

Supplementary Legislative Consent Motion in relation to the Education Bill

Legal briefing

Cynulliad
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Wales



Context

1. This legal briefing has been prepared because of the particular significance of this and the other Legislative Consent Motion (LCM) (relating to the Localism Bill) currently before the National Assembly. They are significant for two reasons. Firstly, they are the first LCMs to come before the Assembly since it acquired its much broader legislative competence as a result of the referendum earlier this year. Secondly, they are the first LCMs to which the new Standing Order 29 applies.

2. Legislative Consent Motions became a feature of Assembly business in the Third Assembly following the acquisition by the Assembly of limited legislative competence in relation to matters set out in Schedule 5 to the Government of Wales Act 2006. They followed the precedent set in Scotland since 1999 where they were commonly referred to as Sewell motions. They indicate the agreement of the Assembly to legislation being made at Westminster on subjects for which legislative competence has been devolved. During the Third Assembly they became gradually more frequent as the Assembly's legislative competence grew. Following the extension of that competence to include all 20 subjects set out in Schedule 7 to the 2006 Act, it is likely that they will become an important feature of life in the Fourth Assembly as there is a much greater range of subjects on which the consent of the Assembly would be needed if the UK Parliament proposes to legislate on that subject in relation to Wales.

3. The new Standing Order 29 is based on Standing Order 26 of the Third Assembly, but contains one significant development in SOs 29.4 and 29.5, which provide that the Business Committee may refer a legislative consent memorandum to one or more committees for consideration and report (a legislative consent memorandum explains the background to the Bill and explains the basis for the LCM). As no committees (other than the Business Committee) have yet been established, it is not possible for these first two legislative consent memoranda to be given committee consideration. When

LCMs are referred to committees, it is likely that legal advice such as this will be given to the committees, and may be incorporated in the committee reports. In the absence of such committee consideration, this advice is being made available directly to all Members prior to the plenary debate.

The Education Bill

4. The Education Bill received its formal First Reading in the House of Commons on the 26th January 2011, and has since completed its passage through the Commons. The Second Reading Debate in the House of Lords is scheduled for the 14th June.

5. The Bill generally applies to England only, but the National Assembly passed a Legislative Consent Motion on 1st March in relation to matters then relevant to Wales that came within the Assembly's legislative competence –

“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.”

6. Paragraph 49 of the Explanatory Notes to the Bill states –

The Welsh Assembly Government intends to seek a legislative consent motion in relation to clause 58, which was inserted by Government amendment during the House of Commons Report stage. It concerns the remission of fees at Academy boarding schools.

The Legislative Consent Motion

7. As the Memorandum in support of the LCM explains, the amendment, and therefore the LCM, is very limited in its scope. Indeed, paragraph 13 of the Memorandum suggests that the amendment in question may in practice have little practical consequence in Wales. Nevertheless, for the reasons outlined, above it is appropriate to draw certain matters to the attention of Assembly Members.

8. As the Memorandum makes clear, the effect of the new section to be inserted into the Academies Act 2010 is to extend provisions which already

apply in relation to reimbursement by local authorities of the cost of board and lodging at maintained schools (section 458 of the Education Act 1996) so that they will in future apply also to the cost of board and lodging at Academies. These provisions apply in two situations. One is when education suitable to the needs of a pupil cannot be provided otherwise than residentially. The other is when payment of the cost of board and lodging by the parents of the child would cause them financial hardship. This imposes a duty on local authorities in the circumstances set out above.

9. The attention of Members is also drawn to paragraph 9 of the Memorandum, which refers to the provisions allowing Welsh Ministers to introduce “appropriate legislation in accordance with Welsh priorities and concerns”. This may give the impression that the new section itself provides a power for Welsh Ministers to legislate. This is not so. What it does is to impose a duty on local authorities in Wales to make payments to Academies under certain circumstances. Welsh Ministers may, nevertheless, bring forward related legislative proposals for consideration by the Assembly under its broader legislative competence in relation to education.

Conclusion

10. There are no legal problems with the Legislative Consent Motion, which is clear and accurate.

Legal Services

National Assembly for Wales

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