

Financial Implications of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill

August 2019



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About the Committee

The Committee was established on 22 June 2016 to carry out the functions of the responsible committee set out in [Standing Orders](#) 18.10, 18.11, 19 and 20 of the National Assembly for Wales.

Under Standing Orders 19 and 20, the committee's responsibilities include considering any report or document laid before the Assembly concerning the use of resources, or expenditure from the Welsh Consolidated Fund. This includes undertaking [budget scrutiny of the bodies directly funded from the Welsh Consolidated Fund](#).

Under Standing Orders 18.10 and 18.11, the committee's responsibilities include [oversight of the governance of the Wales Audit Office](#), as set out in the [Public Audit \(Wales\) Act 2013](#).

The committee also considers any proposals for, and the progress of the [devolution of fiscal powers to Wales](#) as part of its responsibilities.

The committee may also [scrutinise legislation introduced to the Assembly](#).

Committee Chair:



Llyr Gruffydd AM
Plaid Cymru
Mid and West Wales

Current Committee membership:



Rhun ap Iorwerth AM
Plaid Cymru
Ynys Môn



Alun Davies AM
Welsh Labour
Blaenau Gwent



Mike Hedges AM
Welsh Labour
Swansea East



Rhianon Passmore AM
Welsh Labour
Islwyn



Nick Ramsay AM
Welsh Conservatives
Monmouth



Mark Reckless AM*
Brexit Party
South Wales East

The following Member was also a member of the Committee during this inquiry.



Neil Hamilton AM
UKIP Wales
Mid and West Wales

*Mark Reckless was not a Member of the Committee during consideration of evidence and agreement of the report

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Introduction

1. The Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill (the Bill) and Explanatory Memorandum (EM), including Regulatory Impact Assessment (RIA), was introduced by Julie Morgan AM, Deputy Minister for Health and Social Services (the Deputy Minister) on 25 March 2019.
2. The purpose of the Bill is to abolish the common law defence of reasonable punishment so it is no longer available to parents in Wales or those acting *in loco parentis* as a defence to assault or battery against a child. The EM accompanying the Bill states:

“Removing the defence will not interfere with the principles of the common law, which acknowledge that a parent can intervene physically, for example, to keep a child safe from harm, or help with activities such as tooth brushing.”
3. The EM goes on to say:

“The intended effect of the Bill, together with an awareness-raising campaign and support for parents, is to bring about a further reduction in the use and tolerance of the physical punishment of children in Wales.”
4. The Finance Committee (the Committee) took evidence on the financial implications on 9 May 2019 from:
 - Julie Morgan AM, Deputy Minister for Health and Social Services;
 - Karen Cornish, Deputy Director, Children and Families Division, Welsh Government; and
 - Sarah Canning, Head of Legislation, Research and Parenting Branch, Welsh Government.
5. Policy scrutiny of the Bill was undertaken by the Children, Young People and Education Committee (CYPE).
6. The CYPE Committee issued a public consultation on the Bill and received 645 responses.

1. Background

- 7.** The RIA sets out the costs and benefits of the Bill.
- 8.** The Deputy Minister said the purpose of the Bill is to “further protect children’s rights” and if the Bill is successful “it will help end the physical punishment of children in Wales by abolishing the defence of reasonable punishment”. Therefore the Deputy Minister was “committed to resourcing those very important issues”.¹
- 9.** The overall net costs of the Bill are estimated at between £2.3 and £3.7 million. The majority of those costs, £1.3m to £2.7m, fall to the Welsh Government and are primarily for awareness raising activity. The remaining costs, £971,000 to £980,000, fall to the police, Her Majesty’s Courts and Tribunals, and the Crown Prosecution Service (CPS) in terms of “compliance costs”.²
- 10.** The RIA identifies a number of unknown costs, including to³:
- social services as a result of a potential increase in referrals;
 - family courts and Children and Family Court Advisory and Support Service (Cafcass) Cymru, as a result of a potential increase in allegations of common assault against a child or children of parents involved in a family court case;
 - CPS, as a result of a potentially higher volume of requests, for charging advice from the police;
 - provide the delivery of out of court disposals;
 - review training and guidance offered by organisations involved in safeguarding of children, to ensure they are up to date.
- 11.** The Deputy Minister highlighted the difficulties in estimating the cost implications of the Bill, as there is no precedent in the UK for removing the defence of reasonable punishment, therefore data is not routinely collected.⁴

