

Children, Young People and Education Committee: Report on the Legislative Consent Memorandum for the Children and Social Work Bill

Background

1. On 13 October, Carl Sargeant AM, Cabinet Secretary for Communities and Children laid a Legislative Consent Memorandum¹(the Memorandum) for the Children and Social Work Bill² (the Bill) currently before the UK Parliament. The Memorandum relates to clauses in the Bill as amended, which include provisions within the legislative competence of the Assembly.
2. Standing Order 29 includes details about the process for consent in relation to UK Parliament Bills. When the UK Parliament wishes to legislate on a subject matter which has already been devolved to the National Assembly for Wales, convention requires it to receive the consent of the Assembly before it may pass the legislation in question. Such consent is given by the Assembly through Legislative Consent Motions (LCMs).
3. Before a LCM can be tabled, a Legislative Consent Memorandum relating to the legislation in question must be laid and may be considered by an Assembly committee or committees. In this case, the Memorandum was referred by the Business Committee to the Children, Young People and Education Committee to consider and report on it.

Policy Objectives and Summary of the Bill

4. The UK Government's stated policy objectives for the Bill are to improve decision making and support for looked after and previously looked after children in England and Wales; enable better learning about effective approaches to child protection and the wider provision of children's social care in England and enable the establishment of a new regulatory regime specifically for the social work profession in England.

¹ [Legislative Consent Memorandum : Children and Social Work Bill](#)

² [Children and Social Work Bill](#)



5. The Bill has a number of measures which only apply to England, these include:

- provisions aimed at improving decision-making and support for looked after and previously looked after children;
- clarifying the Secretary of State’s powers to intervene in a local authority to secure proper performance to a group of authorities which have combined their services under City Deals or similar arrangements;
- enabling the Secretary of State to establish a Child Safeguarding Practice Review Panel for reviewing serious child safeguarding cases in England and publishing outcomes;
- provisions about the regulation of social workers.

6. The Bill also includes provisions which apply to England and Wales relating to care and adoption proceedings which broaden the range of factors courts and adoption agencies must consider when making decisions about a child’s adoption.

Provisions in the Bill for which consent is required

7. Consent is sought for aspects of the amendment to clause 9 of the Bill tabled by Lord Nash³. The amendment has the effect of amending the Adoption and Children Act 2002⁴. Section 1 of the Adoption and Children Act 2002 sets out matters which must be considered by courts and adoption agencies in coming to a decision concerning the adoption of a child.

8. The amendment will have the effect of requiring adoption agencies in Wales to have regard to the same factors as those applying to adoption agencies in England and the courts. The amendment will also mean that for adoption agencies in Wales prospective adopters are now included in the list of relationships which they must have regard to when making a decision about a child’s adoption.

9. The amendment to clause 9 was tabled by Lord Nash at the request of the Welsh Government⁵. The amendment was agreed on 18 October 2016⁶.

³ [Marshalled List of Amendments: Amendment 32](#)

⁴ [Adoption and Children Act 2002](#)

⁵ [Letter from Lord Nash 11 October 2016](#)

⁶ [House of Lords Hansard: 18 October 2016](#)



Legislative Competence

10. The Memorandum correctly identifies that consent is required for the adoption agency element of the provision because it falls within the legislative competence of the National Assembly for Wales insofar as it relates to the protection and well-being of children (including adoption and fostering) under paragraph 15 of Part 1, Schedule 7 to the Government of Wales Act 2006.

Appropriateness of the legislative approach

11. As set out in the Memorandum, the Welsh Government believes it is appropriate to deal with these provisions in this UK Bill as it represents the most practicable and proportionate legislative vehicle to enable these provisions to apply in relation to Wales.

12. The Welsh Government has confirmed that there are no financial implications for the Welsh Government if the National Assembly for Wales consents to the provisions applying to Wales. The Welsh Government has also set out in the Memorandum that:

- it is important that the provisions cover Wales-based adoption agencies as it will enable a coherent approach to be taken to adoption for both courts and adoption agencies in Wales and between adoption agencies in England and in Wales.
- making this provision for Wales in the Bill will support their commitment to ensuring that adoption is an important option for permanence to be considered when children are not able to be brought up in their own birth families. The amended provision will ensure consistency in the adoption decision making process by making sure Wales-based adoption agencies consider the quality of the relationship the child has with their prospective adopters.
- the amendment to the Bill will also provide clarity in cases with a cross-border element by enabling the same provisions to apply to adoption agencies in Wales and England at the same time. Furthermore the Bill will bring changes into force for Welsh adoption agencies at the same time as the courts. This will provide a coherent approach to any adoption-related questions and mean there is no time lag between the application of the new requirements on the courts and the application to adoption agencies in Wales.



Consultation

13. The Committee has consulted with Adoption UK Cymru, the National Adoption Service and the Association for Fostering and Adoption (AFA) Cymru. The responses received welcome the proposal to apply the proposed changes in Wales, and indicate that concerns would be raised if the proposed changes were not extended to Wales.

Committee Consideration and Conclusion

14. The Committee considered the Memorandum on 2 November 2016. The Committee is content that the Bill will make provision in relation to Wales, for a purpose within the Assembly's legislative competence. On the basis of the Memorandum presented, the Committee has no concerns with the approach being taken.

15. Consultation with Welsh adoption agencies has highlighted that there is support for these provisions, and that they should apply to Wales.

16. The Committee recommends that the Assembly supports the Legislative Consent Motion, as it is appropriate to deal with these provisions in this UK Bill as it represents the most practicable and proportionate legislative vehicle to enable these provisions to apply in relation to Wales.

