

**Cynulliad Cenedlaethol Cymru**

**Y Pwyllgor Plant a Phobl Ifanc**

**20 Ionawr 2012**

Cynulliad  
Cenedlaethol  
Cymru  
National  
Assembly for  
Wales



## **Adroddiad ar y Memorandwm Cydsyniad Deddfwriaethol Atodol mewn perthynas â'r Bil Diwygio Lles**

### **Cefndir**

1. Cyflwynwyd y Bil Diwygio Lles (“y Bil”) yn Nhŷr Cyffredin ar 16 Chwefror 2011. Mae'r Bil yn darparu ar gyfer cyflwyno ‘Credyd Cynhwysol’ i ddisodli amrywiaeth o fudd-daliadau a chredydau treth â phrawf modd ar gyfer pobl o oedran gweithio, gan ddechrau yn 2013. Mae hefyd yn gwneud newidiadau sylweddol eraill i'r system fudd-daliadau. Mae crynodeb o ddarpariaethau'r Bil yn y Nodiadau Esboniadol<sup>1</sup> sy'n cyd-fynd ag ef, a baratowyd gan swyddogion yn yr Adran Gwaith a Phensiynau. Roedd y Cynulliad eisoes wedi cytuno ar Gynnig Cydsyniad Deddfwriaethol ar y Bil ar 29 Mawrth 2011.<sup>2</sup>
2. Ar 3 Ionawr 2012, gosododd y Dirprwy Weinidog Plant a Gwasanaethau Cymdeithasol (“y Dirprwy Weinidog”) y Memorandwm Cydsyniad Deddfwriaethol atodol (“y Memorandwm atodol”) o ganlyniad i ddiwygiadau a wnaed i'r Bil ym mis Mai 2011. Mae'r Memorandwm atodol hefyd yn cyfeirio at ddiwygiadau pellach a gyflwynwyd gan Lywodraeth y DU ar 17 Ionawr 2012. Mae rhagor o wybodaeth am hyn yn y Memorandwm atodol<sup>3</sup>.
3. Cafodd y Memorandwm atodol ei ystyried gan y Pwyllgor Busnes ar 10 Ionawr a'i gyfeirio at y Pwyllgor Plant a Phobl Ifanc (“y Pwyllgor”) i'w ystyried o dan Reol Sefydlog 29, gydag adroddiad i'w gyflwyno erbyn 20 Ionawr 2012.
4. Cyflwynodd y Dirprwy Weinidog Gynnig Cydsyniad Deddfwriaethol mewn perthynas â'r Memorandwm atodol ar 9 Ionawr 2012—

---

<sup>1</sup> <http://www.publications.parliament.uk/pa/bills/lbill/2010-2012/0075/en/12075en.htm>

<sup>2</sup> <http://www.cynulliadcymru.org/bus-home/bus-third-assembly/bus-chamber/bus-chamber-third-assembly-rop.htm?act=dis&id=214069&ds=3%2F2011#cyn5>

<sup>3</sup> <http://www.cynulliadcymru.org/cy/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&id=229076&ds=1/2012>

"Cynnig bod Cynulliad Cenedlaethol Cymru yn unol â Rheol Sefydlog 29.6 yn cytuno y dylai Senedd y Deyrnas Unedig ystyried y darpariaethau pellach y cyfeirir atynt yn y Bil Diwygio Lles sy'n ymwneud â'r Comisiwn Symudedd Cymdeithasol a Thlodi Plant, yn ogystal â'r darpariaethau y cyfeirir atynt yng nghynnig NDM 4713, i'r graddau y maent yn dod o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru."

5. Bwriedir ystyried y Cynnig yn y Cyfarfod Llawn ar 24 Ionawr 2012.

### **Ystyried y Memorandwm atodol**

6. Bu'r Pwyllgor yn ystyried y Memorandwm atodol yn ei gyfarfodydd ar 12 ac 18 Ionawr 2012.

7. Yn yr amser prin a oedd ar gael i'r Pwyllgor, ni fu'n bosibl cynnal unrhyw ymgynghori cyhoeddus na gwahodd tystion i roi tystiolaeth.

### **Darpariaethau yn y Bil y ceisir cydsyniad ar eu cyfer**

8. Mae paragraff 8 o'r Memorandwm atodol yn rhestru'r darpariaethau yn y Bil y ceisir cydsyniad y Cynulliad ar eu cyfer, sef —

- Atodlen 13, paragraff 2 (yr adran 8B newydd arfaethedig);
- Atodlen 13, paragraff 2 (yr adran 8C newydd arfaethedig);
- Atodlen 13, paragraff 3 (yr Atodlen 1 newydd arfaethedig).

ac yn rhoi rhywfaint o esboniad o'u heffaith.

