Jane Hutt MS: Cabinet Secretary for Social Justice, Trefnydd and Chief Whip

Members will be aware that the Senedd Cymru (Members and Elections) Act received Royal Assent in June this year, which will deliver a major series of reforms to our institution, including expanding to 96 Members from 2026.

A separate Bill, the Senedd Cymru (Electoral Candidate Lists) Bill concluded its Stage 1 scrutiny in the Senedd in July, and I am grateful for all the contributions from Members to those proceedings.

Tomorrow, the First Minister will set out her policy and legislative priorities for the remainder of this Senedd term, indicating those areas where the Welsh Government will now focus its full energy in delivering tangible outcomes for the people of Wales.

As a result, we are looking across the government at areas where we can implement our policy and legislative objectives in a more practical and timely way.

Following consideration, we have decided to table a motion to withdraw the Bill from further Senedd consideration, which will be debated and voted on in plenary on September 24<sup>th</sup>.

During the Stage 1 debate, representatives of all political parties in the Senedd made clear their commitment to the important area of women's representation in the next Senedd.

We remain committed to a gender balanced Senedd and getting more women into politics, but have reflected over the summer and decided the best way we can achieve practical change for the 2026 Senedd election is to address this issue in a different way.

The withdrawal of this Bill does not prevent political parties considering what action they can implement through their candidate selection processes.

As Cabinet Secretary for Social Justice, I am pleased to report that I will accelerate progress on new guidance for political parties in relation to diversity and inclusion, including the representation of women, but also across a broader range of characteristics and circumstances.

This work is already underway, and we will consult publicly on it shortly. The guidance will therefore be available in advance of candidate selection processes by political parties for the 2026 election.

I anticipate this approach will assist delivery of practical, tangible outcomes across the political spectrum with the aim of returning a strong and diverse Senedd which can properly represent the whole of Welsh society.

---

**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

---

<b>TITLE</b>	<b>The Health Services (Provider Selection Regime) (Wales) Regulations 2024</b>
<b>DATE</b>	<b>19 September 2024</b>
<b>BY</b>	<b>Jeremy Miles MS, Cabinet Secretary for Health and Social Care</b>

The draft Health Services (Provider Selection Regime) (Wales) Regulations 2024 laid before the Senedd on 13 August have been withdrawn.

The draft regulations introduce a new regime for the procurement of health services on behalf of the NHS in Wales, as provided for by the Health Service Procurement (Wales) Act 2024.

The draft regulations include provisions to disapply the UK Government's Procurement Act in relation to health service procurement in Wales. Subject to approval by the Senedd, the draft regulations were due to commence on 28 October, to coincide with the commencement of wider public procurement reforms being introduced by the Procurement Act.

However, on 12 September, the UK Government announced it was delaying the commencement of the Procurement Act until February 2025. This means the provisions currently included in the draft regulations to disapply health service procurement from the Procurement Act need to be amended to ensure their effective operation.

The draft regulations will therefore be amended and re-laid for Senedd approval at a future date. I will provide Members with an update in due course.

# Agenda Item 8

Ysgrifennydd y Cabinet dros Iechyd a Gofal Cymdeithasol  
Cabinet Secretary for Health and Social Care

Dawn Bowden AS/MS  
Y Gweinidog Gofal Cymdeithasol  
Minister for Social Care



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref MD-PO-0230-24

Sam Rowlands MS  
Temporary Chair  
Health and Social Care Committee  
Senedd Cymru

6 September 2024

Dear Sam,

Thank you for your letter of 26 July, following the appearance of the Minister for Social Care before the Health and Social Care Committee on 17 July to discuss the Health and Social Care (Wales) Bill.

During the Committee session the Minister committed to engage with the Cabinet Secretary in order to provide further information on issues connected with the provision of Continuing Health Care. This, along with a response to the additional question included in your letter, is attached at Annex A.

In addition, you may wish to be aware that since the Committee session, a [Delphi study](#) on eliminating profit from the care of looked after children has been published, which complements earlier reports from the [Wales Centre for Public Policy](#) and [Cardiff University](#) as well as [ADSS Cymru](#).

We are copying this letter to the Chairs of the Legislation, Justice and Constitution Committee and the Finance Committee.

Yours sincerely,

**Mark Drakeford AS/MS**  
Ysgrifennydd y Cabinet dros Iechyd a Gofal  
Cymdeithasol  
Cabinet Secretary for Health and Social Care

**Dawn Bowden AS/MS**  
Y Gweinidog Gofal Cymdeithasol  
Minister for Social Care

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400

[Gohebiaeth.Mark.Drakeford@llyw.cymru](mailto:Gohebiaeth.Mark.Drakeford@llyw.cymru)  
[Correspondence.Mark.Drakeford@gov.wales](mailto:Correspondence.Mark.Drakeford@gov.wales)

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.

## Elimination of private profit from care of looked after children

1. In relation to the elimination of profit from children looked after, we asked Care Inspectorate Wales whether the provisions in the Bill and explanatory memorandum relating to supplementary placements will act to effectively 'legalise' and normalise unregistered placements in Wales ... Can you confirm your position ... and, in particular, whether you intend to make any changes to the relevant provisions of either the Bill or explanatory memorandum.