¹ RoP, paragraph 7, 9 May 2019

² Explanatory Memorandum

³ Explanatory Memorandum

⁴ RoP, paragraph 11, 9 May 2019

- 12.** Ireland has removed the defence of reasonable punishment. Part 5 (section 28) of the Children First Act 2015 provides for an amendment to the Non-Fatal Offences Against the Person Act 1997.
- 13.** The Scottish Parliament is also considering the Children (Equal Protection from Assault) (Scotland) Bill, which was introduced as a private members' Bill by John Finnie MSP, in September 2018. The Bill is currently being scrutinised by the Equalities and Human Rights Committee.
- 14.** However, the Deputy Minister said that as the legislation in Ireland was passed by an amendment to an Act, the Welsh Government “couldn't use them as a comparison because they didn't have any data and they hadn't done any preparation”.⁵
- 15.** The Deputy Minister said the Welsh Government had worked “extensively with stakeholders to try and establish the best estimates”, including the police, CPS, social services and the Ministry of Justice. She confirmed she had also “spoken to a range of stakeholders in Ireland, New Zealand and Malta” which are countries that have removed the defence and have similar legal systems to Wales.⁶
- 16.** The RIA also states an “Implementation Group” will be established to consider the extent to which current processes or guidance may need to be revised, and how to raise awareness among professionals who will be involved in the implementation of the law change.⁷
- 17.** The RIA does not include financial benefits associated with the introduction of the legislation. The Deputy Minister said she was “certain there will be benefits”, however she added:
- “there are a number of reasons why we decided not to include costs and benefits associated with the link between physical punishment and anti-social behaviour. Because the research evidence is mixed, and although many researchers suggest physical punishment is linked to anti-social behaviour, the Wales Centre for Public Policy review published in July 2018, which we actually commissioned, did not present this finding as a causal relationship.”⁸

⁵ RoP, paragraph 131, 9 May 2019

⁶ RoP, paragraph 11, 9 May 2019

⁷ Explanatory Memorandum

⁸ RoP, paragraph 15, 9 May 2019

Committee view

18. The Committee notes the Deputy Minister's comments that, as there is no precedent in the UK for removing the defence of reasonable punishment, it had been difficult to estimate the cost implications of the Bill. However, the Finance Committee expects that RIAs contain the best estimate possible for cost implications to ensure the Committee is able to fully scrutinise the overall costs and benefits of a Bill.

Conclusion 1. Throughout this report, the Committee has recommended that further financial information is provided. Should there be significant changes to the Regulatory Impact Assessment, the Committee may consider those changes in more detail.

2. Awareness raising

19. The majority of costs associated with the Bill relate to awareness raising activity that will be undertaken by the Welsh Government. These costs are estimated as a range between £1.3m to £2.7m, depending on the approach to the campaign. Three options for different awareness raising campaigns have been outlined in the RIA:

- option A: A low intensity campaign, allowing for two bursts of agreed activity in each year (£1.3m);
- option B: A medium intensity campaign in each year, with two-to-three substantial bursts of agreed activity in each year (£2.1m);
- option C: A high intensity campaign, with large bursts of agreed activity in each quarter of the year leading up to and after commencement (£2.7m).⁹

20. In evidence to the CYPE Committee on 12 June 2019, the Deputy Minister confirmed that she has committed to funding the high-intensity campaign.¹⁰

21. The Deputy Minister outlined that the Bill is part of a wider package of measures that the Welsh Government is taking to support children and their parents. Those measures include the Parenting: Give it Time campaign, and support programmes such as Flying Start and Families First, among others. She said:

“We are particularly keen that the information about this Bill and the support that this will need is incorporated in those programmes.”¹¹

22. When asked about strengthening and adapting current programmes in light of the Bill’s provisions (listed in Chapter 8 of the RIA), the Deputy Minister said a “mapping exercise” would be undertaken to scope what additional advice and information would be required to support parents “beyond what we already give”. She said this would be a “key task” for the Implementation Group (see Chapter 5) to consider.¹² During evidence to the CYPE Committee, the Deputy Minister

