

Subordinate Legislation Committee

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SLC(3)-11-09 : Paper 6 : Proposed Children and Families (Wales) Measure - Legal Advisers' Report - Note on Subordinate Legislation Provisions

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Proposed Children and Families (Wales) Measure

Note on Subordinate Legislation Provisions

Background

1.1 The Children and Families (Wales) Measure makes statutory provision, through a legislative framework, to take forward the Welsh Assembly Government's commitment in terms of child poverty. It also intends to take forward early development of the Government's strategy for vulnerable children by bringing forward legislation to provide greater support to families where children may be at risk together with strengthened regulatory enforcement in children settings.

1.2 The Proposed Measure is in four Parts:-

Part 1: Eradicating Child Poverty - sections 1 to 12

Part 2: Child Minding and Day Care for Children - section 13 to 48

Part 3: Integrated Family Support Teams - sections 49 to 58

Part 4: Miscellaneous and General - sections 59 to 68

Additionally the Proposed Measure contains two Schedules: Schedule 1 deals with Minor and consequential Amendments and Schedule 2 with Repeals.

1.3 Part 1 - Eradicating Child Poverty

The purpose of Part 1 of the Proposed Measure is to introduce a legislative framework requiring Welsh authorities (as defined in section 12) to make and demonstrate their contribution towards eradicating child poverty by requiring the production and publishing of strategies reflecting the broad aims contained in section 1 of the Proposed Measure for contributing to the eradication of child poverty in Wales. These strategies will provide a reference point for objective setting and other actions.

1.4 Part 2 - Child Minding and Day Care for Children

The current legislation relating to childminding and regulation of day care is found in Part 10A of and Schedule 9A to the Children Act 1989. The purpose of the Proposed Measure is to repeal and re-enact the current provisions (which are mainly technical in nature) to ensure that the range of regulatory enforcement options is available to all establishments and agencies that the Welsh Ministers regulate and to introduce a new regulatory option, namely a penalty notice, which will all the Welsh Ministers to take a quick and proportionate response to a regulatory breach. The Proposed Measure seeks to restate and modify the law in a more cohesive way and does not provide for any significant burdens to be placed upon child minders or day care providers.

Part 3 - Integrated Family Support Teams

The purpose of Part 3 of the Proposed Measure is to introduce new integrated family support teams to strengthen support to vulnerable children and families through reconfiguring services towards more targeted support delivered by multidisciplinary professional teams to improve outcomes for children and adults so that they can live safely together as a family unit.

Part 4 - Miscellaneous and General

The purpose of the Proposed Measure is to reflect the Welsh Assembly Government's commitment to the United Nation Convention on the Rights of the Child and in particular to Article 31.1 and 2 relating to play. The Proposed Measure imposes a duty on local authorities to carry out assessments of the sufficiency of play opportunities in their areas in accordance with regulations made and guidance issued by Welsh Ministers.

The Proposed Measure also reflects the Welsh Assembly Government's commitment to Article 12.1 of the United Nation Convention on the Rights of the Child relating to the formation and expression of views. The Proposed Measure places a general duty on local authorities to make arrangements to promote and facilitate participation by children in decisions of the local authority which affect them.

Provisions conferring power to make subordinate legislation

2. The measure contains a number of provisions which confer on the Welsh Ministers, a power to make regulations and orders in relation to certain functions under the Proposed Measure. The power in each case is to be exercised by the Welsh Ministers by statutory instrument.

2.1. The following provisions contain powers to make regulations:-

Part 1

Section 1(5): power to make regulations for the determination of material deprivation and median income;

Section 4(3): under strategies prepared by Welsh children's services authorities, amends section 26 of the Children Act 2004, giving the Welsh Ministers power under that act to make regulations in relation to children's plans;

Section 5(3): power to make regulations in relation to strategies prepared by other Welsh authorities, including the period of the strategy; its publication; review and consultation before publication;

Section 6(1)(a): power to make regulations in relation to a local authority duty to secure availability of free childcare; prescribe the type of childcare; prescribe the description of children entitled to it and their age;

Section 9(1): power to make regulations to impose duties on local authorities in relation to the provision of particular sorts of parental support services and health support services for particular sorts of children or parents; power to require that the duty triggered by the making of regulations under section 6(1) or a duty in relation to parental support services or health support services, is to apply in one or more parts of a local authority area;

Section 9(2): power to make regulations about the areas in which services specified by the regulations are to be provided either in the regulations or by requiring that the authorities themselves specify the areas.