The Government is clear that the provisions in the Bill relating to the approval of supplementary placements will not act to effectively 'legalise' or normalise unregistered placements. These provisions enable Welsh Ministers to approve a placement with a registered for-profit provider of children's residential or foster care who is subject to the wider transitional arrangements set out in the Bill. It will not enable Welsh Ministers to authorise an unregistered placement.

The provisions relating to supplementary placements need to be considered alongside those relating to the revised local authority sufficiency duty and the duty on local authorities to prepare and publish an annual sufficiency plan. Taken together these provisions give robust direction to local authorities about putting in place a sufficiency of placement capacity and utilising the right type of provision and provider, which should negate the need to utilise unregistered placements.

We are aware there has been some confusion regarding the reference to 'unregistered accommodation' in the Explanatory Notes to the Bill. Section 13 of the Bill sets out the ways in which looked after children are to be accommodated in "the most appropriate placement". The Explanatory Notes state that a placement can be in "unregistered accommodation (on a temporary basis or in cases of urgency)".

The intention was to refer to accommodation where there is no requirement to register because the placement is not with a foster carer and the arrangements fall outside the definition of "a care home service". There are a variety of circumstances where a local authority can decide to place a child in a setting other than foster care or a care home service for children (children's home). The most common example of this is where a local authority places an older child aged 16 or 17 in supported accommodation as preparation for independent living.

More recently usage of the terms "unregistered accommodation" and "unregulated accommodation" have tended to distinguish between two things, the term *unregistered accommodation* being used to refer to arrangements which fall within the scope of activity where there is a requirement to register but where the provider is not in fact registered and *unregulated accommodation* being used to refer to arrangements which fall outside the scope of regulated activity and therefore where registration is not required. The former is not the sense in which "unregistered" is used in the Explanatory Notes.

In light of the points raised, we propose to make a revision to the Explanatory Notes on this point at the end of Stage 2, to remove the reference to 'unregistered' accommodation, and provide an alternative form of words which will be clearer for lay readers consulting the Explanatory Notes in future.

## Continuing healthcare

- 2. In relation to issues with continuing healthcare you gave an undertaking to ask the Cabinet Secretary for Health and Social Care to update the committee on progress with the review of the current CHC Framework. As part of this, we would like to hear whether there is any scope to bring this review forward, and whether there is merit in doing this so that any changes that are needed to be made to the existing system can happen in tandem with the introduction of direct payments for CHC.**

The current CHC Framework was published in 2021 and became operational as of 1 April 2022. This Framework replaced the previous 2014 publication. The Welsh Government gave a commitment to review the Framework within five years of implementation, therefore a new Framework should be in place and operational by April 2027.

With the introduction of the Health & Social Care (Wales) Bill and its provisions to enable the introduction of direct payments for Continuing NHS Healthcare, it would be timely to consider the legislative timetable of the Bill in tandem with the revision of the CHC Framework. This would enable relevant information regarding the newly established direct payments for CHC to be included in the revised Framework document. Given the Bill's current timetable, it is hoped that the Bill might receive Royal Assent in late Spring 2025. This will be followed by the drafting of Regulations and Guidance during 2025-26 and with the aim that some direct payments for CHC would begin during 2026. This timetable would therefore fall in line neatly with the revision of the CHC Framework.

The revision of the Framework would require a full external consultation exercise, involving key partners and other stakeholders, with all responses being considered before a revised Framework is published.

The Complex Care Joint Forum, formed in 2023, would also be key in discussing changes to the CHC Framework, as it includes Welsh Government policy colleagues and representatives from local authorities and health boards. The group supports the implementation of the Framework, with a particular focus on the interface between social care and healthcare, and on partnership working between health boards and local authorities. The group aims to work together for shared knowledge and cross organisational working.

These key partners and stakeholders would also be heavily involved in the introduction of the newly established direct payments system. I am conscious that such key external partners will be involved in both aspects and, therefore, we need to ensure that we are not excessively loading them with additional work whilst implementing such a significant change.

- 3. Also in relation to continuing healthcare, we have heard from health board representatives that there is currently no performance framework for CHC, as it is in the process of being revised. They said this framework was critical, and should include metrics to capture and measure progress and success. You agreed to ask the Cabinet Secretary to provide us with an update of work in this area, including details of when the revised framework will be put in place.**

The CHC Framework 2021 refers to a National Performance Framework, forming part of the governance and accountability arrangements for CHC in Wales.

During the pandemic, there was an agreement that health boards would not be required to complete returns in relation to a CHC Performance Framework, due to pressures faced.

Discussions then took place with the health boards' CHC Leads regarding the possibility of re-establishing the Performance Framework. There was agreement that it needed to be refined in order that it was a meaningful exercise for the health boards and that the information collated was of benefit to the Welsh Government.

During this time, it became apparent that not all health boards collect information using the same categories or indicators. It was therefore difficult to compare information received from the various health boards.

In November 2023, Judith Paget, Director General of Health and Social Services / Chief Executive NHS Wales, wrote to the Chief Executives of all health boards informing them of the work of the newly established Value and Sustainability Board, which included five workstreams, one being a CHC workstream.

Shane Mills, Clinical Director, National Collaborative Commissioning Unit, along with a national group, has undertaken a time-limited piece of work to review high-cost patient placements, to identify opportunities to reduce the cost whilst ensuring quality and outcomes are protected. This work is still underway and is being done in conjunction with representatives from all health boards.

