

Health and Social Care Committee

HSC(4)–07–13 paper 1

Legislative Consent Memorandum: Children and Families Bill

To: Health and Social Care Committee

From: Legislation Office

Meeting date: 28 February 2013

Purpose

1. To invite the Committee to consider its approach to a Legislative Consent Memorandum (LCM) for the Children and Families Bill.

Background

2. On 12 February 2013, the Minister for Health and Social Services laid a Legislative Consent Memorandum (Annexe 1) for the Children and Families Bill¹, which is currently before the UK Parliament.

3. On 19 February 2013, the Business Committee referred the Memorandum to both the Health and Social Care Committee and the Children and Young People Committee for consideration and agreed a reporting deadline of 11 April 2013 in order to allow a Legislative Consent Motion to be debated in plenary on 16 April 2013.

4. The reporting deadline of 16 April falls within the Easter recess. In practice, this means that the Committee will need to conclude its work and report by Friday 22 March.

¹ Legislative Consent Memorandum available via <http://services.parliament.uk/bills/2012-13/childrenandfamilies.html>

The Memorandum

5. The Memorandum was laid by the Minister for Health and Social Services in accordance with Standing Order 29.4.
6. Members will wish to consider in particular—
 - Paragraphs 6–10, which set out the relevant provisions in the Bill for which consent is sought,
 - Paragraphs 13–14, which set out the advantages of utilising the provisions within the Bill rather than including similar provisions in an Assembly Bill.

Legal Advice Note

7. A Legal Advice Note (attached at Annexe 2) from the Committee’s legal adviser:
 - provides further background on the Bill and the provisions for which consent is sought; and
 - confirms that the provisions outlined in the LCM fall within the National Assembly’s legislative competence and that consent is, therefore required
 - suggests some matters that the Committee may wish to consider and question (paragraphs 14 and 15).

Main effect of the provisions for which consent is sought

8. Consent is being sought in relation to two provisions in the Bill relating to—
 - i. the dis-application of the Adoption and Children Act Register to Wales (Part 1, clause 6 and Schedule 1); and
 - ii. the preparation of a care plan (clause 15(2)).
9. In relation to adoption, the Bill seeks to amend the Children Act 2002 so that the Secretary of State will no longer have the power to direct Welsh local authorities to provide information for the Adoption and Children Act Register.
10. In relation to the preparation of a care plan, the Bill seeks to amend the Children Act 1989 to provide that, in relation to Wales, the Welsh

Ministers, rather than the courts as is currently the case, will have the power to set time limits for the preparation of a care plan by a local authority. The Bill also seeks to clarify that Welsh Ministers will now have powers to 'prescribe' the content and form of the care plan.

Consideration of the Memorandum

11. Given the timeframe within which the Committee must consider and report on the Memorandum, the options available are somewhat limited:

- i. note the Memorandum – the Committee may consider that it is content with the memorandum and report to this effect;
- ii. write to the Minister seeking clarification, prior to the plenary debate, on the points raised in paragraphs 14 and 15 of the legal advice note;
- ii. invite the Minister to attend a meeting of the Committee to answer questions about the Memorandum (given the Committee's work commitments, this is likely to be difficult within the time available and may mean having to ask the Business Committee for additional time to consider the Memorandum).

12. The Committee will also wish to consider how to work with the Children and Young People Committee in order to avoid unnecessary duplication.

Action

13. The Committee is invited to consider and agree its approach.

LEGISLATIVE CONSENT MEMORANDUM

CHILDREN AND FAMILIES BILL

Legislative Consent Motion

1. “To propose that the National Assembly for Wales, in accordance with Standing Order 29.6, agrees that provisions of the Children and Families Bill, relating to amendments to the Children Act 1989 (section 31A (4A)) and sections 125 to 131 of the Adoption and Children Act 2002 in so far as they fall within the legislative competence of the National Assembly for Wales should be considered by the UK Parliament.”

Background

2. The Legislative Consent Motion at paragraph 1 above has been tabled by Lesley Griffiths, Minister for Health and Social Services, under Standing Order 29.6 of the Standing Orders (“SO”) of the National Assembly for Wales (the “National Assembly”). This Legislative Consent Memorandum is laid under SO29.2. SO29 prescribes that a Legislative Consent Motion must be tabled, and a Legislative Consent Memorandum laid, before the National Assembly if a UK Parliamentary Bill makes provision in relation to Wales for a purpose that falls within the legislative competence of the National Assembly or has a negative impact on that competence.