⁹ Explanatory Memorandum

¹⁰ CYPE Committee, RoP, paragraph 172, 12 June 2019

¹¹ RoP, paragraph 29, 9 May 2019

¹² RoP, paragraph 36, 9 May 2019

advised that the Welsh Government would give consideration to funding any gaps identified by the mapping exercise.¹³

23. The RIA includes the cost of a communications contract with an external communications agency. The RIA states the contract and “all awareness raising activity will be managed and co-ordinated by staff within the Welsh Government”.¹⁴

24. The Deputy Minister said “communication is absolutely essential” and the communications contract was procured “to provide support to both the Bill and for the ‘Parenting: Give it Time’”.¹⁵

25. The Deputy Minister confirmed costs had already been incurred under the contract in relation to the “Parenting: Give it Time” campaign, but as this was not directly related to the Bill, it was not included in the RIA.¹⁶

26. The Deputy Minister said that if the Bill did not progress, the Bill-related element of the contract could be ended with “minimal cost to Welsh Government”.¹⁷

27. In contrast to the Welsh Government’s approach, the Scottish Bill places a duty on Scottish Ministers to promote public awareness and understanding about the effect of the Bill.

28. The Deputy Minister said she did not think it was “necessary to have a clause” on the face of the Bill and she had given a commitment to both the CYPE Committee and the Finance Committee that an awareness raising campaign would be undertaken.¹⁸

29. The Bill removes the defence for all parents within Wales, including visitors to Wales.

30. The Deputy Minister said it would be “quite difficult to carry out an extensive awareness campaign” outside of Wales and there would need to be a level of obligation on visitors to find out “the laws in Wales”.¹⁹

¹³ CYPE Committee, RoP, paragraph 226, 12 June 2019

¹⁴ Explanatory Memorandum

¹⁵ RoP, paragraph 31, 9 May 2019

¹⁶ RoP, paragraph 31, 9 May 2019

¹⁷ RoP, paragraph 39, 9 May 2019

¹⁸ RoP, paragraph 171, 9 May 2019

¹⁹ RoP, paragraph 45, 9 May 2019

31. However, the Deputy Minister said that as Scotland and Wales are taking forward similar legislation, there has already been considerable press coverage in the UK press and that social media has been “very important”.²⁰

Committee view

32. The Committee welcomes the Deputy Minister’s commitment to fund a high-intensity campaign, as we believe a successful awareness raising campaign is an integral element of implementation. The Committee agrees with the Welsh Government that this will be key to ensuring the aims and objectives of the Bill are achieved. However, the level of detail that the RIA provides on the actions that will be undertaken in order to deliver this campaign is a concern. There was no evidence presented to the Committee on how the Welsh Government intends to reach the various communities in Wales, and this is an area the Committee would like to see more detail on.

33. The Committee acknowledges there may be difficulties in conducting an awareness raising campaign outside of Wales and in providing adequate information to visitors coming to Wales. However, the Committee notes Wales and Scotland are currently bringing forward similar legislation, resulting in press coverage across the UK and believes there could be merit in the Welsh Government assessing areas it could work collaboratively to raise awareness alongside the Scottish Parliament.

34. The Committee notes the intention that the Implementation Group will undertake a mapping exercise on the gaps and the provisions of the Bill. However, the Committee is disappointed that this was not undertaken prior to the Bill’s introduction. It is an expectation that RIAs provide a best estimate of the costs.

35. That mapping exercise should be used to inform an action plan that details how existing programmes will account for the change in law and where new schemes or activities may be required. The mapping exercise should also inform where individuals may not be subject to existing programmes and support, and how the Welsh Government’s awareness raising campaign can reach those individuals.

Recommendation 1. The Committee notes the public awareness campaign is costed within the Regulatory Impact Assessment. However, as this campaign will be an integral element of the Bill’s implementation, the Committee

²⁰ RoP, paragraph 45 & 47, 9 May 2019

recommends that a duty to carry out a public awareness campaign should be included on the face of the Bill.

