

LEGISLATIVE CONSENT MEMORANDUM
CHILDREN, SCHOOLS AND FAMILIES BILL

Legislative Consent Motion

“To propose that the National Assembly for Wales, in accordance with Standing Order 26.4, agrees that those provisions relating to Local Safeguarding Children Boards and the provision of information about schools etc of the Children, Schools and Families Bill, as introduced into the House of Commons on 19th November 2009, so far as they fall within the legislative competence of the National Assembly for Wales, should be considered by the UK Parliament “

Background

1. The above Motion has been tabled by Jane Hutt, Welsh Minister for Children, Education, Lifelong Learning and Skills under Standing Order 26.4 of the Standing Orders (“SO”) of the National Assembly for Wales (“NAW”). This memorandum is laid under SO26.2. SO 26 prescribes that a Legislative Consent Motion must be tabled and a Legislative Consent Memorandum laid before the NAW if a UK Parliamentary Bill makes provision in relation to Wales that falls within the legislative competence of the NAW, or has a negative impact on that competence.

2. The Children, Schools and Families Bill (“the Bill”) was introduced on 19th November 2009. The Bill can be found at:

<http://www.publications.parliament.uk/pa/cm200910/cmbills/008/10008.i-iii.html>

Summary of the Bill and its Policy Objectives

3. The Bill contains provisions on a range of policy areas and many of its provisions do not apply in Wales. The main purpose of the Bill is to introduce a system of guarantees for parents and pupils in the school system and to make changes to the way schools operate together. The Bill also includes provisions relating to the curriculum, home education, introduces a system of licences to practice for teachers, amends the Children Act 2004 in relation to Local Safeguarding Children Boards and makes provision in respect of youth justice and the publication of information in Family Court proceedings. The Bill also makes provision in relation to children with disabilities or special educational needs, and in connection with the exceptional provision of education in short stay schools or elsewhere.

Provisions in the Bill for which consent is sought

4. The Bill makes provision that applies equally to England and Wales in relation to, the provision of information in connection with schools and funded education, otherwise than at a school. In summary:

- Clause 20 amends section 537 of the Education Act 1996 (“the 1996 Act”) to enable the Welsh Ministers to make regulations requiring the supply of information from schools about the views of specified persons about a school and about how those views are to be obtained. Regulations may prescribe the type of information that is to be provided; and inserts a new section 537ZA in to the 1996 Act allowing the Welsh Ministers to make regulations requiring the supply of information about education funded by a local education authority under section 19(1) of the 1996 Act. This power mirrors that for schools contained in section 537 of the 1996 Act (as amended by the Bill) and gives powers to collect that information from both the local education authority and the education provider. Regulations may also prescribe the type of information that may be required. Regulations have already been made by the Welsh Ministers under section 537 of the 1996 Act as it currently stands. Such regulations include Education (School Performance Information) (Wales) Regulations 2004 and the Education (School Information) (Wales) Regulations 1999. Those regulations require school governing bodies to provide a wide range of information including but not exclusively:
 - details of pupils attending the school;
 - academic results across the school;
 - details of the curriculum; and
 - details of particular policies adopted at the school in a number of areas including the school complaints process, the provision in makes with children with special educational needs, its charges and remissions policy, and its arrangements in respect for school transport.

- Clause 29 inserts a new section after section 32 of the Children Act 2004 to set out a number of conditions under which a person or body must supply specified information to a Local Safeguarding Children Board, and sets out that a Local Safeguarding Children Board must have regard to any guidance given to it by Welsh Ministers in exercising any of its functions under that section

5. These provisions are within the legislative competence of the NAW under the following Matters:

- Matter 5.6 – Provision about the making of arrangements for the provision of education for persons of compulsory school age who have been excluded from schools or who for any other reason would not otherwise receive suitable education

- Matter 5.7 – Provision about entitlement to primary, secondary and further education and to training

- Matter 15.2 – Functions of public authorities relating to – (a) safeguarding children from harm and neglect; (b) safeguarding and promoting the well-being of vulnerable children; (c) reducing inequalities in well-being between children and young people
- Matter 15.6 – Co-operation and arrangements to safeguard and promote the well-being of children or young persons..

Advantages of utilising this Bill

6. It is the view of the Welsh Assembly Government that it is appropriate to deal with these provisions in this UK Bill as it represents the most appropriate and proportionate legislative vehicle to enable these provisions to apply in Wales at the earliest opportunity and will allow Welsh Ministers to introduce appropriate legislation in accordance with Welsh priorities and concerns.

7. If those amendments are to apply only to England the Welsh Ministers would be placed at a disadvantage in terms of their powers to collect and publish such information in comparison to the Secretary of State. Advice from Parliamentary Counsel in relation to the amendments to section 537 of the 1996 Act, is that, to carve Wales out these amendments would strongly suggest that the Welsh Ministers do not have the power to require school governing bodies in Wales to provide information about people's opinions about the school.

8. This Legislative Consent Memorandum has therefore been laid, and the Legislative Consent Motion tabled, before the National Assembly for consideration.

Financial Implications

9. The financial implications of any subsequent consultation, legislation or guidance arising from a future decision to exercise the power to make regulations under the relevant provisions will be subject to full consideration of affordability and to a Regulatory Impact Appraisal which would include an analysis of costs and benefits.

Jane Hutt
Welsh Minister for Children, Education, Lifelong Learning and Skills.