



Report on the Legislative Consent Memorandum for the Children and Families Bill

Background

1. On 12 February 2013, the Minister for Health and Social Services laid a Legislative Consent Memorandum (LCM)¹ for the Children and Families Bill², which is currently before the UK Parliament.
2. On 19 February 2013, the Business Committee referred the LCM to the Children and Young People Committee (“the Committee”) for consideration, in accordance with Standing Order 29.4. The Business Committee also agreed that the Committee should report on the relevant provisions by 11 April 2013. The LCM is due to be considered in plenary on 16 April 2013.

The Children and Families Bill (“the Bill”)

3. The LCM summarises the policy objectives of the Bill:

“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.”

¹ Legislative Consent Memorandum available at: <http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&id=243185&ds=2/2013>

² Children and Families Bill available at: <http://services.parliament.uk/bills/2012-13/childrenandfamilies.html>

Main effect of the provisions in the Bill for which consent is sought

4. Consent is being sought in relation to two provisions in the Bill relating to—

- i. the dis-application of the Adoption and Children Act Register to Wales (Part 1, clause 6 and Schedule 1), and
- ii. the preparation of a care plan (clause 15(2)).

5. In relation to adoption, the Bill seeks to amend the Children Act 2002 so that the Secretary of State will no longer have the power to direct Welsh local authorities to provide information for the Adoption and Children Act Register.

6. In relation to the preparation of a care plan, the Bill seeks to amend the Children Act 1989 to provide that, in relation to Wales, the Welsh Ministers, rather than the courts as is currently the case, will have the power to set time limits for the preparation of a care plan by a local authority. The Bill also seeks to clarify that Welsh Ministers will now have powers to ‘prescribe’ the content and form of the care plan.

Consideration of the LCM

7. We considered the LCM on 27 February and wrote to the Minister seeking clarification on the following two points:

- why these provisions were not included within the Welsh Government’s Social Services and Well-being (Wales) Bill, as they relate to provisions contained within that Bill;
- what transitional measures will be put in place in relation to the dis-application of the Adoption and Children Act register to Wales.

8. We received two letters from the Deputy Minister in response to our request for clarification. These are attached at Annexes 1 and 2.

Our view

9. We note the Deputy Minister’s response and we have no objection to the use of an LCM in the manner proposed.

Gwenda Thomas AC / AM
Y Dirprwy Weinidog Plant a Gwasanaethau Cymdeithasol
Deputy Minister for Children and Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref LF/GT/0141/13

Mark Drakeford AM
Chair of Health and Social Services Committee

Christine Chapman AM
Chair of the Children and Young People Committee

National Assembly for Wales

5 March 2013

Dear Mark and Christine,

Thank you both for your letters of 28 February to the Minister for Health and Social Services regarding the Legislative Consent Memorandum (LCM) for the Department for Education Children and Families Bill.

The areas that your respective Committees require clarification on are set out below.

Point 1:

You have asked why the provisions were not included in the Social Services & Well-being (Wales) Bill 'as they relate to provisions contained in that Bill'. There are two such areas – care plans and adoption.

Care Plans

The provision in relation to care plans (section 31A plans) is contained within Part 5 of the Children Act 1989 that relate to matters of court proceedings. This rests outside of the competence of the Assembly. The section 31A plan is a distinct element of the social services overall care plan for the child and is provided to the Court as part of the care proceedings process. The social services plan is provided for within the Social Services & Well-being (Wales) Bill.

In practice the plan may be exactly the same document but it does not have to be and it may be that the social services plan for the child is much broader in its scope than that produced for the purposes of section 31A. This situation is provided for at Section 67(5) of the Social Services and Well Being (SS&WB) Bill:

The local authority may-

- (a) prepare or review a plan under this section at the same time as it or another body is preparing or reviewing another document in the case of the child concerned and
- (b) include the other document in the plan.

Adoption Register

Members will know from their recent inquiry into Adoption in Wales my plans for a National Adoption Service for Wales. Adoption is primarily a devolved matter and increasingly we are continuing to develop distinct policy approaches that are best suited to the priorities and circumstances of the people in Wales. The removal of Wales from the England and Wales Register as currently provided for in the Adoption and Children Act 2002 (section 125 to 131 refer) is the natural next step in taking forward our Welsh agenda. There is nothing currently in the Social Services and Well-being (Wales) Bill covering a stand alone adoption register for Wales. However, it is my intention, if necessary, to bring forward a government amendment at stage 2 of the Bill scrutiny to achieve this. A Wales only Register will form an integral part of the National Adoption Service allowing the new Service to take a tailored approach to creating a Register which will fit the needs of both children and prospective adopters in Wales.

