

## SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

### CHILDREN AND FAMILIES BILL: AMENDMENT IN RELATION TO SECTION 98(1) OF THE ADOPTION AND CHILDREN ACT 2002

1. This supplementary Legislative Consent Memorandum is laid under Standing Order (SO) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for a purpose that falls within, or modifies the legislative competence of the National Assembly.
2. The Children and Families Bill (the “Bill”) was introduced in the House of Commons on 4 February 2013. The Bill can be found at:  
<http://services.parliament.uk/bills/2012-13/childrenandfamilies.html>

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

3. 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 adoption, 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.
4. The Bill includes provisions relating to;
  - (a) Adoption - to deliver on reforms to: reduce delays in the adoption system; widen the use of ‘Fostering for Adoption’; improve the support available to adopters and the arrangements for the recruitment and assessment of prospective adopters and to make the Adoption and Children Act Register a statutory register in its application to England.
  - (b) Reform of the family justice system in England and Wales<sup>[1]</sup> to tackle delays in public law cases;
    - by implementing a 26 week time-limit for care and supervision cases; reduce the excessive use of experts’ reports; remove unnecessary duplication; and ensure the impact of the child is considered when timetabling decisions are made, and

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<sup>[1]</sup> FJR review of the family justice system for England and Wales and written statement

<http://wales.gov.uk/topics/childrenyoungpeople/parenting/help/justice/;jsessionid=F5E2D1B1C006F79F4176E6D249D006D4?lang=en>

<http://wales.gov.uk/about/cabinet/cabinetstatements/2012/familyjusticereviewupdate/?lang=en>

[n](#) ,

- in private family law - by requiring parents to attend a family mediation and assessment meeting before applying to court; send a clear signal to separated parents that courts will take account of the principle that both should continue to be actively involved in their children's lives where that is safe and consistent with the child's welfare; and introduce a new "child arrangements order" so that the courts can make full use of powers to direct parents to undertake activities aimed at helping them to make child arrangements work; and streamline divorce processes for the courts.
- (c) To reform the Special Educational Needs (SEN) system in England to; improve support for 16-25 year olds, offer a personal budget to children and families, require better collaboration between services; clearer information about the support available; streamline assessment processes and plans.
- (d) Childcare including to increase flexibilities for childminders by the introduction of childminder agencies.
- (e) Looked after children: to require every local authority in England to designate an officer to act as its 'Virtual School Head' (VSH) for the children it looks after; clarify the right to an assessment for support for young carers; and enable the Secretary of State to bring forward new regulations with the aim of raising standards in children's homes.
- (f) Office of the Children's Commissioner for England – to enhance the commissioner powers in promoting and protecting children's rights and greater independence from UK Government. The changes will apply to the Commissioner's role in promoting and protecting the rights of children in the devolved administrations, but only in relation to non-devolved matters.
- (g) Shared Parental Leave and Flexible Working; to introduce a system for shared parental leave and shared statutory parental pay as well as reform the system that gives individuals the right to request flexible working.

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

5. The consent of the Assembly is sought to enable the proposed amendment to section 98(1) of the Adoption and Children Act 2002 to apply to Wales as well as England.
- (a) The overall effect of the proposed provision is to change the regulation making power in section 98(1) of the 2002 Act to enable regulations to be made to give relatives of people adopted before the 30 December 2005 access to intermediary services to facilitate contact between the descendants and the adopted person's birth relatives, regardless of whether the adopted person is living or dead. The types of relatives

who will be affected by the new provision will be set out in regulations which will be made by Welsh Ministers.

- (b) The exclusion of persons related to adopted persons from the definition of relatives in section 98 of the Act creates an unfair anomaly in the legislation.
  - (c) Disapplying the amendment to Wales may be seen as discriminating against Welsh adoptees and their families, and may create problems in relation to cross border issues.
  - (d) The British Association of Adoption and Fostering (BAAF) provided evidence to the House of Lords Select Committee expressing their concern on existing anomalies within the 2002 Act and the distress this causes.
6. The Bill extends to Wales.
7. The proposed provision amends the existing regulation making power in section 98(1).

The regulations that are currently made pursuant to section 98 are the Adoption Information and Intermediary Services (Pre-Commencement Adoptions)(Wales) Regulations 2005.

The regulation-making power under s.98(1) will continue to be subject to the negative procedure (Section 140(2) Adoption and Children Act 2002).

8. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to adoption – a subject which falls under the social welfare heading in Part 1 of Schedule 7 to the Government of Wales Act 2006.
9. A memorandum has been previously laid in relation to the Children and Families Bill, although not in relation to the same provisions.

### **Advantages of utilising this Bill rather than Assembly legislation**

10. It is the view of the Welsh Government that 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. The proposed amendment to section 98 is considered to be minor and non contentious in its nature and effect. Regulations are already in place in relation to Wales that allow intermediary services to facilitate contact between an adopted person and their birth relatives. The change will mean that regulations can be made that will allow those intermediary services to facilitate contact between the adopted person's descendants and the adopted person's birth relatives. The Children and Families Bill appears to be the most practical vehicle to take this

provision forward to ensure that people in Wales whose family relationships are affected by adoption can benefit from this provision at the same time as those in England.

**Financial implications**

11. There are no anticipated financial implications for the Welsh Government.

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**Deputy Minister for Social Services**  
**December 2013**