The group has identified that the solutions required to deliver on these opportunities would be best delivered on an all-Wales basis. Next steps have included the proposal to facilitate the use of a standardised reporting system across all health boards in Wales potentially using one software platform to collect performance data, instead of the different platforms and systems currently used. This proposal is still under consideration at present, and any decision made on this is clearly relevant to any proposal to create an updated CHC Performance Framework.

As the CHC Performance Framework has been raised by health board representatives as part of their discussions with the Committee, my officials will revisit this area, including working with the Value and Sustainability subgroup to establish the best way forward to create an integrated all-Wales approach to data collection. We will be working with our partners to scope out and develop an implementation plan for a new performance framework over the autumn and winter months.

**Dawn Bowden AS/MS**  
Y Gweinidog Gofal Cymdeithasol  
Minister for Social Care



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref MA-DB-6070-24

Mike Hedges MS  
Chair  
Legislation, Justice and Constitution Committee  
Welsh Parliament  
[SeneddLJC@Senedd.wales](mailto:SeneddLJC@Senedd.wales)

30 August 2024

Dear Mike,

Following my appearance before the Legislation, Justice and Constitution Committee on 17 June to discuss the Health and Social Care (Wales) Bill, I am writing to inform you that I have published the Integrated Impact Assessment summaries.

[Health and Social Care \(Wales\) Bill: impact assessments | GOV.WALES](#)

I am copying this letter to the chairs of the Health and Social Care Committee and the Finance Committee.

Yours sincerely,

**Dawn Bowden AS/MS**  
Y Gweinidog Gofal Cymdeithasol  
Minister for Social Care

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Gohebiaeth.Dawn.Bowden@llyw.cymru](mailto:Gohebiaeth.Dawn.Bowden@llyw.cymru)  
[Correspondence.Dawn.Bowden@gov.wales](mailto:Correspondence.Dawn.Bowden@gov.wales)

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.

**Back Page 24**  
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.

**Dawn Bowden AS/MS**  
Y Gweinidog Gofal Cymdeithasol  
Minister for Social Care



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: DB-PO-0199-24

Peredur Owen Griffiths MS  
Chair  
Finance Committee  
Senedd Cymru  
[SeneddFinance@senedd.wales](mailto:SeneddFinance@senedd.wales)

26 July 2024

Dear Peredur,

Thank you for your letter of 8 July, following my appearance before the Finance Committee to discuss the Health and Social Care (Wales) Bill. I am providing a detailed response to the points you have raised in the annex to this letter. I hope that this will provide a degree of clarity to the Committee.

I am copying this letter to the chairs of the Health and Social Care Committee and the Legislation, Justice and Constitution Committee.

Yours sincerely,

**Dawn Bowden AS/MS**  
Y Gweinidog Gofal Cymdeithasol  
Minister for Social Care

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

[Gohebiaeth.Dawn.Bowden@llyw.cymru](mailto:Gohebiaeth.Dawn.Bowden@llyw.cymru)  
[Correspondence.Dawn.Bowden@gov.wales](mailto:Correspondence.Dawn.Bowden@gov.wales)

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.

## 1. The Welsh Government's approach to quantifying and presenting the financial implications of the Bill

- (a) **The sum of the constituent elements in the Regulatory Impact Assessment (RIA) suggests the total cost of the Bill ranges from £394.5m to £495.7m. However, this differs from the total cost set out in that RIA summary, which is £429.8m to £455.7m. We've also noted other inconsistencies in the value of costs and benefits in the RIA summary with the tables included in the rest of the RIA. Please could you provide a clarification of the correct figures or an explanation for these differences.**

We have reviewed the RIA summary tables and we are content the ranges of £394.5M to £495.7M presented there are correct.

The range £429.8M to £455.7M does not feature in the RIA summary but appears to have been calculated by adding up the lowest values from the 'Administrative costs', 'Compliance costs' and 'Other costs' ranges and the highest values from those same ranges in the RIA summary. However, to calculate minimum or maximum costs for the eliminating private profit section of the RIA, the estimated costs of different scenarios need to be considered collectively, rather than simply adding all the lowest figures from the ranges together, or all the highest figures from the ranges.

Ranges for the costs and cost-savings under the eliminating private profit section have been calculated using different assumptions (scenarios) for the proportion of existing private sector providers who will opt to remain in the market. These are presented as scenarios A, B and C in the RIA. Market intelligence and stakeholder discussions have led us to believe that an outcome somewhere between Scenarios B and C is most likely and so the figures in the RIA summary tables are based on the range of costs and cost-savings calculated under these two Scenarios.

Comparing Scenarios B and C, private providers' costs (which are shown in the 'Other costs' section of the RIA summary table) are highest under Scenario B and lowest under Scenario C. The reverse is true for public sector administrative costs, where costs are lower in Scenario B and the higher end of the range is calculated under Scenario C.

Therefore, to simply add together the upper end of the private sector cost range and the upper end of the public sector cost range leads to an incorrect total, because they are derived from different scenarios and different sets of modelling assumptions. This is set out in Chapter 7 of the RIA, but we acknowledge it could have been explained more fully in the RIA summary in Chapter 6. We would anticipate laying a revised Explanatory Memorandum/RIA following the completion of Stage 2, and can include some additional narrative in Chapter 6's RIA summary table to clarify this point.

