

## **LEGISLATIVE CONSENT MEMORANDUM**

### **APPRENTICESHIP, SKILLS, CHILDREN AND LEARNING BILL**

#### **Legislative Consent Motion**

1. “To propose that the National Assembly for Wales, in accordance with Standing Order 26.4, agrees that provisions of the Apprenticeship, Skills, Children and Learning Bill relating to the education of young offenders, 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 John Griffiths AM, Deputy Minister for Skills, under Standing Order 26.4 of the Standing Orders (SO) of the National Assembly for Wales (the National Assembly). This Legislative Consent Memorandum is laid under SO26.2. SO26 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 that falls within the legislative competence of the National Assembly.

3. The Apprenticeship, Skills, Children and Learning Bill (the Bill) was introduced on 4 February 2008 and reprinted as amended on 6 May 2009. The Bill can be found at:

<http://www.publications.parliament.uk/pa/ld200809/ldbills/042/09042.i-v.html>

4. The relevant Government amendments in relation to young offenders were made at committee stage (3 March to 26 March 2009) and report stage (5 May 2009) in the House of Commons and are detailed below.

#### **Summary of the Bill and its Policy Objectives**

5. The Bill is jointly sponsored by the Department for Children, Schools and Families and the Department for Innovation, Universities and Skills. The main purpose of the Bill is to reform education, training and apprenticeships for young people and adults, provide new powers to strengthen children’s trusts, improve standards in schools and increase confidence in qualifications.

6. The Bill includes a small number of provisions for Wales that apply equally to England namely:

- a right for employees to request time for training;

- provisions to exclude publicly funded student loans from Individual Voluntary Arrangements (IVAs) and register students who default on mortgage style loans with the credit referencing agencies;
- duties on local authorities to ensure young offenders receive education and training;
- duties in relation to the Specification of Apprenticeship Standards, Apprenticeship Frameworks and Certificates;
- provisions to aid in ensuring compliance with the School Teachers Pay and Conditions Document;

7. The Bill also proposes specific provisions to allow Welsh Further Education institutions to apply for the power to award foundation degrees and provisions to enable the Welsh Ministers to make regulations establishing complaints procedures to be adopted by the governing bodies of maintained schools.

### **Provisions in the Bill for which consent is sought**

8. Part 2 of the Bill includes provision to place new duties on local authorities to secure education and training for young offenders. Legislative consent is sought in respect of the following clauses and amendments.

#### **8i) Clause 47 (as amended)**

Clause 47 inserts a new section 18A into the Education Act 1996 imposing a duty on LEAs with custodial establishments for young offenders in their areas to ensure that enough suitable education is provided to meet their reasonable needs. The amendments made at Commons Committee stage will mean that LEAs will be required to have regard to the desirability of those children/young people continuing courses they have already started, and to the national and local curricula. Any education provider that the LEA makes arrangements with to deliver education must take account of information given by a person's home LEA in relation to a person when deciding on the education and training to be provided to that person.

#### **8ii) Clause 48 (as amended)**

This clause amends section 562 of the Education Act 1996 so that children and young people in juvenile custody are no longer excluded from the provisions of the Education Acts. The amendments made at Commons Committee stage provided that section 562 does not apply to those who are subject to care orders under section 25 Children Act 1989 (and provided with secure accommodation for welfare reason). This clarifies what is thought already to be the case for this group of young people.

### **8iii) Clause 49 (as amended)**

Clause 49 in the Bill as introduced was replaced at Report Stage by a new clause introducing new Chapter 5A into the Education Act 1996. This restates what clause 49 said and makes further new provision. The new provisions are:

#### **- *New section 562A Education Act 1996***

This replaces section 562B of the Education Act 1996 inserted by the Bill as introduced. It is a regulation making power allowing Welsh Ministers to modify provisions of the Education Act 1996 in relation to detained persons.

#### **- *New section 562B Education Act 1996***

This replaces section 562A of the Education Act 1996 inserted by the Bill as introduced and imposes a duty on a home authority to take steps to promote the fulfilment of a person's learning potential during detention and on release. The amendments here will require the home authority to take steps to arrange for the provision of education and training on release and will require a host authority to take into account information from the home authority in making decisions about a detained person's education and training.

#### **- *New section 562C Education Act 1996***

This new provision requires a host LEA to use its best endeavours to secure that appropriate special educational provision is made for a child in custody who had a statement of special educational needs before detention.

#### **- *New section 562D Education Act 1996***

This new provision allows LEAs to supply goods and services for the purpose of making the appropriate special educational provision required under sections 562C.

#### **- *New section 562E Education Act 1996***

This new section provides a power for anyone who has provided education or training to a detained person to provide information on that person to an LEA for the purpose of the provision of education and training for the detained person. An LEA must provide information when it receives a request from specified bodies. The Welsh Ministers must, when they receive a request from an LEA, provide them with assessment reports (which are reports in relation to those with learning difficulties).

