Agenda – Finance Committee

Meeting Venue:
Committee Room 3 – Senedd
Meeting date: 9 May 2019
Meeting time: 09.20

For further information contact:
Bethan Davies
Committee Clerk
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1 Introductions, apologies, substitutions and declarations of interest

2 Paper(s) to note

(Pages 1 – 3)

Minutes of the meeting held on 1 May 2019

2.1 PTN1 – Letter from the Minister for Finance and Trefnydd – Supplementary budgets 2019-20 – 30 April 2019

(Page 4)

2.2 PTN2 – Letter from the Counsel General and Brexit Minister – Legislation (Wales) Bill – Government response to the Committee's report – 3 May 2019

(Pages 5 – 8)

3 Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill: Evidence session

(09.20-10.20) (Pages 9 – 46)

Julie Morgan AM, Deputy Minister for Health and Social Services
Karen Cornish, Deputy Director, Children and Families Division
Sarah Canning, Head of Legislation, Research and Parenting Branch

Paper 1 – Letter from the Deputy Minister for Health and Social Services to the Children, Young People and Education Committee – 5 April 2019

Paper 2 - Letter from the Deputy Minister for Health and Social Services to the Chair of the Children, Young People and Education Committee - 25 April 2019

Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill Explanatory Memorandum

Research Brief

4 Motion under Standing Order 17.42 to resolve to exclude the public from items 5, 7-9 and the start of the meeting on 15 May 2019

(10.20)

5 Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill: Consideration of evidence

(10.20-10.30)

6 Inquiry into the Welsh Government's capital funding sources: Evidence session 3

(10.40-11.40) (Pages 47 - 65)

David Ward, Chief Executive, Tirion Group

Howel Jones, Corporate Director, Programmes and Project, Local Partnerships

Rosie Pearson, Corporate Director Business Development, and Programme Director PPP and PFI, Local Partnerships

Paper 3 - Written evidence: Tirion Group

Research Brief

7 Inquiry into the Welsh Government's capital funding sources: Consideration of evidence

(11.40-11.50)

8 Retention payments in the construction industry

(11.50-12.05) (Pages 66 - 72)

Paper 4 - Retention payments in the construction industry

9 Assembly Commission - Voluntary Redundancy Scheme Update and Relaxation of the Establishment Cap

(12.05-12.20) (Pages 73 - 78)

Paper 5 - Letter from the Assembly Commission - Voluntary Redundancy Scheme Update and Relaxation of the Establishment Cap - 3 May 2019

Concise Minutes - Finance Committee

Meeting Venue:

Committee Room 3 - Senedd

Meeting date: Wednesday, 1 May 2019

Meeting time: 09. - 12.30

This meeting can be viewed on Senedd TV at:

http://senedd.tv/en/5496

Attendance

Category	Names
Assembly Members:	Llyr Gruffydd AM (Chair) Rhun ap Iorwerth AM Alun Davies AM Neil Hamilton AM Mike Hedges AM Rhianon Passmore AM Nick Ramsay AM
Witnesses:	Gerald Holtham Dr Stanimira Milcheva, University College London Peter Reekie, Scottish Futures Trust
Committee Staff:	Bethan Davies (Clerk) Leanne Hatcher (Deputy Clerk) Roger Ford (Researcher) Christian Tipples (Researcher)

1 Introductions, apologies, substitutions and declarations of interest

1.1 The Chair welcomed Members to the meeting.

2 Paper(s) to note

2.1 The papers were noted.

2.2 The Committee agreed to write to the Secretary of State for Wales and the Chief Secretary to the Treasury following their letters declining the Committee's invitation to give evidence to the inquiry on the Welsh Government's capital funding sources.

2.1 PTN 1 - Letter from the Chief Secretary to the Treasury - Inquiry into the Welsh Government's capital funding sources - 2 April 2019

2.2 PTN2 - Letter from the Rt Hon Alun Cairns MP, Secretary of State for Wales - Inquiry into the Welsh Government's capital funding sources - 10 April 2019

3 Inquiry into the Welsh Government's capital funding sources: Evidence session 1

3.1 The Committee took evidence from Gerald Holtham, Hodge Professor of Regional Economics and Dr Stanimira Milcheva, Associate Professor in Real Estate and Infrastructure Finance, University College London on the Welsh Government's capital funding sources.

4 Inquiry into the Welsh Government's capital funding sources: Evidence session 2

4.1 The Committee took evidence from Peter Reekie, Chief Executive, Scottish Futures Trust on the Welsh Government's capital funding sources.

5 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting

5.1 The motion was agreed.

6 Inquiry into the Welsh Government's capital funding sources: Consideration of evidence

6.1 The Committee considered the evidence received.

7 Approach to scrutiny of the Welsh Government's Draft Budget 2020-21

7.1 The Committee considered its approach to scrutiny of the Welsh Government's draft budget 2020-21 and agreed:

- to hold a stakeholder event in mid Wales on 27 June 2019;
- to write to other policy committees identifying a number of themes for scrutiny;
- to hold a public consultation on stakeholders' expectations from the 2020-21 draft budget to steer the Committee's scrutiny, to be held over the summer recess; and
- the provision of specialist advice in relation to the tax policy.

8 Public Services Ombudsman for Wales 1st Supplementary Budget 2019-20

8.1 The Committee noted the Ombudsman's supplementary budget request and agreed to consider it further when the supplementary budget motion is tabled.

Y Pwyllgor Cyllid | Finance Committee
FIN(5)-12-19 PTN1
Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref MA-P/RE/1480/19

Llyr Gruffydd AM,
Chair Finance Committee,
The National Assembly for Wales,
Cardiff Bay,
Cardiff
CF99 1NA

30 April 2019

Dear Llyr,

I am writing to inform you of our approach to the publication of supplementary budgets during 2019-20.

I intend to continue with the practice adopted over recent years and publish two supplementary budgets during the financial year.

A first supplementary budget will be tabled on 18 June to allow for a debate on 9 July, prior to the summer recess. This allows a period of three weeks for scrutiny under Standing Orders.

The budget will also provide an opportunity to reflect the changes arising from the UK Government's Main Estimates exercise, alongside any allocations from our reserves.

Following current practice, I intend to publish a Second Supplementary Budget later in the financial year.

I hope you find this update helpful.

Rebecca Evans.

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

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Y Pwyllgor Cyllid | Finance Committee
FIN(5)-12-19 PTN2
Jeremy Miles AC/AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Agenda Item 2.2

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-L/CG/0379/19

Llyr Gruffydd AM
Chair, Finance Committee
National Assembly for Wales

3 May 2019

Dear Llyr

LEGISLATION (WALES) BILL

During the Stage 1 debate on 2 April, I said that I would write to the Committee responding in detail to your report on the financial implications of the Bill. This letter sets out the Government's response to the four recommendations made in the Committee's report.

Recommendation 1

The Committee recommended the Government undertakes further work on analysing and costing the efficiencies in the Bill.

As you acknowledged in the Stage 1 debate although the impact assessment by the Law Commission was used as a starting point, the main driver for the Bill is to improve social justice by ensuring the public can have easier access to Welsh law, and you accept that cost savings are not the main driver for the Bill.

