

Legislation Committee No.2 - Proposed Children and Families (Wales) Measure

LC2(3)-08-09 Paper 4

Magistrates Association Family Courts Committee

Response to Legislation Committee No 2 - Consultation on the Proposed Children and Families (Wales) Measure

The Family Courts Committee of the Magistrates Association thanks the Legislation Committee No2 of the Welsh Assembly Government for its invitation to give oral evidence. We have much pleasure in accepting and submit our response ahead of that meeting.

The Magistrates Association represents Magistrates across England and Wales on a broad spectrum of issues affecting the Magistracy.

These include policy and procedure, sentencing, training and responding to consultations. In particular the Family Courts Committee represents family magistrates on these issues relating to family matters which affect the Family Proceedings Courts in England and Wales.

Family Magistrates are part of the Family Jurisdiction, and therefore apply all legislation, practice directions, guidance, policy and procedures consistently to the Family Proceedings Courts throughout England and Wales. A member of the Family Courts Committee is from Powys and acts as liaison between the Committee and Wales. We therefore acknowledge the establishment of the Welsh Assembly Government, the setting up of Cafcass Cymru within it and its recent approach to the implementation of the Public Law Outline (PLO) and the Private Law Programme.

We welcome the opportunity to give evidence to the Legislation Committee in order to mark an official relationship with the Welsh Assembly Government as part of a better understanding of the implementation of legislation in Wales in the Family Proceedings Courts. Part of this will be to acknowledge similarities and differences in the English and Welsh legislations and how it will work in the courts.

More specifically, we are responding to the Proposed Children and Families (Wales) Measure highlighting the similarities and differences.

Considerations by the Committee

In respect of the role of Committee No2 our response focuses on No 5 - The views of Stakeholders who will work with the new measures.

Parallel English Legislation

In the UK the Childcare Act 2006 introduces a new system of regulation for childcare providers and has replaced the registration regime provided for in the Children Act 1989. There are major similarities in the two pieces of legislation and a few significant differences in relation to Wales. The aim of the legislation is to provide clarity and to bring the powers into one separate measure whilst enhancing regulation and enforcement powers.

Sections 20 - 24

The proposed provisions in this section are similar to those under S 66 of the Child Care Act 2006 for failure to comply with registration conditions. Persons wishing to provide day care provision for children in a particular premises must apply for registration. If a registered person contravenes or fails to comply with registration, they are guilty of a level 5 offence.

Sections 25 - 27

These proposals are similar to S. 68 - 70 of the Child Care Act 2006 in that there is provision for the cancellation or suspension of the registration or for the person to voluntarily remove themselves from the registration.

Section 28

It is proposed that in an emergency, Ministers may apply to a JP for an order cancelling a persons registration and the application may be made ex-parte. For a registration to be cancelled the child for whom day care or child minding is provided by the registered person must be suffering or likely to suffer significant harm. Similar provision exists in S 72 of the Child Care Act 2006.

There is a difference between England and Wales in that in England the powers of cancellation of registration, varying, or imposing conditions in an emergency are exercised by a JP. The Welsh Measure separates these out. Whilst the power to cancel registration in an emergency is exercised by a JP, the variation, removal or imposition of conditions in an emergency is exercised by Ministers/those delegated. This is provided for in Section 29. Appeals in both jurisdictions are to a first tier tribunal.

Section 29

The proposals state that in an emergency, Ministers/those delegated can vary, remove or impose conditions on a person's registration if it is of the view that unless they act, the child will or may be exposed to significant harm. This takes effect from the time the Ministers give notice. This is a change from the existing provision whereby only a JP can vary remove or impose conditions.

Section 30

In non-emergency situations, the proposals are that Ministers/ those delegated have to give notice if they intend to refuse an application for registration, impose a new condition, vary or remove a condition, refuse to grant a condition or to cancel a persons registration.

Section 31

This confirms the existing situation whereby appeals under s 28, 29, &30 are to a first line tribunal and not to a court.

Section 35

This section proposes to give powers to authorised persons to enter premises without a warrant if there is cause to believe that a child is being looked after in contravention of the Measure and can inspect the premises, records and documents, and take copies of them, inspect any children being looked after there and interview others etc. Obstruction of such an authorised person exercising these powers is a level 4 offence. These are similar powers to that in S76 of the Child Care Act 2006. There are differences however. Section 77 of the CCA 2006 provides for the requirement of consent to enter domestic premises to exercise a power of entry under Section 77(2). Section 78 provides that where where a person has been or is likely to be prevented from exercising a power conferred by Section 77 application can be made to the court for a warrant authorising any constable to assist that person in the exercise of that power using reasonable force if necessary. There does not appear to be a requirement for such consent or for a warrant of assistance under the Measure. We consider that the authorised person should be required to apply to a court for a warrant before entering the premises.

Section38

This confirms existing legislation that the making of a false or misleading statement is a level 5 offence.

Section 39

It is proposed that Ministers will be able to issue fixed penalties for the offences listed. The list of these offences is to be determined by regulations. We do not understand why in this clause it falls upon Ministers to issue fixed penalties. We consider that all criminal matters should be dealt with by a magistrates court and the penalties ordered according to the official Magistrates Court Sentencing Guidelines.

Section 41

This sets a time limit for bringing proceedings of 1 year. This is against a 6 months time limit in S 86 of the Child Care Act . This is from the time that such information is made known to the Prosecutor (and is subject to a maximum of three years from commission of the offence).

Regarding the above clauses we would make the following submission

We consider that any criminal proceedings brought in relation to this Measure should be dealt with in the magistrates court.

We note Section 28(8) which provides that for the purpose of Section 28 and 29 "harm" has the same meaning as in the Children Act 1989 (c. 41) and the question of whether harm is significant is to be determined in accordance with section 31(10) of that Act. We are reassured to see that there is commonality of terms.

We seek clarification regarding the powers of Ministers / delegated persons and those of the JP/courts.

There is a need for a briefing note to magistrates and legal advisers on these Measures.

Part 3

In England, the CCA 2006 imposes duties on Local authorities in relation to the well-being of young children, the provision of early childhood services, and places a duty on the local authority and relevant partners to work together. There are also other partnership duties under the Children Act.

The Magistrates Association supports the initiative of the Welsh Assembly Government to pilot Integrated Family Support Teams in three councils for multi-disciplinary teams to help safeguard children whose parents have complex needs. Protecting and supporting vulnerable children must be in their best interests. There are no proposals regarding how court proceedings will be brought in circumstances that require a court application. However, we await the outcome of the pilot schemes and may wish to comment at that stage. There is no similar initiative in England.

April 2009