



Social Services & Wellbeing (Wales) Bill WLGA Stage 2 Report

September 2013



WLGA • CLILC

INTRODUCTION

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales, and the three national park authorities, the three fire and rescue authorities, and four police authorities are associate members.
2. It seeks to provide representation to local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.
3. This report sets out the views of local government on the Social Services & Wellbeing (Wales) Bill in advance of Stage 2 scrutiny. The report provides a broad overview of the benefits, concerns and implications attached to key parts of the Bill, and are designed to inform AM's in advance of Stage 2 commencement.
4. Further briefings on specific Parts of the Social Services and Wellbeing (Wales) Bill are available on request.

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Key Messages

- The WLGA broadly welcome the principles of the Bill to improve the wellbeing outcomes of those people with a care and support need, and to streamline legislation. However we question whether Care and Support is an appropriate term to underpin the Bill as it is derived from a medical and not a social approach to service delivery.
- The WLGA welcome the timing of the Bill in recognising that current services are no longer sustainable as resources decrease, and pressures on services continue to increase. The WLGA recognise the pressures on the public purse, but continue to call for a mature and open debate about how this vast Bill can be funded, where a cost is identified. We recognise that resources are limited, and efficiencies should be gained as the Bill is introduced, but we remain concerned at the lack of adequate financial assessment undertaken to date by Government.
- The Bill is vast in scope, and whilst we support the move to legislate in key areas such as wellbeing, safeguarding and integration, we call for a phased approach to implementation to ensure deliverability, and to enable the necessary time to draft robust and effective regulation and guidance
- The WLGA firmly believe that the Bill should be presented as a Wellbeing Bill across the Public Service, rather than as a Social Services Bill. Success will depend on engagement and leadership from across the public service alongside our third and independent sector partners.
- There are specific concerns that as drafted the Bill will increase pressure on local authorities if sufficient invest to save funds are not provided, consideration needs to be given to increased pressures as a result of existing budget cuts, welfare reforms, and how these can be mitigated.
- The Bill needs to enable local authorities to work flexibly with partners to plan and deliver services, as drafted the Bill is too prescriptive specifically in Parts 2 and 9 of the Bill, and may result in progress being stymied as a result of bureaucracy.

Specific Amendments

The proposed amendments are set out in full detail in Annexe A and have been subject to extensive legal advice.

Part 2- Wellbeing

- The duty on wellbeing to be more proportionate and protect local authorities from increased litigation
- Equal duties placed on the NHS and other named bodies such as housing providers, in relation to wellbeing, information and advice

Part 3- Assessing the Needs of Individuals

- Any relevant agency to undertake assessment, to prevent delay and duplication in the service
- Proportionate Assessment to be defined on the face of the Bill
- A commitment to a fully costed national eligibility framework derived on the SSIA model set out in 'Access to Wellbeing Services'

Part 6- Meeting Needs

- Replace section 59 with a new duty to secure accommodation
- Remove reference to Categories of Care Leavers and replace with 'eligible, relevant and former relevant'

Part 7- Safeguarding

- A new definition of adult at risk to reflect the welsh context
- Inclusion of banning and removal powers
- Confirm Local Authorities as Lead Partner in a Safeguarding Board
- Remove any areas where legislative consent is not forthcoming
- Remove reference to Safeguarding Board Areas
- Remove the power to merge boards
- Define neglect in section 166

Part 9- Cooperation and Partnership

- Remove reference to 'integration' and replace with 'collaboration'
- Define care and support
- Remove over prescription around boards, membership of boards etc
- Repeal Section 33 of NHS Act 2006
- Ensure equity of duties across health and social care
- Establish 'collaborative budgets' rather than 'pooled funds'

1. Overview

This briefing sets out the WLGA perspective on key elements of the Social Services and Wellbeing (Wales) Bill, and is designed to inform the Stage 2, Scrutiny process. It proposes key questions which we believe need further consideration during scrutiny, and a set of amendments in key areas where members believe this will ensure delivery alongside improved outcomes for citizens.

Our views have the endorsement of the WLGA political Leadership, ADSS Cymru, the professional voice of social services in Wales, and have also been developed in close consultation with our key partners in the NHS Confederation, and informed through our ongoing discussions with the third sector advisory group on the Bill.

2. General Principles

The WLGA support the ambitious principles of the Bill, and we welcome its timely nature of in recognising the increasing pressures on social care services, both within local government and across our partners in health and the third sector. However, at Stage 1 scrutiny, the WLGA and ADSS Cymru advocated a core set of principles which the WLGA and ADSS Cymru believe must be reflected throughout the Bill, if it is to achieve its ambitious policy objectives as stated in the Explanatory Memorandum of:

- (a) Improve the wellbeing outcomes of people who need care and support and carers who need support; and*
- (b) To reform social services law.*

Therefore in ensuring the Bill is able to meet its policy objectives, we believe it would benefit from the further amendments we are proposing at Stage 2, which are reflective of the below principles. We further call for a clear commitment from Government that delivery will be supported by a phased and funded approach to delivery.

WLGA/ ADSS Cymru Key Principles

The Bill must:

- Simplify legislation
- Streamline bureaucracy
- Clarify the functions of social services
- Achieve a balance between national consistency and local autonomy
- Require greater partnership working with key partner such as health
- Provide social services with a core leadership role around wellbeing

- Recognise the contribution of the wider public services, and third sector partners in developing and delivering preventative service

3. Key Questions for further consideration

In ensuring the Bill reflects the principles as set out by the WLGA and ADSS Cymru during Stage 1 scrutiny, and supporting implementation, within a context of reducing budgets and increasing pressures on the system, we believe further consideration must be given to:

- Deliverability of the Bill
- Size of the Bill
- Cost of the Bill
- Legislative Competence (in Safeguarding and Wellbeing)
- Detail and Clarity (I.e. National Eligibility Framework)
- Proportionate powers between Ministers and Local Authorities (Section 121-125)

As such the WLGA call for a commitment from the Welsh Government to:

- Establish an implementation plan which is phased, and establishes priority areas
- An implementation Fund to support the delivery of the Bill
- Establish ongoing review of funding mechanisms to NHS and Local Authorities
- An end to hypothecation of grant funded activity which falls within the scope of the Bill

4. Generating a Robust Welsh Evidence Base

To support the development of a local government perspective, the WLGA have worked in partnership with a range of agencies to establish a robust evidence base in key areas as featured in the Bill and, from which we expect legislation, and resulting policy and guidance to be informed. Assembly Members will receive a full briefing on each of these reports as they are issued. These include:

(A) Social Services Budget Survey 2013 (Annexe A)

Working with ADSS Cymru the annual social services budget survey, provides evidence as to the current spending patterns in social services, alongside identification of budgetary trends to provide a national picture.

