

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> ,

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;

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

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