

**WELSH ASSEMBLY GOVERNMENT MEMORANDUM ON FRAMEWORK POWERS CONFERRING LEGISLATIVE COMPETENCE ON THE NATIONAL ASSEMBLY FOR WALES**

**Introduction**

1. This memorandum sets out the background and context relevant to the Children, Schools and Families Bill conferring legislative competence on the National Assembly for Wales (“the NAW”) in relation to the regulation of education provided for home-educated children, and services provided by local authorities for persons involved in the provision of education for home-educated children.

**Background**

2. Part 3 of the Government of Wales Act 2006 (c32) (“the 2006 Act”) gives the NAW the power to pass legislation known as Assembly Measures. Assembly Measures can make any provision that can be made by an Act of Parliament in respect of those Matters, subject to the restrictions contained in the 2006 Act.
3. The NAW may pass Measures in relation to the “Matters” listed in Part 1 of Schedule 5 to that Act. Additions to the NAW’s legislative competence are made by adding new matters to fields in Part 1 of Schedule 5 to GOWA 2006. The 2006 Act includes a power to add new matters by Order in Council, and matters may also be added by provisions in Acts of Parliament, which are referred to as “framework powers”.
4. The proposed power in the Children, Schools and Families Bill would grant the NAW law-making powers by adding a new Matter (Matter 5.6A) in Field 5 (Education and Training) in respect of the regulation of home education for those of compulsory school age. It is also proposed that existing Matter 5.15 be amended to include the inspection of services provided by local authorities for those persons involved in the provision of home-educated children.

**Context**

5. The “Review of Elective Home Education in England” (“the Badman review”) was carried out at the request of the Secretary of State for Children, Schools and Families, and reported in June 2009. It was a review of home education arrangements in England only, but the law in this respect is the same in England and Wales. Graham Badman was specifically tasked to look at whether there are any barriers to local authorities and other public agencies in effectively carrying out their safeguarding responsibilities in relation to home-educated children. The review also looked at whether local authorities were

providing the right support for home educating families. The report contained a total of 28 recommendations, including that the DCSF establish a compulsory national registration scheme.

6. The Badman Review addressed many issues which have been a concern of local authorities and policy officials in Wales for some time. Some of the recommendations potentially offer opportunities to help secure a suitable standard of home education and, potentially, in a small number of cases, greater protection for children from abuse. However, it is felt that it would not be appropriate to legislate in this area without carrying out a separate review in Wales, and to consult with all relevant bodies and persons in order to develop a distinctive approach in line with Welsh policy. Such a consultation exercise has not yet been carried out in Wales.
7. Conferring legislative competence on the NAW in this area would allow the Assembly Government to consult and if appropriate, bring forward proposals for legislation to protect the rights of children to receive appropriate education suitable for their needs.

### **Scope of proposed powers**

8. The Welsh Assembly Government is seeking the legislative competence for the NAW in respect of the regulation of home-educated children. Existing Matter 5.15 provides the legislative competence for the NAW to legislate in connection with the inspection of the provision of home education by those who are involved in the provision of such education. However, this matter does not allow the NAW to make provision in connection with the:
  - regulation (other than of the inspection of such provision) of home education; or
  - the inspection of services provided by local authorities for those persons involved in the provision of home-educated children.

To enable the NAW to make provision in these areas, Field 5 (Education and Training) will be amended to include a new matter 5.6A. Matter 5.15 will also be amended, to include the inspection of services provided by local authorities for those persons involved in the provision of home-educated children.

9. The Assembly competence in this area currently is not sufficient to allow, for example, the NAW to pass a Measure which may make provision in connection with:
  - a compulsory registration scheme, locally administered by the LA for all children of compulsory school age who are home-educated, with

- potentially the ability to refuse registration where there are safeguarding concerns;
- the introduction of a power for the LA to visit the homes of home educated children and the option to consider speaking to the child about the education they receive;
  - extending the remit of Her Majesty's Inspectorate for Wales (Estyn) to cover the inspection of services local authorities provide to home educating families; and
  - introducing a requirement for local authorities to provide information on numbers of home educated children to the Welsh Ministers.

The above is not an exhaustive list of the provision that a future Measure may make, it is an indication of policies for which the NAW cannot currently legislate on in the area of home-educated children.

### **Geographical limits of any Assembly Measure**

10. Section 94 of the 2006 Act provides that an Assembly Measure is outside the NAW's legislative competence if it applies otherwise than in relation to Wales or confers, imposes, modifies or removes functions exercisable otherwise than in relation to Wales (or gives power to do so). There are limited exceptions for certain kinds of ancillary provision, for example provision appropriate to make the provisions of the Measure effective, provision enabling the provisions of the Measure to be enforced and to make consequential amendments to other legislation.
11. The limitation relating to functions other than in relation to Wales means that the NAW would not be able, by Measure, to confer on the Welsh Ministers, Welsh local authorities or any other public authority functions which did not relate to Wales.

### **Minister of the Crown functions**

12. By virtue of paragraph 1 of Part 2 of Schedule 5 to the 2006 Act, and paragraph 7 of Part 3 of that Schedule, the NAW may not by Measure alter or remove functions of a Minister of the Crown without the consent of the relevant Secretary of State (and may not create new Minister of the Crown functions at all). The proposed provisions themselves do not modify or remove any functions of a Minister of the Crown. In relation to any future proposals for Assembly Measures that may impact on Minister of the Crown functions, the appropriate UK Government Departments would first be consulted and agreement sought before any change to, or modification of, those functions could be made.