(B) Transitional and Longer Term Implications of the Social Services and Wellbeing (Wales) Bill – Institute of Public Care (IPC)

Commissioned by the WLGA, Welsh NHS Confederation and the Society of Welsh Treasurers, this seminal report considers the likely impact of the Bill, and implications for local services in implementing new statutory duties and models of service.

(C) Transforming governance into collective action to safeguard children:

This work is being led by world expert Professor Jan Horwath from the University of Sheffield and commissioned by WLGA/ADSS Cymru to support the development of regional boards to

achieve effective safeguarding outcomes for children and young people, focusing on governance, accountability and performance as opposed to structures.

5. Recommended Amendments

Part 2- General Functions

(4) Overarching Wellbeing Duty

Part 2 of the Bill places for the first time an overarching wellbeing 'duty' on local authorities, to seek to promote the wellbeing of people who need care and support, and carers who need support. Whilst we support the inclusion of a broad and ambitious definition on the face of the Bill, we are unclear as to the specific expectations on Social Services to promote the wellbeing of people in their localities.

As currently drafted the duty relates only to local authorities, and not other key partners within the public sector such as Health and Housing providers. This is clearly implied in the recent Ministerial Statement on Wellbeing and in our view as drafted risks undermining the value of such a wide definition, if the duty does not explicitly fall on other key partners.

The Bill should include a clear role for Local Government and partners to promote wellbeing, additionally however it is our view that this part of the Bill should go further and encourage engagement, empowerment and a stronger voice for citizens in securing their own wellbeing. This is in line with recent statements from the Minister for Health and Social Services about the need to engage with citizens in securing their own wellbeing, through encouraging, enabling and supporting individuals to take personal responsibility. This will be critical to maximising peoples' independence and self-determination and will ultimately help manage demand on services themselves.

Alongside a broader duty across the public sector, and an inclusion of the citizen's voice, we propose that the duty be amended to protect public bodies from expected increased and costly litigation. It is rare to have such a broad legal duty, and as such we have received strong legal advice that Section 1 would benefit, either from an element of proportionality, enabling the local authority to either 'take reasonable steps to' or 'seek to ensure that', or a specific commitment that this duty is not justiciable. This aligns with existing legislation such as Equalities law, and would still enable appropriate legal challenge, such as judicial review, but would ensure increased and costly litigation against public bodies in relation to Part 2, does not become a norm. At the very worst it is envisaged that such a broad, new statutory duty, drafted without the protection of other comparable duties, would increase insurance premiums of local authorities, result in increased legal bills, and divert resources away from the front line.

Recommended Amendment

6 (1) A local authority, NHS Bodies and other named relevant partners must make arrangements to seek to ensure the provision of a range and level of services which it considers will achieve the purposes in subsection 2 in its area.

(7) Promoting Social Enterprises, co-operatives, user led services and the third sector

Whilst recognising the vital role such organisations can play in the delivery of services and in building community capacity, we are concerned that specific approaches have been identified in the Bill, creating specific new statutory requirements on local authorities. It is our view that Councils should be encouraged to promote and facilitate the development of vibrant, mixed markets of provision in their area in which social enterprises and third sector organisations sit alongside providers in the statutory and independent sectors.

We are concerned that this duty might conflict with existing Section 7 Guidance on Commissioning of social care services and have more significant implications for state aid. Whilst we recognise the value of a mixed market of provision we would wish to see an amendment to broaden out the duty to ensure that no one sector is required to be supported by a local authority over another, and assurances regarding our concerns over state aid implications.

Recommended Amendment

Section 7 (1) – reword to read: ‘A local authority must promote, alongside other appropriate forms of provision across the statutory, third and independent sectors –’

(8) Provision of Information, advice and assistance

The Bill places a duty on local authorities, ‘facilitated’ by LHBs, to provide information, advice and assistance to help people understand the care and support system in their area, what services are available locally and how to access those services. We agree with this in principle, and through the SSIA are developing a citizen portal to achieve this broad aim. However we would like to see the duty reflect a public service approach to the provision of information, advice and assistance to improve wellbeing, and specifically the role of LHBs strengthened to ensure that information, advice and assistance is available across the range of care and support services in a given area. In addition we believe the duty must be proportionate, and require a named public body, to take ‘reasonable steps’ to secure such provision.

Whilst significant work has been undertaken to scope out a national model for a citizen portal, it is clear from this work that an implementation and running cost will exist. Similar statutory models such as the Family Information Services, introduced as part of the Childcare Act 2006, received funding to support implementation and delivery. However, recent research suggests that continued running costs have far exceeded provided funding, and which local authorities have had to resource, at the expense of existing budget lines.

Recommended Amendment

Section 8 (1) – reword to read: A local authority, NHS Body and other named relevant partners must collaborate where appropriate, and take reasonable steps to secure the provision of a service for providing people with

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| <p>(a) information and advice relating to care and support, and</p> <p>(b) assistance in accessing care and support</p> |
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Part 3 – Assessing the needs of Individuals

The Bill provides a single right to assessment (including an assessment of outcomes) for adults, children and their families where it appears that the individual has a need for care and support. A duty is also introduced on local authorities to undertake a carers' assessment.

The Explanatory Memorandum to the Bill suggests that provisions 'across the spine of the Bill' are designed to promote an individual's voice and control in relation to access, assessment and eligibility for services. In relation to assessment, this is crucial and we are keen to see within the Bill, provisions that ensure assessments are proportionate and can be carried out in a range of contexts, for example assessing someone for reablement, or another preventative service without having to apply eligibility criteria, which should apply only to long-term, ongoing care. This view is widely supported by our partners, yet we believe the Bill does not adequately reflect this as currently drafted. Every contact with an individual contains an assessment of risk and personal capacity, therefore assessments should be citizen led, and should aim to maximise the contribution of the citizen to both the assessment and the outcomes that need to be achieved to promote their wellbeing.

We would suggest that principles of proportionality and co-production with individuals in undertaking assessments should be reflected on the face of the Bill, with a clear definition of 'proportionate' and from which to inform guidance and practice. This view is supported by colleagues in the third sector advisory group.