There are also £2.3M of administrative cost-savings identified in the RIA summary. The total cost as given in the RIA summary is reached on the basis

of the net administrative costs, i.e. the administrative costs less the administrative cost savings.

Taking these two points together, and bearing in mind that the individual values in the RIA summary are subject to rounding, we hope that these points explain the basis for the calculation of the overall range of estimated costs in the RIA summary.

You have also raised concerns about inconsistencies between values in the RIA summary and in the body of the RIA at Chapter 7. Some of the apparent inconsistencies you are concerned about are explained below, but we have identified an error in Table 7.13 of the RIA, which estimates values for profit lost by the private sector in relation to the proposals on eliminating private profit in the care of looked after children. The values included for Scenarios B and C for the financial year 2034-5 are incorrect – these should be -£32,809,000 for both scenarios.

This error is not reflected in the totals given in the RIA summary, which are correct. The correct figures are also given in the [ADSS Cymru report](#) which has been published separately. However, we will update and correct the Explanatory Memorandum at the next opportunity, after Stage 2 proceedings are completed.

My officials would be happy to engage further with the Committee in writing if any other inconsistency is identified (beyond the points covered above and that discussed below in response to question 3(c)), should you wish your clerks to write to my officials.

## **2. Changes and financial implications related to ‘eliminating profit’ for children’s residential and fostering services**

- (a) On what evidence do you think local authorities will see reduced costs for residential and fostering services over the appraisal period, particularly since the Welsh Local Government Association (WLGA)/Association of Directors of Social Services Cymru (ADSS) highlight some of the operational benefits are contested and the Competition and Markets Authority said the cost of local authority children’s home placements is not lower than the cost of placements with private providers.**

In the projections, the introduction of new services by local authorities and not-for-profit providers is anticipated to result in a 10% reduction in relative outturn (expenditure in a specified period). The projections include the cost of the development of new local authority and not-for-profit provision in the transitional costs, including capital costs (e.g. for residential care homes for children). Developing their own new local authority provision means that, on an ongoing basis, local authorities do not need to pay for using these capital assets (except depreciation costs).

It is important to consider a number of wider points in this context. Specifically private providers, given their current position of market dominance, considerably influence price, and what they provide and where. There is no incentive for private providers to reduce the numbers in care and some providers see profit margins of over 22%.

The costs associated with the current approach to the provision of care are also rising. The spend on residential care was around £198M in 2022-23. This has tripled since 2016-17, when the cost was around £65M for the year.

If we do nothing, local authorities will continue to face increasing financial challenges which in turn will stagnate their ability to effectively shape the market to meet their needs, resulting in higher costs and inadequate placements, with all the associated problems of quality of care, stability, the workforce, and securing the range of provision to meet children's needs.

Whilst the Competition and Markets Authority (CMA) did state that the cost to local authorities of providing their own children's home placements is no lower than the cost of procuring placements from private providers, it also highlighted that fact that the cost to local authorities of providing their own foster care was lower. And whilst it has been necessary for the purpose of making the calculations in the RIA to assume a like-for-like replacement of residential and foster care placements, in policy terms we would not expect this to be the case as the eliminating profit agenda sits in a wider context of encouraging the sector to reduce the number of children that come into care, and to move away from reliance on residential care towards other forms of meeting children's needs, including foster care. This means the future requirements for residential care placements for children may well be smaller than projected.

The changes we are proposing will allow us to lower and control the continuing increase in the costs of private placements that local authorities are currently experiencing and create better matching opportunities resulting in better outcomes for children and young people.

Bringing services in-house will support a social worker-led understanding of patterns in placement, which will enable proactive capacity management, minimising the scramble for last-minute placements that can lead to suboptimal matches and higher costs.

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

We also note ADSS Cymru's point within its written evidence to the Health and Social Care Committee that despite the challenges and risks, it believes

that the removal of profit from the care of children looked after is the right thing to do.

**(b) What cost differential are local authorities seeing from bringing their services in-house and have you conducted a pilot to test the potential to make savings in providing fostering placements, as suggested by the Competition and Markets Authority. If so, could you provide information on what it showed.**

As noted, the CMA report recommended that pilots should be set up in certain local authorities to test the potential to make savings by bringing more fostering placements in-house.

Whilst we naturally hope that our changes will contribute to the future financial sustainability of children's social care, our commitment to the transformation of children's services is not primarily about saving money. It is about changing how we provide services to children and their families as part of locally-based services that have the welfare of the young person at their heart.

Foster carers are central to delivery of the changes we are seeking to make and we are committed to increasing the supply of local authority foster carers. Not only will this help to secure a sufficient supply of foster carers in the future but it will also help deliver our wider transformation agenda to re-balance provision away from residential care to foster care. We are providing significant funding to Foster Wales to help achieve its ambitious target of recruiting an additional 800 foster carers by 2026.

**(c) How have you calculated the profit that providers are expected to lose as a result of the proposals, reflecting the "broad spectrum of businesses" in the market and why is so little information provided about the estimates in the RIA and the separate report by the ADSS Cymru.**

The RIA methodology's key guiding principle was proportionality. When producing estimates, ADSS attempted to balance the level of detail and the effort required to capture new data against the range of potential outcomes that could be achieved. Given the wide variation in commercial models and that the level of operating profit will vary, ADSS did not segment profits lost for different categories of businesses.

