

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

CHILDREN AND FAMILIES BILL: AMENDMENT IN RELATION TO SECTION 38 OF THE CHILDREN AND YOUNG PERSONS ACT 1963

1. This supplementary Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for a purpose that falls within, or modifies the legislative competence of the National Assembly.
2. The Children and Families Bill (the “Bill”) was introduced in the House of Commons on 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

3. 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.
4. The Bill includes provisions relating to;
 - (a) 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 a statutory register in its application to England.
 - (b) Reform of the family justice system in England and Wales^[1] 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

^[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>

- 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 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.
- (c) 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.
- (d) Childcare including to increase flexibilities for childminders by the introduction of childminder agencies.
- (e) Looked after children: 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; clarify the right to an assessment for support for young carers; and enable the Secretary of State to bring forward new regulations with the aim of raising standards in children's homes.
- (f) 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.
- (g) 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.

Provisions in the Bill for which consent is sought

5. The consent of the Assembly is sought to repeal Section 38 of the Children and Young Persons Act 1963 through the Children and Families Bill. S.38 imposes restrictions so that local authorities cannot licence children under 14 to take part in performances except 'where the child is acting, or dancing in a ballet and the part can only be taken by a child of that age, or where the performance is wholly or mainly musical or consists only of opera and ballet.' The overall effect of the proposed repeal of section 38 is to remove those restrictions and allow children under the age of 14 to take part in a wider variety of performances.

6. The Bill extends to Wales.
7. Section 38 does not confer any power upon the Welsh Ministers to make any subordinate legislation. The regulations made under this Act, the Children (Performances) Regulations 1968, are made pursuant to sections 37 and 39 of the Act. The Welsh Ministers do have power to amend those regulations and the provisions of the regulations would apply to any licences granted to children under the age of 14 if the section 38 restriction is repealed. The repeal of section 38 of the Act will not affect those regulation making powers.
8. It is the view of the Welsh Government that this provision falls within the legislative competence of the National Assembly for Wales in so far as it relates to child protection (in the context of child performance) – child protection is a subject which falls under the social welfare heading in paragraph 15, Part 1 of Schedule 7 to the Government of Wales Act 2006.

Advantages of utilising this Bill rather than Assembly legislation

9. It is the view of the Welsh Government that it is appropriate to deal with this provision in this UK Bill as it represents the most practicable and proportionate legislative vehicle to enable these provisions to apply in relation to Wales at this time.
10. This provision is not contentious and there are no suitable Assembly Bills in which to make the change in a similar time frame as is offered by the Children and Families Bill. Including Wales in the amendment proposed to the Children and Families Bill would mean that it could come into force for both England and Wales at the same time, so that there is no interim period before it can be implemented in Wales when children in Wales would be disadvantaged.
11. Removing this provision from the Children and Young Person's Act 1963 would enable children under 14 to take part in a wider range of performances and would focus the licensing process on what is in the child's best interests. This would provide greater opportunities for child performances in Wales by removing restrictions for children under 14 to perform and avoids putting children in Wales at a disadvantage as compared to children in England.

Financial implications

12. There are no anticipated financial implications for the Welsh Government.

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Minister for Education and Skills
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