The Bill provides that a local authority can undertake assessments jointly with another body or on behalf of another body in particular circumstances. We welcome this flexibility but would argue that the Bill needs to go further in terms of (1) allowing the local authority to arrange assessment by the most appropriate body and (2) requiring other bodies to cooperate, as drafted the Bill does not achieve this, yet this is a widely shared view across social services, the NHS and the third sector, and reflects similar suggestions for amendment received from the third sector advisory group and college of Occupational Therapists.

Recommended Amendment

Section 17 (5) – add : (c) the local authority may require another body to undertake an assessment on its behalf or contribute to a joint assessment

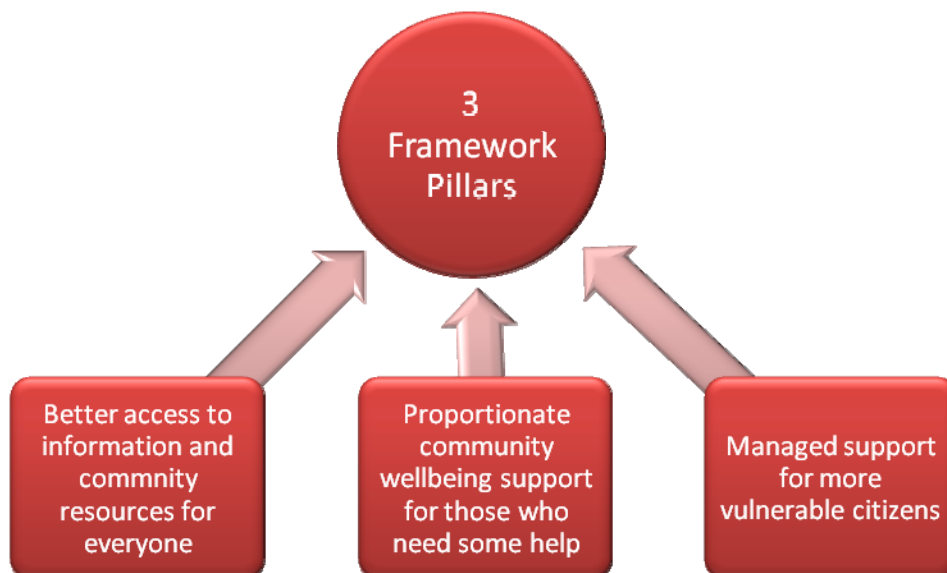
Part 4 Meeting Needs

(19) Determination of eligibility and consideration of what to do to meet needs.

The Bill requires local authorities to assess whether an individual's identified need for care and support is an 'eligible need' as identified under the forthcoming National Eligibility Framework to be developed by the Welsh Government.

We are encouraged at the effective partnership approach recently established by Welsh Government to develop a framework that reduces variation in service provision whilst protecting the flexibility of local authorities to plan and deliver services to best meet need. We further welcome the endorsement by the Deputy Minister of the model set out in the SSIA Report Access to Care and Wellbeing Services, which proposed that eligibility should be seen as part of a wider context around improving wellbeing, and should encompass three key pillars.

Diagram 1



- Better access to good information, advice and assistance to engage with resources available in the community. This will better enable individuals and families to exercise their voice and control and make informed choices about their involvement with their community, and about the support they need to help them live as they wish.
- A wide spectrum of proportionate community support which citizens who have wellbeing needs can access to help maximise their independence, live well in their community and achieve their desired outcomes without having to rely on complicated assessments or care packages.
- Help to the most vulnerable individuals and families with significant or enduring needs to assess those needs and organise and secure the care and support they require. Those who met relevant criteria by virtue of their vulnerability or need for

safeguarding should have the right to a detailed assessment of need, a care and support plan and to ongoing help in ensuring that the plan meets their needs and helps them to achieve their desired outcomes.

(34) Direct Payments

There is a strong view from local authority officers, that the Bill with regard to Direct Payment's is currently too prescriptive and restrictive in order for Local Authorities to explore the full potential to use personal budgets, or to work in a truly citizen focussed way. In addition, the impact of changes to DBS regulations from the Home Office will have a direct impact on Direct Payments. The Home Office currently state that anyone working in a regulated activity must have a DBS check, this is contradictory to current Direct Payments legislation and guidance, and is not clearly addressed in the Bill as yet. The impact of this on friends and family members being employed via a DP will be significant and may affect future uptake.

There was an expectation that this Bill would clarify how stakeholders and partners would be expected to work together. It is felt that this Bill does not impose strongly enough the need for health colleagues to work with social care services particularly with CHC, joint packages, pooled budgets, and we would advocate that this is addressed through amendment. In addition there is growing evidence that local authorities wish to explore the use of co production, social enterprise and pooled budgets for Direct Payment's. However, there may be some registration restrictions with some proposed schemes and these issues have not been addressed within the Bill as it stands.

(40) Portability

We broadly concur with the inclusion within the Bill of portability, but in ensuring this practice is transparent, and expectations on local authorities clarified would advocate that section 40 (4) is amended to ensure that the receiving authority is responsible only, for providing services that were provided by the sending authority. As drafted the Bill could be interpreted that a local authority would be responsible for securing the provision of health or third sector services in the receiving authority also, which we presume to be a drafting oversight.

Recommended Amendment

Add to point 40 (4) 'the receiving authority does not have to provide services provided other than those funded by the sending authority'

Part 6- Looked after and Accommodated Children

In line with the evidence presented by WLGA and ADSS Cymru at Stage 1 scrutiny, concerns remain that the Bill fails to place an emphasis on Children, and does little to deliver transformation or improvements to services, to create sustainability. We therefore welcome the recommendation from the Stage 1 committee report by the Health and Social Care Committee which states '*We recommend that the Deputy Minister issues an oral statement*

before the end of Stage 2, detailing the rationale for moving from having a separate Bill for children to a people focused Bill'

We believe that the Bill misses an important opportunity to define 'Children's services' in a coherent legal framework for Wales, and in particular clarifying key questions such as what the Government see as the role of family and extended family. There is a risk of confusion as drafted in terms of the local authorities responsibilities towards the Children in Need population, which is wider, than just looked after and accommodated children, which Part 6 of the Bill only refers to, and this is dealt with through specific recommendations for amendments within this report.

As drafted the Bill repeals a number of sections of the 1989 Children Act, we fail to see the rationale for repealing only some elements of the Act and believe this may lead to confusion amongst practitioners. In addition whilst the Bill repeals elements of the Children Act 1989, they are carbon copied into this Bill, and we believe this is an important missed opportunity to update legislation now over 20 years old.