We continue to consider the rule of law demands law which is accessible, and this underpins our approach to both this Bill and the wider programme. We also recognise there are likely to be economic benefits, both at an individual project level and from the programme as a whole. The Law Commission's evidence to the Constitutional and Legislative Affairs Committee during Stage 1 gave the example of planning law. They considered that it was:

> *"…the sort of measure that, if simplified, if it succeeds in creating legal certainty, can stimulate inward investment. It can accelerate planning decisions that mean that people are more likely to invest in Wales than elsewhere. So, we are very interested in the fact that good legislation can have positive economic benefits."*

I believe this is a notion that will also apply in other subject areas we will be consolidating and codifying, and will be enhanced by the associated projects such as the improvements to the Cyfraith Cymru/Law Wales website. Having clear and accessible information on the law, as well as access to up-to-date copies of the legislation, available free of charge to users will result in time saved and improved confidence in decision making processes and interactions with the state more generally.

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The RIA to the Bill sets out the Government's rationale for noting, but not further testing, the Law Commission's impact assessment. Although the Government could undertake a similar exercise to estimate lawyer time spent researching inaccessible law, and comparing this with estimated savings in time, we do not consider it would provide any more concrete or definite findings than currently available. It would also be problematic to test whether these savings in time had actually been achieved at the end of the overall programme (which will take a generation or more to deliver). This is partly because of the timescales involved and partly because it will be difficult to identify which savings are directly attributable to the Bill.

Recommendation 2

In the Stage 1 debate, I set out that the Government accepts recommendation 6 of the Constitutional and Legislative Affairs Committee, namely that a review be undertaken of the legislation part way through the next Assembly term.

The intention is that the review the Counsel General will undertake in 2023 will include details of the resourcing and financial implications of delivering the first programme aimed at improving accessibility of Welsh law, and other costs arising from implementing the Act. We therefore accept Recommendation 2 of the Finance Committee' report.

The Government would also support the National Assembly reviewing the legislation at any time it considered it appropriate to do so.

Recommendation 3

The Committee recommended that the Government provides further information on the financial implications for policy staff not costed in the RIA and costs to other bodies. You have asked for this to be included in a revised RIA.

I confirm that any revised RIA prepared at the end of Stage 2 will include example costs to the Welsh Government of preparing a consolidation Bill, but I must stress these will be indicative or sample costs and should not be considered definitive or representative of all consolidation projects. This is because we anticipate there will be a wide range in the size, complexity and duration of individual drafting projects, and a range of differing inputs from policy staff depending on each project's needs.

In relation to Part 1 of the Bill, the Committee considered there are likely to be costs to the Assembly Commission to develop a Standing Order for consolidation Bills. Developing a Standing Order is not contingent on the Bill being passed, and work has already been undertaken (by the Assembly Commission and the Welsh Government) following Business Committee's decision to prepare a suitable procedure. As such we do not agree the RIA should reflect this cost as it does not arise from the Bill itself.

The Committee was also of the view that there will be costs for private sector organisations in terms of learning what the new law says (in respect of Part 1 of the Bill). My evidence to the Committee on this point (quoted at paragraphs 24 and 29) was specifically in relation to Part 2 of the Bill. However my position remains that such organisations, and private sector lawyers, will not need to do more than note there are new interpretation provisions in place for Welsh law made after the commencement date (currently 1 January 2020). We therefore continue to maintain this would be 'normal business' activity for lawyers in the private sector. We recognise the implications for public sector lawyers, particularly those who draft subordinate legislation, is slightly more significant. We are therefore providing them with advice and guidance, to reduce any burdens on them (as set out in the RIA to the Bill).

Recommendation 4

The Committee has asked for further information on how the Welsh Government intends to publicise the Bill, if enacted – I accept this recommendation and provide more information below.

The Committee has expressed concerns that there are only limited publicity activities planned, as it considers wider public engagement would be required to generate the benefits we anticipate. Normally we would agree that wide engagement with those affected by the legislation is a vital part of the implementation of any new legislative scheme. However the approach we are taking, set out below, reflects the somewhat unusual and perhaps unique nature of this Bill.

Part 1 of the Bill is aimed at the Government, rather than the public. The benefits we see developing from the programmes of accessibility will be the consolidated and codified bilingual laws of Wales, which will be clear and certain in their effect, as well as being easily available and navigable. It is those new laws that will need to be widely promoted, and we will ensure that there are clear arrangements in place for each new Act to ensure the public are aware of the codified legislation and its implications. Promoting Part 1 of the Bill more widely is therefore considered to be of limited effect, as it is the mechanism by which improvements will be achieved rather than the improvements we all hope for.

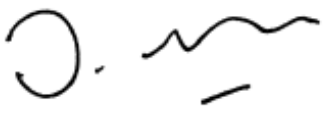
However, we will be placing details about the Act (if passed) on the Cyfraith Cymru/Law Wales website, and the intention is to engage with stakeholders on the development of each programme of accessibility. As I have mentioned above we also intend to report annually to the Assembly on progress in delivering each programme (see recommendation 10 of the Constitutional and Legislative Affairs Committee, and amendment 3 which I tabled on 4 April). These reports will further serve to highlight Part 1 of the Bill.

As set out in the Explanatory Memorandum, Part 2 of the Bill (like most interpretation Acts in Commonwealth jurisdictions) is intended to exist in the background, as part of the machinery of law that the average reader will not regularly need to have recourse to. But the RIA also acknowledges that Welsh Government drafters, legal professionals, the judiciary and Welsh law schools will benefit from being made of aware of the changes brought about by Part 2 if enacted. For that reason, we have set out that we will be placing information on the Cyfraith Cymru/Law Wales websites about interpretation Acts generally, and specifically about this Act. We will draw that information to the attention of the Law Society, the Bar Council, and CILEX. Similar information will be provided to the Welsh Training Committee of the Judicial College and the Heads of the Law Schools in Wales.

Part 3 of the Bill is particularly relevant to drafters of legislation, and the guidance we refer to in the RIA, and which the Committee noted in its report, will include information about this element of the Bill.

I would like to take this opportunity to reiterate my remarks in the Stage 1 debate, and thank the Committee for their scrutiny of the Bill and their helpful report, and the Committee's support staff.

Yours sincerely,



Jeremy Miles AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

Y Pwyllgor Cyllid | Finance Committee
FIN(5)-12-19 P1
Julie Morgan AC/AM
Y Dirprwy Weinidog Iechyd a Gwasanaethau Cymdeithasol
Deputy Minister for Health and Social Services

Agenda Item 3

Llywodraeth Cymru
Welsh Government

Our ref: MA-L/JM/194/19

Lynne Neagle AM
Chair
Children, Young People and Education Committee
National Assembly for Wales

SeneddCYPE@assembly.wales

5 April 2019

Dear Lynne

Following the introduction of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill to the National Assembly on 25 March 2019, I am writing to provide further information in relation to social services data, which is highlighted in the Regulatory Impact Assessment accompanying the Bill.

This information is provided to support the committee's scrutiny of the Bill.

The Welsh Government has not been able to establish a baseline of the number of referrals relating to reasonable punishment received by social services departments using existing social services data. As the defence of reasonable punishment currently exists, social services departments in Wales do not specifically collect information about physical punishment. There is therefore, no published or readily-available data to use as a baseline.