#### **- *New section 562F Education Act 1996***

This new provision requires the provision of information in relation to children with statements of special educational needs..

#### **- *New section 562G Education Act 1996***

This new provision requires LEAs to notify the home authority or in the case of those over 16 in Wales, the Welsh Ministers, where a person who did not have a statement of special educational needs before detention but who

appears to them to need an assessment of their learning difficulties, is released.

**- New section 562H Education Act 1996**

This replaces section 562C of the Education Act 1996 inserted by the Bill as introduced and contains provision to make guidance.

**8iv) Clause 50 (as amended)**

Clause 50 in the Bill as introduced was replaced at Report Stage by a new clause which inserts section 39A of the Crime and Disorder Act 1998. It makes provision similar to that contained in the earlier clause 50 which required youth offending teams to notify home LEAs when a child or young person was detained. The new provision extends the notification duties so youth offending teams are required to notify host LEAs as well and also to notify LEAs when a person is transferred in detention and when a person is released.

**8v) Clause 51 (new)**

Clause 51 was inserted at Commons Committee stage. It inserts a new section 312A into the Education Act 1996 and amends section 328(5) of that Act. These provisions disapply Part 4 of the Education Act 1996 (which make provision for those with special educational needs) from those detained in custody and provides for a statement of special educational needs to be revived and reviewed on release.

**9. Matters in the Government of Wales Act 2006**

It is considered that the provisions outlined above fall within the legislative competence of the Assembly under the following Matters:

- Matter 5.6 - Provision about the making of arrangements for the provision of education for persons of compulsory school age who have been excluded from schools or who for any other reason would not otherwise receive suitable education
- Matter 5.7 - Provision about entitlement to primary, secondary and further education and training
- Matter 5.8 – Provision about the provision of services that are intended to encourage, enable or assist people-  
(a) to participate effectively in education or training;....
- Matter 5.13 - Provision for and in connection with securing collaboration –  
...(b) between on or more [bodies that conduct institutions concerned with the provision of further education] and other persons or bodies that have functions relating to education or training in Wales;
- Matter 5.16 – the provision of .. information in connection with ..  
(a) pre-16 education or training;

*(b) post-16 education or training;...*

- *Matter 5.17 - "education and training for persons who have greater difficulty in learning than the majority of persons of the same age as those persons...."*
- *Matter 5.18 - The provision of any of the following for children or young persons -*
  - (a) facilities for social or physical training;*
  - (b) educational activities.*
- *Matter 15.2 – Functions of public authorities relating to-...;*
  - (b) safeguarding and promoting the well-being of vulnerable children;*
  - (c) reducing inequalities in well-being between children or young persons.**This matter applies to the functions of public authorities whose principal functions relate to any one or more of the fields in this Part.*
- *Matter 15.6*  
*Cooperation and arrangements to safeguard and promote the well-being of children or young persons.*  
*("well-being" includes well-being "so far as relating to ....education, training and recreation")*

### **Commencement**

10.. Commencement of these clauses in so far as they relate to Wales will be by order of the Welsh Ministers.

11. It is the view of the Assembly Government that the clauses in respect of the education of young offenders fall within the National Assembly's legislative competence as specified above, therefore the agreement of the National Assembly is required under SO 26. SO 26 prescribes that a Legislative Consent Motion and Memorandum need to be tabled and laid, respectively, before the National Assembly, if a UK Parliamentary Bill makes provision in relation to Wales that falls within the legislative competence of the National Assembly.

### **Advantages of utilising this Bill**

12. The provisions in the Bill relating to the education of young offenders could be dealt with in an Assembly Measure made under the matters specified above of Schedule 5 to GOWA 2006. However, it is the view of the Assembly Government that it is appropriate to deal with these provisions in this UK Bill, which has presented an expedient opportunity for the Assembly Government to ensure that the education of both young offenders in Welsh institutions and Welsh young offenders in English institutions is ensured by the placing of duties on local authorities both in England and Wales. By doing so we are ensuring that young offenders in Wales are afforded the same 'rights' to education as their English counterparts.

13. There are only three institutions in Wales that house youth offenders and there is a great deal of cross border movement, so it is very important to ensure that young offenders in both England and Wales receive the same educational entitlements and that provision is made for all at the same time. The overarching policy for both England and Wales on the education of young offenders is essentially the same, which is to make local authorities responsible for securing education and ensuring continuity of education and better cooperation between relevant parties. Different policies in Wales in relation to the curriculum and the Welsh Ministers' role are reflected in the provisions on the face of the Bill and in the fact that, for Wales, guidance and regulations will be made by the Welsh Ministers.

14. In addition, there is no currently available Assembly Measures under which these provisions could be brought forward in the same timescale.

### **Financial Implications**

15. The Youth Justice Board funds education for young offenders in custody in England and Wales. Therefore there are no additional financial implications for Welsh Ministers.

John Griffiths AM  
Deputy Minister for Skills  
May 2009