Recommendation 2. The Committee recommends that the Welsh Government publish further details of its awareness raising campaign. In particular, how it intends to reach relevant individuals.

Recommendation 3. The Committee recommends that the outcome of the mapping exercise undertaken by the Implementation Group is included in a revised Regulatory Impact Assessment after Stage 2.

3. Costs to other organisations

3.1. Social services

36. The RIA notes that the costs to social services are currently unknown due to a lack of baseline data.²¹

37. The Welsh Government has estimated the unit cost of a referral to social services as £535, based on the costs for a referral relating to physical assault on a child that does not progress to child protection Section 47 enquiries²². This includes:

- administrative costs and agency checks (£60);
- review and support by senior social worker (£75);
- multi-agency strategy discussion (£100);
- two to three visits with family for voluntary sector/early intervention support (£300).

38. The Welsh Government has been unable to estimate the potential increase in referrals to social services associated with cases of reasonable punishment and the RIA does not include an estimate of the costs. The RIA notes:

“Due to the fact that the defence currently exists, social services in Wales do not specifically collect information on physical punishment. There is therefore no published or readily available data to use as a baseline for referrals to social services of cases of reasonable punishment.”²³

39. In a letter to the CYPE Committee on 5 April 2019 the Deputy Minister expanded on this, stating:

“We have carried out a lot of work to try to establish a baseline for social services referrals. As part of this work with local authorities, we have been able to establish that local authorities do not necessarily record the specific details of a referral or report of an incident in the first

²¹ Explanatory Memorandum

²² Section 47 of the Children Act 1989 places a duty on local authorities to investigate if it appears to them that a child in its area is suffering or is at risk of suffering significant harm

²³ Explanatory Memorandum

instance in a searchable form. The details of each individual case, record or report are normally established later in the process. This has presented challenges in separating out data relating to the physical punishment of children where the defence of reasonable punishment would apply.”²⁴

40. The Deputy Minister confirmed the Welsh Government was working with five social services teams “to establish a meaningful estimate for current reports of reasonable punishment”.²⁵ She said:

“we’ll be working with the implementation group and with the relevant task and finish group under that implementation group to establish a method to collect much more specific and long-term data on the levels of reasonable punishment before and after the implementation of the Bill. Because we’re not going to be able to measure whether the Bill has been a success unless we have something to measure it against.”²⁶

41. In terms of whether the removal of the defence will lead to an increased number of referrals to social services, the Deputy Minister said that evidence from other countries shows “there is not a flood of referrals”²⁷. She said she didn’t anticipate there will be a “huge impact”.²⁸

42. This was reiterated to the CYPE Committee on 13 Jun, when the Deputy Minister stated, “I don’t think, really, we have to fear that social services would be overwhelmed, but we must be prepared, and we must get this data and monitor it closely”.²⁹

43. The RIA notes that costs relating to social services and the police will be considered by the Implementation Group, and the Group will monitor the potential impacts of the legislation after commencement, including resource implications.

44. During the Deputy Minister’s statement to Plenary on the Bill’s introduction (March 2019), she stated:

²⁴ Letter from the Deputy Minister, 5 April 2019

²⁵ RoP, paragraph 57, 9 May 2019

²⁶ RoP, paragraph 57, 9 May 2019

²⁷ RoP, paragraph 80, 9 May 2019

²⁸ RoP, paragraph 85, 9 May 2019

²⁹ CYPE Committee, RoP, paragraph 74, 12 June 2019

“On that implementation group, we plan for these different groups to work together very closely in order to look at any implications in a very detailed way, so we will be involving all those organisations that he mentioned. Of course, all of them have said that it may need more resource in order to make this happen.”

45. Councillor Huw David, Leader of Bridgend County Borough Council and Welsh Local Government Association (WLGA) Spokesperson for Health and Social Care, reiterated this to the CYPE Committee. When asked whether he anticipated any unintended consequences of the Bill, he stated:

“If we implement it carefully, if we implement it with the right resources, then I hope not. I think not. But as with every piece of legislation, it is about the implementation, it is about the cultural change as well, and that’s why I cannot overstate the importance of making sure that resources are made available, because our social services departments—children’s social services in particular—are overstretched. They are at breaking point—make no bones about it—and they are dealing with children who are facing serious harm and neglect.”³⁰

Committee view

46. The Committee is concerned about the financial impact the Bill may have on social services. Whilst the Committee notes that some information has been provided on the unit cost, this does not go far enough. The Committee also notes the Deputy Minister’s comment in Plenary that organisations have already suggested they “may need more resource” to deliver the Bill.

