

LEGISLATIVE CONSENT MEMORANDUM

EDUCATION 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 **Section 409 Education Act 1996, Permitted Charges, Independent Appeal Panel, Boarding Schools and Colleges and Young People’s Learning Agency (YPLA)** contained within the Education Bill, as introduced into the House of Commons on 26th January 2011, 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 Leighton Andrews, Welsh Minister for Children, Education and Lifelong Learning 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 Education Bill (“the Bill”) was introduced on 26th January 2011 The Bill 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 provision of information in connection with schools and funded education, otherwise than at a school, in summary:
5. **Clause 44** will reinstate section 409 and paragraph 6(3) and (4) of Schedule 1 to the Education Act 1996 for Wales. During the passage of the Apprenticeship Skills Children and Learning Act 2009 provisions were included repealing section 409 and paragraph 6(3) and (4) of Schedule 1 to the Education Act 1996. This repeal was inadvertently applied to Wales instead of just England.
6. Section 409 of the Education Act 1996 relates to powers to provide that a local authority should make arrangement to consider complaints in relation to such matters as the National Curriculum, collective worship, religious education and curriculum generally. As of yet the repeal of these provisions have not yet been brought into force so no practical change has actually taken place.
7. These provisions are within the legislative competence of the NAW under the following Matters:
 - Matter 5.2A, Conduct and governance of schools maintained by local authorities, including the allocation of functions, property, rights and liabilities relating to such schools.
 - Matter 5.4, Provision about the curriculum in schools maintained by local authorities.
8. **Clause 47** will amend Section 456 of the Education Act 1996 for the purposes of the determination of permitted charges clarifying the regulation of the permitted charges allowed under section 455 of this Act.
9. Section 455 allows schools to charge for non education services e.g. boarding of a pupil on a residential trip. The proposed amendment would clarify that charges can include costs attributable to the provision and maintenance of accommodation e.g. maintenance, heating and lighting which arise in connection with providing these “optional extras” which can be charged for.
10. These provisions are within the legislative competence of the NAW under the following Matters:
 - Matter 5.2A, Conduct and governance of schools maintained by local authorities, including the allocation of functions, property, rights and liabilities relating to such schools.
 - Matter 5.4, Provision about the curriculum in schools maintained by local authorities.

- Matter 5.8, Provision about the provision of services that are intended to encourage, enable or assist people -
 - (a) to participate effectively in education or training,
 - (b) to take advantage of opportunities for employment, or
 - (c) to participate effectively in the life of their communities.

- Matter 5.14, The provision of financial resources for and in connection with -
 - (a) education or training provided by institutions concerned with the provision of further education;
 - (b) post-16 education or training provided otherwise than by such institutions;
 - (c) the carrying out of research relating to education or training falling within paragraph (a) or (b).

- Matter 15.6, The provision of advice and information in connection with, and the carrying out of studies in relation to -
 - (a) pre-16 education or training;
 - (b) post-16 education or training;
 - (c) the training of teachers and specialist teaching assistants for schools;
 - (d) services of the kinds mentioned in matter 5.8.

11. **Clause 42** - Proposals will provide that those pupils excluded from schools in England are to be provided with an opportunity to have that decision reviewed by a review panel. There will however no longer be the option of parents or pupils in England being able make an application to an Independent Appeal Panel (IAP) constituted under section 52 of the Education Act 2002. This provision will only apply to England, therefore the Bill will amended section 52 of the Education Act 2002 so that it is only applicable to Wales. These provisions will give rise to consequential amendments requiring their inclusion within this LCM.

12. Schedule 1 to the Bill will provide an amendment to schedule 17 to the Equality Act 2010 (disabled pupils: enforcement). The amendment will ensure that clarification around rights to appeal is provided to include any person who can make an appeal under the arrangements in section 52(3) of the Education Act 2002 and not just an appeal by the person's parent.

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

- Matter 5.5 Provision about school attendance, the behaviour of pupils at schools, school discipline, and the exclusion of pupils from schools (including the duties of parents in connection with those matters)

- Matter 5.17, Education and training for -

- (a) persons who have a greater difficulty in learning than the majority of persons of the same age as those persons;
- (b) persons who have, or have had -
 - (i) a physical or mental impairment, or
 - (ii) a progressive health condition (such as cancer, multiple sclerosis or HIV infection) where it is at a stage involving no physical or mental impairment.

