

LEGISLATIVE CONSENT MEMORANDUM

WELFARE REFORM BILL

Legislative Consent Motion

“To propose that the National Assembly for Wales, in accordance with Standing Order 26.4, agrees that the provisions of Part 2 of the Welfare Reform Bill (Disabled Persons: Right to Control Provision of Services), as introduced into the House of Lords on 18th March 2009, so far as those provisions fall within the legislative competence of the National Assembly for Wales, should be considered by the UK Parliament.”

Background

The above Motion has been tabled by Jane Hutt, Welsh Minister for Children, Education, Lifelong Learning and Skills under Standing Order 26.4 of the Standing Orders (“SO”) of the National Assembly for Wales (“NAW”). This memorandum is laid under SO 26.2. SO 26 prescribes that a Legislative Consent Motion needs to be tabled, and Legislative Consent Memorandum to be laid, in the NAW if a UK Parliament Bill makes provision in relation to Wales that falls within the legislative competence of the NAW or has a negative impact on that competence.

The Welfare Reform Bill (‘the Bill’) was introduced on the 14th January 2009. The Bill (as introduced into the House of Lords on 18th March 2009) can be found at:

<http://www.publications.parliament.uk/pa/ld200809/ldbills/032/09032.i-iv.html>

Summary of the Bill and its Policy Objectives

The main purpose of the Bill is to further reform the welfare and benefit systems to improve support and incentives for people to move from benefits into work, provide greater choice and control for disabled people and encourage parental responsibility by introducing a requirement for births to be registered jointly by both parents.

Provisions in the Bill for which consent is sought

Part 2 of the Bill contains a series of enabling powers which will allow the making of regulations that confer new rights on disabled people. It makes broad provision to enable disabled people aged 18 or over to exercise greater choice in relation to, and greater control over, the way in which ‘relevant

services' (as defined in clauses 31(1) and (2) are provided to or for them by a 'relevant authority'

Clauses 31(1) and (2) provide that a relevant service is a service which is provided to or for the benefit of a disabled person (whether or not in connection with their disability), *and* which relates to one or more of the following matters, and which is not an excluded service.

- (a) the provision of further education for the individual;
- (b) facilitating the undertaking by the individual of further education or higher education;
- (c) the provision of training for the individual;
- (d) securing employment for the individual;
- (e) facilitating the individual's continued employment;
- (f) facilitating the individual to live independently or more independently in P's home;
- (g) enabling the individual to overcome barriers to participation in society.

In relation to England and Wales, the following are excluded services—

- (a) community care services as defined by section 46(3) of the National Health Service and Community Care Act 1990;
- (b) services provided under the Carers and Disabled Children Act 2000; and
- (c) services provided under section 17 of the Children Act 1989 (provision of services for children in need, their families and others).

A "relevant authority" (as set out in Clause 32) includes the Welsh Ministers; a local authority within the meaning of the Local Government Act 1972; a person or body whose functions are exercised on behalf of the Crown; and a body which meets both the conditions of being (a) established by the Royal prerogative, enactment, a Minister of the Crown or a government department and (b) its revenues derive wholly or mainly from public funds.

Clause 33 (2) states that the "appropriate authority" may make regulations to:

- (a) carry out an assessment of a Disabled Person's, (P's) needs ;
- (b) prepare, in consultation with P, a plan setting out the way in which the authority the authority proposes to meet those needs
- (c) to review and revise the plan in consultation with P taking account of any changes in P's needs or wishes;
- (d) at P's request, to make payments to P in respect of P securing the provision of an equivalent service

Regulations may also under Clause 33 (3)

- (a) specify who is or is not to be treated as a disabled person for any purpose of the regulations
- (b) make provision about the circumstances in which a relevant authority is to be taken to have decided to provide a relevant service to a person

- (c) make provision enabling a disabled person to require a relevant authority to assess the value of any relevant services to which the person is entitled;
- (d) make provision as to matters which a relevant authority must, or may, have regard when making a decision for the purposes of a provision of the regulations
- (e) make provision as to steps which a relevant authority must, or may, take before, or after, the relevant authority makes a decision for the purposes of a provision of the regulations (including requiring the relevant authority to review its decision)

Regulations may also, under Clause 33 (4) enable or require relevant authorities to disclose information for the prescribed purposes of the regulations; under Clause 33 (5), vary the conditions attached to powers of a relevant authority to provide financial assistance; and under Clause 33 (6), require relevant authorities to act in accordance with guidance by the appropriate authority.

Clause 37 specifies that the Welsh Ministers would be the appropriate authority in relation to provision that would be within the legislative competence of the National Assembly for Wales if it were included in a Measure of the Assembly.

Part 2 (Disabled people: right to control provision of services) falls within the Assembly's legislative competence under Matters 5.8, 5.17, 15.1, 15.2(c), 15.5 (c) and (d), and 15.6 of GOWA 2006, insofar as its provisions cover disabled adults who fall within the categories of persons to which those Matters relate.

Advantages of utilising this Bill

General policy responsibility for employment and social security law in England and Wales currently rests with the UK Government (DWP pay all general disability related social security benefits across the UK and provide a disability advisory service linked to job centre plus services). It is therefore appropriate to deal with these provisions in a UK Bill. Nevertheless the Assembly Government has a fundamental role in providing a number of the relevant services

It is the view of the Assembly Government that it is appropriate to deal with these provisions in this UK Bill, which presents an opportunity for the Assembly Government to consider provision of services for disabled people in the context of the broader Welfare Reform agenda.

This Legislative Consent Memorandum has therefore been laid, and the Legislative Consent Motion tabled, before the National Assembly for consideration.

Financial Implications

The financial implications of any subsequent consultation, legislation or guidance arising from a future decision to exercise the power to make regulations under the relevant provisions will be subject to full consideration of affordability and to a Regulatory Impact Appraisal which would include a cost benefit analysis.

Jane Hutt
Welsh Minister for Children, Education, Lifelong Learning and Skills
xx 2009