47. Given the lead-in time for the development of this Bill, the Committee believes more progress should have been made in establishing a baseline cost for referrals to social services. Considering the current financial issues facing local government, the Welsh Government should prioritise analysis of this information when it updates the RIA.

Conclusion 2. Due to the lack of information on referrals to social services, the Committee is unable to draw a conclusion as to the value for money of this aspect of implementation. The Committee is also concerned that as the Regulatory Impact Assessment stands, it does not provide stakeholders, such as

³⁰ CYPE Committee - RoP, paragraph 35, 8 May 2019

local authorities, with a full indication of the potential resources the Bill may require.

Recommendation 4. The Committee recommends that the Welsh Government prioritises establishing a baseline cost for referrals to social services and this should be included in a revised Regulatory Impact Assessment.

3. 2. Police referrals

48. The RIA estimates there is likely to be 274 referrals per annum to the police relating to the removal of the defence, at a cost of £178,000 based on a unit cost of £650.³¹

49. The RIA notes the four police forces in Wales, in coordination with the Police Liaison Unit (PLU), conducted a retrospective audit of recorded crime offences relating to common assault and cruelty to children covering a period of 19 months in order to establish the baseline of 274 referrals (outlined in detail in Annex 7 of the EM and RIA).

50. The Deputy Minister said she was “confident” the baseline provided by the police “is as robust as it can be under the current circumstances”.³² She said:

“...with the police, the data on reasonable punishment is not routinely collected. So we’re in the same position with the police, but they have been able to go back over their records and have come forward with this figure, which, as I say, the officials have been through the methodology, and feel very satisfied that this 274 is an adequate figure.”³³

51. In the Deputy Minister’s letter she provided further information on the retrospective audit carried out by the police forces and the PLU. She said:

“The police manually analysed a sample of the results to determine which proportion related to reasonable punishment, and identified that one in seven/eight did, depending on the specific police force. The police identified a sample size for review large enough to provide 90% confidence in their estimate that 274 crimes identified by the search

³¹ Explanatory Memorandum

³² RoP, paragraph 89, 9 May 2019

³³ RoP, paragraph 89, 9 May 2019

would relate to physical punishment. This estimate would be subject to a small margin of error (± 25 crimes).³⁴

52. The Deputy Minister reiterated the point that she hadn't "received any indication that either police or social services were overwhelmed following law reform"³⁵ in other countries, citing Ireland and New Zealand as examples.³⁶

53. The RIA notes the Welsh Government is working with the police to explore the potential for including community resolutions as one of the out of court disposals that may be offered.

54. The Deputy Minister said prosecutions would only take place "if it's in the public interest and in the child's interest". Therefore, the Deputy Minister would like "to divert people to community solutions or maybe we'll have to consider a special diversion scheme" and she would be relying on the Implementation Group "to look at the existing diversion schemes".³⁷

55. The Deputy Minister said the cost of diversion schemes would fall to the Ministry of Justice. She also confirmed she would not "want anybody paying to go on a course".³⁸ The Deputy Minister elaborated on this in her letter to CYPE Committee:

"The way courses are funded varies between police forces. They are usually paid for through funding from the PCC; by the offender themselves, or are already available and funded in the community. It is possible that existing provision could be utilised. The Implementation Group, which will include representatives from key organisations, will consider the use of out of court disposals, including community resolutions and conditional cautions. Planning around implementation will also consider the most appropriate models of delivery, guidance, funding and resourcing arrangements."³⁹

³⁴ Letter from the Deputy Minister, 31 May 2019

³⁵ RoP, paragraph 120, 9 May 2019

³⁶ RoP, paragraph 121-125, 9 May 2019

³⁷ RoP, paragraph 149, 9 May 2019

³⁸ RoP, paragraph 151 & 153, 9 May 2019

³⁹ Letter from the Deputy Minister, 25 April 2019

3. 3. Number of prosecutions that might occur in Wales as a result of the legislation

56. The RIA states that in the absence of any other reliable data to make estimates of the number of prosecutions that might occur in Wales as a result of the legislation, the police data from New Zealand has been used as a proxy to provide an estimate of potential numbers of cases prosecuted in Wales in the five years following commencement. The estimated number of cases over five years is 38.