We have carried out a lot of work to try to establish a baseline for social services referrals. As part of this work with local authorities, we have been able to establish that local authorities do not necessarily record the specific details of a referral or report of an incident in the first instance in a searchable form. The details of each individual case, record or report are normally established later in the process. This has presented challenges in separating out data relating to the physical punishment of children where the defence of reasonable punishment would apply.

The recording of incidents differs among the 22 local authorities. For example, some record this under child protection, some under child welfare issues or other categorisations.

We have considered a number of options to enable us to obtain the relevant data, which could then be used as an approximation for a baseline but, to date, we have not yet been able to identify an existing baseline dataset, which is sufficiently robust.

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We are continuing this work and are currently working with a small number of local authorities to try to establish a sufficiently accurate baseline, based on the method the four Welsh police forces were able to use when analysing their data.

I will provide further updates about the process to establish a social services data baseline as they become available and I look forward to providing evidence to the committee in due course.

I am copying this letter to the chairs of the Finance and the Constitutional and Legislative Affairs committees, which are also scrutinising this Bill.

Best wishes

Julie Morgan AC/AM
Y Dirprwy Weinidog Iechyd a Gwasanaethau Cymdeithasol
Deputy Minister for Health and Social Services

Y Pwyllgor Cyllid | Finance Committee
FIN(5)-12-19 P2
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Llywodraeth Cymru
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Ein cyf/Our ref MA-L/JM/0382/19

Lynne Neagle AM
Chair
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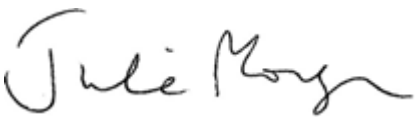
25 April 2019

Dear Lynne,

Thank you for your letter of 5 April, which requested clarification on specific points of interest in relation to the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill.

I trust the Committee will find the information provided in the Annex to this letter helpful. I look forward to discussing how the Bill will protect children's rights with the Committee on 2 May.

Yours sincerely,



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ANNEX

Assault and battery

"At various points in the Explanatory Memorandum (e.g. para 1.1. and para 1.4) it is stated that the Bill removes the defence of reasonable punishment as a defence to assault or battery against a child. Section 1 of the Bill removes the defence of reasonable punishment in relation to corporal punishment of a child by parents or those acting in loco parentis. Corporal punishment is defined in section 1 (5) of the Bill to mean battery carried out as a punishment. Can you confirm how the defence is removed in cases of assault?"

The approach taken in the Bill is consistent with what was done in relation to corporal punishment in schools by section 548 of the Education Act 1996. We are not aware of any suggestion or concern that section 548 left open the possibility of teachers being able to defend threats to carry out corporal punishment against pupils as lawful.

For an assault to occur, a person must apprehend the immediate infliction of unlawful violence or force. It follows that the apprehension of the immediate infliction of *lawful* force is not an assault (anticipating a collision in a game of rugby, for example; where consent to participation renders the contact lawful). Any action which currently causes a child to apprehend the infliction of a smack, for example, is potentially defensible, and lawful, by reference to the current defence (assuming that the adult in question is a parent or is in loco parentis).

The defence's abolition in relation to any form of corporal punishment, irrespective of the level of harm caused, will mean that all acts of battery captured by the definition in section 1 of the Bill will be unlawful. By extension, any action which involves the immediate apprehension of "corporal punishment" will be incapable of being defended in respect of an allegation of assault or of a trespass against the person. The interaction between, on the one hand, the abolition by statute of the defence in relation to a particular type of battery, and, on the other, the existing common law of assault achieves the correct result.

In other words, once the defence is abolished in relation to acts of battery constituting corporal punishment, it follows that an assault by way of a threat to carry out any degree of corporal punishment (which will be unlawful once the Bill is in force, irrespective of severity) cannot be defended in legal proceedings.

Implementation and training needs

"What assessment/discussions have taken place with CAFCASS about the anticipated impact of this Bill on their work and caseloads in terms of both private law and public law cases."

Officials have had regular discussions with Cafcass Cymru regarding the potential impact of the Bill on their work. Cafcass Cymru already responds to allegations made by separating couples within private law proceedings. This is a complex issue and professionals already make balanced decisions to ensure children are kept safe, and are able to maintain relationships with both parents where this is safe and in the child's best interests. The Bill does not change this.

There is no precedent in the UK for removing the defence and, therefore accurately predicting the impact is difficult. It is possible there will be an impact on caseloads, at least initially, due to increased public and professional awareness of the issue.

We will continue to work closely with Cafcass Cymru, to consider how we can monitor the impact of the Bill. A representative from Cafcass Cymru will be invited to be part of the Implementation Group which is meeting on 14 May. Work by the Group will help us develop monitoring and reporting processes for future evaluation of the impacts of the change in the law (if passed).

I recognise parental separation affects many children and their families. Where it is handled well, the adverse impact on children is minimised. In 2017, Welsh Government provided £32,000 to make the Cafcass Cymru Working Together for Children course more widely available to parents. The course helps parents understand how best to work together to support their children during and after separation.

"What assessment/discussions have taken place with representatives of the judiciary (civil, family and criminal)regarding the training needs and cross-border issues arising from the implementation of this Bill?"

Officials have met with representatives of Her Majesty's Courts & Tribunals Service (HMCTS) in July 2018 and a further meeting is planned in April 2019.

HMCTS colleagues highlighted the importance of engaging across the whole justice system and made a number of suggestions for engagement and awareness raising which will be considered through the work of the Implementation Group.

The Lord Chief Justice (LCJ) is responsible for arrangements for training the judiciary in England and Wales. These responsibilities are exercised through the Judicial College. The Welsh Government has a commitment to consult the LCJ and engage with his Judicial Office on proposals which bring changes to the criminal law or which may have an effect on the operation of the judiciary and the courts and tribunals system. As is the case with all Bills, the LCJ's Office have been kept informed of these proposals and are aware that the Bill has been introduced.

A representative from HMCTS has been invited to the Implementation Group which is meeting on 14 May and will consider potential training needs and cross-border issues.

"Please could you provide further details on:

The assessments undertaken in respect of the availability of Registered Intermediaries which para 28 of Annex 4 of the EM states 'must be considered for use at court in every case involving a child witness'."

"The reference in para 29 of Annex 4 of the EM to a current shortage of RIs 'and a very limited number of Welsh speaking ones' and that 'this could create delays in the process'."

The Registered Intermediaries (RI) scheme was the subject of a review by the Victims' Commissioner, Baroness Newlove. The review, 'A Voice for the Voiceless', which was published in January 2018 identifies a shortage of RIs to work in some geographical areas, such as North Wales and a lack of Welsh speaking RIs.

Written evidence on the RI scheme has also been provided to the Commission on Justice in Wales, which was set up by the former First Minister in September 2017 to review the operation of the justice system in Wales. Giving evidence to the Commission a RI identified, at the time of submitting his evidence (July 2018), that there was one full time Welsh speaking RI and two part time non Welsh Speaking RIs in Wales. He reported that the majority of intermediaries who work in Wales were traveling from England to conduct assessments and interviews.

Written evidence was also provided to the Commission on Justice in Wales in August 2018, by the Victims' Commissioner, Baroness Newlove. She reported that victims with communication needs can face a long wait to get access to a RI to help them give evidence with the police and for giving evidence at court.

