

DATA PROTECTION IMPACT ASSESSMENT

Eliminating profit from the care of children looked after

Submitting controller details

Name of controller	Welsh Government
Subject/title of Data Protection Impact Assessment	Eliminating profit from the care of children looked after
Name of controller contact	Alistair Davey
Version History	v2 5 December2024 – Author: Tom Cleaver

Step 1: Identify the need for a DPIA

Explain broadly what project aims to achieve and what type of processing it involves. You may find it helpful to refer or link to other documents, such as a project proposal. Summarise why you identified the need for a DPIA.

Project aims

- 1.1. This proposal involves the development of new primary legislation as part of the [Health and Social Care \(Wales\) Bill](#) ("the Bill"). Specifically this DPIA relates to provisions regarding eliminating private profit from the care of looked after children.
- 1.2. The Programme for Government included a commitment to 'eliminate private profit from the care of looked after children during the next Senedd term', something that was subsequently taken forward by including provisions within the Bill. Specifically, the Bill amends the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') to impose a requirement for a provider of a care home service wholly or mainly for children ('a children's home'), a fostering service or a secure accommodation service (other than a local authority) that is registered with Care Inspectorate Wales (CIW) to be a not-for-profit entity. These three types of services entities are referred to within the Bill as a 'restricted children's service'. It is intended that no new for-profit providers will be allowed to register to provide restricted children's services from April 2026.
- 1.3. The aim behind the proposal is to ensure that public money invested in the care of looked after children does not profit individuals or corporate entities, but instead is spent on children's services, to deliver better experiences and outcomes for young people; support service development and improvement; and further build professional development for those providing care.

- 1.4. The Bill will allow for transitional arrangements whereby existing for-profit residential or foster care services will be able to continue after the Bill comes into force (subject to passing of the Bill in the Senedd, Royal Assent is expected in spring 2025). Existing for-profit providers will continue to be registered on a transitional basis. This is intended to mitigate disruption to the lives of children settled in existing residential and foster care arrangements and allow for new placements in for-profit services in cases where there are no appropriate placements for the child in a service provided by not-for-profit providers.
- 1.5. From April 2030 it is intended that local authorities will be required to apply to Welsh Ministers for approval to place children in new placements (known as ‘supplementary placements’) with existing for-profit providers. There is also a regulation-making power to place additional conditions on existing for-profit providers during this transitional period including restrictions on the type of service they may provide and the description of looked after children they may accommodate. The Welsh Ministers will also have a power, exercised through regulations, to bring the transitional arrangements to an end at an appropriate time. The appropriate time will be determined when Welsh Ministers, having reviewed the extent to which the sector has successfully moved away from reliance on residual for-profit provision, decide it is suitable to bring the permissive arrangements to an end.
- 1.6 The Bill also imposes new requirements regarding financial arrangements of (non-local authority) service providers relating to the provision of fostering services or children’s homes. Specifically the Bill will provide that unreasonable or disproportionate payments entered into by a not-for-profit entity can be taken into account by Welsh Ministers when deciding if a provider is a fit and proper person to be registered. In essence this is intended to check that any payments being made by a provider do not undermine the pursuit of its objects or purposes set out in the new section 6A(3) of the 2016 Act inserted into the Bill. New section 6A(3) requires a person who wants to provide a restricted children’s service’s objects or purposes to primarily relate to:
- (a) the welfare of children, or (b) such other public good as the Welsh Ministers may prescribe.

The need for a DPIA

- 1.7 This element of the legislation, specifically the requirements regarding supplementary placements and the financial arrangements of not-for-profit restricted children’s services pertaining to unreasonable or disproportionate payments will result in the processing of personal data that meets Article 35(1) of the UK GDPR, which states that a DPIA is required when processing is “likely to result in a high risk”. The Article 29 Working Party (WP29) has set out nine criteria that should be considered and meeting two or more of these would in most cases indicate the need for a DPIA to be carried out. The personal data processed meets the following WP29 criteria:
4. **Sensitive data or data of a highly personal nature.** Met by processing special category data in the form of an individual’s racial / ethnic origin, political opinions,

religious / philosophical beliefs, health information, sexual life, sexual orientation and criminal & court records.

5. **Data processed on a large scale.** Met due to the potential number of individuals engaged, the range of data items being processed and the geographical extent of the processing.
7. **Data concerning vulnerable data subjects.** Met due to the processing including personal data about children under 12 and asylum seekers who are deemed to be a vulnerable segment of the population that requires special protection.