14. **Clause 42**, will provide legislative changes to the current wording of sections 87-87D of the Children Act 1989 via an Education Bill. The primary intention is that of clarifying for the purposes of sections 87-87D; a school or college provides accommodation for a child if it provides the accommodation on its own premises or arranges for it to be provided elsewhere.
15. To address a potential loop hole where schools arrange alternative accommodation for pupils which may not be covered by the current legislation and so not subject to inspection there will be a number of amendments to rectify this situation.
16. The functions prescribed by sections 87 - 87D of the Children Act 1989 falls within the legislative competence of the National Assembly for Wales under the following matters.
 - **Matter 15.6** Co-operation and arrangements to safeguard and promote the well-being of children or young persons. This matter applies to co-operation by, and arrangements made by -
 - (a) public authorities whose principal functions relate to any one or more of the fields in this part;
 - (b) police authorities and chief officers of police for police areas in Wales;
 - (c) the British Transport Police Authority;
 - (d) local probation boards for areas in Wales;
 - (e) the Secretary of State, in relation to the Secretary of State's functions under sections 2 and 3 of the Offender Management Act 2007, or any provider of probation services under arrangements made under section 3(2) of that Act;
 - (f) youth offending teams for areas in Wales;
 - (g) the governors of prisons, young offender institutions or secure training centres in Wales (or, in the case of contracted out prisons, young offender institutions or secure training centres or contracted out parts of such institutions, their directors);
 - (h) persons other than public authorities who are engaged in activities relating to the well-being of children or young persons.
17. **Clause 62**, will repeal Sections 60 to 80 of and Schedule 3 of the Apprenticeships, Skills, Children and Learning Act 2009 ("the ASCLA") abolishing the Young Persons Learning Agency (YPLA). The YPLA was launched in April 2010 with the mission of championing education and training for young people in England. They do this by providing financial support to young learners, by funding academies for all their provision and

by supporting local authorities to commission suitable education and training opportunities for all 16-19 year olds. The YPLA do not provide any services in Wales.

18. The general functions of the YPLA are relevant to a number of Matters in Field 5 of Schedule 5 of the Government of Wales Act 2006 (“GOWA 2006”), namely Matters 5.8, 5.11, 5.13, 5.16 and 5.18 . However, it is the collaborative provisions set out in sections 68 and 69 of the ASCLA that are relevant here. In abolishing the YPLA, DfE will be required to repeal sections 68 and 69 of the ASCLA. Under section 68 of the ASCLA. Under section 68 of the ASCLA, the YPLA may make arrangements with the Welsh Ministers for the provision by the YPLA of services that are required by the Welsh Ministers in connection with the exercise of their functions relating to education or training. Section 69 provides that the YPLA may take part in arrangements made by the Welsh Ministers under section 2 of the Employment and Training Act 1973 (arrangements for assisting persons to select, train for, obtain and retain employment).
19. The NAW could, by Measure, make provision which repealed sections 68 and 69 of the ASCLA in so far as those sections enable the YPLA to make arrangements with the Welsh Ministers for the provision by the YPLA of services that are required by the Welsh Ministers in connection with the exercise of their functions relating to education or training or to take part in arrangements made by the Welsh Ministers under section 2 of the Employment and Training Act 1973.
20. These provisions are within the legislative competence of the National Assembly for Wales under a combination of the following Matters:
 - Matter 5.8, Provision about the provision of services that are intended to encourage, enable or assist people -
 - (a) to participate effectively in education or training,
 - (b) to take advantage of opportunities for employment, or
 - (c) to participate effectively in the life of their communities.
 - Matter 5.11, Provision for and in connection with securing the provision of facilities for post-16 education or training.
 - Matter 5.13, Provision for and in connection with securing collaboration
 - (a) between bodies that conduct institutions concerned with the provision of further education, or
 - (b) between one or more such bodies and other persons or bodies that have functions relating to education or training in Wales, including, in particular, provision for and in connection with the establishment of bodies for the purpose of discharging functions on behalf of one or more persons or bodies that are party to arrangements for collaboration.
 - Matter 5.16 The provision of advice and information in connection with, and the carrying out of studies in relation to -

- (a) pre-16 education or training;
 - (b) post-16 education or training;
 - (c) the training of teachers and specialist teaching assistants for schools;
 - (d) services of the kinds mentioned in matter 5.8.
- Matter 5.18, The provision of any of the following for children or young persons -
 - (a) facilities for social or physical training;
 - (b) educational activities.
 In this matter “children” and “young persons” have the same meaning as in field 15. Interpretation of this field

In this field -

“nursery education” means education suitable for children who have not attained compulsory school age

“post-16 education” means -

 - (a) education (other than higher education) suitable to the requirements of persons who are above compulsory school age, and
 - (b) organised leisure-time occupation connected with such education;

“post-16 training” means -

 - (a) training suitable to the requirements of persons who are above compulsory school age, and
 - (b) organised leisure-time occupation connected with such training.

“pre-16 education or training” means education or training suitable to the requirements of persons who are of or below compulsory school age.

“relevant independent educational institution” means an institution other than a school which -

 - (a) provides part-time education for one or more persons of compulsory school age (“part-time students”) whether or not it also provides full-time education for any person, and
 - (b) would be an independent school but for the fact that the education provided for the part-time student or students is part-time rather than full-time.

For the purposes of the above definition of “relevant independent educational institution”, an institution provides “part-time” education for a person if -

 - (a) it provides education for the person, and
 - (b) the education does not amount to full-time education.

Advantages of utilising this Bill

21. 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.

22. If those amendments are to apply only to England the Welsh Ministers would be placed at a disadvantage. Clauses 42 and 47 provide important clarification in relation to boarding school accommodation and permitted charges. The lack of a consistent approach for schools in these areas would have a detrimental effect in Wales.
23. This Legislative Consent Memorandum has therefore been laid, and the Legislative Consent Motion tabled, before the NAW for consideration.

Financial Implications

24. 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, where appropriate, which would include an analysis of costs and benefits.

Leighton Andrews AM.
Welsh Minister for Children, Education and Lifelong Learning