Within the modelling which informed the RIA ADSS calculated the potential profit lost by for-profit providers under Scenarios A, B and C. This was calculated by considering lost profits as for-profit providers exit the market, then adding the increased profits gained during the transitional period on the assumption that these providers would increase fees to offset anticipated costs associated with closure.

Using 2022-23 as the price base year, ADSS estimated that approximately £33M of profit per year would be lost once all for-profit providers had exited the market. ADSS calculated that once they leave the market, for-profit

providers would lose profits equivalent to 17% of the outturn currently apportioned to this cohort of providers. This has been modelled at an aggregate level and does not consider different business or operating models. The 17% was estimated using Welsh market intelligence data and LaingBuisson's Children's Services UK Market Reports analysis of profitability (for-profit companies). This analysis used the industry standard EBITDA (Earnings Before Interest, Taxes, Depreciation, and Amortization) Margin as a comparative indicator of profitability. For clarity, the estimate of the profit providers are expected to lose because of the proposals was not used in the calculations to estimate the cost and benefits to the public sector. These calculations were separate. That is, the profit lost as a result of the legislation would not simply be gained by local authorities.

Different net profit amounts would be lost at a different rate in each scenario during the transition period, reflecting that different proportions of for-profit providers would gain increased profits during the transition period. The underpinning assumption made in this estimate is set out in the [ADSS report](#) at Table 2 - How transitional costs have been obtained. The underpinning logic is that providers would increase fees (and therefore percentage profit) to offset anticipated costs associated with closure.

Some of the impacts on different types of businesses are also considered in Chapter 8 of the Explanatory Memorandum, within the competition assessment.

I have mentioned in my answer to question 1(a) above that we have identified an error in in Table 7.13 of the RIA which estimates values for profit lost by the private sector. I have set out there the correction which will be made when we revise the Explanatory Memorandum after Stage 2.

**(d) Submissions to the Welsh Government's consultation on the policy proposal said the introduction of the requirements for existing providers from 1 April 2027 was "felt to be overly ambitious and carried with it a risk to the safety of children and young people who require a good quality, registered and stable placement". Despite this, you plan to keep to this timetable. Can you explain why is this the case.**

The intention is for the relevant provisions of the Bill to be brought into effect so that new providers registering with CIW will have to have not-for-profit status from 1 April 2026; and so that existing "for profit" providers will be subject to transitional provisions (to be set out in regulations) from 1 April 2027. This represents the start of the transition period so far as limitations on the ability to place are concerned.

The transitional provisions will prevent existing providers from registering new homes or approving new foster carers. However, the provisions will also mean that existing providers will be able to accommodate new children subject to approval, sought by the placing Welsh local authority, from Welsh Ministers. This carefully designed structure of transition is intended to help manage the sufficiency risk during the transition period, as not for profit provision is built-

up, and secure a safe, stable and equitable transition to the new system. Where the placing authority is an English placing authority, providers will only be able to accept placements in prescribed circumstances.

The length of the transition period will be determined by a range of factors, including the level of demand for placements in restricted services, and the speed of replacement of for-profit by not-for-profit provision. Any decision to bring this transition period to a close will be informed by careful consideration of children's article 8 UNCRC rights.

**(e) What assumptions have you made in the RIA about the length of the transition period and what would be the financial implications if it needs to be extended.**

The cost estimates for Scenarios A -C in the RIA are based on the costs of establishing new not-for-profit provision being incurred over three years, from 2025-26 to 2027-8. The end of the financial year 2027-28 was anticipated as the earliest that sufficiency of provision could potentially be achieved based on intensive investment over a three year period beginning in April 2025 (in line with the anticipated Royal Assent for the Bill) and spanning the period that new providers registering with CIW are required to be a not-for-profit entity (from 1 April 2026), the beginning of transitional provisions (from 1 April 2027) then a further one-year period of investment up to the end of the 27/28 financial year during the transitional period itself. The cost estimates also include provision for ongoing consideration of requests for approvals of supplementary placements from 2027-8 onwards.

Provider intentions regarding decisions to potentially transition to not-for-profit models are only now beginning to emerge following the Bill's introduction. Therefore, there is scope to potentially update the RIA in the future as our understanding of the likelihood of potential scenarios develops through continued engagement with the sector.

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

**(f) The Children's Home Association says responses to a survey after a Welsh Government workshop in November 2023 indicated no independent providers would, at that time, be willing or able to transition to not-for-profit. How will you manage the transition if a significant proportion of private providers exit the market quickly; how will capacity be met and transition be resourced.**

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

I would also note that it is probably not within providers' commercial interests to leave the sector quickly while the transitional provisions are in place. This is because the period will enable them to continue to earn a degree of income from their services (albeit subject to the permission of Welsh Ministers), while new provision is established.

### **3. Changes and financial implications related to the proposal to allow CHC direct payments**

**(a) You assume 110 people across the local authorities in Wales are currently delaying or refusing to transfer to Continuing Healthcare (CHC). Disability Wales told the Health and Social Care Committee this number seemed "quite low". Could you respond to that statement.**

The figure of 110 people is based on information we have received from local authorities' direct payments officers and heads of adult services through our engagement with them.