Finally, the Bill fails to reflect the necessary multi agency approach required to meet the care and support needs of a looked after child, particularly in relation to their health needs, and we advocate that health are included in relevant clauses pertaining to meeting the care and support, or wellbeing needs of a looked after child to embed the multi agency approach on which improved wellbeing depends.

(24) Power to meet care and support needs of a child

The current arrangements set out in policy and guidance such as 'Towards a Stable Life and Brighter Future', remain fit for purpose. It is our view that in legislating on the face of the Bill, to provide a power there may be unintended consequence of confusion, and undermining an already established process.

We do not feel that section 24 provides any clarity as to the local authorities required role in meeting the care and support needs of a child, Section 24 (1) must provide clarity as to the responsibilities of an authority in relation to such children, through defining within this Act, the definition of 'ordinarily resident' as referred to in this section would lead to likely confusion or potential disagreement as to which authority is responsible for meeting the care and support needs. There is also likely to be a division between what this term means for adults and children. If the Bill is a 'people' focused Bill careful consideration must be given to a term that is applicable and relevant to both children and adults. In clarifying this statement current adult and children legislation define ordinary residence very differently, having a 'people' definition of ordinary residence means there will be a complete change for one or the other, and as such with many knock on implications and costs, that we would welcome further discussion on prior to one definition being enacted in this Bill.

(25) Duty to maintain family contact

As drafted Section 25, may have significant unintended consequences. We support the intention of Section 25 (2) and believe this could be further improved, however Section 25 (1) places a duty on the local authority to maintain family contact for children not looked after. We would therefore not agree this is a duty that the state should have and propose this is removed.

Recommended Amendment: Remove Section 25, assessment will dictate whether it is safe and prudent to maintain family contact, in line with existing legislation, and in the context of those children not looked after but involved in private family law proceedings, the duty should fall to CAFCASS Cymru. As drafted this definition could apply to children not in receipt of local authority social services, thus making the duty of no added value.

Recommended Amendment: Add to section 25 (2) clause (c) where it is safe to do so (d) where it will improve wellbeing of the child to do so.

(59 -60) Accommodation Duties

Section 59 does little to improve existing legislation. Whilst important, we feel there is scope to improve the drafting for purposes of clarity and consistency. As drafted the Bill lists types of accommodation, this could potentially minimise options, and as drafted excludes independent provision.

Recommended Amendment 3: Remove section 59 as drafted and replace with-

General duty of a local authority to secure accommodation for looked after children

(a) within the family where it is safe to do so

(b) within the community where it is safe to do so

(c) If in the community, in accommodation deemed to best meet the assessed needs of the child or young person

(60) Accommodation for Children who are lost or abandoned etc

We are unclear as to what 'etc' as listed in section 60 would refer to. As drafted we believe the definition to be appropriate, but to also include the word 'unaccompanied' in recognition of unaccompanied asylum seeking children.

Recommended Amendment: Remove etc, and replace with 'unaccompanied' to the definition set out in Clause 60, to read 'Accommodation for children without parents, or who are lost, abandoned or unaccompanied'

Recommended Amendment: Remove 60 (2) it provides no added value to existing legislation. If it remains, replace 'may' with 'must'.

(88-96) Young People Entitled to support under sections 89-96

We support the views of the Children and Health and Social Care Committee, that defining Care Leavers through categories (section 90) is unhelpful. We propose using widely used and recognised terms used in the Children (Leaving Care) Act 2000 of Eligible, Relevant and Former Relevant.

We support the emphasis that Local Authorities' must have a range of services and be able to procure / support care leavers to access accommodation that meets their assessed needs, but believe existing legislation covers this, and so may need to be repealed and featured in this Bill to ensure a streamlined approach.

Recommended Amendment: Replace in 88 (2) 7 (a-c), 89 (1-4) 90 (2) (a-c) the word categories, for eligible, relevant and former relevant as appropriate in relation to the proposed definitions set out in 88 (2).

Part 7 – Safeguarding

Local Government welcome the intention to create new legislation for Safeguarding, particularly in relation to the development of a coherent legal framework for adult protection. In both our written and oral evidence however, we set out our concern that there are risks in including such substantive legislation in a Bill already vast in scope. We remain of the view that a concurrent piece of legislation should have been introduced, to create a separate Safeguarding Act, and reflective of the approach taken in Scotland. We firmly believe that if legislative consent is not gained, for those provisions where it is necessary, within Section 7, that it should be removed from the Bill until such time as consent is granted.

We welcome the opportunity to participate in the Expert Panel created by the Deputy Minister, to frame the regulations and policy guidance to underpin section 7. However we are concerned that this work is ambitious given the limited timetable, and intention to publish recommendations in November 2013. Proper engagement and scrutiny is required if we are to shape legislation, that genuinely safeguards and protects, and enhances the ability of professionals to access, engage and support vulnerable adults children and families in Wales.

(104) Adults at Risk

The WLGA and ADSS Cymru have stated in written and oral evidence, that we believe the definition as drafted in the Bill, must be improved. This view is widely shared across the sector, and with colleagues such as Age Cymru and the Older Peoples Commissioner for Wales. Working with colleagues in Age Cymru and the Older Peoples Commissioner for Wales, and the NHS Confederation, a more rounded definition has been developed that addresses existing concerns around the language used in the definition, and the concern that its focus may be too narrow. We would also recommend that this definition be adopted in forthcoming legislation to be introduced by the Welsh Government on Domestic Violence.

Recommended Amendment

Replace section 104 (1) with: An “adult at risk” for the purposes of this Part is an adult –

(a) Who is experiencing, or is at risk of experiencing, abuse or neglect; and

(b) Whose ability to protect himself or herself against the abuse, or the risk of it, is compromised; and

© As a result, is in need of support or protection

We believe this definition to be proportionate, appropriate and effective. It also removes the focus on care and support, which we believe to be an unnecessary definition, for the

purposes of defining and adult at risk, and believe its inclusion in the definition, could cause confusion as to the eligibility or entitlement of a person to services in this context.

We strongly support the view of Age Cymru, Older Peoples Commissioner and the third sector Bill advisory group in calling for a definition of neglect to be included alongside that of abuse, in section 166 for the purposes of clarity.

Recommended Amendment: Include a definition of neglect in section 166

We have also considered the need to ensure that people are protected in a range of settings, and reflected on the recent case of Mid Staffs, where a range of patients were put at risk, due to the poor quality of care. We believe such considerations should form a cornerstone of the debate, on protecting adults, and propose that in section 166, where types of abuse are defined, the word 'institutional' is included to ensure protection can be afforded in such settings as Hospitals, Care Homes etc.