I can however assure you that I will keep you informed of progress in establishing a register along with wider changes in the area of adoption.

Point 2 (i) – (iii) and Point 3

In relation to your specific points about transitional arrangements:

(i) & (3) The existing arrangements will remain in place until the law changes and our new register has been established. On current plans we envisage that a new National Adoption Register for Wales will be in place ready for the dis-application of the Adoption and Children's Act to Wales in April 2014.

(ii) My officials have already had talks with counterparts in Department for Education to ensure "plumbing" arrangements between the two Registers are established; as such no children will be dis-advantaged as a result of a Wales only Register

(iii) I can confirm that the existing joint funding arrangements will continue in practice & remain in place until separate England and Wales registers are established.

I am grateful to both the Health and Social Services and Child and Young Persons Committee's in their consideration on these matters and their support to the LCM. There will also be opportunity to discuss these matters when I lead on the plenary debate in April (16).

I also remain committed to keeping members regularly informed of progress made in advancing my plans for a Sustainable Social Service in Wales. The Assembly's scrutiny of the Social Services and Well-being (Wales) Bill will provide the platform for a full consideration of all matters of social wellbeing for the people of Wales, including those areas where there is an overlap with the LCM.

Yours Sincerely



Gwenda Thomas AC / AM

Y Dirprwy Weinidog Plant a Gwasanaethau Cymdeithasol
Deputy Minister for Children and Social Services

Gwenda Thomas AC / AM
Y Dirprwy Weinidog Gwasanaethau Cymdeithasol
Deputy Minister for Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref LF/GT/0141/13

Christine Chapman AM
Chair
Children and Young People Committee
National Assembly for Wales

19 March 2013

Dear Christine

Thank you for your letter of 13 March in relation to the Assembly's competence in respect of family law proceedings. This is a complex area and I am sorry if my earlier letter did not sufficiently explain why it is not possible to include the provisions in the Social Services and Well-being (Wales) Bill.

Please be assured that there is no inconsistency between the submissions we have made in the Legislative Consent Memorandum (LCM) and our clarifying letter to you of 5 March 2013. The need for the distinction which we are making between the requirement for the LCM and the reasons not to include provision of the same sort in the Social Services and Well-being Bill arises from the fact the provision in s.31A of the Children Act 1989 which is amended has two different aspects as set out below.

Provision about plans for children who are subject to care proceedings have to deal with two separate but related sorts of requirements. One set of requirements is to meet the needs of a court making decisions in care proceedings. When a court is satisfied that a child in care proceedings has suffered significant harm, before it makes an order, it must hear what the local authority's plan for the child is so as to be satisfied that making the order which the local authority seeks will be better for the child. This is the principal focus of section 31A and this is an issue about family proceedings which is outside the competence of the National Assembly for Wales because of the exception in relation to family proceedings in Schedule 7 of the Government of Wales Act 2006.

The other set of requirements about care plans for children apply for all children, whether they are the subject of care proceedings or not (some children are looked after by local authorities on an entirely voluntary basis). We have included provision to allow Welsh Ministers to set requirements about what a local authority must include in a child's care plan in the Social Services and Well-being (Wales) Bill.

The UK Children and Families Bill confers the function of setting time limits for the preparation of a care plan on the Welsh Ministers. To the extent that this imposes requirements on a local authority looking after the child in question, it is something which encroaches on the legislative competence of the National Assembly for Wales. However to the extent that this is about imposing requirements which apply to local authorities participating in care proceedings, it is not something which could be included in the Social Services and Well-being Bill in the same form. A Welsh Bill could not re-enact s.31A in its current form because of the family proceedings exception. Nor would it make sense in our view to make a separate Welsh amendment to s.31A, covering only some of the aspects, when there is the opportunity for this to be done for England and Wales in the UK Bill.

The inclusion of this part of the UK Bill's provision in the Legislative Consent Motion asserts the National Assembly's competence in relation to care planning for children. Not replicating s.31A in the Social Services and Well-being Bill is an acknowledgement of the limitation imposed by the family proceedings exception.

I am copying this letter to the Chair of the Health and Social Care Committee.

Yours Sincerely

A handwritten signature in cursive script, reading "Gwenda".

Gwenda Thomas AC / AM

Y Dirprwy Weinidog Gwasanaethau Cymdeithasol
Deputy Minister for Social Services