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**Cymdeithas Genedlaethol er Atal
Creulondeb i Blant**

National Society for the Prevention
of Cruelty to Children

10th May 2013

Vaughan Gething
Assembly Member
National Assembly for Wales
Cardiff Bay
CF99 1NA

Dear Vaughan

Thank you very much for inviting the NSPCC to give oral evidence in support of our written evidence. We welcome the bill and its potential to improve lives of vulnerable children and young people and those who care for them by delivering a single framework which makes clear the responsibilities of social services and of key partners in delivering prevention, early help and acute services. I write now to confirm the key changes that we would like to see made to the face of the Bill and to clarify our views on other specific issues to support delivery of the aims of the legislation.

We would like to see:

- Duties on the face of the Bill which make clear the roles and responsibilities of all partners (and sets out who those partners are) in promoting universal wellbeing, wellbeing of those at risk of becoming “in need” and wellbeing of those who are “in need”. We are concerned that the long title of the Bill states ‘public authorities’, Section 6 places the duty on local authorities and the title of the Bill states social services and consequently the responsibilities of partners are unclear. We recommend that these discrepancies are rectified and that Part 2 Section 4 states clearly the responsible partners and that Part 2 Section 6 (5), the duty on LHB, should be stronger.
- We are concerned that there may be a gap between preventative services and those with an eligible need and want to ensure that gap is closed. Besides the changes above, NSPCC Cymru/ Wales believes that partners, rather than just social services, should provide a spectrum of services to include:
 - universal preventative services
 - early help and support to children and families
 - services to ‘children in need’ (as defined by Section 17 of the Children Act)
 - services to children with an eligible need
- The UNCRC should be clearly stated in the policy objectives within the explanatory notes or the long title of the Bill and we are concerned that the due regard duty assessment against the UNCRC has not been published. Should there be principles included on the face of the Bill, then we would expect to see the UNCRC as one of those.
- A definition of “in need” which builds on that defined in the Children Act 1989 (we are currently looking further at this and will write again to follow up)
- A duty on Welsh Ministers to issue a statement relating to the wellbeing of children in Part 9
- Clarification that Lead Directors and Members for Children and Young People from the Children Act 2004 will be retained
- Advocacy- We welcome the Deputy Minister’s decision to consider an amendment to strengthen advocacy – it is vital that clear provision is made for easily accessible, independent advocacy.

Noddur: Ei Maurhydi y Frenhines

Syllfaemwyd 1884. Corfforddug trwy Statwr Brenhinol. Mae ChildLine yn wasanaeth a ddarperir gan yr NSPCC, rhifau cofrestru’r elusen 216401 a SC037717. Mae croeso i chi cysylltu gda ni yn Gymraeg neu’n Saesneg.

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- Part 6 is effectively a copying over of Section 3 of the Children Act 1989 though the Explanatory memorandum states that it will not stand in isolation from other statutes. However, there are some changes which require further explanation. (For further information and detail see Appendix 1.) On the face of the Bill NSPCC Cymru/ Wales would specifically like to see:
 - A requirement to assess and provide services to children as they enter care to support their emotional wellbeing.
 - Greater support for children returning home from care through a requirement to assess, prepare, support and monitor wellbeing
 - Improved support for care leavers

In Part 7 we would like to see:

- Strengthening of Section 112 (3) so that Safeguarding Boards hold all agencies to account for exercising their safeguarding duties appropriately and effectively
- Section 115 of the draft Bill is not strong enough and we want to see commitment to a funding formula on the face of the Bill (NB This was an urgent recommendation of the previous Health, Wellbeing and Local Government Committee in November 2010 in their report following their inquiry into LSCBs)
- We support the Children's Commissioners views that there should be separate national safeguarding boards, one for children and one for adults, and that these should be independently chaired
- Independent specialist chairs of all Safeguarding Boards.
- Section 117 is removed from the Bill or, if it remains, that conditions are on the face of the Bill that need to be met before Safeguarding Boards could be merged (for example ensuring proper scrutiny of such decision by the NAFW).