Direct payments officers currently support the range of individuals who are in receipt of social care direct payments, including those who would be likely to be assessed to be eligible for CHC, were they content to undergo the relevant assessment.

This is the best evidence we have received for an estimate, through our engagement with stakeholders. We would of course consider other evidence from other stakeholders, if that is provided.

**(b) The financial implications of introducing CHC direct payments has been informed by experiences of implementing Personal Health Budgets in England, with the cost of direct payments ranging from £46,000 to £120,000 per package. While you note there is likely to be a similar variation across packages in Wales, you have used an average package cost of £50,000 in the RIA. Could you provide an explanation for why this is.**

Whilst the costs are varied, the £50,000 estimate is intended to represent the fact that some packages will cost more, and some will cost less. Some of the more expensive packages of care are for people in care homes, and it is not the intent for these CHC recipients to be eligible for a direct payment as they would not be purchasing services for deployment in their own private homes. It is therefore not appropriate to simply look at the most expensive and least expensive packages and split the difference.

It has proved extremely difficult to get an average cost for a CHC package of care, from either England or Wales. In Wales, for example, Local Health Boards have differing systems regarding what is included in a CHC

package, and many collect different statistics in different ways to meet internal requirements.

As a result, a decision was made to seek advice from the National Care Commissioning Unit (NCCU). The £50,000 estimate for a CHC package of care is based on these discussions with the NCCU, who have undertaken recent work as part of the CHC Workstream of the Welsh Government Value and Sustainability Board.

**(c) The RIA quantifies the cost reduction to local authorities from people transferring from social care to CHC direct payments as ranging from £10.9m to £13.7m. Why have you used the maximum benefit in the RIA summary rather than the range of values.**

We have reviewed the RIA summary tables and are content that the figure presented for the estimated cost reduction to local authorities and individuals is correct. The RIA summary gives a figure of £13.7M as the estimated combined cost reduction to local authorities and individuals as a result of the proposed introduction of CHC direct payments.

The summary of cost-savings at Table 7.39 in the RIA provides the detail behind the figure. A note accompanying the table explains that some cost-savings could go to individuals, if they currently contribute to their care. If so, that would reduce the cost-savings for local authorities.

**(d) What assurance can you give that the administrative and support arrangements for CHC direct payments, with their estimated costs, reflect the experience of Local Health Boards' with existing CHC packages and local government's with social care.**

We have looked to learn from experience in England and Scotland, and this has emphasised how essential providing support to direct payment recipients is to the success of the scheme.

There will be a number of administrative costs incurred to implement and administer CHC direct payments. These administrative costs will cover setting up and funding staffing, training for both staff and personal assistants, employer support for those in receipt of direct payments plus setting up the technical side of the scheme (IT tools to support the costing of individual budgets, payment and audit tools for managing the expenditure, payroll systems etc).

A central Hub for some key administrative functions is proposed in order to create a pool of specialised staff who can deal efficiently with management of the direct payments elements and ensure as far as possible a level playing field across Wales for those accessing CHC via a direct payment. This Hub model is based on a previous Welsh Government/NHS Wales project managing a large number of retrospective CHC claims across Wales via a single team. It is also in line with other centralised and standardised approaches being considered for data capture and financial

management of CHC. We believe that this approach may be more cost effective than asking individual Local Health Boards to make their own arrangements to administer direct payments. It will also ensure that support and advice is consistent across Wales.

To estimate the associated administrative and arrangement cost, a scoping exercise was done to seek the most accurate picture possible, with officials obtaining costing data from representatives of those organisations who currently operate in Wales. This included cost data on managed accounts with support; payroll; set up charges; and core support packages.

**4. How the provisions in the Bill will be monitored as well as the related financial outlay**

**(a) Will the Welsh Government provide additional funding to cover the capital and ongoing costs that local authorities and Local Health Boards are expected to incur as a result of these proposals; what happens if the estimated reduction in outturn does not materialise.**

We have been carefully considering the likely costs associated with the proposals in the Bill and how these can best be met. We will continue to take account of emerging evidence and how this informs our understanding of the likely impacts of the proposals, including the costs.

As the large majority of the likely costs relate to eliminating private profit from the care of looked after children, I will deal with these first in my answer, before turning to the likely costs associated with CHC direct payments.

*Eliminating private profit from the care of looked after children*

As a broader point I would highlight that, as explained in response to question 2(a) above, if we continue to use a mix of providers of residential children's care (local authority, not-for-profit and private), costs will continue to rise over the coming years. Public money for children's services will continue to be taken out as profit instead of being re-invested to improving services, capacity and outcomes for children.

Local authorities will continue to face increasing financial challenges which in turn will stagnate their ability to effectively shape the market to meet their needs. There is no incentive for private providers to decrease the need for provision, which often results in higher costs and inadequate placements, bringing a range of associated problems.

The changes driven by our eliminating profit proposals and wider children's services transformation programme should allow us to lower and control the continuing increase in the costs of private placements that local

authorities are currently experiencing and create better matching opportunities, resulting in better outcomes for children and young people.

The savings that would be generated by not directing funding to private provision, and through reducing our reliance on residential care, will in the longer term release more budget for preventative and therapeutic resources which would in turn help with placement stability, reduce the number coming into care, and increase the number of those returning to families.