Her Majesty's Courts and Tribunals Service and the Ministry of Justice carried out a recruitment exercise between October and December 2018 to recruit additional Registered Intermediaries. Fifteen candidates were successful and twelve have completed the approved assessed training course and will shortly be able to commence practising in the role of RI in Wales.

Guidance and training for frontline professionals (para 4.14-4.15 of the EM)

"Please could you provide a list of all relevant public policy and guidance in Wales which you have assessed as needing updating if the Bill passes, along with the date it was last updated"

"Please could you provide the estimated cost of updating: all Welsh Government guidance in respect of Social Care, Education (para 61 of Annex 4 of the EM), Health, Parenting, and third sector (para 8.19 of the EM)"

The updating of Welsh Government guidance is a routine activity which officials regularly undertake to ensure such guidance remains compliant with any changes to legislation or procedures. As such, we would expect this to be covered by administrative running costs, with little or no additional costs in this respect.

The Implementation Group will consider whether guidance provided by other public bodies needs updating. As we are not creating a new offence we expect existing guidance, across public bodies, to be updated, rather than produced from scratch. The organisations responsible for this guidance, for example the CPS or National College of Policing regularly update guidance to reflect changes in law and practice. We anticipate they would use existing resource to do this. In many cases guidance on the operation of the defence of reasonable punishment is only one aspect of broader guidance which covers a wide range of safeguarding or criminal justice issues. The CPS Charging Standard, for example, provides guidance to prosecutors and police officers in relation to a number of different offences against the person, of which the approach to the reasonable punishment defence in cases of common assault is only one part.

"Para 8.47 of the EM refers to the All Wales Child Protection Procedures 2002 being 'regularly updated'. Since the 2008 revision to these procedures, please could you indicate:

- ***how often it has been updated;***
- ***when it was last updated;***
- ***how long the updating work took;***
- ***the total costs of this work in terms of redrafting, dissemination, and training****."*

The All Wales Child Protection Procedures 2008 (AWCPP) were produced and adopted by all Safeguarding Children Boards in Wales. This is not Welsh Government guidance. The All Wales Child Protection Procedures Review group (now disbanded) was responsible for keeping the procedures up to date and added a number of protocols to the core procedures.

Currently the AWCPP and the Policy and Procedures for the Protection of Vulnerable adults (POVA) are being revised by Cardiff and the Vale Safeguarding Board on behalf of all Safeguarding Boards in Wales to take account of the Social Services and Well-being (Wales) Act 2014, which came in force 6 April 2016, and its accompanying statutory guidance. The work is overseen by a Project Board chaired by the Director of Social Services of the Vale of Glamorgan with representatives from

all Safeguarding Boards and partners. The intention is for the new Wales Safeguarding Procedures (WSP), which will replace both the AWCPP and the POVA procedures, to be launched in the autumn 2019.

The Welsh Government have also co-ordinated with stakeholders the production of a number of practice guides which replace existing AWCPP protocols for the safeguarding of children in specific circumstances, for example, in relation to child trafficking and children missing from home or care.

The WSP will be hosted by Social Care Wales (SCW) in a digital format which will enable ease of access, review and update. The Project Board is considering formal arrangements for keeping the WSP current and informed by changes to practice and guidance. This will be the responsibility of the Safeguarding Boards.

The current project is a substantial revision, rather than an update and was commenced in 2017. Funding of £185,000 to produce, digitalise and translate the Wales Safeguarding Procedures has been made available over the last two years. Additional funding for implementation and training resources will now be required. The Welsh Government has provided the funding for the review and agreement will be sought by the Welsh Government to provide funding for a launch and implementation. This includes SCW working with the Project Board to produce training materials for use by all Safeguarding Boards in Wales.

The Project Board have received a briefing on the Bill. As part of their work they will consider the consequent implications (should the Bill be passed) for updating the WSP as part of the sustainable arrangements made to keep the WSP current and informed by changes to practice, case law and guidance. The WSP Project Board members will be invited to contribute to the work of the Implementation Group.

"Please could you provide further information about the costs associated with social services workload arising from para 50 of Annex 4 of the EM. This states that there may 'be an increase in reporting incidents from individuals and community organisations such as schools' in line with the 'duty to report' in the Social Services and Well-being Act."

There is no precedent in the UK for removing the defence of reasonable punishment and, therefore, no requirement on public services to record or report incidents of physical punishment. There is therefore, no published or readily available data to use as a baseline or experience from another country to make a robust estimate of what the potential increase in social services referrals might be. As a consequence it is difficult to accurately predict the costs associated with a potential increase in workload for social services. As now, it is anticipated that, if the legislation is enacted, a significant proportion of incidents of physical punishment will not require a response under the child protection process.

We are working with a small number of local authorities to try to establish a sufficiently accurate baseline; however there are a number of issues associated with this. These were outlined in my letter to the Chair, Lynne Neagle AM on 5 April. One of the reasons why we are working to establish a baseline and will be putting in place

systems to better record cases is to enable us to look at resource requirements and understand cost implications.

There will be ongoing work, via the Implementation Group, with social services to establish a recording and monitoring system to develop a reliable system to collect relevant data for a period prior to implementation to establish baselines, and following commencement in order to monitor the impact of the Bill.

"What discussions have taken place with the Crown Prosecution Service regarding amending the Charging Standard for Offences Against the Person to ensure that Section 58 of the 2004 Children Act does not apply in Wales as per paragraph 3.23 of the Explanatory Memorandum? How much time will this revision take, how much is it expected to cost and who will be responsible for this cost?"

The former Minister for Children, Older People and Social Care, Huw Irranca-Davies met with the Chief Crown Prosecutor for Wales and CPS colleagues on 9 October 2018 and I met with them on 7 March 2019. Officials have also had regular contact with CPS colleagues during which there has been discussion on a range of issues including amending the Offences Against the Person Charging Standard.

The CPS is a non-devolved organisation which has a policy department that updates guidance documents as part of the work they are employed to do. Between July and August 2017 the CPS consulted on revisions to and amended its Charging Standard. This was done as part of their periodic refresh, to reflect a number of legal and social developments and to clarify aspects of the Standard. The amendments included clarification on the approach required where the defence of reasonable punishment falls for consideration. Changes to the application of the defence in Welsh legislation will again be reflected in updates to the CPS Charging Standard in line with CPS normal practice.

The CPS meets the costs incurred of reviewing and updating its legal guidance. Following discussions it is understood that, in line with their normal practice, the CPS will meet costs incurred in reviewing its Charging Standard to reflect legislation that ensures Section 58 of the 2004 Children Act does not apply in Wales.

"What discussions have taken place with the Police regarding the amended guidance referred to in para 15 of Annex 4 of the EM? How much time will this revision take, how much it is expected to cost and who will be responsible for this cost?"

"What discussions have taken place with the Police regarding the difference in recording requirements between England and Wales for the National Law Enforcement database referred to in paras 14 and 15 of Annex 4 of the EM? How has the feasibility of this work been assessed, how much is it expected to cost and who will be responsible for this cost?"