3. The Children and Families Bill (the “Bill”) was introduced into the House of Commons on the 4 February 2013. The Bill can be found at:
<http://services.parliament.uk/bills/2012-13/childrenandfamilies.html>

Summary of the Bill and its Policy Objectives

4. The Bill is sponsored by the Department for Education (DfE) to make legislative changes to reform support to children and families. The first half of the Bill seeks to improve services for children and young people by reforming the systems for adoptions, Looked after Children, family justice and Special Education Needs. The second half seeks to encourage growth in the childcare sector, shared parental leave and ensuring children in England have strong advocates for their rights. The Bill includes provisions relating to;

- (a) Reform of the family justice system in England and Wales¹ to tackle delays in public law cases;
- by implementing a 26 week time-limit for care and supervision cases; reduce the excessive use of experts' reports; remove unnecessary duplication; and ensure the impact of the child is considered when timetabling decisions are made, and
 - in private family law - by requiring parents to attend a family mediation and assessment meeting before applying to court; send a clear signal to separated parents that courts will take account of the principle that both

¹ FJR review of the family justice system for England and Wales and written statement
<http://wales.gov.uk/topics/childrenyoungpeople/parenting/help/justice/?jsessionid=F5E2D1B1C006F79F4176E6D249D006D4?lang=en>
<http://wales.gov.uk/about/cabinet/cabinetstatements/2012/familyjusticereviewupdate/?lang=en> ,

Annexe 1

should continue to be actively involved in their children's lives where that is safe and consistent with the child's welfare; and introduce a new "child arrangements order" so that the courts can make full use of powers to direct parents to undertake activities aimed at helping them to make child arrangements work; and streamline divorce processes for the courts.

- (b) Adoption to deliver on reforms to; reduce delays in the adoption system; widen the use of 'Fostering for Adoption'; improve the support available to adopters and the arrangements for the recruitment and assessment of prospective adopters and to make the Adoption and Children Act Register on a statutory register in its application to England.
- (c) Looked after children: the need to reform the contact arrangements between a child in the care of the local authority and their birth family and certain other people, and to require every local authority in England to designate an officer to act as its 'Virtual School Head' (VSH) for the children it looks after.
- (d) To reform the Special Educational Needs (SEN) system in England to; improve support for 16-25 year olds, offer a personal budget to children and families, require better collaboration between services; clearer information about the support available; streamline assessment processes and plans.
- (e) Shared Parental Leave and Flexible Working; to introduce a system for shared parental leave and shared statutory parental pay as well as reform the system that gives individuals the right to request flexible working.
- (f) Childcare, to increase flexibilities for childminders by the introduction of childminder agencies.
- (g) Office of the Children's Commissioner for England – to enhance the commissioner powers in promoting and protecting children's rights and greater independence from UK Government. The changes will apply to the Commissioner's role in promoting and protecting the rights of children in the devolved administrations, but only in relation to non-devolved matters.

5. With the exception of 4 (b) (c) (d) and (f) above provisions in the Bill extend to Wales.

Provisions in the Bill for which consent is sought

6. The provisions for which consent is sought are contained within Part 1, clause 6 and Schedule 1, and Part 2, clause 15 (2) of the Children and Families Bill, and relate to:

- (i) the dis-application of the Adoption and Children Act Register to Wales;

Provisions in relation to the Adoption and Children Act Register amend sections 125 – 131 of the Adoption and Children Act 2002 so that the Secretary of State will not have the power to direct Welsh local authorities to provide information for the register, and the Order in Council provision (which is the current secondary legislation vehicle) is to be removed and replaced with a regulation making power on the Secretary of State.

The provisions relate to the issues that are within the legislative competence of the Assembly, in that they concern adoption. Adoption is a matter within subject heading 15 of Schedule 7, Government of Wales Act 2006.

- (ii) the preparation of a care plan;

Annexe 1

This provision prescribes that, in relation to Wales, the Welsh Ministers have the regulation making powers in respect of setting time limits for the preparation of a care plan by a local authority (a power that is currently vested in the courts).

7. The proposed new section 31A reads as follows:

- (1) *Where an application is made on which a care order might be made with respect to a child, the appropriate local authority must, within such time as may be prescribed prepare a plan (“a care plan”) for the future care of the child.*
- (2) *While the application is pending, the authority must keep any care plan prepared by them under review and, if they are of the opinion some change is required, revise the plan, or make a new plan, accordingly.*
- (3) *A care plan must give any prescribed information and do so in the prescribed manner.*
- (4) *For the purposes of this section, the appropriate local authority, in relation to a child in respect of whom a care order might be made, is the local authority proposed to be designated in the order.*
- (4A) *In this section prescribed*
 - (a) *in relation to a care plan whose preparation is the responsibility of a local authority for an area in England, means prescribed by the Secretary of State: and*
 - (b) *in relation to a care plan whose preparation is the responsibility of a local authority in Wales, means prescribed by the Welsh Ministers.*
- (5) *In section 31(3A) and this section, references to a care order do not include an interim care order.*
- (6) *A plan prepared, or treated as prepared, under this section is referred to in this Act as a “section 31A plan”.*