I recognise that local government finances are under pressure. Welsh Ministers have delivered on our commitment to deliver an uplift to the Revenue Support Grant for this financial year and also passed on the subsequent UK Government consequential worth circa £14M in revenue funding.

We are also investing an additional £68M into the sector during 2022-2025 to help local authorities build in-house and not-for-profit residential and foster care provision, help move children out of residential care back into a family setting, and to provide locally based and designed services, including specialist provision for children with more complex needs. We will be considering the future of this fund, and what contribution it might make to further delivery of the eliminating profit and radical reform agendas.

Investment in beds and homes will require capital investment and we also want to build on our broader revenue and capital investments across care and support for children's services via the Regional Integration Fund, the Integration and Rebalancing Capital Fund and the Housing with Care Fund. Officials are currently scoping what future contribution could be made from these sources, which have already been contributing to the general children's transformation agenda.

There is not an agreed Welsh Government budget beyond this financial year, however, these proposals are a high priority for Government and will be considered as part of the forthcoming budget round.

*Projected revenue costs and how they will be met:*

The total estimated cost to Local Authorities set out in the RIA minus their expected capital costs to purchase and refurbish properties leaves a cost of between approximately £78.6M and £102.7M. These costs would include additional commissioning and legal costs as the new provision comes on-stream.

The RIA also estimates a cost of approximately £4.5M to Welsh Government associated with the implementation of the provisions in the Bill. This includes approvals of local authority sufficiency plans and applications to Welsh Ministers to place children in 'supplementary' placements, communications, engagement and awareness raising,

developing guidance and training materials, and reporting on and reviewing delivery and implementation.

This £4.5M figure also includes expected costs for Care Inspectorate Wales in relation to monitoring and enforcement and changed requirements in respect of registration of new and existing providers. Resourcing for a small team has been included in recognition of this, along with an amount for the development of bespoke IT systems to support the changes.

Local Authorities, through their membership of Regional Partnership Boards (RPBs) have access to the Regional Integration Fund – a revenue fund. The RIF, established in 2022, has funding of £146M allocated between April 2022 and March 2027. The fund seeks to create sustainable system change through the integration of health and social care services. There is a focus on six new national models of integrated care with one being 'Accommodation-Based Solutions'. RPBs could choose to direct the funding towards supporting projects associated with the development of not-for-profit provision i.e. staffing and set-up costs related to establishing new care home services for children.

The revenue cost to local authorities is expected to be partially offset by a reduction in their overall spending on children's residential and foster care (identified as 'outturn costs' in the RIA) with a saving estimated to be between £184M and £253.9M during the ten year period.

Subject to agreement of future budgets the expected revenue costs for Welsh Government are expected to be met from existing budgets. And, so far as other costs are concerned, this work area is a priority to consider in the context of the forthcoming budget round.

*Projected capital costs and how they will be met:*

Between £107.1M and £142.8M has been estimated for local authorities in capital costs to purchase and refurbish properties to replace capacity which could be lost when for-profit providers leave the market in Wales. This has deliberately been estimated on a conservative basis, assuming that all provision is replaced like for like. Whilst this was a prudent approach to take given that we cannot project with certainty how reliance on (for example) residential provision will change in the period from now until the start of the transitional period, we would hope that that reliance would start to decrease and this will be reflected in the amount of residential provision needed, and therefore in costs to LAs.

This is expressed in our wider children's transformation agenda which is about reshaping and re-balancing future provision so we have better models of care in residential care, with more children placed in family settings with wraparound support.

Welsh Government has been supporting local authorities via RPBs to develop their in-house care provision for several years through a number

of different funding streams. Past and current capital funding streams include the Integrated Care Fund, the Housing with Care Fund and the Integration and Rebalancing Capital Fund. While these funds are for purposes wider than the implementation of the Bill and focused on integrated models of care rather than meeting core social care costs, there is scope within the criteria to support the development of children's residential care.

Welsh Government will continue to support local authorities through these established funding mechanisms. However, we do expect Local Authorities, as they do now, to continue to contribute to funding the costs of providing accommodation for children looked after, as part of their wider social care budgeting.

### *Borrowing options:*

Local authorities have powers to borrow for any purpose relevant to their functions. Alongside other sources of funding Welsh Government officials are exploring how these powers could potentially apply in respect of local authorities borrowing to cover anticipated capital costs.

### CHC Direct Payments

The costs of CHC are increasing steeply year on year in Wales and have risen from £278M to £449M in less than a decade (2014-2023).

The rise in CHC costs is likely to be due to a number of factors, including an ageing population, increases in chronic disease, changes in lifestyle, and increases in health care costs.

It is important to stress that although experience in England tends to suggest that CHC packages delivered through direct payments will be cheaper than comparable packages delivered in the traditional way, our proposed change is not driven by financial considerations. It is driven by the request of service users – disabled people or people with long-standing health conditions – for the greater voice and control which direct payments have the potential to give them.

It is important to note that the estimated 110 individuals, who are disabled or have a long-standing health condition, who are refusing CHC, are doing so because they feel the current CHC system does not meet their needs. These individuals feel that accepting CHC without a direct payment would lead to a loss of voice and control over their care. If the current system met their needs in terms of voice and control, they would already form part of Local Health Boards' total CHC costs. We estimate that they represent only 1.1% of the current CHC cohort.