Recommended Amendment: Insert the word 'institutional' alongside types of abuse listed in section 166

(105) Adult protection and Support Orders

The WLGA, welcome the proposals to create a coherent legal framework for the protection of vulnerable adults, and have welcomed the provisions set out in the Bill. However we support the views of our professional colleagues in the ADSS Cymru, who are clear that to be effective, the opportunity of legislation should be maximised to provide a more coherent and broader range of powers within this section of the Bill.

There is significant and documented concern, around section 105 providing an 'authorised officer' the power to enter premises in order to gain access, for the sole purpose of speaking with an adult suspected of being at risk. Whilst access is provided, the powers of intervention are not, and the ADSS Cymru, WLGA, Age Cymru and others have called for powers of intervention to be included on the face of the Bill, to ensure that an adult deemed to be at risk can be appropriately protected by the relevant agencies, in a manner supportive and reflective of their Human Rights. This is reflected in the Stage 1 report by the Health and Social Care Committee, who welcomed the Deputy Ministers intention to bring forward an amendment to include powers of removal, subject to legislative consent issues being resolved with the Westminster Government.

We fundamentally believe that without the full suite of powers to remove a vulnerable person, or ban a perpetrator from a relevant setting, the proposed power of entry will not improve the safety or wellbeing outcomes of the person who is suspected of being at risk, but will conversely increase the potential threat of risk to them.

Recommended Amendment: We support the view of the statutory and third sector in calling for powers of intervention, reflecting the removal and banning orders provided for in the Adult Support and Protection (Scotland) Act 2007.

We share the view of the Constitutional and Legislative affairs committee, who reflected their serious concern, that legislation has been proposed that relies on legislative competence being granted by Westminster. Conclusion 1 of their report on the Bill states *'We are surprised that the issue of obtaining appropriate consents has yet to be resolved, particularly given the Welsh governments proposals which have now been translated into a Bill, are likely to have been developed over a considerable period of time. It is important that the issues of concerns are resolved quickly and the final outcome is made public as soon as possible'*.

Recommended Amendment: We propose that should matters of legislative consent not be resolved in time for the passage of the Bill, Section 7 is removed and a separate Bill introduced following the conferral of legislative consent.

(111) Safeguarding Children Boards and Safeguarding Adult Boards

The Bill provides for the creation of statutory safeguarding boards, however in line with current professional practice we believe the boards should have the word protection included in their title, to reflect the wider function than just safeguarding.

Recommended Amendment: Add to 111 'protection' to read Safeguarding and Protection Children Boards, and Safeguarding and Protection Adult Boards

The WLGA and ADSS Cymru believe the Bill provides a valuable opportunity to reflect on the experience of LSCBs, to ensure that evidence and experience of their operation since their introduction in 2006, informs provisions within the Social Services and Wellbeing (Wales) Bill.

However, the Bill provides for safeguarding boards to be established on a statutory footing, within a prescribed 'area'. We do not believe that legislating for the creation of a board in a prescribed area to be sustainable or prudent, and assumes that structures will improve operational effectiveness. We are concerned that the Bill, and supporting regulations, must ensure effective operation of the Boards, and in developing our evidence base for this, have commissioned work by world expert in child protection, Prof Jan Horwarth to determine effective governance and accountability arrangements in a collaborative model. Early evidence from Prof Horwarth's work has suggested that capacity, finance and clarity of function are the areas that need to be addressed rather than size.

As such we believe that the provision within the Children Act 2004, (31) (9) which states 'Two or more Childrens services authorities in Wales may discharge their respective duties under subsection (1) by establishing a board for their combined area' remains sufficient and sustainable. Given the conclusions of the Commission on Governance and Delivery of Public Services in Wales has not yet reported, to prescribe an 'area' would seem imprudent, and difficult to amend should any future reorganisations to Health or Local Government be introduced in Wales in the future.

This view concurs with that of the Health and Social Care Committee, who in their Stage 1 report recommendations, note the Deputy Ministers intention to establish safeguarding boards on six regional footprints, but *'recommend that she provides further information on the footprints and the rationale behind her intent'* We welcome this, in recognition of our clear position that a prescribed footprint, may not be fit for purpose, particularly for areas

such as Mid and West Wales, and North Wales, and also undermines the findings of the National Safeguarding Children Forum that a focus on structures alone is unhelpful.

Recommended Amendment: Remove 111 (1) prescribing the creation of 'areas' for which there are to be safeguarding boards.

In ensuring that the boards operate within an appropriate and effective governance and accountability structure, we support recommendation 39 of the Health and Social Services Committee, who call for probation or indeed the successor service) to be listed on the face of the Bill as a relevant partner. Further in ensuring clear governance, and reflecting on evidence emerging from Prof. Horwarth's report, we would suggest that the local authority remains the Lead Partner, and reflects section 31 (1) of the Children Act 2004, which provides that each children's services authority must establish a local safeguarding board for their area.

Recommended Amendment 9: Include probation (or any appropriate future term) into 11 (2)

Recommended Amendment 10: Remove 111(3) (a) (b) and replace with 'for the purposes of this part a Lead Partner is the local authority'

Recommended Amendment 11: Insert into 112 (1) (a) (b) and 2 (a) (b) 'within the scope of prescribed duties and powers' to read-

The objectives of a Safeguarding Children Board are-

(a) To protect children, within the scope of prescribed duties and powers' who are experiencing or are at risk of abuse, neglect or other types of harm

a) To prevent children, from within its area becoming at risk of abuse, neglect or other types of harm, within the scope of prescribed duties and powers

The WLGA and ADSS Cymru have advocated for the removal of section 112 (7) which provides for the power to form a joint board. We see no evidence as to why this would support effectiveness, or improve outcomes in line with the stated policy objectives of the Bill. This view is widely supported, and is reflected in the Health and Social Care Committee's report recommendation 37.

Recommended Amendment: Remove section 112 (7) enabling a safeguarding board to form a joint children/adult board

There has been a long and well documented debate, that a national funding formula is required to ensure efficiency and equity in funding arrangements for safeguarding boards. Evidence from the WLGA budget audits from 2007-11, and provided to the National Children Safeguarding Forum, suggest that local authorities provide a disproportionate share of funding, with contributions from partners varying in the amount, consistency over time, and in recent years often a refusal to contribute. As drafted section 115, which is concerned with the funding of boards, does not reflect the legislative consent necessary to mandate contributions from named relevant partners in section 111(2). Thus this legislation, as

drafted does little to improve existing statutory requirements as set out in Section 33 of the Children Act (2004).