1.8 Furthermore, Article 35(3) of the UK General Data Protection Regulation (UK GDPR) sets out three types of processing which will always require a Data Privacy Impact Assessment (DPIA). This proposal meets the second type of processing:

- process special category or criminal offence data on a large scale.

Step 2: Describe the processing

Describe the nature of the processing: how will you collect, use, store and delete data? What is the source of the data? Will you be sharing data with anyone? You might find it useful to refer to a flow diagram or other way of describing data flows. What types of processing identified as likely high risk are involved?

Nature of processing – supplementary placements

- 2.1. The approvals process for supplementary placements will involve applications by local authorities being sent to Welsh Ministers for approval. In practice it is envisaged that a team in the Welsh Government will be tasked with considering and determining the applications, potentially with input from CIW colleagues. Local authorities would process the data in preparing the applications. These will include information about the children being placed. The names of individual children would not be included but it is possible that in some cases a child could be identified from the information provided. For example, a child could be identified if an official was aware of some of the circumstances of a child's case already and those corresponded with anonymised detail within the application itself. However, the risk of this is considered to be extremely low.
- 2.2. The data within these applications is already collected by local authorities in relation to their statutory duties within existing legislation regarding meeting the needs of looked after children within their areas.

- 2.3. The detail of the specific arrangements for how the approval process will operate is not set out on the face of the Bill. It is intended that guidance will be produced for local authorities and providers setting out the specific format of the applications including the type of information to be contained and submission arrangements to Welsh Ministers (via Welsh Government). Guidance will also be produced to set out the process of considering applications within Welsh Government including data handling and storage arrangements.

Nature of processing - financial arrangements

- 2.4. Regarding the provisions in the Bill relating to unreasonable or disproportionate payments made by a not-for-profit entity Welsh Ministers have an existing power to require information from service providers (section 32 of the 2016 Act). As a result of provisions in the Bill CIW (acting on behalf of Welsh Ministers) will in future be able to require information about particular transactions or financial arrangements from (non-local authority) not for profit providers of children's homes and fostering services. Service providers would process this data in preparing this information.
- 2.5. CIW guidance exists for providers covering areas including registration and annual returns processes where this information may be requested in future. Officials are considering whether specific guidance is required for providers regarding the provisions relating to unreasonable or disproportionate payments. This could potentially set out processes for how CIW might request this information from providers and how providers should submit this information (format etc). Officials will also consider what internal process should be established in relation to considering the information received within Welsh Government including data handling and storage arrangements.

Describe the scope of the processing: what is the nature of the data, and does it include special category or criminal offence data? How much data will you be collecting and using? How often? How long will you keep it? How many individuals are affected? What geographical area does it cover?

Scope of processing – supplementary placements

2.6. It is anticipated that the following personal data items would be processed by local authorities in preparing applications for supplementary placements:

- Name of provider. While the name will only be the name of the provider (i.e. the company name), this name could potentially include details of a provider's address. The name of the child would be provided in a pseudonymised form.

Depending on the detail pertinent to the specific application the following special category personal data items may also be processed by the local authority:

- Racial / ethnic origin
- Political opinions
- Religious / philosophical beliefs
- Physical / mental health conditions
- Sexual life
- Sexual orientation

The above special category data items would be provided in a generalised form wherever possible and would not be accompanied by the name of the individuals concerned.

2.7. It is anticipated a significant number of applications containing personal data would be submitted initially following the planned April 2030 implementation given that many local authorities currently rely heavily on for-profit provision. While they are being supported to reduce this reliance there is still likely to be a significant need to place children in this type of provision following introduction and therefore a significant number of applications for approval from Welsh Ministers are expected on a frequent basis. In the years following April 2030 we expect the number of applications and therefore the quantity of personal data collected to reduce as the sector moves away from reliance on this residual for-profit provision.

2.8. Retention arrangements for the data are not set out on the face of the Bill however these will be specified within the guidance to be developed for both local authorities and Welsh Government.

2.9. We cannot predict the precise number of individuals who would be the subject of an application for a supplementary placement. However, for context according to Stats Wales there were 7,210 Children looked-after by Welsh local authorities as at 31 March 2023, an increase of 55 (2%) on the previous year. A bespoke request

for data held by CIW in September 2024 showed 333 care home services for Children looked-after. 266 services were for-profit, 67 services were either LA or not for profit. The growth in demand for residential care has, according to CIW, more than doubled since 2012. In September 2024 there were 44 fostering services, of which 22 services were private, 5 of which were not-for-profit and 22 were local authority run.