Any additional costs are expected to be at least partially offset by a reduction in the cost of providing care to those individuals who currently receive traditional CHC but who will instead opt to receive a direct payment in the future.

Local Health Boards will need to budget plan for the scenario of additional cases coming into the ambit of CHC as well as any likely benefit of the costs of existing packages changing as a result of direct payments coming in.

There will be administrative costs incurred to implement and administer CHC direct payments. These costs are estimated to be in the order of £1.1M per annum. A transitional period of three years (2025-26 to 2027-28) is envisaged during which Welsh Government intends to provide financial support to cover the costs.

The costs should then be fully borne by Local Health Boards after the three-year transitional period, at a point when some savings should begin to be realised which will be offset against the costs incurred by the Boards.

**(b) How will you monitor whether the proposals achieve the policy objectives and how are the related costs of post-implementation review reflected in the RIA.**

The implementation of the eliminating private profit element of the Bill will be underpinned by a programme of ongoing monitoring and evaluation. This will in part be achieved through the Eliminating Profit Programme Board which was established in 2021 to support delivery of the Welsh Government's commitment.

The RIA also includes provision for estimated costs of monitoring and evaluation to Welsh Government and Care Inspectorate Wales. These cost estimates are set out in Table 7.14 of the RIA.

We recognise that any more formal evaluation would need to focus on the extent to which the legislation has contributed to delivering the change across the range of key outcomes where we expect it to make a difference.

We will continue to reflect on costs as stakeholders, who have been waiting to see the provisions within the Bill, begin to make decisions about their future.

In order to assess the effectiveness of direct payments within CHC, we will commission an independent evaluation to cover both the implementation and the impact of the proposal.

As part of the evaluation, we would want to ensure we hear the views of those involved in implementing the proposal, to help shape delivery in the future and ensure that the proposal is being delivered as intended.

Agreed outcomes may include improved quality of life; reduction of individual's reliance on unplanned care; and overall savings per person, per year for CHC Direct Payment recipients.

The costs of evaluation for the introduction of CHC direct payments are estimated at £90,000 over 3 years, i.e. £30,000 a year for 3 years from 2025-6 to 2027-8. This is set out at table 7.30 of the RIA. It is proposed that this cost will be met by Welsh Government.

Dawn Bowden MS  
Minister for Social Care

26 July 2024

Dear Dawn

**Health and Social Care (Wales) Bill**

Thank you for attending our evidence session on 17 July, along with your officials, to discuss the Health and Social Care (Wales) Bill.

During that session, there were a few follow-up actions. We would also like to take this opportunity to raise one other, separate matter with you following our evidence session with Care Inspectorate Wales. For convenience, I have included all of these matters in the annex to this letter.

When the Committee returns after the summer recess, we will be considering a draft of our report on the Bill. It would be helpful to have your response in advance of this, **by Friday 6 September**, so that our report can reflect its contents.

A copy of this letter goes to Mike Hedges MS, Chair of the Legislation, Justice and Constitution Committee, and Peredur Owen Griffiths MS, Chair of the Finance Committee.

Yours sincerely



Sam Rowlands MS  
Temporary Chair, Health and Social Care Committee

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

### Health and Social Care (Wales) Bill

1. In relation to the elimination of profit from children looked after, we asked Care Inspectorate Wales whether the provisions in the Bill and explanatory memorandum relating to supplementary placements will act to effectively 'legalise' and normalise unregistered placements in Wales. This is because the Bill, as drafted, does not prohibit any unregistered placement being used for a child of any age. Further, paragraph 55 of the explanatory memorandum refers to a placement meaning accommodating a child in unregistered accommodation on a temporary basis or in cases of urgency. In response, the Inspectorate told us:

*"we made a query to Welsh Government about that. And my understanding is that that is an incorrect use of the word. So, sometimes, the words 'unregulated' and 'unregistered' are mixed up. So, what we've been told is that the intention was that that reference should be 'unregulated'. (...) we were content with the response that we got that that was an unintentional reference within the explanatory memorandum, and sure that will be—I'm hoping that will be—altered."*

*[For the full exchange, see paragraphs 204-209, RoP, 17 July 2024]*

Can you confirm your position in relation to the above and, in particular, whether you intend to make any changes to the relevant provisions of either the Bill or explanatory memorandum.

2. In relation to issues with **continuing healthcare**, local authorities are calling for an urgent review of the whole CHC process. The Welsh Government has given a commitment to review the current CHC Framework within five years of implementation, with the next review anticipated to take place in 2026/27.  
You gave an undertaking to ask the Cabinet Secretary for Health and Social Care to update the committee on progress with the review of the current CHC Framework. As part of this, we would like to hear whether there is any scope to bring this review forward, and whether there is merit in doing this so that any changes that are needed to be made to the existing system can happen in tandem with the introduction of direct payments for CHC.
3. Also in relation to **continuing healthcare**, we have heard from health board representatives that there is currently no performance framework for CHC, as it is in the process of being revised. They said this framework was critical, and should include metrics to capture and measure progress and success. You agreed to ask the Cabinet Secretary to provide us with an update of work in this area, including details of when the revised framework will be put in place.

Document is Restricted