The WLGA and ADSS Cymru, alongside partners such as the NSPCC, Children's Commissioner and third sector advisory group are extremely concerned that this legislation will not be fit for purpose without legislative consent to require partners to contribute. If this is not achieved the policy objectives of the Bill to improve wellbeing outcomes will not be met.

Recommended Amendment: Subject to legislative consent, in 115 (1) AND (2) remove word 'may' and change to 'must'. In 115 (3) remove word may, and replace with 'will'

Part 9 –Wellbeing Outcomes, Cooperation and Partnership

Improved collaboration between health and social care going forward is critical. We support the Welsh Government's position, that structural change is not an option, and that social services remain a core function of local government.

We are clear that further debate is necessary around how legislation, policy and guidance can support integrated delivery at a local level, and unblock prevailing barriers not addressed through previous legislation, as part of the NHS Act 2006 (Section 33)

We see value in developing broad and enabling legislation, which reflects the political imperative at all levels to quicken the pace of collaboration between local government and the NHS. However we do not believe that legislation should be seen as an end in itself, and advocate that consideration is given to where guidance and policy can also actively support change on the ground.

Ultimately, this Bill must provide clarity around expectations, powers to deliver partnership working and be sustainable to navigate any future structural changes within the public sector to stem from future policy decisions, such as the response to the current 'Public Services Commission', Chaired by Sir Paul Williams.

In providing clarity, we do not believe the term integration to be helpful, in the context of this debate, as it perpetuates misunderstandings and leans to an understanding that integration refers to structural change. As an early view we propose using the word collaboration, and clearly defining the scope of where collaboration would be expected.

Recommended Amendment: Replace the word 'Integration' with 'Collaboration', in sections 143, and 146

The WLGA and ADSS Cymru have identified a number of key principles, which we believe must be addressed in the Bill, and reflect the shared view in Wales, that the Bill must enable enhanced service collaboration, rather than structural change. The principles reflect evidence presented by the Kings Fund et al around successful collaboration across the NHS and social services. Importantly we believe that health and social care alone cannot deliver the desired improved wellbeing outcomes for those with a care and support need, and our views are presented in this wider corporate public service context, with a presumed contribution from

partners such as housing associations, third sector and independent providers where appropriate.

Key Principles

- Shared national outcomes framework required, rather than just social services
- Collaboration not Integration
- Re defining Care and Support in the context of the new eligibility framework, and improved wellbeing outcomes
- Ownership and enabling sharing of information
- Integrated not pooled budget
- Improved & streamlined governance
- Joint commissioning
- Staff working across boundaries (simplifying pay and conditions)
- Joint assessment and care management
- Joint performance management framework
- Equal Ownership of risk

We are of the view that legislation should be used proportionately, and is not an end in itself. Whilst we recognise the value of legislation in providing a supportive and flexible legal framework, across two separate bodies, we see value in developing future guidance and policy in key areas.

Suggested areas for consideration through policy and guidance include:

- Developing a shared approach to Joint Assessment and care management, and maximising the new powers of delegation which we expect the Bill to confer.
- Establishing a joint up approach to performance management, working in partnership with the relevant inspectorates, reviewing the ACRF, and implementing an outcomes framework for 'wellbeing' as required by section 137 of the Bill.
- Equal Ownership of Risk through new approaches to governance, service planning and delivery, and set out in guidance

In terms of our views on the provisions contained within the Bill, these are structured around the identified principles, which relate to the proposed legislation. We provide our view in relation to the principle, alongside recommendations for amendment to the Bill, where we believe this would be of value to local government, and secure enhanced outcomes in terms of our ability to collaborate, and in achieving the outcomes to be contained in the Ministers statutory outcomes framework.

(146) Collaboration not Integration

We have previously set out our position that the Bill risks confusion by using the word 'integration' (section 146). There is sufficient evidence to suggest 'integration'; to be a confusing term, and one which is broadly understood to reflect structural change. As previously stated the WLGA and ADSS Cymru both support the view of the Welsh Government, who are not in favour at this time of structural change, but are keen to see continued collaboration. In evidencing this, in the Stage 1 Committee report states *'we are*

persuaded by the evidence received in favour of fully integrated health and social care' yet there is no clarity around the term 'fully integrated'.

Recommended Amendment: We therefore recommend that section 9 must be reframed to support 'collaboration' rather than 'integration' and section 146 re drafted to read:

146 –Promoting collaboration across care and support services

(1) Local authorities and relevant partners must work in collaboration to provide care and support services where it is agreed this would....

(146) Defining Care and Support

It has been proposed that the Bill is re framed towards collaboration, rather than integration, in the pursuit of improving wellbeing outcomes, for those with a defined care and support need. However the Bill fails to sufficiently define 'Care and Support', in addition we believe the term 'Care and support' to be an outdated concept, that is neither reflective of an outcomes focus, nor improved voice and control for the citizen. The term as drafted re enforces the perception, widely presented in evidence, and accepted by the committee that the Bill re enforces the medical model of care. In our view further consideration to a term that is more empowering and citizen focused would be welcome.

Recommended Amendment: If the Assembly is not minded to amend the Bill to remove reference to 'Care and Support' a definition of the term should be provided. We do not believe the current definition provided in 146 (2) (a-b) to be fit for purpose.

Recommended Amendment: In redefining 'care and support' towards a more outcomes focused approach, and one rooted in a social approach, we recommend that section 137 of the Bill be amended to reflect the need for a joint approach. We recommend a new provision be added which reads: 'Requires the contribution of Local Authorities and relevant partners, to the measures specified in the statement of wellbeing outcomes to be achieved, issued by Welsh Ministers'.

Recommended Amendment: We further recommend that a provision be included that in reference to Care and Support services, the pursuit of improved wellbeing outcomes, as specified in the Bill must be a 'primary consideration', in informing partnership working and collaborative activity.

(143) Ownership and sharing of information

Generating genuine shared ownership of the agenda across health and social care is a crucial building block of success, and we look to legislation to support this. As drafted Section 143, places a duty on local authorities to 'make arrangements to promote cooperation', thus promoting continued inequity in terms of the contribution of both agencies.

Recommended Amendment: Amend section 143 (1) to read 'A local Authority and relevant partners must make arrangements to promote cooperation between.....'