9. Ar 12 Ionawr, ysgrifennodd y Pwyllgor at y Dirprwy Weinidog yn gofyn iddi esbonio dau o'r darpariaethau hynny. Cafwyd ymateb y Dirprwy Weinidog ar 17 Ionawr. Mae'r llythyrau hyn i'w gweld yn Atodiadau 1 a 2.

10. Bu'r Pwyllgor yn ystyried ymateb y Dirprwy Weinidog yn ystod ei gyfarfod ar 18 Ionawr.

### ***Cymhwysedd Deddfwriaethol***

11. Mewn perthynas â chymhwysedd y Cynulliad i ddeddfu yn y meysydd a amlinellir yn y Memorandwm atodol, mae paragraff 8 o'r Memorandwm hwnnw yn nodi—

"Cynulliad Cenedlaethol Cymru sydd â'r cymhwysedd deddfwriaethol mewn perthynas â'r darpariaethau hyn [a amlinellir yn y Memorandwm atodol] a gynhwysir yn y pwnc Lles Cymdeithasol

“Social Welfare”) (Gwarchodaeth a lles plant gan gynnwys mabwysiadu a maethu, gofalu am oedolion ifanc, pobl agored i niwed a phobl hŷn), ym mhwnc 15 o Ran 1 o Atodlen 7 i Ddeddf Llywodraeth Cymru 2006. Mae’r cymalau arfaethedig yn ceisio gwneud darpariaeth mewn perthynas â Chymru (“in relation to Wales”) at ddiben o fewn adran 108(7) ac Atodlen 7 o Ddeddf Llywodraeth Cymru 2006, sydd o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru.”

### ***Diwygiadau pellach i’r Bil***

12. Mae paragraff 7 y Memorandwm atodol yn nodi bod Llywodraeth y DU yn ystyried cyflwyno diwygiadau pellach i’r Bil yng nghyfnod Adroddiad yr Arglwyddi, yn ymwneud â gofynion adrodd blynyddol y Comisiwn Symudedd Cymdeithasol a Thlodi Plant. Cyflwynwyd dau ddiwygiad mewn perthynas â’r gofynion hyn ar 17 Ionawr.

13. Nid yw’r Pwyllgor wedi gallu ystyried y diwygiadau hyn yn yr amser a oedd ar gael. Fodd bynnag, mae’n ymddangos o lythyr y Dirprwy Weinidog, lle mae’n nodi—

“The Legislative Consent Motion relates to all the provisions in the Bill relating to the Social Mobility and Child Poverty Commission which are within the legislative competence of the Assembly”,

y caiff y diwygiadau newydd hyn eu hymgorffori yn y Cynnig Cydsyniad Deddfwriaethol.

### ***Y broses a’r amserlen ar gyfer ystyried***

14. Nododd y Pwyllgor i’r rhan fwyaf o’r darpariaethau y mae’r Memorandwm atodol yn ymwneud â nhw fod yn destun diwygiadau a gynigiwyd yn Nhŷ’r Cyffredin ar 17 Mai 2011, ond na chafodd y Memorandwm ei osod yn y Cynulliad tan 3 Ionawr 2012.

15. Hefyd, nododd y Pwyllgor fod Senedd yr Alban wedi ystyried y Bil Diwygio Lles yn drylwyr y llynedd a’i fod wedi bod yn destun sawl adroddiad pwyllgor rhwng mis Hydref a mis Rhagfyr, gan gynnwys ystyried darpariaethau cyfatebol a osodwyd yn y Cynulliad ar 3 Ionawr 2012.

16. Yn ei llythyr, esboniodd y Dirprwy Weinidog yr oedi wrth gyflwyno’r Memorandwm atodol —

“The supplementary LCM was laid at the earliest opportunity following the conclusion of negotiations with the UK Government to secure further amendments to these provisions [as inserted into the Bill in May 2011]. It was not until mid November 2011 that the UK Government offered further legislative concessions and not until late in December that it confirmed it would start the process to table amendments in the House of Lords.”

17. Ychwanegodd —

“It was in Welsh interests to hold off agreement to table a Legislative Consent Motion, signifying agreement to what the Bill would contain relating to the Commission, until we were satisfied as to what that content would finally be.”

18. Wrth esbonio'r oedi, rydym yn nodi i'r Dirprwy Weinidog dynnu sylw at wahanol weithdrefnau Senedd yr Alban a'r Cynulliad Cenedlaethol o roi cydsyniad deddfwriaethol.

### Casgliadau

19. Mae'r Pwyllgor yn fodlon bod y darpariaethau yn y Mesur y mae'r Memorandwm atodol yn ymwneud â nhw o fewn cymhwysedd deddfwriaethol y Cynulliad.

