

General principles of the Bill

1. What are your views on the general principles of the Health and Social Care (Wales) Bill?

(we would be grateful if you could keep your answer to around 500 words)

We strongly agree with the assessment that the social care sector needs fundamental change. We agree that the market as it is currently formed is failing to deliver care that meets the needs of vulnerable children and young people. Business models that only prioritise private profit do not lead to markets or services that have the interests of people and communities at their heart – this is true across sectors of the economy, but especially so in social care, and we are seeing the results of that in the crisis in the sector. There is a diverse range of businesses.

However, while we support the policy intention of removing profit from the provision of care services, we must ensure that we support the sector to safely transition so that providers of quality services that are embedded in their community and who have demonstrated a clear commitment to staff and people receiving care are able to transition to new models so as to maintain their viability.

To safeguard the service, we believe there are a range of models that should be available to suit the different circumstances and complexities of different private sector providers. , Models such as employee ownership can offer the right solution for some businesses, and whilst they encompass an element of profit generation, they are founded on democratic principles that can enable profit for purpose through redistribution of any surplus into the workforce or the service. With the right support a range of models can be tailored to the needs of the business so it remains anchored in the community, re-investing profits locally and providing greater benefits for staff, and continuity of care for those who need it.

2. Is there a need for legislation to deliver the Welsh Government's stated policy intention?

Yes

Please outline your reasons for your answer to question 2

(we would be grateful if you could keep your answer to around 500 words)

In order to create the type of market we want to see for the delivery of social care services for children and young people, the right legislative framework is key to ensuring high quality care is provided with people at the heart. However, to transition safely from the current model to one founded not just on profit, it will be key to ensure specialist support is available for existing businesses to transition to alternative models, as well as for those individuals and communities looking to start new organisations to deliver high-quality care.

3. What are your views on Part 1, Chapter 1 of the Bill (sections 1-13), which makes provision intended to restrict the extraction of profit by providers of children's care home services, secure accommodation services and fostering services

(we would be grateful if you could keep your answer to around 500 words)

We support the aims of Part 1 of the Bill as a part of the mission to transform the social care sector in Wales. Cwmpas is a development agency working for positive change and we believe that our economy and society should work differently, putting people and planet first. We have supported the social economy in Wales for over 40 years, providing specialist support to entrepreneurs, communities and the public sector to help them to create social value and develop new democratic models of business. We know that in order to change the way our economy works, we need ownership structures and business models that embed democracy, sustainability and community impact.

In recent years, we have developed specific projects for the social care sector, supporting communities across Wales to develop community-led and co-operative models of care. Through this, we fully support the intentions of this part of the Bill to transform the sector and lead a transition to a market of providers who keep profits within local communities.

However, we also strongly believe that the employee ownership model should be one of the models available. Whilst employee-owned businesses can be profitable, and are therefore currently outside of the scope of the legislation, it is a democratic ownership model that can be established on the basis of profit for purpose. As viable businesses, providers need to be operating on the basis of being in a surplus position, and under the employee ownership model any profit/ surplus is redistributed more fairly and can support improvements in workforce retention and quality of care. Across sectors of the economy, employee-owned businesses are demonstrably contributing to stronger and more resilient local economies, greater productivity and fairer working conditions. The model has the potential to answer many of the challenges facing the social care sector while achieving the intended outcomes of this legislation.

Our research corroborates the findings of other research in this area and finds that employee-owned businesses have better outcomes for workers and therefore better worker recruitment and retention. Any profit/ surplus created goes to employees embedded in their communities – which is crucial at a time when the social care sector faces a recruitment and retention crisis that is threatening the ability of the sector to deliver the services that our communities need.

In addition, employee ownership leads to greater worker engagement and voice in decision-making. This anchors businesses within their local communities and ensures that decisions are made by workers – those with genuine knowledge and relationships with those receiving care and the wider communities – rather than solely those working in the interests of creating profit for shareholders.

In addition, our conversations with the existing sector suggest that converting to the employee-owned model is likely to be more feasible for some (depending on circumstances) than the models currently permitted within the Bill. In fact, there has been a suggestion that if this model is not permitted, some businesses will leave the market in Wales. More information on these unintended consequences of the Bill is given in response to Question 8.

Therefore, while we support the intended outcomes of this part of the Bill, we strongly believe that employee-owned businesses should be a permitted model for the reasons outlined.