The former Minister for Children, Older People and Social Care, Huw Irranca-Davies met with the four Chief Constables (or their Deputies) of the four police forces in Wales on 3 August 2018 and I also met them on 24 January 2019. Officials have also had regular contact with representatives of the four police forces in Wales in which there has been discussion on a range of issues including guidance and recording requirements.

As explained at paragraph 14 of Annex 4 of the EM, the National Law Enforcement Database (LEDS) will be set up to replace both the existing Police National Database (PND) and Police National Computer (PNC). Currently, conviction information is held on the PNC, and records on non-conviction information (e.g. intelligence, non-statutory out of court disposals such as community resolutions) are held on the PND.

The need to consider how the LEDS will distinguish between the fact that certain common assaults on children may be non-conviction information in England and conviction information in Wales has been raised in our discussions with police as an issue to work through.

At this stage, our view is that there would be no difficulty in terms of accommodating this difference within a combined database which contains records about both conviction and non-conviction information. Removing the defence of reasonable punishment in Wales does not create a new offence; the offence of common assault already exists in common law across England and Wales, therefore it should be possible to report incidents of common assault against children, either as conviction information (e.g. if a caution has been accepted by the perpetrator) or as non-conviction information.

Clear guidance about the inputting of information to LEDS, so that there is clarity about whether cases of 'reasonable punishment' are recorded as conviction or non-conviction information will be essential. Once recorded, it should be clear to disclosure units which non-conviction information they should consider for release for the purpose of an enhanced Disclosure and Barring Service check.

We consider that any costs attached to such guidance would be minimal, and part of much wider guidance likely to be required regarding the inputting of information to LEDS. However, these are matters of detailed implementation which we will discuss further with the police and others as required.

"Please could you provide details of any costs associated with attending a course as part of a conditional caution referred to in para 21 of Annex 4 of the EM. Will a course need to be developed for this type of offence? If yes, who will be expected to develop and fund this course?"

"Please could you provide details of progress and costs associated with the community resolutions referred to in para 24 of Annex A of the EM?"

The former Minister for Children, Older People and Social Care, Huw Irranca-Davies met with the Police and Crime Commissioners on 29 October 2018 and I also met them on 24 January 2019. Officials have also had regular contact with the CPS and representatives of the four police forces in Wales in which there has been discussion on a range of issues including on out of court disposals.

Conditional cautions are issued by the police in accordance with Ministry of Justice guidelines. Decisions around the use of out of court disposals and the most appropriate conditions to attach to a caution are a non-devolved responsibility. We will continue to work with the Home Office, Ministry of Justice, CPS, Police and Police and Crime Commissioners to consider suitable interventions.

The way courses are funded varies between police forces. They are usually paid for through funding from the PCC; by the offender themselves, or are already available and funded in the community. It is possible that existing provision could be utilised. The Implementation Group, which will include representatives from key organisations, will consider the use of out of court disposals, including community resolutions and conditional cautions. Planning around implementation will also consider the most appropriate models of delivery, guidance, funding and resourcing arrangements.

Awareness raising campaign and costs (paras 3.63-3.66 of the EM).

"Please could you clarify the target audience for the awareness raising campaign."

The communications campaign will target the entire population of Wales as most people come into contact with children.

The audience will also be broken down and messages will be tailored for a number of different groups. We will carry out scoping work over the coming months to consider what messages resonate best with and the most effective ways to communicate with different groups.

The communications plan will include extensive engagement with stakeholders who are key to the implementation of the legislation, for example the police, Crown Prosecution Service, Disclosure and Barring Service, and frontline professionals and organisations who work with children and families including social services, health and education professionals.

"Please could you provide details of the methods and costs for awareness raising with visitors to Wales, how this will be delivered and the costs associated for this for 3 years (para 9.2 of the EM)?"

Work will be carried out during the passage of the Bill to establish the most effective methods of raising awareness with visitors to Wales. We recognise that citizens of Wales and visitors to our country should be able to find the law, and to understand it, with reasonable ease in advance so that they can enjoy the benefits, and respect the obligations, that the law confers or imposes on them.

"Please could you provide details of the assessment made as to whether to include this awareness raising campaign on the face of the Bill."

We have given careful and detailed consideration to the need to raise awareness of the change in the law, both prior to and after commencement, should the Bill achieve Royal Assent.

We commissioned a report by the Public Policy Institute for Wales (now the Wales Centre for Public Policy) on legislating to prohibit the physical punishment of children (https://www.wcpp.org.uk/publication/legislating-to-prohibit-parental-physical-punishment-of-children/), which considered the experience from other countries which have legislated in this area.

As highlighted at paragraph 8.24 to 8.25 of the Explanatory Memorandum, the report showed that a change in the law, accompanied by an awareness raising campaign and support for parents, can lead to a decline in physical punishment and a change in attitudes. It also found that where a change in the law is not accompanied by a publicity campaign, or a campaign is not sustained, knowledge of the law is less widespread.

We are therefore committed to running a sustained awareness raising campaign, and have confirmed this commitment in Chapter 8 of the Explanatory Memorandum.

A duty on Welsh Ministers to carry out an awareness raising campaign is not necessary in light of this firm commitment and the fact that Welsh Ministers already have sufficient powers to be able to raise awareness of the legislation.

Implementation group (para 8.9 of the EM)

"Please could you provide details of the role, membership and terms of reference for the implementation group and how often it has met to date, and an outline of the reasons why this information was not included in the Explanatory Memorandum"

The remit of the Implementation Group will be to consider and make recommendations about how to implement any changes required in most practical and effective way. I have invited representation from a wide range of stakeholders including the police, Police and Crime Commissioners, social services, and the public sector in Wales including health and education sectors. The first meeting has been arranged for 14 May 2019.

From previous engagement with stakeholders, we anticipate the workstreams could include: - advice, guidance, support and information for parents; data collection, monitoring and evaluation; operational processes, procedures, guidance and interaction between agencies; and out of court disposals, including possible diversionary schemes. The full range of work to be covered will be tested with the Implementation Group.

Other

"In relation to paragraph 3.42 of the EM, are you assured that all other academic references have been represented correctly?"

The overarching aim of the Bill is to help protect children's rights.

The intention was to provide a balanced summary of evidence in the consultation document and the Explanatory Memorandum, rather than provide a comprehensive academic review. The conclusions from our consultation document are broadly consistent with the findings set out in the Wales Centre for Public Policy (WCPP) report 'Parental Physical Punishment: Child Outcomes and Attitudes'. The WCPP report was an independent review of the available literature which had the findings peer reviewed by experts in the field. Officials have endeavoured to read and check all academic references which have been referred to in the Explanatory Memorandum and consultation document. To the best of our knowledge academic references have been represented correctly.

"Please could you provide more clarity about the published data referred to in para 8.20 of the EM in New Zealand in terms of cases reported to the police service before and after the law change."

The New Zealand legislation, The Crimes (Substituted Section 59) Amendment Act 2007, came into force on 22 June 2007. Its purpose was to abolish the use of parental force for the purpose of correction.

New Zealand police have published a number of reviews of the impact of the New Zealand legislation. The reviews are available at: https://www.police.govt.nz/about-us/publication/crimes-substituted-section-59-amendment-act-2007

The reviews were based on data collected by the New Zealand police, with a view to providing information on volumes of calls to police about child assaults involving 'smacking' and 'minor acts of physical discipline', as opposed to other child assaults.