Recommended Amendment: Amend section 3(a) to remove reference to the Chief Officer of Police

Recommended Amendment: Amend section 6 a-d to read:

'A local authority and any of its relevant partners may for the purposes' of arrangements under this section –

(a) Commission and provide staff, goods, services, accommodation or other resources

(b) Establish an Integrated budget

Recommended Amendment: Section 145, appears to repeat provisions around the sharing of information as set out in Section 143, we believe the provisions relating to information should be consolidated into one clear provision, to support understanding and successful application of duties pertaining to information sharing.

Recommended Amendment: Consolidate provisions around information sharing as set out in Section 143 (6) (c) and Section 145.

It is also our view that the drafting of the provisions was inequitable, requiring compliance only, with requests from the local authority, but not from health or other named relevant partners. We believe that in practice this will cause confusion, misunderstanding and operational difficulty. We advocate that clarity is sought as to the rationale for including a duty, placed only on relevant partners to comply with requests from the local authority.

(147-9) integrated fund

We have proposed that the term 'collaboration' rather than 'Integration' be used in the Bill, as a broad term to describe the vision of continued collaboration across services, and where there it is agreed it would promote the wellbeing of those citizens described in 146 (1) (a) (i-iii).

A key mechanism to support collaboration is a 'pooled fund' as defined by the NHS Act 2006. However we believe this definition should be repealed, on the basis that the term is a catch all across the UK. Given the very different devolved approaches to health and social care collaboration, we believe the term can be easily confused. This is not appropriate for the emerging and divergent welsh context, where we are seeking to promote collaboration across specific service areas, rather than structural change. As such we believe there is a need for a term to defined, appropriate to the specific welsh context, and which provides clarity. We therefore recommend Section 33 of the NHS Act 2006, be repealed and re established with a new definition, and terms appropriate to Wales.

Recommended Amendment: Remove section 147, 148 & 149 and re drafting as one section which replaces and improves section 33, and provides local authorities and health with the powers to establish statutory joint working arrangements and which covers, pooled funds and governance arrangements.

However this is not achieved, we see value in drawing on existing legislative approaches in devolved settings, and we support the flexible approach taken in Scotland, which provides for the payment of monies, in alignment with a statement of intent around collaborative or integrated activity. The Public Bodies (Joint Working) Scotland Act states:

- (2) The local authority must make a payment to the integration joint board of the amount calculated in accordance with the method of calculation set out in the plan in relation to each function delegated by it
- (3) The Health Board must make a payment to the integration joint board of the amount calculated in accordance with the method of calculation set out in the plan in relation to each function delegated by it.'

Recommended Amendment: Remove of the word 'pooled fund' from Section 148 (1) (b), 148 (3) (a) (b), (4) and replace with 'integrated budget'

Recommended Amendment: Section 148 to include the provision 13 (2) (3) included in the Public Bodies (Joint Working) Scotland Act 2013, and replace the word 'integrated board' with 'Integrated Fund'

Recommended Amendment: In Section 148 (4) amend the existing definition of a pooled fund to read 'In this section, integrated budget' means a fund established jointly by a local authority and Local Health Board, which promotes collaborative resource management, and out of which payments may be made towards the expenditure incurred for the purpose of, or in connection with collaborative arrangements'

(147-9) Improved Governance

Improved governance around defined collaborative activities is crucial to delivery on the ground. Whilst not supporting additional bureaucracy, the WLGA recognise the importance of robust governance arrangements that promote shared leadership and delivery. The Bill can support improved governance by providing local authorities and Local Health Boards with the power to establish partnership arrangements, that are supported by statutory guidance around partnership working, and which draws on the significant evidence from the Kings Fund of what has worked, and what may not work, and through use of guidance rather than primary legislation enables flexibility to accommodate a range of different contexts.

We believe that the Mental Health (Wales) Measure 2010, and the Carers Strategies (Wales) Measure 2010, is examples of best practice, in relation to an equitable and proportionately regulated approach towards collaborative activity in a service area of joint concern. We

recommend that section 147 (3) and section 149, which prescribes blanket partnership arrangements and subsequent regulations be removed. Whilst we support the premise of the intent, we do not believe prescribing this on the face of the Bill or establishing such disproportionate regulation, is of value, but is more likely in practice to stymie activity and innovation. This therefore provides statutory underpinning to the requirement for collaborative working, but does not prescribe overly restrictive or bureaucratic structures as a means to deliver collaboration.

Recommended Amendment: Remove Section 147 and 149. Section 33 of the NHS Act already prescribes a requirement for partnership working, this section has not been repealed and remains enacted. In addition Section 42 of the Mental Health Measure (Wales) also prescribes cooperative working between Local Health Boards and Local Authorities. We therefore propose repeal of sections 33 (NHS Wales Act 2006) and Section 41 (Mental Health Wales Measure 2010) and implement a consolidating clause that relates to all joint activity across NHS and Local Authorities, reflecting the existing flexibility to enable delivery in a number on non prescribed service areas.

Recommended Amendment: Section 147 (3) be removed, and replaced with statutory guidance for collaborative activity in specific service areas, rather than by primary legislation providing the power for regulations that define:

- *The form of partnership arrangements*
- *Functions delivered by the partnership*
- *Prescribed teams*
- *Prescribed persons*

Recommended Amendment: Add a new clause which replicates the Carers information and strategies Measure (Wales) which provides for a Duty to produce strategy

- (1) The Welsh Ministers may by regulations require a relevant authority, or two or more relevant authorities to prepare and publish a strategy setting out how the authority will work, or the authorities will work together—***
- (2) Each relevant authority responsible under subsection (x) for the preparation and publication of a strategy must implement the strategy***

Annexe A- Recommended Amendments

- 1. Section 6 (1) A local authority, NHS Bodies and other named relevant partners must make arrangements to seek to ensure the provision of a range and level of services which it considers will achieve the purposes in subsection 2 in its area.**
- 2. Section 7 (1) – reword to read: ‘A local authority must promote, alongside other appropriate forms of provision across the statutory, third and independent sectors –’**
- 3. Section 8 (1) – reword to read: A local authority, NHS Body and other named relevant partners must collaborate where appropriate, and take reasonable steps to secure the provision of a service for providing people with information and advice relating to care and support, and assistance in accessing care and support**
- 4. Section 15 (1) – reword to read: ‘A local authority must assess a carer’s needs for support if it appears to the local authority that a carer may currently have needs for support’**
- 5. Section 17 (5) – add: the local authority may require another body to undertake an assessment on its behalf or contribute to a joint assessment**
- 6. Add to point 40 (4) ‘the receiving authority does not have to provide services provided other than those funded by the sending authority’**
- 7. Remove Section 25, assessment will dictate whether it is safe and prudent to maintain family contact, in line with existing legislation, and in the context of those children not looked after but involved in private family law proceedings, the duty should fall to CAFCASS Cymru. As drafted this definition could apply to children not in receipt of local authority social services, thus making the duty of no added value.**
- 8. Add to section 25 (2) clause (c) where it is safe to do so (d) where it will improve the wellbeing of the child to do so.**
- 9. Remove section 59 as drafted and replace with - general duty of a local authority to secure accommodation for looked after children:**
 - within the family where it is safe to do so**
 - within the community where it is safe to do so**
 - If in the community, in accommodation deemed to best meet the assessed needs of the child or young person**