20. Mae'r Pwyllgor o'r farn nad yw'r darpariaethau sy'n ymwneud â'r Comisiwn Symudedd Cymdeithasol a Thlodi Plant yn arbennig o ddadleuol. Oherwydd hyn, **credwn nad oes dim i rwystro'r Cynulliad rhag cytuno ar Gynnig Cydsyniad Deddfwriaethol yn y termau a amlinellir yn y Memorandwm atodol.**

21. Fodd bynnag, mae gennym bryderon difrifol ynglŷn â'r broses a'r amserlenni ar gyfer cyflwyno'r Memorandwm atodol a'r Cynnig Cydsyniad Deddfwriaethol cysylltiedig yn gynt.

22. Yn yr achos hwn, gofynnwyd i ni ystyried ac adrodd ar Femorandwm sy'n ceisio cydsyniad ar gyfer darpariaethau a osodwyd yn y Bil ym mis Mai y llynedd, ac ar gyfer diwygiadau i'r Bil a gynigiwyd ddeuddydd cyn dyddiad cau y Pwyllgor ar gyfer derbyn adroddiadau. Er bod y Pwyllgor yn cydnabod yr esboniad a roddodd y Dirprwy Weinidog am yr oedi wrth osod y Memorandwm atodol a'r Cynnig, credwn fod hyn wedi effeithio ar ein gallu i'w hystyried mewn modd priodol.

23. Mewn perthynas â'r diwygiadau diweddar a gynigiwyd ar ôl gosod y Memorandwm atodol, ni chredwn ei bod yn briodol gofyn i'r Cynulliad neu un o'i bwyllgorau ystyried rhoi cydsyniad deddfwriaethol heb yn gyntaf gael manylion llawn y darpariaethau perthnasol i'w gosod yn y Bil, a chael digon o amser i'w hystyried.

24. Deallwn fod y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol yn cynnal ymchwiliad i'r gweithdrefnau ar gyfer Cynigion Cydsyniad Deddfwriaethol a'r sefyllfa yn y deddfwrfeydd datganoledig eraill. O ystyried y materion a amlinellir uchod, tynnwn eu sylw at yr adroddiad hwn er mwyn llywio eu trafodaethau.

**Y Pwyllgor Plant a Phobl Ifanc**  
**Children and Young People Committee**

Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



Bae Caerdydd / Cardiff Bay  
Caerdydd / Cardiff CF99 1NA

Gwenda Thomas AM  
Deputy Minister for Children and Social  
Services  
Welsh Government

12 January 2012

Dear Gwenda

**Supplementary Legislative Consent Memorandum (LCM) relating to the  
Welfare Reform Bill**

As you will be aware, the Business Committee referred the above LCM to the Children and Young People Committee on 10 January, with a reporting deadline of 20 January.

The Committee discussed the LCM at its meeting this morning and agreed that I should write to you in the following terms.

**Timing**

1. The Scottish Parliament has already considered the Welfare Reform Bill at length last year and it has been the subject of 4 committee reports between October and December, including consideration of the amendments that were laid before the Assembly for consideration on 3rd January 2012. Could you explain why the LCM relating to these amendments has been laid much later in the Assembly than in the Scottish Parliament?

**Points of clarification**

2. Schedule 13, paragraph 3 (the proposed new Schedule 1) – relating to removing the duty of consulting the Welsh Ministers when a Minister of the Crown appoints other members of the Social Mobility and Child Poverty Commission. Paragraph 11 of the Memorandum states that if

Bae Caerdydd  
Cardiff Bay  
CF99 1NA

consent was withheld for the LCM, “the logical consequence would be that reference to the Welsh strategy and consultation of the Welsh Ministers would be removed.” This statement seems to contradict the LCM, because if the LCM is agreed then consultation in relation to appointments to the Commission board with the Welsh Ministers will be removed in any event. The Committee would be grateful for clarification as to whether the reference to ‘consultation’ is in relation to appointments to the Commission board or to the Welsh Child Poverty Strategy. Could you also clarify the reasoning for removing the duty of consultation with the Welsh Ministers in relation to appointments?

3. Paragraph 7 of the Memorandum states that the UK Government is considering further amendments to the Bill to be tabled at the Lords Report stage (11th January 2012). It states that these amendments will remove the requirement for the Commission’s annual statement to present views on the progress made towards implementing devolved strategies. If the Commission will no longer report on the performance of the Welsh child poverty strategy, do you intend to report annually on progress made/targets met?

I would be grateful for a response by **Tuesday 17 January** in order that the Committee may be able to consider this at its meeting the following day.

A copy of this letter goes to the Chair of the Constitutional Affairs Committee in view of their recent inquiry into the granting of powers to Welsh Ministers in UK laws, particularly the procedures for Legislative Consent Motions compared to the position in the other devolved legislatures.