2.10. Under the Bill local authorities will each be required to publish annual sufficiency plans and submit to Welsh Ministers in draft form no later than 4 months before the beginning of the financial year to which they relate. These plans must include an estimate of the number of applications the local authority anticipates making for approval of supplementary placements so will therefore give Welsh Government additional clarity on projected numbers ahead of submission. The first plans are anticipated to be required by December 2026 covering the 2027-28 financial year.

2.11. The requirement for sufficiency plans will apply to all local authorities so could cover all geographical areas of Wales, as well as supplementary placements into for-profit provision in England.

Scope of processing – financial arrangements

2.12. Personal data items relating to financial arrangements with or for a relevant person would be processed by service providers in responding to requests from CIW. The Bill sets out that a “relevant person” means any of the following:

- an employee, worker or officer of the service provider;
- a person connected to an employee, worker or officer of the service provider;
- where the service provider is part of a group of persons under common ownership or common control, any person within that group.

These would then be considered by Welsh Ministers (in practice, by officials on their behalf) regarding whether these financial arrangements are considered unreasonable or disproportionate and as a consequence undermine their status as a not-for-profit organisation. The Bill specifies that when determining whether unreasonable or disproportionate financial arrangements have been entered into, regard must be had to:

- Financial information relating to the size and value of the financial arrangement
- The size and value of the arrangement relative to the amount of income the service provider receives from providing the restricted children’s service
- The proportion of the service provider’s total income that comes from providing the restricted children’s service;
- Information relating to making a payment or awarding any benefit (direct or indirect) that has monetary value

Therefore personal data items relating to the above would be processed.

- 2.13. It is anticipated that personal data relating to these financial arrangements could start to be collected following Royal Assent of the Bill, intended to be Spring 2025. We expect a greater number of applications for registration in the initial years following the Bill coming into force as prospective not-for-profit providers enter the market and, potentially, existing for-profit providers choose to re-establish their businesses under one of the permitted not-for-profit models and seek reregistration accordingly.
- 2.14. The requirements regarding considering unreasonable or disproportionate financial arrangements would apply to those registered as a restricted children's service provider from all geographical areas of Wales, unless they are subject to the transitional provisions.

Describe the context of the processing: what is the nature of your relationship with the individuals? How much control will they have? Would they expect you to use their data in this way? Do they include children or other vulnerable groups? Are there prior concerns over this type of processing or security flaws? Is it novel in any way? What is the current state of technology in this area? Are there any current issues of public concern that you should factor in? Are you signed up to any approved code of conduct or certification scheme (once any have been approved)?

Context of processing – supplementary placements

- 2.15. As outlined in paragraph 2.3 the data on individuals which will be contained in supplementary placement applications is already collected by local authorities in relation to their statutory duties within existing legislation regarding meeting the needs of looked after children within their areas.
- 2.16. Regarding the impact on individuals, applications would include information on those children local authorities wish to place in a supplementary placement. This could include special category personal data items where relevant to the application. Those individuals would not have control over the data however the name of the child would be provided in an pseudonymised form and other data would be anonymised as far as possible. Both providers and the children whose data is being processed in relation to supplementary placements will need to receive the appropriate privacy information as to how their personal data will be processed under the new supplementary placements process. Local authorities should already have privacy notices in place covering children looked after- these will need to be updated to reflect these new purposes and this will be clarified in guidance, as will the need for providers to receive the appropriate privacy information.

- 2.17. As a new process sharing data between local authorities and Welsh Ministers for supplementary placements will be a novel use of data. However sharing this type of data would be something expected in line with existing data sharing between organisations relating to local authorities meeting the needs of looked after children within their areas.
- 2.18. There are no specific prior concerns relating to the sharing of this information, save for recognising its extremely sensitive nature hence the intention for anonymising data where possible and developing specific guidance for both local authorities and Welsh Government to ensure robust and consistent sharing and retention arrangements, in line with best practice.