57. In the Deputy Minister’s letter of 31 May 2019, she said that a justice impact assessment had been developed in consultation with the Ministry of Justice that included an estimated cost to the justice system using the New Zealand data as a proxy and that “this approach was agreed with the Ministry of Justice”.⁴⁰

58. The Deputy Minister’s official said the estimated number of 38 prosecutions could “potentially” be lower following awareness raising and the additional information and support that would be provided by the Bill.

59. In the Deputy Minister’s letter she confirmed that in New Zealand there was no specific educational and media campaign to explain the law change. Therefore, as the Welsh Government has made a commitment to undertake an awareness campaign in Wales, she anticipates “that the number of cases proceeding to prosecution would reduce over time”.⁴¹

60. The Deputy Minister’s official said that New Zealand had spent a period of three months pre-commencement “collecting information about the types of physical assaults that were taking place”.⁴² She said:

“That is our intent: to actually work with colleagues and a range of our stakeholders to develop a way of collecting information pre commencement, should the Bill achieve Royal Assent, and then we can compare that effectively post commencement.”⁴³

61. In relation to training requirements for professionals as a result of the Bill, the Deputy Minister said that as it is removing the defence rather than creating a new offence “there’s no need to have any training”. She said:

⁴⁰ Letter from the Deputy Minister, 31 May 2019

⁴¹ Letter from the Deputy Minister, 31 May 2019

⁴² RoP, paragraph 69, 9 May 2019

⁴³ RoP, paragraph 69, 9 May 2019

“...professionals already receive and investigate reports of children being assaulted and there are established procedures to determine on a case-by-case basis how best to proceed. And so, in nearly all of these cases, the professionals already receive safeguarding training to a certain level and at a frequency appropriate to their role, and we anticipate that any changes to legislation would be incorporated in the training that already takes place.”⁴⁴

62. The RIA states that as a consequence of the Bill some bodies and organisations may require their own guidance to be updated for their members and or employees. The RIA notes that the Implementation Group will consider the extent to which current processes or guidance might need to be amended.

63. However, the Deputy Minister said:

“in terms of any guidance change, the organisations that are involved change their guidance all the time, and we don’t really see that this will have any financial impact on them at all—that they would, as a matter of routine, change the guidance, and that would be part of the run of the mill, their daily work.”⁴⁵

64. The Deputy Minister said before she can “really be clear on resource implications” for organisations, she will be asking the Implementation Group to “consider data collection and the monitoring arrangements that will need to be put in place”.

65. The Deputy Minister’s official also referred to the fact that the Bill does not create any new offences and therefore she would not anticipate organisations “having to create a new system”. She added:

“What we would suggest is that they would be incorporating data collection into existing activities. So, if you take the social services data, where we’ve said at the moment they do collect data on physical abuse, but the sub-categories are limited and, at the moment, don’t relate to physical punishment. So, potentially, this is a sub-category of something that they’re already looking at and monitoring—.”⁴⁶

⁴⁴ RoP, paragraph 114, 9 May 2019

⁴⁵ RoP, paragraph 160, 9 May 2019

⁴⁶ RoP, paragraph 165, 9 May 2019

Committee view

66. The Committee does not agree with the Deputy Minister's view that there will not be a financial impact for organisations to update guidance and this statement is inconsistent with acknowledgements in the RIA around anticipated costs in these areas.

67. Any activity undertaken by an organisation as a result of the implementation of the Bill should be considered and, where appropriate, described and costed in the RIA. While updating guidance to take account of new legislation could be part of a staff member's role, this may still lead to opportunity costs where staff time has been required for an action associated with the legislation.

68. Whilst the Committee accepts, to some extent, that there may not be a requirement for additional training specific to the legislation, safeguarding training that is already being delivered will need to be amended. Successful delivery of the aspirations of the legislation depends on safeguarding professionals having clarity over the current law.