Yours sincerely



**Christine Chapman**  
**Chair**

Gwenda Thomas AC / AM  
Y Dirprwy Weinidog Plant a Gwasanaethau Cymdeithasol  
Deputy Minister for Children and Social Services



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref : LF/GT/20/12

Christine Chapman  
Chair  
Children and Young People Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

16<sup>th</sup> January 2012

*Dear Christine,*

**Supplementary Legislative Consent Memorandum (LCM) relating to the Welfare Reform Bill**

I am responding to your letter dated 12 January 2012 concerning the LCM on the provisions in the Welfare Reform Bill relating to the Social Mobility and Child Poverty Commission.

I appreciate that the Committee was able to discuss the LCM at short notice and have provided responses to each of the points raised in your letter below.

**Timing**

1. The first LCM on the Welfare Reform Bill, concerning information sharing provisions, was considered by the previous Assembly in March 2011. The provisions on the Social Mobility and Child Poverty Commission were inserted into the Bill in May 2011. This supplementary LCM was laid at the earliest opportunity following the conclusion of negotiations with the UK Government to secure further amendments to these provisions. It was not until mid November 2011 that the UK Government offered further legislative concessions and not until late in December that it confirmed it would start the process to table those further amendments in the House of Lords.

It was in Welsh interests to hold off agreement to table a Legislative Consent Motion, signifying agreement to what the Bill would contain relating to the Commission, until we were satisfied as to what that content would finally be. Standing Order 29.6 requires that "When a legislative consent memorandum is laid, the government must table a motion ("a legislative consent motion") which must seek the Assembly's agreement to the inclusion of a relevant provision in a relevant Bill."



The Standing Orders of the Scottish Parliament differ from those of the National Assembly. The Scottish Government need only table a Legislative Consent Motion after the committee which has considered a Legislative Consent Memorandum has reported. Therefore it was able to state in the memorandum laid in October that it was not yet content with what the Bill contained regarding the Commission; but when it came to table the Legislative Consent Motion which was debated on 22 December, it was able to propose that the Parliament should give its consent on that point.

## Points of Clarification

2. The Secretary of State's duty to consult with Welsh Ministers and other Devolved Administrations on appointments to the Commission was initially set out in the Child Poverty Act 2010. The UK Government has decided that there should no longer be a duty to consult with Devolved Administrations on appointing new members to the Social Mobility and Child Poverty Commission.

The reason that the UK Government made this decision was that it concluded there was an asymmetry between the Secretary of State having to consult the Devolved Administrations, and not having to be consulted in turn on appointments made by the Devolved Administrations.

There is now agreement at Ministerial level that the UK Government and Welsh Government will consult each other on any new appointments being made to the Commission.

The Legislative Consent Motion relates to all the provisions in the Bill relating to the Social Mobility and Child Poverty Commission which are within the legislative competence of the Assembly. The logical consequence of rejecting the motion would be that references to Wales regarding the Commission would be removed namely, reference to the Welsh strategy and to the Welsh Ministers, including the requirement for the Secretary of State to consult the Welsh Ministers before preparing a statement on child poverty in 2020.

3. The amendments proposed in terms of the reporting arrangements would remove the requirement for the Commission's annual report to present views on progress in implementing the devolved strategies. The report will instead describe the measures taken by Welsh Ministers in accordance with the Welsh Strategy. This will preserve the direct accountability of the Welsh Ministers to the National Assembly for Wales for reporting on progress, which is why the Welsh Government sought this legislative change to the Bill. It will also re-instate what was previously provided for and agreed to by the Assembly in the Child Poverty Act 2010 as originally enacted.

In terms of reporting arrangements within Wales, the Welsh Government will follow those arrangements set out in the Children and Families (Wales) Measure 2010, which are:-

Section 3(6) provides that the Welsh Ministers must in 2013 and in every third year after 2013:

(a) publish a report containing an assessment of the extent to which;

(i) the objectives contained in their strategy for contributing to the eradication of child poverty have been achieved, and

(ii) if an objective has not been achieved, progress that has been made towards achieving the objective;

(b) lay a copy of the report before the National Assembly for Wales.

The Welsh Ministers will also provide the Commission with an annual update on the measures taken by the Welsh Ministers, in accordance with a Welsh Strategy. This is an administrative agreement rather than being provided for by way of legislative amendment in the Bill.

I hope the information provided in this letter has helped to clarify the position. If any further detail is required my officials will be available to answer any additional questions.

A copy of this letter has been sent to the Chair of the Constitutional Affairs Committee.

*Yours sincerely,  
Gwenda.*

**Gwenda Thomas AC / AM**

Y Dirprwy Weinidog Plant a Gwasanaethau Cymdeithasol  
Deputy Minister for Children and Social Services