In the period of three months prior to commencement of the legislation, and five years afterwards, the New Zealand police examined offences recorded under the following seven offence codes:

- Assault Child (Manually)
- Assault Child (Other Weapon)
- Common Assault (Domestic)(Manually)
- Common Assault (Manually)
- Other Assault on Child (Under 14 Years)
- Common Assault Domestic (Other Weapon)
- Other Common Assault #1649

The offences under these seven codes were examined for the purpose of the reviews, because they were considered to be the offence types most likely to include 'smacking' type incidents. The review reports indicate that the child assault events identified under these codes are not the total number of child assault events attended by the New Zealand police in any review period, as assault events which were not considered to be likely to include 'smacking' type incidents were not examined.

Based on this examination, the events recorded under each of these offences were allocated to one of each of the following categories: 'smacking', 'minor acts of physical discipline' and 'other child assault'.

The rationale used to allocate each event to one of these categories involved consideration of the:

- actual physical action used in the child assault; and
- the context and the surrounding circumstances.

We have summarised the data collected for each of the 12 review periods in the table below. The first review period of 17/03/2007 – 22/06/2007 is the three month period prior to commencement of the New Zealand Act:

New Zealand review of cases since enactment of Section 59

	Law passed											*Numbers of cases*
	Baseline Period	Review Period 1	Review Period 2	Review Period 3	Review Period 4	Review Period 5	Review Period 6	Review Period 7	Review Period 8	Review Period 9	Review Period 10	Review Period 11
	17/03/2007 - 22/06/2007	23/06/2007 - 28/09/2007	29/09/2007 - 04/04/2008	05/04/2008 - 03/10/2008	04/10/2008 - 04/04/2009	05/04/2009 - 23/06/2009	24/06/2009 - 22/12/2009	23/12/2009 - 22/06/2010	23/06/2010 - 21/12/2010	22/12/2010 - 21/06/2011	22/06/2011 - 21/12/2011	22/12/2011 - 21/06/2012
Smacking	3	3	13	9	8	3	11	25	18	18	23	12
Minor Acts of Physical Discipline	10	12	69	49	39	10	39	38	45	58	45	31
Other Child Assaults/No offence disclosed	82	96	206	200	232	114	318	353	381	380	432	312
Total	95	111	288	258	279	127	368	416	444	456	500	355

Note: Review periods vary in length and so are not directly comparable

Source: New Zealand Police

As we indicate in paragraph 8.20 of the Explanatory Memorandum, there are differences between the situations in New Zealand and Wales which must be borne in mind when comparing the two. Subject to the caveats listed at paragraph 8.34 and annex 6 of the Explanatory Memorandum, we have used the New Zealand data as a proxy to estimate the potential increase in reporting to the police and prosecutions in the courts.

In the case of the police, baseline data specific to Wales was identified through a retrospective audit carried out by the four police forces in Wales (see table on page 50 of the Explanatory Memorandum). The potential scale of increase was calculated by reference to the New Zealand data, on the basis that incidents categorised in New Zealand as 'smacking' or 'minor acts of physical discipline' would roughly equate to offences at the level of 'reasonable punishment' in Wales. The table at page 51 of the Explanatory Memorandum explains that, on average, such incidents occurred twice as frequently in the five years following commencement of the legislation in New Zealand. An average increase has been used as reporting periods in New Zealand were not uniform, so attempting to forecast on a year by year basis is complex.

In the case of the courts, the New Zealand data has been used as a proxy to provide an estimate of the potential numbers of cases prosecuted in Wales in the five years following commencement – again, bearing in mind the caveats around the differences between the situations in Wales and New Zealand. As explained at paragraphs 8.40 and 8.41 of the EM, the estimated number has been calculated on the basis that the number of 0-14 year olds in Wales is around 60% of the number of 0-14 year olds in New Zealand (the legislation in New Zealand applies to 0-14 year olds).

In the five years of the review period, there were eight prosecutions for 'smacking' and 55 for 'minor acts of physical discipline', so 63 prosecutions in total. We have, therefore, estimated 37 or 38 prosecutions over a five year period in Wales. This is explained further at pages 8-9 of the Justice Impact Assessment, where it is also noted that the incidence of prosecutions would likely start to decrease after 5 years as a result of the sustained awareness raising campaign planned by the Welsh Government.

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David Ward
CEO Tirion Group Ltd
Written Evidence to Welsh Government Finance Committee: 23rd April, 2019

Developing Effective Funding Models for Mixed Tenure Housing

1.0 Scope of Evidence

This evidence has been restricted to consideration of Welsh Government's role in helping non-regulated "not for profit" housing providers to access Institutional Finance to support mixed tenure housing provision as part of a more comprehensive strategy to stimulate housing provision. The proposed interventions would not just be applicable to such organisations but could also facilitate increased delivery by the Registered Social Landlord (RSL) sector.

The evidence does not cover the following aspects although I would be happy to discuss these matters as part of the oral session:

- The Registered Social Landlord sector and the role of equitization in facilitating increased scale of delivery; and
- The role of loan and grant finance to support the SME housebuilder sector in provision of open market homes for sale.

2.0 Institutional finance "the opportunity"

2.1 Institutional investors are seeking long-term, index-linked cash flows to match their long-term annuity obligations. Housing currently represents just 1% of UK institutional fund investment compared to 47% in the Netherlands, 15% in France and 13% in Germany. Pension funds are now actively seeking long-term investment alternatives to gilts to improve their returns. RSLs and not-for-profit providers like Tirion are attempting to secure long-term finance no longer readily accessible from the traditional banking sector to support delivery of mixed-tenure housing. Tirion believes that this type of facility, which matches income streams, provides a natural hedge and should form part of a portfolio of loans.

2.2 Typically, institutional investors are offering 20-50 year debt, at highly attractive investment yields, which can significantly reduce the cost of development finance reducing or negating the need for public sector subsidy. In some cases, investors have launched their own vehicles and are looking to acquire housing assets to hold on a long-term basis.

2.3 Institutional investors offer particularly attractive yields for affordable housing due to historically low void rates and this reduces the viability gap between affordable and market housing.

2.4 The potential scale of investment should not be under-estimated. Tirion Group alone is targeting institutional investment of £350 million in Wales and typically individual funds have allocated investment of at least £1bn for housing assets in the UK. L&G are believed to have allocated up to £10bn for investment in affordable housing in the future.

3.0 Barriers to Securing Investment

3.1 Whilst the opportunity to tap into Institutional appetite for residential assets is enormous, it remains a fact that in most cases the funds wish to invest in completed / existing assets. Forward funding for pre-construction and construction activities remains very rare.

3.2 This dis-connect between the development process and long-term investment is further exacerbated by the required lot sizes, at which, most investors wish to transact. In many cases the institutions require investment lot values of between £30 and £50m. This means that additional "warehouse" finance is required so that portfolios can be built to reach this critical mass. Tirion is fortunate in that it's investor is prepared to transact on our units at a much lower value of circa £15m and there are signs that the wider Institutional market is moving in this direction in recognition of the specific characteristics of the residential sector i.e. portfolios made up of small individual units each with their own value.