69. The RIA again suggests that the Implementation Group will explore further the requirements around guidance and training. As has been stated already in this report, the Committee is surprised and disappointed that the work of the Implementation Group will commence after the RIA has been published.

70. In previous RIAs, the Welsh Government has been consistent in providing information on the updating of guidance etc, and the Committee expects this information to be included in RIAs in the future. The Committee believes there is a cost implication to this aspect of the Bill and would have expected to see this included in the RIA.

71. During the Committee's session with the Deputy Minister, diversion schemes were discussed. This mechanism has not been costed in the RIA. Should the Welsh Government be considering diversion schemes as a possible aspect of implementing the Bill, further work should be undertaken on the cost implications.

72. The Committee notes the methodology for calculating the number of referrals to police and the number of prosecutions do not directly link to each other. Whilst the Committee understands the difficulties in gathering this data and appreciates the approach that has been taken to these two areas, the Committee would like to see a clear link in the number of referrals and the number of prosecutions.

Conclusion 3. The Welsh Government has not offered any costings in terms of guidance and training. The Committee cannot therefore draw a conclusion as to value for money of those activities, or whether the resources associated with those activities seem adequate and reasonable to deliver the aspirations of the legislation.

Recommendation 5. The Committee recommends that further work is undertaken on the cost implications of diversion schemes and this information is included in a revised Regulatory Impact Assessment.

Recommendation 6. The Committee recommends the Welsh Government considers how to ensure there is a clear link between estimated referrals to the police and prosecutions for offences that previously would have been covered by the defence of reasonable punishment. This information should be included in a revised Regulatory Impact Assessment.

Recommendation 7. The Committee recommends that the Welsh Government provides a full assessment of any costs to updating guidance and training and this information is included in a revised Regulatory Impact Assessment.

4. Implementation Group

73. The RIA notes the role of an “Implementation Group” at various points. The RIA states:

“An Implementation Group will be established to consider the extent to which current processes or guidance may need to be revised, and how to raise awareness among professionals who will be involved in the implementation of the law change.”

74. The membership of the Implementation Group is not set out in the RIA. However, the Deputy Minister confirmed the Group will include representatives from the police, the police and crime commissioners, the CPS, the Association of Directors of Social Services (ADSS), the Association of Directors of Education in Wales (ADEW), WLGA, the legal profession and third sector representatives. She said:

“I see this implementation group as absolutely crucial, because this is where we’ll have the key agencies meeting together. The first meeting is ... well in advance of the Bill coming through the Assembly and well in advance of any Royal Assent or implementation.”⁴⁷

75. In terms of the Implementation Group’s remit, the Deputy Minister said “we have suggested some areas that we think the group will need to consider”⁴⁸ such as “possible work streams and task and finish groups”⁴⁹. However, “we see this group as setting their own timetable and their own issues about which are the key ones to deal with, because how this actually operates on the ground is the important thing”.⁵⁰

76. The Deputy Minister’s letter to the CYPE Committee detailed possible workstreams for the Group:

“From previous engagement with stakeholders, we anticipate the workstreams could include: - advice, guidance, support and information for parents; data collection, monitoring and evaluation; operational processes, procedures, guidance and interaction between agencies; and out of court disposals, including possible diversionary schemes. The

⁴⁷ RoP, paragraph 142, 9 May 2019

⁴⁸ RoP, paragraph 145, 9 May 2019

⁴⁹ RoP, paragraph 145, 9 May 2019

⁵⁰ RoP, paragraph 144, 9 May 2019

full range of work to be covered will be tested with the Implementation Group.”⁵¹

77. The costs of the Implementation Group itself is not included in the RIA. When questioned as to how much the Group would cost, the Deputy Minister replied:

“...we see it as people doing their jobs as they are—they’re opportunity costs. We see that as part of the ongoing work. We set up groups all the time that people do as part of the run of their jobs. So, we see that as part of that.”⁵²

Committee view

78. The Committee notes that the Implementation Group appears to have an important role to play in assessing the activities that will be required to successfully deliver the Bill. At various points the RIA suggests that the Group will have responsibility for considering what is implemented and how this is done. This has led to aspects of the RIA appearing incomplete whilst awaiting the Group’s input.