10. Remove etc, and replace with 'unaccompanied' to the definition set out in Clause 60, to read 'Accommodation for children without parents, or who are lost, abandoned or unaccompanied'
11. Remove 60 (2) it provides no added value to existing legislation. If it remains, replace 'may' with 'must'.
12. Replace in 88 (2) 7 (a-c), 89 (1-4) 90 (2) (a-c) the word category, for eligible, relevant and former relevant as appropriate in relation to the proposed definitions set out in 88 (2).
13. Replace section 104 (1) with: An "adult at risk" for the purposes of this Part is an adult – who is experiencing, or is at risk of experiencing, abuse or neglect; and whose ability to protect himself or herself against the abuse, or the risk of it, is compromised; and as a result, is in need of support or protection
14. Insert the word 'institutional' alongside types of abuse listed in section 166
15. We support the view of the statutory and third sector in calling for powers of intervention, reflecting the removal and banning orders provided for in the Adult Support and Protection (Scotland) Act 2007.
16. We propose that should matters of legislative consent not be resolved in time for the passage of the Bill, Section 7 is removed and a separate Bill introduced following the conferral of legislative consent.
17. Add to 111 'protection' to read Safeguarding and Protection Children Boards, and Safeguarding and Protection Adult Boards
18. Remove 111 (1) prescribing the creation of 'areas' for which there are to be safeguarding boards.
19. Include probation (or any appropriate future term) into 11 (2)
20. Remove 111(3) (a) (b) and replace with 'for the purposes of this part a Lead Partner is the local authority'
21. Insert into 112 (1) (a) (b) and 2 (a) (b) 'within the scope of prescribed duties and powers' to read- The objectives of a Safeguarding Children Board are- o protect children, within the scope of prescribed duties and powers' who are experiencing or are at risk of abuse, neglect or other types of harm. To prevent children, from within its area becoming at risk of abuse, neglect or other types of harm, within the scope of prescribed duties and powers
22. Remove section 112 (7) remove power to merge boards
23. Subject to legislative consent, in 115 (1) and (2) remove word 'may' and change to 'must'. In 115 (3) remove word may, and replace with 'will'

24. Replace the word 'Integration' with 'Collaboration', in sections 143, and 146
25. Section 9 must be reframed to support 'collaboration' rather than 'integration' and section 146 re drafted to read: Promoting collaboration across care and support services
 - i. Local authorities and relevant partners must work in collaboration to provide care and support services where it is agreed this would....
26. If the National Assembly is not minded to amend the Bill to remove reference to 'Care and Support'; a definition of the term should be provided. We do not believe the current definition provided in 146 (2) (a-b) to be fit for purpose.
27. In redefining 'care and support' towards a more outcomes focused approach, and one rooted in a social approach, we recommend that section 137 of the Bill be amended to reflect the need for a multi agency approach. We recommend a new provision be added which reads: 'Requires the contribution of Local Authorities and relevant partners, to the measures specified in the statement of wellbeing outcomes to be achieved, issued by Welsh Ministers'.
28. We further recommend that a provision be included that in reference to Care and Support services, the pursuit of improved wellbeing outcomes, as specified in the Bill must be a 'primary consideration', in informing partnership working and collaborative activity.
29. Amend section 143 (1) to read 'A local Authority and relevant partners must make arrangements to promote cooperation between.....'
30. Amend section 3(a) to remove reference to the Chief Officer of Police
31. Amend section 6 (a)-(d) to read: 'A local authority and any of its relevant partners may for the purposes' of arrangements under this section –
 - Commission and provide staff, goods, services, accommodation or other resources
 - Establish an Integrated budget
32. Section 145, appears to repeat provisions around the sharing of information as set out in Section 143, we believe the provisions relating to information should be consolidated into one clear provision, to support understanding and successful application of duties pertaining to information sharing.
33. Consolidate provisions around information sharing as set out in Section 143 (6) (c) and Section 145.
34. Remove section 147, 148 & 149 and re drafting as one section which replaces and improves Section 33 (NHS (Wales) Act, 2006) and provides local authorities and health with the powers to establish statutory joint working

arrangements and which covers, pooled funds and governance arrangements.

35. Remove of the word 'pooled fund' from Section 148 (1) (b), 148 (3) (a) (b), (4) and replace with 'integrated budget'
36. Section 148 to include the provision 13 (2) (3) included in the Public Bodies (Joint Working) Scotland Act 2013, and replace the word 'integrated board' with 'Integrated Fund'
37. In Section 148 (4) amend the existing definition of a pooled fund to read 'In this section, integrated budget' means a fund established jointly by a local authority and Local Health Board, which promotes collaborative resource management, and out of which payments may be made towards the expenditure incurred for the purpose of, or in connection with collaborative arrangements'
38. Remove Section 147 and 149. Section 33 of the NHS Act 2006, already prescribes a requirement for partnership working, this section has not been repealed and remains enacted. In addition Section 42 of the Mental Health Measure (Wales) also prescribes cooperative working between Local Health Boards and Local Authorities. We therefore propose repeal of sections 33 (NHS Wales Act 2006) and Section 41 (Mental Health Wales Measure 2010) and implement a consolidating clause that relates to all joint activity across NHS and Local Authorities, reflecting the existing flexibility to enable delivery in a number of non prescribed service areas.
39. Section 147 (3) be removed, and replaced with statutory guidance for collaborative activity in specific service areas, rather than by primary legislation providing the power for regulations that define:
 - The form of partnership arrangements
 - Functions delivered by the partnership
 - Prescribed teams
 - Prescribed persons
40. Add a new clause which replicates the Carers information and strategies Measure (Wales) which provides for a duty to produce strategy
 - i. The Welsh Ministers may by regulations require a relevant authority, or two or more relevant authorities to prepare and publish a strategy setting out how the authority will work, or the authorities will work together—
 - ii. Each relevant authority responsible under subsection (x) for the preparation and publication of a strategy must implement the strategy

