

LEGISLATIVE CONSENT MEMORANDUM
EDUCATION BILL

Supplementary Legislative Consent Motion

“To propose that the National Assembly for Wales, in accordance with Standing Order 29.6, agrees that, in addition to the provisions referred to in motion NNDM4660, those further provisions which have been brought forward in the Education Bill relating to charges for boarding and lodging at boarding Academies, in 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 was tabled by Leighton Andrews, Welsh Minister for Children, Education and Lifelong Learning under Standing Order 29.6 of the Standing Orders (“SO”) of the National Assembly for Wales (“NAW”). This memorandum is laid under SO29.2. SO 29 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 Education Bill (“the Bill”) was introduced on the 26th January 2011 and can be found at:

<http://services.parliament.uk/bills/2010-11/education.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 create an education system that delivers for all children. Starting with basic literacy ability and continuing through to the attainment of qualifications enabling students to continue their education or stand them in good stead for work. The Bill will take forward the commitments set out in the ‘Importance of Teaching’ White Paper and the Department for Business, Innovation and Skills ‘Skills for Sustainable Growth and Further Education’. There will also be two elements of Higher Education Funding included in the Bill.

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 charges at boarding Academies. Currently the payment of boarding school lodging charges are set out under section 458 of the Education Act 1996.

5. Section 458 of the Education Act 1996 places a duty on local authorities in England and Wales to remit/ pay the board and lodging charges for pupils from their area attending maintained boarding schools in the following circumstances:
 - Where the local authority for the pupil's area are of the opinion that education suitable to his or her age, ability aptitude and Special Education Needs cannot be met otherwise than by that pupil attending a maintained boarding school then, that local authority shall remit the full charges for board and lodging if the school is in its area, or if it is in a different local authority area to where the pupil lives then it must pay the full cost of those to the local authority where the school is situated.
 - In any other case, where the local authority is satisfied that paying the boarding and lodging charges in full would involve financial hardship to the parents, then the local authority must remit those charges if the school is in its own area, or if the school is in a different local authority area to where the pupil lives. Those charges must be remitted or paid to such extent as the local authority considers will avoid such hardship. If such hardship cannot be avoided the local authority must remit/pay the whole of the charges.
6. Section 458 of the Education Act 1996 places a duty on local authorities, in the circumstances outlined in paragraph 5, only to remit/pay these boarding and lodging charges for pupils attending maintained schools. In this context maintained school means any school maintained by a local authority to include community schools, community special schools, voluntary controlled schools, voluntary aided schools, foundation schools, foundation special schools and maintained nursery schools.
7. Clause 59 of the Bill will amend the Academies Act 2010 by inserting a new clause 10A. This new clause replicates the requirements of section 458 of the Education Act 1996 for boarding Academies so as to place a duty on local authorities to remit/pay such charges to those boarding schools which have Academy status. Therefore in conjunction with section 458 of the Education Act 1996 local authorities will be under a duty to remit/pay boarding and lodging school charges for pupils at both maintained and Academy schools in certain circumstances. However, clause 59 does not allow Academies to be established in Wales.
8. These provisions are within the legislative competence of the NAW under the following headings:
 - Heading 5 - Schedule 7 of the Government of Wales Act 2006 - Education and training.
 - Heading 12 - Schedule 7 of the Government of Wales Act 2006 – Local Government.
 - Heading 15 - Schedule 7 of the Government of Wales Act 2006 – Social Welfare.

Advantages of utilising this Bill

9. 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 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.

10. If those amendments are to apply only to England then the parents of children who live in Wales but who attend boarding academies in England, would be disadvantaged as there would not be a duty on local authorities to pay the boarding and lodging charges of such academies in the circumstances outlined above.
11. This Legislative Consent Memorandum has therefore been laid, and the Legislative Consent Motion tabled, before the NAW for consideration.

Financial Implications

12. There are 31 (English) boarding schools who either are or were (prior to converting to become Academies) maintained schools falling under the section 458 provisions. Welsh maintained boarding schools cannot convert to become Academies. Section 458 of the Education Act 1996 has always applied to maintained boarding schools. It is now proposed that this provision, under section 10a of the Academies Act, will also apply to boarding Academies as well as maintained schools so as to maintain the status quo. The amendment will allow the provision and choice currently available to remain the same in the instance of a maintained boarding school in England converting to Academy status.
13. Neither the Welsh Government nor the Department for Education are aware of any pupils having had their fees remitted under the section 458 provisions for a number of years.

Leighton Andrews AM.
Welsh Minister for Education and Skills