8. There are 2 elements of Section 31A that are to be amended and they are underlined above:

- Firstly, under the current provision the time limit for the preparation of the care plan is determined by the court. However, the new provision will amend section 31A(1) and will remove the power of the court to set the time limit and instead impose a regulation making power upon Welsh Ministers (in relation to Wales) to set such a time limit.
- Secondly, the clause creates a new provision, section 31A(4A) which is intended to supplement the current section 31A(3) which states:

“A care plan must give any prescribed information and do so in the prescribed manner.”

9. The word “prescribed” was never defined when the original and subsequent amendments have been made to this provision. The new section 31A(4A) clarifies the position by prescribing that the Secretary of State has the function in relation to England and the Welsh Ministers in relation to Wales.

10. Both of the proposed amendments to section 31A fall within the legislative competence of the Assembly in that they concern care planning – a subject which falls

Annexe 1

within Schedule 7 , Subject 15 (social welfare)and is concerned with social services, protection and well being of children and the care of children.

Interdependency with the Social Services & Wellbeing (Wales) Bill

11. Local authorities duties to provide a plan for children with care and support needs, including looked after children, is contained within the Social Services and Well-being (Wales) Bill. This is a holistic plan that sets out the health, education, physical, emotional and social development of a child including with whom and where the child lives etc. It is intended that the section 31A plan (court plan) required under the Children Act 1989 will be a component part of the holistic plan local authorities will be required to prepare under Part 4 (section 38-39) of the Social Services and Well-being (Wales) Bill. Therefore in practice a child will have one integrated plan.

12. The Social Services and Well-being (Wales) Bill (Part 9, section 151) provides for Welsh Ministers to direct local authorities to enter into joint arrangements in relation to their functions for the maintenance of adoption services. It enables the Welsh Ministers to deliver on the national adoption support service that will also consider the future development of a national adoption register for Wales.

Advantages of utilising this Bill

13. Family law and proceedings are not devolved and it is the Welsh Government's view that this UK Bill represents the most appropriate and proportionate vehicle to enable the provisions on family justice reforms to apply in relation to public bodies in Wales. It will also ensure there is a consistent approach across England and Wales in the family justice courts handling of family law cases, and local authorities and Welsh Family Proceeding Officers (Cafcass Cymru) handling of cases in relation to public and private law proceedings

14. Local authorities' functions for adoption of children are devolved. The new provisions in the Children and Families Bill provided a timely opportunity to legislate to dis-apply the pre-existing provisions in relation to Wales.

Financial implications

15. There are no anticipated financial implications for the Welsh Government associated with the provisions discussed in this memorandum. Local authorities will as they do now be required to make a care plan for a child who they are looking after. Changes under the SS&W Bill also provide for integration of plans for children with care and support needs – including the requirements under Section 31 (Children Act 1989) a court plan. Similarly provisions to make the Adoption and Children Act Register a “*statutory register*” do not extend to Wales, and therefore there are no financial burdens anticipated.

Lesley Griffiths
Minister for Health and Social Services

Annexe 2
ASSEMBLY RESTRICT

Paratowyd y ddogfen hon gan gyfreithwyr Cynulliad Cenedlaethol Cymru er mwyn rhoi gwybodaeth a chyngor i Aelodau'r Cynulliad a'u cynorthwywyr ynghylch materion dan ystyriaeth gan y Cynulliad a'i bwyllgorau ac nid at unrhyw ddiben arall. Gwnaed pob ymdrech i sicrhau bod y wybodaeth a'r cyngor a gynhwysir ynddi yn gywir, ond ni dderbynnir cyfrifoldeb am unrhyw ddibyniaeth a roddir arnynt gan drydydd partïon.

