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Y Dirprwy Weinidog Gwasanaethau Cymdeithasol
Deputy Minister for Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our LF/GT/0922/13

David Melding AM
Chair of the Constitutional and
Legislative Affairs Committee

Dear David,

15 October 2013

I refer to the contribution made by Suzy Davies AM on behalf of your Committee to the Stage 1 debate on the General Principles of the Social Services and Well-being Bill. Having reflected on this contribution, I have concluded that I would provide you with a detailed response to each of your Committee's 14 Stage 1 report recommendations. Although there is no strict requirement to provide a recommendation by recommendation response to your report, I feel it is important that I set out for you the consideration which I have given to each of them. I therefore enclose a table setting out a summary of my thinking in deciding whether or not to accept your recommendations.

You will also be aware that I will be making a Written Statement, before the end of October, in responses to recommendations 1 and 2 of your report.

I hope you will agree that I have been positive in my overall response to your report.

Yours sincerely

Gwenda

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Deputy Minister for Social Services

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Summary of Responses to the Constitutional and Legislative Affairs Committee Stage 1 Report Recommendations

No.	Theme	Summary of Recommendation	Deputy Minister's Response
1	Balance	<p>"We believe that a Bill of such public importance should have more detail on its face. We recommend that the Deputy Minister reviews the balance of the Bill with a view to tabling amendments to ensure that the Bill's policy intent is much clearer."</p>	<p>I accept this recommendation on the basis that I have already reviewed the balance of the Bill following comments made during the scrutiny process so far, both by stakeholders and the relevant scrutiny Committees.</p> <p>However, I retain very strongly my view that the balance of primary to subordinate legislation is not only appropriate and proportionate, but necessary. This is a Bill for a generation, and it needs to retain the flexibility that is currently provided for in order to respond to changing needs and circumstances over time. The only way in which we can ensure that flexibility is to retain the current balance between detail on the face of the Bill and the subordinate legislation powers.</p> <p>I recognise however that this is an issue of great interest to the scrutiny Committees, Assembly Members and stakeholders. As I made clear during the debate on the general principles of the Bill, I intend to publish a Written Statement in the Autumn, clarifying my views and rationale in relation to this issue.</p>
2	Procedures	<p>"As part of the review in recommendation 1, and while we make recommendations later in this report regarding the procedure to be applied to subordinate legislation, we recommend that the Deputy Minister</p>	<p>While I accept the principle behind this recommendation I will not be undertaking a review of the type proposed. This is because the procedures for all of the subordinate legislation under the Bill have been reviewed throughout</p>

		reconsiders all the procedures to be applied to the making of subordinate legislation, and issues a written statement on that aspect of the review, prior to tabling appropriate amendments.”	Stage 1 scrutiny and following my appearances and discussion at Committee. I believe that I am responding positively by accepting recommendations made elsewhere in this Committee’s report as well as in the Health and Social Care Committee’s report to change procedures.
3	Definitions and Descriptions	<p>“We recommend that the Deputy Minister should consider tabling an amendment to apply the Affirmative procedure to the regulation-making powers contained in Sections 3(6), 7(3) and 9(3).”</p> <p><i>NB. These powers relate to the extension of the definitions of ‘disabled’; social enterprises, co-operatives and third sector organizations; and sensory impairments.</i></p>	<p>Changing the procedure for section 3(6) was a commitment I gave in my letter to the Health and Social Care Committee on 20 May. I also recall our discussion of this matter during my evidence session with your Committee on 22 April.</p> <p>Changing the procedure for section 7(3) is something I gave a verbal commitment to do during my evidence session with the Committee on 22 April as was changing the procedure for section 9(3).</p> <p>In light of the concerns raised by the Committee and in addition to stakeholder feedback, I will bring forward Government amendments at Stage 2 to change the procedure by which Regulations under these sections are made, from Negative to Affirmative.</p>
4	Eligibility	<p>“We recommend that the Deputy Minister should consider tabling an amendment to the Bill to apply a super-Affirmative procedure to regulation-making powers under Section 19 of the Bill.”</p> <p><i>NB. Section 19 relates to the determination of eligibility.</i></p>	I have already made a commitment to consult on groups of Regulations and the Regulations to be made under section 19 will form part of that consultation, prior to scrutiny by the Assembly under the Affirmative procedure. I believe this provides sufficient assurance and opportunity for scrutiny and on that basis am rejecting this recommendation.

5	Duty to meet needs	<p>"We recommend that the Deputy Minister should table an amendment to the Bill to apply the Affirmative procedure in the first instance to the making of Regulations under Sections 23, 26 and 27, followed thereafter by the Negative procedure."</p> <p><i>NB. Sections 23, 26 and 27 relate to duties to meet care and support needs of a child; an adult carer; and a child carer.</i></p>	<p>I made a commitment in my correspondence of 20 May to the Health and Social Care Committee, to change the procedure on all of the powers referenced in this recommendation. My commitment was to change the procedure to Affirmative for the first set of Regulations, and Negative for any sets thereafter. However, on reflection and in order to provide maximum scrutiny and accountability, I have decided to go further and to change the procedure to Affirmative for all uses of the Regulations under the sections referenced. I therefore propose to bring forward Government amendments at Stage 2.</p>
6	Direct Payments	<p>"We recommend that the Deputy Minister should table an amendment to the Bill to apply the Affirmative procedure in the first instance to the making of Regulations under Sections 34 to 37, followed thereafter by the Negative procedure."</p> <p>Sections 34 to 37 relate to Direct Payments.</p>	<p>I believe that the existing regime, which currently operates via a Negative procedure under the Health and Social Care Act 2001, works satisfactorily.</p>
7	Looked After Children	<p>"We recommend that the Deputy Minister should table an amendment to provide that in each case where Welsh Ministers issue a direction under Section 62(5), the direction is accompanied by a written statement explaining the reason for its use."</p> <p><i>NB. Section 62(5) relates to the power for the Welsh Ministers to direct a Local Authority to exercise its powers in a specific way with respect to a child it is looking after, for the purposes of protecting members of the public from serious injury.</i></p>	<p>I recall our discussion about this matter during my evidence session on 22 April. At that time I indicated that I would be willing to issue a Written Statement when a Direction under this power is used.</p> <p>The reasons for making such a Direction are likely to involve an analysis of personal information about the young person in relation to whom it was made. It is unlikely to be appropriate, therefore, for this kind of information to be issued publicly. The Welsh Ministers would, as a matter of general public law, be required to</p>