79. The Committee is concerned that, although it appears to have an integral role in delivering the legislation, the resourcing of the Implementation Group (for example the time of professionals to attend and any secretariat) has not been accounted for or acknowledged in the RIA. The time professionals will spend as members of this Group is an opportunity cost and so the Group must provide value for money.

80. While the Committee accepts that costs will develop over the course of a Bill’s passage, it is clear that the work of the Implementation Group will be key to the delivery of the legislation. The Committee is concerned that this work was not undertaken in such a way that it could have informed the Assembly’s scrutiny process.

Conclusion 4. As has been noted at multiple points in this report, the Committee is disappointed that the work of the Implementation Group is taking place after the Committee conducts its scrutiny. The Committee will be keen to understand how that Group develops its plans for implementation and whether

⁵¹ Letter from the Deputy Minister, 25 April 2019

⁵² RoP, paragraph 156, 9 May 2019

this provides detail to areas on which the Committee has been unable to draw a conclusion in its scrutiny.

Conclusion 5. The Committee is disappointed that the activities and resourcing of the Implementation Group have not been included in the RIA and is surprised that the Welsh Government did not see it as a priority to establish this Group prior to introducing the Bill, in order to fully understand how the objectives of the Bill would be delivered.

Recommendation 8. The Committee recommends that the Welsh Government publishes a workplan for the Implementation Group and specifically highlights any areas relating to resourcing activities associated with the Bill.

5. Post implementation review

81. The RIA notes the Implementation Group will have a role in monitoring the legislation, specifically in terms of any changes following commencement and how these take account of existing procedures.

82. The post implementation review in the RIA also notes the effects of the Bill will be monitored “in a number of ways”, including through research and evaluation and routine data collection with stakeholders.⁵³

83. Correspondence from the Deputy Minister provides further information on this:

“Through the Implementation Group further work will take place with the police, and other key stakeholders, to agree the approach to data collection pre and post the change in the law (if the Bill is passed) with the intention of developing the baseline and future monitoring requirements.”⁵⁴

84. In relation to the cost of post implementation review, the Deputy Minister’s official said:

“It’s not specifically mentioned in the RIA, because I think that would be part of our everyday work as the Bill team. As things progress, there will still be people dedicated within Welsh Government to look at these issues, and I think at that point then we’d have to look at—. I suppose it’s possible we might need to get some external help, but we don’t know that at the moment. We might be able to deal with it internally in terms of the review.”⁵⁵

85. The RIA also outlines that public awareness will be tracked using “representative surveys” to monitor changes in attitudes and prevalence of parents reporting they use physical punishment.⁵⁶

⁵³ Explanatory Memorandum

⁵⁴ Letter from Deputy Minister, 31 May 2019

⁵⁵ RoP, paragraph 75, 9 May 2019

⁵⁶ Explanatory Memorandum

86. The Deputy Minister’s official said they hadn’t “anticipated that cost at the moment” for the representative surveys. She said it would be undertaken by an external provider and the cost is likely to be “between £10,000 and £25,000”.⁵⁷

Committee view

87. The Committee is pleased that a post implementation review is included in the RIA and considers the methodology outlined a potentially effective way of monitoring the outcomes of the legislation.

88. The Committee believes inclusion of a robust post implementation review is good practice and helps to ensure the objectives of legislation are being delivered in line with expectations and that value for money has been achieved.

89. However, the Committee is concerned that the post implementation review contains significant data gathering and monitoring activities that have not been fully costed. The Committee notes the Deputy Minister’s intention to establish a baseline of information and her official acknowledged the possibility of a requirement for external support for certain post implementation review activities. However, the Committee would expect the resourcing implications of these activities, or an indication of this information, to be contained in the RIA in order to enable effective scrutiny of the costs associated with the proposals.

Recommendation 9. The Committee recommends the Welsh Government analyse its post implementation review strategy, with consideration given to the resourcing of the activities it intends to undertake. This information should be included in a revised Regulatory Impact Assessment.

⁵⁷ RoP, paragraph 182 & 184, 9 May 2019