3.3 The consequence of this dis-connect is that there is a shortage of assets in which institutions can invest. Even where units are being constructed they are not available in sufficient lot value size. This is partly due to much more stringent regulation of the traditional banking sector following the 2008 global financial crisis and consequently greatly reduced appetite to provide development finance. This is further exacerbated by the current practise of valuing assets according to an RICS red book procedure which results in a significantly lower value than that which institutions are prepared to lend against. This further constrains the level of funding Banks can offer for the pre-construction, construction and warehouse phases of large residential projects.

3.4 This has created a vicious circle of dis-connected flows of finance, i.e. the link between development finance, warehouse finance and the long-term debt being offered by the Institutions, that Welsh Government financial interventions should seek to address.

4.0 The Role of WG

4.1 Fiscal restraint will continue to restrict the availability of Social Housing Grant in the medium to long term. However, it is also true that during this period the shortage of all types of housing tenure will grow. It seems sensible that SHG going forward should target the Social Rented Sector and therefore those most in need. It is also clear that Social Rented housing is unlikely to be viable without grant, or without cross-subsidy, in most housing markets in Wales.

4.2 The Planning system seeks to deliver community benefits including social rented housing via the s106 and CIL systems. Values in most parts of Wales do not support sufficient investment in community facilities and the social rented sector. In these circumstances WG interventions should focus on delivering a mixed tenure approach, with the possibility of cross funding (at least in part) the social rented sector on all large-scale projects in Wales. This requires mechanisms that remove elements of financial risk associated with pre-construction, construction and warehouse phases of large developments. In the majority of cases this could be achieved directly through loan finance and in some cases this could be coupled with grant to deal with abnormally high site preparation costs.

4.3 The most effective method in terms of levering private investment in mixed-tenure housing is for WG to take subordinate positions in providing a proportion of debt during the pre-construction, construction and warehouse phases of projects.

5.0 Developing an Effective Model Using Existing Finance

5.1 The effective deployment of Financial Transaction Revenue would appear to offer the best opportunity to support mixed-tenure housing development in the short to medium term. It also offers the best opportunity to minimise financial risk to the public sector. Examples of how FTR loan finance could be deployed include:

- Pre-construction – 100% loans for design, planning and statutory consents – loans would be repayable at the point that construction finance is secured;
- Site preparation works – 100% for site remediation and preparation – generally repayable at the point that construction finance is secured. Where sites are in public ownership, the loan would not be repayable if, for whatever reason the project does not proceed. This is on the basis that the works would have added the equivalent value to those sites that remain in public ownership;
- Construction phase – Up to 30% loan against development costs – loan to be subordinated to senior lender – loan to be repaid at the point warehouse finance is secured; and
- Warehouse phase – Up to 30% loan against warehouse finance costs – loan to be subordinated to senior lender - loan either to be repaid at the end of the construction phase on drawdown of institutional debt or long-term quasi-equity position taken against the loan to provide long-term revenue stream or dividends.

5.2 It should be possible to provide a rolling loan facility for housing providers to reduce the peak debt of any single organisation at the relevant stages of the development process.

5.3 Using the principles set out above it will also be possible to integrate the de-carbonisation of new development into loan programmes. The investment profile for energy investors closely matches that of institutional investment in housing being long-dated with low yields. Tirion are at the forefront of proving the commercialisation of this approach with our partners Pobl and Sero Energy with Innovative Housing Programme grant support our development at Parc Eirin in Tonyrefail.

6.0 Quantifying the Risk

6.1 Adopting a strategy that is predicated either on 100% debt or sub-ordinated debt structure comes with financial risk. However, containing risk should be relatively straightforward particularly if the debt provider (WG or other public sector organisation can adopt a long-term position on the value of assets if necessary). A broad-brush assessment of the risk context is as follows:

- Pre-construction – 100% loan – inherently the greatest risk but with the lowest financial impact – risk mitigated where the site has an Local Development Plan allocation or even better an Outline Planning Consent.

- Site preparation works – 100% loan – where the site is in public ownership it can be argued there is no risk as the works are directly adding to the value of the site. Where the site is in private ownership a legal charge can be placed on the land. The risk here is if the end value of the site remains lower than the loan offered.
- Construction phase – Up to 30% junior loan against development costs – this carries the greatest risk in the development phase due to potential for cost overruns and depreciation of values during the construction phase but still significantly lower than current average grant levels.
- Warehouse phase – Up to 30% junior loan against warehouse finance costs – relatively low risk as debt against completed units.

7.0 The Future – WG Equity Investment?

7.1 Deploying the above loan mechanisms will result in significant increases in the delivery of mixed-tenure housing on large regeneration sites. We can envisage a situation where selling land to housebuilders as part of the development strategy for large sites would cross-subsidise the provision of homes for affordable homes. However, it is unlikely to negate the need for Social Housing Grant to deliver large numbers of homes for Social Rent across Wales.

7.2 In these circumstances Welsh Government should consider its role in providing equity for both not-for- profit housing providers (e.g. Tirion) and RSLs. This could operate on the following basis:

- SHG is replaced with time-limited WG equity investment, to fund new homes for social rent via a financial transaction;
- The WG equity share would be according to need i.e. the discount required to achieve social rent levels;
- WG would forgo the return on its equity share, with the housing provider charging a maximum market rent on its share, giving a genuinely affordable submarket rent level overall; and
- The housing provider would repay WG its equity stake within a 20-year period through the re-financing of the debt against the growth in value of the assets. Alternatively, at the point the rental cashflows are providing enough surplus WG could take a slice of long-term rental income.

7.3 The risk associated with this structure is that property and rental values fall over the 20-year deferred period. This is highly unlikely.

8.0 Conclusion

8.1 There is a huge opportunity to tap into Institutional Investors' appetite for residential assets. Existing funding instruments can be better utilised to help housing providers access this investment through existing vehicles, such as Tirion Homes and RSLs, and new partnerships formed with local authorities and other public sector landowners playing a major role.

8.2 The proposal for a new Housing Land Authority could also play a pivotal role in managing the supply of development land.

8.3 There is an excellent opportunity to integrate the de-carbonisation of new development into the loan programmes, providing household cost benefits to tenants, improving the viability of projects and reducing the carbon impact of new housing.

8.4 The key conclusion is that increasing capital investment in housing, and particularly affordable housing, is not about seeking new sources of finance but rather creating mechanisms that allow existing forms of finance to join up through the public sector taking an element of acceptable risk in the development process.

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Cynulliad Cenedlaethol Cymru
Comisiwn y Cynulliad

National Assembly for Wales
Assembly Commission

Llyr Gruffydd AM
Chair of Finance Committee
National Assembly for Wales
Tŷ Hywel
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3 May 2019

Dear Llyr

Voluntary Redundancy Scheme Update and Relaxation of the Establishment Cap

I am writing to update the Committee on the Commission's Voluntary Exit Scheme (VES) and the cap on its staff establishment.

Voluntary Redundancy Scheme

During our evidence session (Scrutiny of Draft Budget 2019-20) on 3 October 2018, we informed the Committee that the Commission had not yet made a decision to move forward with a VES. We subsequently wrote to you on 20 November 2018 to confirm that at its 5 November meeting, the Commission agreed to offer a Voluntary Exit Scheme to all staff to ensure that the Commission can continue to provide the necessary skills, expertise and capacity to support the Assembly through the particular challenges brought by Brexit and Constitutional Change.