			<p>keep a record of a decision of this sort including their reasons for it.</p> <p>Therefore after careful consideration I will be rejecting this recommendation.</p>
8	Looked After Children	<p>"We recommend that the Deputy Minister should table an amendment to the Bill to apply the Affirmative procedure in the first instance to the making of Regulations under Sections 92 and 93, followed thereafter by the Negative procedure."</p> <p><i>NB. Sections 92 and 93 relate to support for Category 2 and Category 3 young people (care leavers), respectively.</i></p>	<p>You have already received my letter (LFGT095413) that sets out my thinking in response to this recommendation.</p>
9	Safeguarding	<p>"We recommend that the Deputy Minister should table an amendment to apply the Affirmative procedure to the making of Regulations under Sections 105(9) and 112(4)."</p> <p><i>NB. Section 105 relates to adult protection and support orders; and Section 112 relates to the functions and procedures of Safeguarding Boards.</i></p>	<p>Changing the procedure for sections 105(9) and 112(4) was something that was raised during my appearance at Committee on 22 April at which time I agreed to give the matter further thought. I subsequently gave a commitment to make this change in my letter of 20 May to the Health and Social Care Committee. I will therefore be bringing forward Government amendments during Stage 2.</p>
10	Safeguarding	<p>"We recommend that the Deputy Minister should table an amendment to the Bill to apply a super-Affirmative procedure to the order-making power under Section 117 of the Bill."</p> <p><i>NB. Section 117 relates to the merging of Children and Adults' Safeguarding Boards.</i></p>	<p>This is also a recommendation of the Health and Social Care Committee. Although this is a permissive power, I have been clear that I have no plans currently to use it. In recognition of both Committees' support for this change of procedure, I am proposing bringing forward a Government amendment during Stage 2.</p>

11	Social Services Functions	<p>"We recommend that the Deputy Minister should table an amendment to the Bill to apply a Super-Affirmative procedure to an order made under Section 119(2), unless the order makes changes of only a minor or consequential nature, in which case the Affirmative procedure should apply."</p>	<p>The report appears to suggest that the power under section 119(2) could be used to substantially change the functions of a Local Authority. However, it would in fact simply enable the Welsh Ministers to amend the list of functions which are considered to be "social services functions", or to include Local Authority functions as a social services function in the list under Schedule 2 of the Bill.</p> <p>When this issue was raised at the Committee's scrutiny session I gave my view that the Affirmative procedure was sufficient in this case and my view has not changed.</p>
12	Directions	<p>"We recommend that the Deputy Minister should table an amendment to provide that in each case where Welsh Ministers issue a direction under Sections 122, 125 and 129 to 133, the direction is accompanied by a written statement explaining the reason for its use."</p>	<p>As I have stated in my response to recommendation 7 above, the Welsh Ministers would record, and hold on record, the reasons for making a Direction of this sort. The reasons would then be disclosable.</p> <p>While I do not object to issuing a Written Statement with Directions made under these sections, it may not always be possible for that statement to 'accompany' the Direction. I also do not believe that primary legislation is the correct vehicle for a requirement such as this. In my view, this would be better dealt with in the Code of Practice.</p> <p>I am therefore happy to give a commitment to the issuing of a Statement, following the use of a Direction under the Sections referenced. However, this will be within a specified time, rather than it <i>accompanying</i> the Direction. The requirement will also feature in the Code, rather than on the face of the Bill.</p>

13	Cooperation (Children)	<p>"We recommend that the Deputy Minister should table an amendment to apply the Affirmative procedure to Section 144 of the Bill."</p> <p><i>NB. Sections 143 and 144 relate to arrangements to promote co-operation in relation to adults with needs for care and support; and children, respectively.</i></p>	<p>You have already received my letter (LFGT095413) that sets out my thinking in response to this recommendation.</p> <p>In addition to what I have already said, you will wish to be aware that I do propose to bring forward a Government amendment during Stage 2 in relation to this recommendation. It will be to amend the Children Act 2004, to apply a procedure to the Regulation making power that will be inserted into that Act by section 144 of the Bill. This power will be subject to the Negative procedure.</p>
14	Partnerships	<p>"We recommend that the Deputy Minister should consider tabling an amendment to the Bill to apply a Super-Affirmative procedure to the regulation-making power under Section 147."</p> <p><i>NB. Section 147 relates to partnership arrangements.</i></p>	<p>The potentially intrusive nature of this power is already acknowledged by the assignment of the Affirmative procedure through which any exercise of this power would be subject to a period of consultation (unless in the case of an emergency where such may not be appropriate). I do not believe I need to change this.</p>