Context of processing – financial arrangements

- 2.19. As set out in paragraph 2.4 Welsh Ministers already have an existing power to require information from service providers within section 32 of the 2016 Act. However, the Bill amends the 2016 Act to provide that unreasonable or disproportionate financial arrangements entered into by a service provider registered in respect of a restricted children's service are evidence to which the Welsh Ministers must have regard when deciding if the provider is a fit and proper person. Paragraph 2.12 sets out the personal data items around financial arrangements regarding a relevant person which providers would have to provide to CIW in future.
- 2.20. Regarding the impact on individuals, information provided to CIW could include information relating to salaries or any bonus payments or other financial benefits relating to those within the organisation or connected organisations. Those individuals would not have control over the data once provided however specific guidance for both providers and Welsh Government would be developed to ensure robust and consistent sharing and retention arrangements, in line with best practice. Any information collected as part of CIW's regulation process (registration or inspection) would be retained in accordance with their [retention policy](#).

Describe the purposes of the processing: what do you want to achieve? What is the intended effect on individuals? What are the benefits of the processing – for you, and more broadly?

Purposes of processing – supplementary placements

- 2.21. Supplementary placements are intended to ensure that local authorities can still place children in a for-profit placement during the transitional period if that specific placement is considered to be the only way of meeting the child's well-being needs. This could be because no suitable not-for-profit provision is yet in place within a particular area as it is still in the process of being established during the transitional period (new not-for-profit providers still going through the registration process, local authorities still in the process of creating new in-house children's homes etc). Therefore this will benefit children in that the local authority will be able to place them in the most appropriate placement consistent with their wellbeing.
- 2.22. Supplementary placement applications will also enable Welsh Ministers to monitor the number of children placed in for-profit placements during this transitional period so they can determine individual local authorities' progress towards achieving sufficiency of not-for-profit provision within their individual areas, and progress across Wales as a whole. This will also benefit the decision making regarding when the most appropriate point is to bring the transition period to an end (the point at which no for-profit providers will be able to continue operating across Wales). The specific sufficiency placement applications and application process will enable Welsh Ministers to monitor progress towards ending for-profit provision in a consistent way through set procedures that provide clarity to local authorities and providers regarding data sharing arrangements.

Purposes of processing – financial arrangements

- 2.23. As previously set out there is a new requirement for unreasonable or disproportionate financial arrangements entered into by a service provider registered in respect of a restricted children's service to be taken into account when deciding if the provider is a fit and proper person. By requiring the processing of information relating to financial arrangements of individuals associated with restricted children's services Welsh Ministers will be able to determine whether any of these arrangements are unreasonable or disproportionate and if so take appropriate action. The intended effect will be to prevent unreasonable or disproportionate payments being made by a service which would be inconsistent with them having to have objects or purposes that primarily relate to the welfare of children – a key objective of the new legislation.

Step 3: Consultation process

Consider how to consult with relevant stakeholders: describe when and how you will seek individuals' views – or justify why it's not appropriate to do so. Who else do you need to involve within your organisation? Do you need to ask your processors to assist? Do you plan to consult information security experts, or any other experts?

- 3.1. A formal [public consultation on the primary legislative proposals](#) took place, over twelve weeks, between 17 August and 7 November 2022. Following the introduction of the Bill which included the specific proposals regarding supplementary placements and considering unreasonable or disproportionate financial arrangements [a further consultation was conducted](#), between 24 May and 28 June 2024 as part of Stage 1 scrutiny of the general principles of the Bill.
- 3.2. We intend to work closely with key stakeholders including CIW and local authorities as we start the process of developing the detailed guidance for supplementary placements and for how CIW considers unreasonable or disproportionate financial arrangements as part of the fit and proper person test. In addition we will continue to consult closely with our internal Information Rights Unit colleagues (as we have done when preparing this DPIA), and engage with the ICO to keep them updated on developments.

Step 4: Assess necessity and proportionality

Describe compliance and proportionality measures, in particular: what is your lawful basis for processing? Does the processing actually achieve your purpose? Is there another way to achieve the same outcome? How will you prevent function creep? How will you ensure data quality and data minimisation? What information will you give individuals? How will you help to support their rights? What measures do you take to ensure processors comply? How do you safeguard any international transfers?

4.1. The statutory basis for processing the data for both supplementary placements and financial arrangements is the requirements within the Bill therefore the processing is necessary to comply with a legal obligation (article 6(c)). The processing is also necessary for the performance of tasks carried out in the public interest (article 6(e) GDPR).