4. What are your views on Part 1, Chapter 2 of the Bill (sections 14-22 and schedule 1), which makes a number of amendments in relation to social care services, social care workers and local authority social services, intended to ensure that the 2014 and 2016 Acts can operate fully and effectively

(we would be grateful if you could keep your answer to around 500 words)

5. What are your views on Part 2 of the Bill (sections 23-26 and schedule 2), which relates to health care, and makes amendments to the National Health Service (Wales) Act 2006 in order to enable the introduction of direct payments within NHS Continuing Healthcare

(we would be grateful if you could keep your answer to around 500 words)

6. What are your views on Part 3 of the Bill (sections 27-30) which contains a number of general provisions, including in relation to regulations, interpretation, consequential and transitional provisions, and coming into force provisions

(we would be grateful if you could keep your answer to around 500 words)

Implementation and impact of the Bill

7. Are there any potential barriers to the implementation of the Bill's provisions? If so, what are they, and are they adequately taken into account in the Bill and the accompanying Explanatory Memorandum and Regulatory Impact Assessment?

(we would be grateful if you could keep your answer to around 500 words)

8. Are any unintended consequences likely to arise from the Bill?

(we would be grateful if you could keep your answer to around 500 words)

Our engagement with the sector has strongly suggested that without the necessary support for existing providers, there is a risk of locally-embedded small scale businesses who create good value for service-users leaving the market.

We have provided feedback to the Welsh Government relating to the pilot research that has been undertaken with three residential care providers, based in Wales. This pilot project has provided tailored advice to each of the participants on how they could transition to their preferred option within the approved models. There has also been interest in exploring Employee Ownership Trust (EOT) Models, which is not approved within the draft Bill, but it was agreed that these could be explored as part of this pilot research. We provided support through in the form of a 'road map'; noting potential challenges and providing an estimate of professional fees that are likely be costs incurred by providers during the transition process.

None of the participants said they would consider a transition to a charitable model due to the administrative burden of charitable regulation and the belief that it would be disingenuous to create a charitable "shop front" whilst actively seeking to recover their investment through management charges and interest rates. Furthermore, the participants stated that they would want to remain operational and in strategic control of the businesses for the foreseeable future post transition and therefore the governance arrangements of the charitable model would be unsuitable.

Two of the providers wanted an Employee Ownership Trust (EOT) model to be an 'in scope' model. Cwmpas consider that it is possible to develop a Wales specific Employee Ownership model that would not have the intention of profit creation but would see any surplus that was created more fairly redistributed into improving the service and conditions for workers. Cwmpas would welcome the opportunity to discuss this in more detail with Welsh Government. Providers also felt that it would have been beneficial if the Explanatory Memorandum to the Health and Social Care (Wales) Bill contained worked transition examples. Each provider was exploring the exemptions contained within the Bill. Providers felt that the lack of clarity in the legislation was preventing them from making a confirmed decision of whether to transfer or whether to exit the market.

Although we have only explored CIC and EOT structures, what is clear is the bespoke complexity of the individual company transitions. The providers have found the individual reports thought-provoking and have emphasised to Cwmpas the nature of the complicated decisions that lie ahead for them. What has also been highlighted is the time needed to plan the transition and the period needed for the current owners/shareholders to recoup their investment. We consider that our children's residential care providers, who are generally independent companies will require a variety of, potentially costly, support to successfully complete the transition; including governance, accountancy and legal support. Cwmpas are still advocating for the inclusion of a not-for-profit EOT model and we would welcome a further conversation regarding this subject. Providers expected the recently published regulations, together with the content of the BPU reports, to aid them to make decisions about their future plans, however, a lack of clarity in the regulations has resulted in the continuation of this period of indecision and the continuation of the fear of wider market instability.

9. What are your views on the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum?)

(we would be grateful if you could keep your answer to around 500 words)

10. What are your views on the Welsh Government's assessment of the financial and other impacts of the Bill as set out in Part 2 of the Explanatory Memorandum?

(we would be grateful if you could keep your answer to around 500 words)

11. What are your views on the Welsh Government's integrated impact assessments (set out in Part 2 of the Explanatory Memorandum), including the Children's Rights Impact Assessment

(we would be grateful if you could keep your answer to around 500 words)

Development of the policy and legislative proposals

12. What are your views on the approach taken by the Welsh Government to the development of the policy and legislative proposals reflected in the Bill.

Among any other issues, please consider in particular the approach to engaging and consulting with stakeholders

(we would be grateful if you could keep your answer to around 500 words)

Any other issues

13. Are there any other issues that you would like to raise about the Bill, the accompanying Explanatory Memorandum and Regulatory Impact Assessment, or any related matters?

(we would be grateful if you could keep your answer to around 500 words)