This document has been prepared by National Assembly for Wales lawyers in order to provide information and advice to Assembly Members and their staff in relation to matters under consideration by the Assembly and its committees and for no other purpose. Every effort has been made to ensure that the information and advice contained in it are accurate, but no responsibility is accepted for any reliance placed on them by third parties

Legal Advice Note

LEGISLATIVE CONSENT MEMORANDUM CHILDREN AND FAMILIES BILL

Background

1. On the 12th February 2013, Lesley Griffiths AM, Minister for Health and Social Services gave notice of a motion in the following terms -

“To propose that the National Assembly for Wales, in accordance with Standing Order 29.6, agrees that provisions of the Children and Families Bill, relating to amendments to the Children Act 1989 (section 31A (4A)) and sections 125 to 131 of the Adoption and Children Act 2002 in so far as they fall within the legislative competence of the National Assembly for Wales should be considered by the UK Parliament.”
2. The Legislative Consent Memorandum (“LCM”) was considered on the 19th February 2013 by the Business Committee, who agreed that the LCM could be considered by both the Children and Young Persons Committee (“the CYP Committee”) and the Health and Social Care Committee (“the HSC Committee”) because the provisions in the Bill for which consent was sought related to sections in the Social Services and Well-being Bill that were being scrutinised by both Committees. The Legislative Consent Motion is due to be debated in plenary on Tuesday 16 April 2013. This Note is intended to inform that consideration.

The Bill

3. The Bill was introduced in the House of Commons on the 4th February 2013. The Bill can be found at -
<http://services.parliament.uk/bills/2012-13/childrenandfamilies.html>

4. The main purpose of the Bill (according to the Explanatory Note) is to make legislative changes to reform support to children and families. The first half of the Bill seeks to improve services for children and young people by reforming the systems for adoptions, Looked after Children, family justice and Special Educational Needs. The second half seeks to encourage growth in the childcare sector, shared parental leave and ensuring children in England have strong advocates for their rights.

Legislative Competence

5. The LCM identifies the Assembly's legislative competence under 'Adoption' and 'Social Welfare' under Schedule 7, subject 15 of the Government of Wales Act 2006 ("GOWA 2006") as being relevant.

Provisions in the Bill for which consent is sought

6. Paragraph 6 of the LCM lists the provisions for which consent are sought. They are contained within Part 1, clause 6 and Schedule 1, and Part 2, clause 15(2) of the Children and Families Bill.

Adoption register

7. Part 1, clause 6 and Schedule 1 makes changes in relation to the law on adoption. The provisions amend sections 125 to 131 of the Adoption and Children Act 2002 so that the Secretary of State will no longer have the power to direct Welsh local authorities to provide information for the Adoption and Children Act Register.
8. This change has been made with the foresight that the Welsh Ministers will make plans of their own in relation to a Welsh adoption register. Section 151 of the proposed Social Services and Well-being Bill provides for Welsh Ministers to direct local authorities to enter into joint arrangements in relation to their function for the maintenance of adoption services. The LCM states that this will allow the Welsh Ministers to deliver on the national adoption support service that will also consider the future development of a national adoption register for Wales.

The preparation of care plans

9. Clause 15(2) of Part 2 of the Children and Families Bill amends the Children Act 1989 and inserts a new section 31A. The new section provides that in relation to Wales, the Welsh Ministers will have the regulation making powers in respect of setting time limits for the preparation of a care plan by a local authority, a power that is currently vested in the courts.

10. The new provision inserted into the Children Act 1989 will also state that “a care plan must give any prescribed information and do so in the prescribed manner.” The word “prescribed” was never defined in the original enactment or in any of the subsequent amendments. However, the new section 31A(4A) clarifies the position by stating that the Secretary of State will have the function in relation to England and the Welsh Ministers in relation to Wales.
11. The Social Services and Well-being Bill also sets out provisions by placing duties on local authorities to provide a plan for children with care and support needs, including looked after children. The care plans are intended to set out in detail the health, education, physical, emotional and social development of a child including with whom and where a child lives. It is intended that the section 31A plan (court plan) required under the Children Act 1989 will be a component part of the holistic plan local authorities will be required to prepare under Part 4 (section 38-39) of the Social Services and Well-being Bill. Therefore, in practice a child will have one integrated plan.

Conclusion

12. It is the view of Legal Services that the Bill will make provision in relation to Wales, for a purpose within the Assembly’s legislative competence.
13. Standing Order 29.7 provides that the Assembly must consider a legislative consent motion which has been tabled.
14. The Committee may wish to consider and question why these provisions were not included within the Welsh Government’s Social Services and Well-being Bill, as they do inter-relate with provisions contained within it and this would have complemented the Welsh Government’s intention to consolidate legislation wherever possible. Although the provision in relation to care plans does remove a power vested in the Court, and family law and proceedings are not devolved, if these provision were planned in any event, timely inter-governmental discussions might have allowed these provisions to be contained in the Social Services and Well-being Bill.
15. The Committee may also consider asking the Minister what transitional measures, if any, are being put into place in relation to the dis-application of the Adoption and Children Act register to Wales and whether or not Welsh Ministers have considered a timeframe for introducing a new national adoption register for Wales.