

**SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM
(MEMORANDUM NO 2)**

**CHILDREN AND SOCIAL WORK BILL
CHILDREN'S SOCIAL CARE: PRE-EMPLOYMENT PROTECTION OF
WHISTLE-BLOWERS**

1. This 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 any purpose within, or which modifies, the legislative competence of the National Assembly.
2. The Children and Social Work Bill (the "Bill") was introduced in the House of Lords on 19 May 2016. The Bill can be found at:
<http://services.parliament.uk/bills/2016-17/childrenandsocialwork.html>

Policy Objectives

3. The UK Government's stated policy objectives 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.

Summary of the Bill

4. The Bill is sponsored by the Department for Education.
5. With exceptions, as stated below, the Bill extends to England only and contains measures which (on introduction) include:
 - A new set of principles clarifying how local authorities in England can promote and defend the interests of all looked-after children and care leavers.
 - A new requirement for local authorities in England to consult on and publish a local offer setting out the support available for care leavers in that area, and to ensure that all care leavers have access to a personal adviser up to age 25.
 - More support for adopted children and children in long-term care at local authority and school level through extending the role of virtual schools heads and designated teachers.
 - Provisions to ensure that the needs of children are paramount in court decisions about their adoption or long-term care, which should take into

account any harm they have suffered, the long-term plan for their upbringing, and their relationship with their prospective adopter.

- A new arrangement to enable local authorities in England to develop and trial more effective ways of delivering children's social care.
- A new central panel to review child safeguarding cases which raise issues that may lead to learning of national importance.
- Provisions to enable the creation of a new body to regulate and improve the quality of the social work profession.

Provisions in the Bill for which consent is required

6. Consent is sought for the amendment tabled by Lord Wills (headed after Clause 28) and published in the amendments for Report supplementary to the marshalled list on 26 October on the UK Government webpage for the Bill, which can be found at [http://www.publications.parliament.uk/pa/bills/lbill/2016-2017/0057/17057-l\(c\).pdf](http://www.publications.parliament.uk/pa/bills/lbill/2016-2017/0057/17057-l(c).pdf).
7. The amendment will insert section 49C into the Employment Rights Act 1996.
8. This amendment to the Bill has been tabled with the aim of affording protection to those who have previously made protected disclosures from being discriminated against when later applying for children's social care positions with relevant employers.
9. The amendment provides that the Secretary of State may make regulations which prohibit a relevant employer from discriminating against an applicant for a children's social care position because it appears to the relevant employer the applicant has made a protected disclosure.
10. The amendment also provides that regulations under this section may make provision about circumstances in which discrimination by an employee or agent of a relevant employer can be treated, for the purposes of the regulations, as discrimination by the employer.
11. The regulations may also confer jurisdiction (including exclusive jurisdiction) on employment tribunals or the Employment Appeal Tribunal and make provision for or about the grant or enforcement of specified remedies by a court or tribunal.
12. The clauses also define, for the purpose of these provisions, in relation to Wales that:
 - 'a relevant employer' means 'the council of a county or county borough in Wales' or a person who exercises children's social care functions as a result of a direction from Welsh Ministers (using their intervention

powers) under sections 153 to 157 of the Social Services and Well-Being (Wales) Act 2014.

- ‘Children’s social care functions’ mean ‘any functions relating to the social care of children in Wales that are prescribed by regulations under this section’.

13. The amendment provides that only where regulations under this section are to include the definition of ‘relevant employer’ or ‘children’s social care functions’, the Secretary of State must consult the Welsh Ministers before they are made.

14. There is an additional sub-clause which provides that all regulations under this section are to be subject to the affirmative procedure in Parliament.

15. It is the view of the Welsh Government that consent is required for these provisions because they fall within the legislative competence of the National Assembly for Wales in so far as they relate to the ‘social services’ subject within the ‘social welfare’ heading under paragraph 15 of Part 1, Schedule 7 to the Government of Wales Act 2006.

Reasons for making these provisions for Wales in the Children and Social Work Bill

16. Making provisions for Wales in the Bill would afford the same protection to applicants for children’s social care positions with relevant employers in Wales as those in England and Scotland. Any delay in implementing these provisions in Wales could disadvantage workers here; the Welsh Government therefore considers that they should come into effect at the same time as in England and Scotland.

Financial implications

17. There are no financial implications for the Welsh Government if the National Assembly for Wales consents to the provisions applying to Wales. Any settlement costs, arising out of Employment Tribunals decisions, would be managed within existing local authority budgets.

Conclusion

18. 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.

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November 2016