4.2. In relation to sensitive data, Article 9(2)(b) GDPR (processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by Union or Member State law providing for appropriate safeguards for the fundamental rights and the interests of the data subject). In our view the requirements of section 10 of and paragraph 1 of Schedule 1 to the Data Protection Act 2018 will be met (assuming that the controller has an appropriate policy document in

place which meets the requirements of paragraph 39 of Schedule 1 to the Data Protection Act 2018).

4.3. No other solution has been identified to meet the requirements within the Bill. Regarding supplementary placements the Bill sets out what information must be provided when making an application for approval of a supplementary placement. This includes an explanation of why the local authority considers that they should not place the looked-after child with any not-for-profit fostering provider or not-for-profit children's home provider (as applicable) that is available. Processing of special category personal data relating to children is required to provide the necessary explanation regarding the need for the supplementary placement because the local authority would need to refer to a specific child's care and support needs and individual circumstances to explain why only a particular type of placement is suitable. As per paragraph 2.22 providing this information to Welsh Ministers was also considered necessary to enable Welsh Ministers to monitor the number of children placed in for-profit placements during this transitional period so they can determine individual local authorities' progress towards achieving sufficiency of not-for-profit provision within their individual areas, and progress across Wales as a whole. This is necessary as the Bill gives regulation-making powers enabling Welsh Ministers to determine the end of the transition period, something that will be informed by progress towards use of not-for-profit provision indicated by the number of supplementary placement applications.

4.4. Regarding the processing of financial data in relation to individuals this is required to enable CIW to consider the new requirement of whether financial arrangements are unreasonable or disproportionate when determining whether a provider is a fit and proper person to be a provider of restricted children's services. Without this data CIW would not be able to make this determination.

4.5. The risk of function creep will be mitigated by preparing guidance covering the data collection. This will include specifically the purposes for which the data should be collected, limiting it to those purposes explained within this DPIA.

4.6. The quality of data will be assured by preparing guidance specifying the level of detail expected and the formats in which the data should be provided. This will give clarity to local authorities, individuals and providers and minimise the risk of data being provided in an incorrect format, or unnecessary additional data being provided.

4.7. The exact arrangements for monitoring local authority compliance on supplementary placements in terms of whether they are completing applications for every placement undertaken is still being considered however this will be area explored during development of the accompanying guidance. Likewise the exact arrangements for monitoring of financial arrangements will also be considered as part of the development process for that guidance, consulting with key internal and external stakeholders as appropriate.

Step 5: Identify and assess risks

Describe source of risk and nature of potential impact on individuals. Include associated compliance and corporate risks as necessary.	Likelihood of harm	Severity of harm	Overall risk
The sharing of more personal / special category data than is necessary for the purposes of a supplementary placement application or consideration of potentially unreasonable or disproportionate financial arrangements.	Remote as guidance will specify the appropriate level of data to be provided within a supplementary placement application, and in relation to the process for consideration of potentially unreasonable or disproportionate financial arrangements.	Minimal	Low
Risk of accidental or unlawful loss, unauthorised disclosure of or access to data shared by for the purpose of a supplementary placement application or consideration of potentially unreasonable or disproportionate financial arrangements.	Possible since despite guidance being put in place in relation to supplementary placement applications and in relation to the process for consideration of potentially unreasonable or disproportionate financial arrangements security breaches resulting from a deliberate act or human error cannot be ruled out.	Minimal	Low
Risk of implementation of inadequate technical or organisation security measures, leading to unauthorised access to or disclosure of personal data in the course of the supplementary placement application process or the process for consideration of potentially unreasonable or disproportionate financial arrangements.	Remote as guidance will specify appropriate security measures to prevent as far as possible unauthorised access to data contained within supplementary placement applications, and that provided in relation to the process for consideration of potentially unreasonable or disproportionate financial arrangements.	Minimal	Low

Unauthorised retention of data relating to either supplementary placement applications or consideration of potentially unreasonable or disproportionate financial arrangements.	Remote- as guidance will set out retention arrangements for personal data processed for the purposes of a supplementary placement applications or consideration of potentially unreasonable or disproportionate financial arrangements.	Minimal	Low
---	---	---------	-----

Step 6: Identify measures to reduce risk

Identify additional measures you could take to reduce or eliminate risks identified as medium or high risk in step 5				
Risk	Options to reduce or eliminate risk	Effect on risk	Residual risk	Measure approved

N/A – no medium or high risks identified.