Part 2

Section 18(2)(a) and (c): power to make regulations to prescribe the information to be provided by applicants for registration as a childminder and the relevant fee;

Section 19: power to make regulations to prescribe further information to be provided by applicants for registration as a childminder;

Section 20(2)(a) and (c): power to make regulations to prescribe the information to be provided by applicants for registration as a day-care provider and the relevant fee;

Section 21: power to make regulations to prescribe further information to be provided by applicants for registration as a day-care provider;

Section 22: power to make regulations to prescribe information about prescribed matters, to be included on a certificate of registration: power to prescribe fee for replacement of lost certificate of registration;

Section 24(1),(2),(3) and (4): power to make regulations governing activities of persons registered as childminders or day-care providers, including welfare and development of children; suitability; qualifications and training; maximum numbers of children cared for; staffing levels; premises; complaints procedure; staff supervision; records; provision of information; obligations of third parties (under section 23(3)) and (under section 24(4)), offences and penalties;

Section 25(5): power to make regulations to prescribe the circumstances under which a person's registration may be cancelled;

Section 26(1): power to make regulations to prescribe the circumstances under which a person's registration may be suspended;

Section 32(2),(3),(4) and (5): power to make regulations in relation to the disqualification of a person from registration (section 32(2)); to prescribe particular circumstances in which a person may be disqualified from registration (section 32(3)); further provision in relation to a person living in a household where a person has been disqualified (section 32(4)) and power of Welsh ministers to consent to a person not being disqualified (section 32(5));

Section 34(1),(2) and (3): power to make regulations in relation to inspection of childminding and day-care; publication of reports (section 34(1)); inspection by Welsh Ministers or Chief Inspector of Education and Training or another (section 34(2)) and application of section 29(2) to (4) of the Education Act 2005 to reports published under the regulations (section 34(3));

Section 37(1),(2) and (3): power to make regulations in relation to supply of information to local authorities; Welsh Ministers to supply prescribed information to local authorities on taking certain steps;

Section 39(2) and (5): power to prescribe offences which are fixed penalty offences; period in which proceedings for an offence may not be instituted;

Section 40(1) and (2): power to make regulations making supplementary provision with respect to penalty notices; amounts payable under fixed penalties;

Section 44(1)(a) and (b): power to make regulations to require a local authority to secure information and advice as to childminding and day-care; training in to childminding and day-care;

Section 45(1) and (2): power to make regulations as to payment of fees by registered persons: amount and waiver of fees;

Section 48(1) and (2): power to make regulations to provide for death of registered person;

Part 3

Section 50 (2) and (9): power to make regulations to say which health and social services functions can be assigned to an IFS team by a local authority and power to assign functions to the team and to allow referrals to IFS teams in different circumstances.

Section 51(2): power to make regulations in relation to the way the Integrated Family Support Teams are funded.

Part 4

Section 60: power to make regulations about the assessments which local authorities must make on the sufficiency of play opportunities in their area.

2.2. The procedure for these regulations is the negative procedure. Use of the negative procedure is justified in the Explanatory Memorandum on the following grounds:-

2.2.1.Regulations under these powers relate to matters which are technical or procedural in nature or will set out detail. The nature and content of the provisions made by any such regulations would not appropriate to be included on the face of the Measure. It is also desirable that the Welsh Ministers have the flexibility to amend provisions about matters such as those relating to the regulation of childminding and daycare quickly. The negative resolution procedure affords the Assembly a degree of scrutiny appropriate to the limited type of provision that can be made in these regulations.

2.2.2.In each of the cases detailed above, the rationale for the application of subordinate legislation rests upon the need to avoid excessive detail or to allow for flexibility, within the confines of the principles presented within the Measure itself. As these regulations will contain considerable detail, and will be subject to periodic review and amendment if required, it is held to be more appropriate that they be contained within subordinate legislation than appear on the face of the Measure.

3.1. The following sections contain powers for the Welsh Ministers to make orders:-

Part 1

Section 1(7): provides power to amend those things identified as "broad aims" contributing to the eradication of child poverty in section 1(2).

Section 2(5): provides power to make regulations to specify objectives for a Welsh authority which relate to the broad aims in section 1 and the Welsh authority's functions. Section 2(6) provides that the regulations may also disapply the authority's choice of objectives to the extent specified.

Section 12(2): provides power to amend the list of bodies named as "Welsh authorities" and who are subject to the duty to prepare and publish a child poverty strategy.

Part 2

Section 13(4): provides power to amend the definition of what constitutes "childminding" and "day care" and so makes the person providing those services liable to register with the registration authority.

3.2 The procedure which applies to these regulation making powers is the affirmative procedure. In each case they provide power to amend a particular aspect of the Measure itself. The potential effect of amendments made under these powers is more far-reaching whether in relation to the child poverty duty or the regulation of the childminding and day care sector.

3.3 Section 67 contains a power for the Welsh Ministers to make an order to commence provisions of the Measure. As is normal practice for commencement orders, no procedure will apply to such orders.

4. The Proposed Measure also provides for the Welsh Ministers to issues guidance and directions.

Standing Order 15.6

5.1 Standing Order 15.6(ii) provides that the Committee may consider and report on:

"the appropriateness of provisions in proposed Assembly Measures...that grant powers to make subordinate legislation to the Welsh Ministers"

5.2 To assist in its consideration of the proposed draft Measure under Standing Order 15.6(ii), the Committee may wish to avail itself of the facility afforded by Standing Orders 10.44 (invitation to give evidence) and 10.45 (summoning of witnesses).

Legal Services
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