We would also like to clarify our position on the paramountcy principle and Article 3, the child's best interests. The NSPCC does not support any measures which seek to alter the paramountcy principle as defined in the Children Act 1989, which ensures that the welfare of children overrides all other considerations. We would welcome the paramountcy principle being explicit on the face of the Bill.

As stated above we do have concerns that the commitment to the UNCRC is not expressed clearly enough within the Bill and if the UNCRC was clearly included in the policy objectives it would add strength in terms of the best interests of the child. Whilst there is reference to "best interests" on the face of the Bill, this is not always consistently done.

In terms of Sections 13 and 14, there are parents who will avoid assessment and intervention by statutory agencies and there are also children for whom detrimental experiences are normalised and they are unable to recognise or identify potentially harmful circumstances.

We share concerns that including sections which enable refusal for assessment will make it even more difficult for local authorities to provide early help to children and families who need it.

We currently have a child protection system which relies on a heavy burden of proof at an acute stage rather than an assumption of providing early intervention and promotion of wellbeing.

We welcome the potential of the bill to provide a step change in the way we safeguard our children by intervening at the earliest opportunity rather than waiting until there is an acute need.

Therefore, we believe the wording of sections 13 and 14 do not do enough to encourage intervention at the earliest opportunity. The ability for a child or parent to refuse an assessment could create a potential barrier to working with families who can be difficult to engage with. Whilst Section 14 does build in a safety mechanism in that a parent's refusal can be over-ridden in certain circumstances, we would like clarity as to why a section which allows for refusal is necessary and in what circumstances a parent would want to refuse support. We would also highlight that Section 13 (3) appears to negate the safety over-ride if a child under 16 has sufficient understanding to make an informed decision, even though (4) provides that the LA is not discharged from its duty if it suspects the child is at risk (again the wording does not do enough to ensure early intervention and prevention). We would query the need for 13 (3) and highlight that within this section, the best interest test only appears to be included for 16 and 17-year-olds.

It is always difficult to strike a balance between protection and rights and that is why we call for a clear commitment to the UNCRC on the face of the bill. This would give clearer effect to article 3 – the best interests of the child – throughout the bill and help professionals continue to strike that balance.

We look forward to working with you over the coming months to strengthen the Bill and if we can help with anything please get in touch.

Kind regards

A handwritten signature in black ink, appearing to read 'Des Mannion', written in a cursive style.

Des Mannion
National Head of Service for NSPCC in Wales

cc: Committee Clerk for Health & Social Care Committee

APPENDIX 1

Part 6 is an effective copying over of part 3 of the CA89. The Explanatory Memorandum says *“The obligations and duties of local authorities (and LHBs) currently in provisions within Part 3 of the Children Act 1989 have been included in this Part (Part 6) ...However, the Bill will not stand in isolation of other statutes and local authorities will still have duties owed to children under the Children Act 1989 and the Adoption and Children Act 2002.”*

This appears to suggest that the legislature's intention is not to substantially repeal provisions of Part 3 CA89 but to replicate them within Part 6 SSWB.

However, there are a couple of examples of areas where there are some changes which are not explained. This creates concern as to which substantive provisions of the CA89 will remain in force in Wales after the Bill has passed.

Examples:

Sec 60 – does not incorporate relevant sections of CA89 which provides for short breaks. This has not been addressed within the Explanatory Memorandum

Sec 62 - restates CA89 s22(3)-(8) however SSWB has removed the provisions which state that the local authority ought to take account of the wishes and feelings of the child, his parent or any person with parental responsibilities and simply states that the local authority ought to take into account any person whom it considers relevant. This has not been addressed within the Explanatory Memorandum.

Sec 65- This is a new provision to support permanency planning. We are supportive of the aims to reduce placement instability and, as we understand it, this provision aims to ensure that fostering to adopt happens where other placement options for the child, such as supported placement with their parents or kinship care, are not in their best interests. We are supportive of this principle. However, this is an example of one area which may need further clarification – we are picking up differing interpretations of the wording, with some suggesting that the decision to place a child with a foster carer who was also an approved adopter only being able to be taken after care proceedings have begun, necessitating an additional short term placement. This could create additional instability and would be against the aims and purpose of the proposals.