Unlike many public sector organisations, the Assembly Commission does not regularly offer Voluntary Exit; the last time such a scheme was made available was during 2015/16. The most recent VES scheme was open to applications between December 2018 and January 2019.

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The aims of the VES, which were derived directly from the capacity review, were to:

- Allow the organisation to respond to shifts in its skill requirements;
- Improve workforce efficiency;
- Facilitate organisational change; and
- Deliver long-term savings where possible and/or avoid additional costs in meeting skill shortages.

In total, 43 applications were received and these were considered against the scheme criteria, by a Panel which included an Independent Advisor to the Commission and was observed by a member of the Trade Union Side and the Head of Governance and Assurance. The Panel's assessment of every application was based on the information available via the application, supported and scored by the relevant line manager and subject to moderation undertaken by an independent moderating panel. 22 applications were accepted. A further 4 applications were considered on appeal and were approved following the consideration of additional information not provided in the application. Two applicants subsequently rejected the offer of VES and thus a total of 24 staff will exit by September 2019.

The initial budget of £800k was subsequently increased at Executive Board to £950k and then increased further to £1.016m. Following the completion of the appeal process and to address the aims of the scheme, the final cost was within the agreed budget, and was well within the Cabinet Office Scheme approved budget of £1.5m.

We are confident that the process followed best practice and took account of the lessons learned from the previous VES in 2015-16. We ensured that independent and objective assurance was provided for all stages of the Scheme. We consider that the Scheme has been effective and has delivered the aims, as well as providing a significant opportunity to make valuable organisational changes to improve efficiency and effectiveness.

Establishment Cap

In November 2017, we wrote to the Finance Committee and stated:

In the present financial year, the agreed staffing establishment includes 460 filled posts, 27 currently vacant posts and 4 apprentice posts; thus the total number of established posts is 491. Going forward, within this establishment ceiling, the Commission will endeavour to maintain effective levels of service in support of Members and public engagement.

During our evidence session (Scrutiny of Draft Budget 2019-20) on 3 October 2018, we informed the Committee that the Commission was:

at the moment staying within that establishment post count of 491 that we gave you an undertaking last year that we would stay within. And we are managing dynamically to make sure that we can meet the new demands from within that staff cohort.

For the last 15 months, we have been able to meet all of the demands placed upon the Commission's within this establishment limit. We have been able to achieve this by prioritising how we use available resources and through the successful reallocation of 12 existing posts from services across the Commission, to support preparations for Brexit.

However, in our letter of 20 November 2018 to the Finance Committee, we did make it clear that the above approach 'will help to ensure that the Commission can continue to provide the necessary skills, expertise and capacity to support the Assembly through the particular challenges brought by Brexit and Constitutional Change, whilst continuing to work, for as long as possible, within the overall establishment cap of 491 posts'; in other words, there may come a point in time when a different approach would be needed.

As indicated, in presenting our budget overview at the beginning of this Assembly, it was impossible to forecast the effects of Brexit and constitutional change over the five years or when the impact would be felt. We have reached that point. Our capacity planning exercises in January and February of 2019 identified a significant gap between demand and capacity and also that it was no longer sustainable to continue to reallocate existing posts, without causing a significant impact to service delivery. Subsequently we have concluded that whilst being successful in meeting its aims, the VES will not deliver a sufficient number of immediately vacant posts to meet the additional demands brought about primarily by Brexit.

At its meeting on 4 March 2019 the Commission considered proposals to relax the establishment cap of 491 posts, to provide additional resources, principally to meet the challenges of Brexit. The Commission recognised the pressures and were supportive in

principle, but asked for further detail about the expected number of additional posts and reassurance that they could be managed within the existing budget.

Further information was provided to the Commission at its 1 April meeting. This information is show in Annex 1. Following a discussion, the Commission agreed an increase to the establishment cap of 6 posts, from 491 to 497.

We have committed to keep the Commission informed of the establishment number and any changes, at each Commission meeting and we will continue to look closely at options to re-prioritise internal posts, as they become vacant, in order to minimise the overall change on the establishment.

I would also like to take this opportunity to assure the Committee that we remain as committed as ever to providing assurance through external scrutiny and audit as well as our internal governance framework. This work is vital in underpinning our confidence that we use resources efficiently, economically and effectively in delivering our services to the Assembly.

If you would like any further information on either of these matters, please do not hesitate to let me know.

Yours sincerely

Suzy Davies

cc Assembly Commissioners, Manon Antoniazzi, Nia Morgan

Annex 1

Extract from 1 April 2019 Commission Paper.

There has been a marked increase in the volume and range of Brexit activity since September 2018, with an increase in the volume of legislation (Brexit and non-Brexit) between January and March. For example, more statutory instruments were tabled in January/February 2019 than during the whole of 2018. At its 18 March 2019 meeting, the Constitutional and Legislative Affairs (CLA) Committee considered an unprecedented volume of legislation: a Bill and 40 statutory instruments.

Across the Assembly Business Directorate there is a need to increase flexibility, skills and resilience to respond to the current and future legislative and other challenges. Short-term staffing arrangements have worked well but are no longer sustainable and there is a significant gap between demand and capacity. As was described in the recent paper to Commission, this demand can be addressed if we have some flexibility to vary our establishment around the current cap of 491, whilst remaining within existing financial resources.

The capability to vary the establishment and headcount, alongside our existing processes for reviewing and re-prioritising vacant posts would enable us to minimise the permanent impact on the establishment, whilst allowing us to meet immediate needs. To provide assurance that the changes do not become excessive, we would intend to report establishment numbers and any changes to the Commission at every meeting.

We have carefully considered whether fixed term or temporary appointments would work. However, we cannot readily set defined timescales for the posts we need to appoint, we need to be competitive in the market against other employers offering permanent contracts and finally, given the levels of churn in the organisation we believe we can minimise the overall establishment impact. Thus, permanent appointments will be necessary.

We have an immediate need for 6 additional posts, as follows:

- 2 European/International Affairs Officers, both based in the Research Service, but supporting activities across the Assembly Business Directorate. In the short to medium term, these officers will support Brexit work. In the longer term, these posts enable the Directorate to develop specialism across a range of policy areas,

which will enable effective monitoring of post-Brexit arrangements, such as common frameworks, trade agreements, and intergovernmental agreements.

- 1 deputy clerk for the CLA Committee, to support the increased volume of legislation due to Brexit as well as to provide resilience for this team in the longer term. This would enable succession planning; we have an experienced Clerk and Second Clerk on whom staff are reliant for advice and guidance on legislative scrutiny.

- 1 Clerk / Team Leader for Legislation, based in the Chamber and Committee Service, but working across the Directorate. There are many projects that require a dedicated senior level resource. This will further boost our capacity and capability by having specialism and depth of knowledge across the whole legislative process. We would rotate clerks through this role, increasing skills and resilience across the Directorate. This is a recast version of an established position that has been vacant since the postholder moved to a temporary role. Filling this vacancy on a permanent basis will increase our headcount.

- 1 specialised legal translator + 1 multi-skilled interpreter/editor. As the volume of Assembly business increases, so does demand on translation and reporting. This includes written, reporting and live interpretation. Some demand can be met from outsourcing, but we need specialised resources inhouse, particularly for legislation.