

20 January 2012



Report on the Supplementary Legislative Consent Memorandum relating to the Welfare Reform Bill

Background

1. The Welfare Reform Bill (“the Bill”) was introduced in the House of Commons on 16 February 2011. The Bill provides for the introduction of a 'Universal Credit' to replace a range of existing means-tested benefits and tax credits for people of working age, starting from 2013. It also makes other significant changes to the benefits system. A summary of the provisions of the Bill can be found in the Explanatory Notes¹ to accompany it, prepared by officials in the Department for Work and Pensions. The Assembly previously agreed a Legislative Consent Motion on the Bill on 29 March 2011.²

2. On 3 January 2012, the Deputy Minister for Children and Social Services (“the Deputy Minister”) laid the supplementary Legislative Consent Memorandum (“the supplementary Memorandum”) as a result of amendments made to the Bill in May 2011. The supplementary Memorandum also refers to further amendments tabled by the UK Government on 17 January 2012. More information on this is provided in the supplementary Memorandum³.

3. The supplementary Memorandum was considered by the Business Committee on 10 January and referred to the Children and Young People Committee (“the Committee”) for consideration under Standing Order 29 , with a reporting deadline of 20 January 2012.

¹ <http://www.publications.parliament.uk/pa/bills/lbill/2010-2012/0075/en/12075en.htm>

² <http://www.assemblywales.org/bus-home/bus-third-assembly/bus-chamber/bus-chamber-third-assembly-rop.htm?act=dis&id=214069&ds=3%2F2011#cyn5>

³ <http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&id=229076&ds=1/2012>

4. A Legislative Consent Motion relating to the supplementary Memorandum was tabled by the Deputy Minister on 9 January 2012—

“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 NDM4713 the further provisions referred to in the Welfare Reform Bill relating to the Social Mobility and Child Poverty Commission, in so far as they fall within the legislative competence of the National Assembly for Wales, should be considered by the UK Parliament.”

5. The Motion is due to be considered in plenary on 24 January 2012.

Consideration of the supplementary Memorandum

6. The Committee considered the supplementary Memorandum at its meetings on 12 and 18 January 2012.

7. In the limited time available to the Committee, it has not been possible to undertake any public consultation or invite witnesses to provide evidence.

Provisions in the Bill for which consent is sought

8. Paragraph 8 of the supplementary Memorandum lists the provisions contained in the Bill for which the Assembly’s consent is being sought, namely—

- Schedule 13, paragraph 2 (proposed new section 8B);
- Schedule 13, paragraph 2 (proposed new section 8C);
- Schedule 13, paragraph 3 (proposed new Schedule 1).

and provides some explanation as to their effect.

9. On 12 January, the Committee wrote to the Deputy Minister asking for clarification in relation to two of those provisions. The Deputy Minister’s response was received on 17 January. These letters are attached as Annexes 1 and 2 respectively.

10. The Committee considered the Deputy Minister’s response during its meeting on 18 January.

Legislative Competence

11. In relation to the Assembly's competence to legislate in the areas outlined in the supplementary Memorandum, paragraph 8 of that Memorandum states—

“The National Assembly for Wales has the legislative competence in relation to these provisions [set out in the supplementary Memorandum] as contained in the “Social Welfare” subject (Protection and well-being of children including adoption and fostering, care of young adults, vulnerable persons and older persons), at subject 15 of Part 1 of Schedule 7 to the Government of Wales Act 2006. The proposed clauses seek to make provision “in relation to Wales” for a purpose within section 108(7) and Schedule 7 of the Government of Wales Act 2006 which falls within the legislative competence of the National Assembly for Wales.”

Further amendments to the Bill

12. Paragraph 7 of the supplementary Memorandum states that the UK Government is considering tabling further amendments to the Bill at Lords Report stage, relating to the annual reporting requirements of the Social Mobility and Child Poverty Commission. Two amendments to that effect were tabled on 17 January.

13. The Committee has not been able to consider these amendments in the time available. However, it appears from the Deputy Minister's letter, in which she states—

“The Legislative Consent Motion relates to all the provisions in the Bill relating to the Social Mobility and Child Poverty Commission which are within the legislative competence of the Assembly”,

that these new amendments will be encompassed within the Legislative Consent Motion.

Process and Timescale for Consideration

14. The Committee noted that most of the provisions to which the supplementary Memorandum relates were the subject of amendments tabled in the House of Commons on 17 May 2011, but that the Memorandum was not laid in the Assembly until 3 January 2012.

15. The Committee also noted that the Scottish Parliament considered the Welfare Reform Bill at length last year and that it has been the subject of several committee reports between October and December, including consideration of equivalent provisions laid in the Assembly on 3 January 2012.

16. In her letter, the Deputy Minister explained the delay in bringing forward the supplementary Memorandum—

“The supplementary LCM was laid at the earliest opportunity following the conclusion of negotiations with the UK Government to secure further amendments to these provisions [as inserted into the Bill in May 2011]. It was not until mid November 2011 that the UK Government offered further legislative concessions and not until late in December that it confirmed it would start the process to table amendments in the House of Lords.”

17. She went on—

“It was in Welsh interests to hold off agreement to table a Legislative Consent Motion, signifying agreement to what the Bill would contain relating to the Commission, until we were satisfied as to what that content would finally be.”

18. We note that, in explaining the delay, the Deputy Minister highlighted the different procedures in the Scottish Parliament and the National Assembly relating to the giving of legislative consent.

Conclusions

19. The Committee is content that the provisions in the Bill to which the supplementary Memorandum relate are within the legislative competence of the Assembly.

20. The Committee considers that, in respect of the provisions relating to the Social Mobility and Child Poverty Commission, there is little controversy. On this basis, **we consider there is no impediment to the Assembly agreeing a Legislative Consent Motion in the terms outlined in the supplementary Memorandum.**

21. We do, however, have serious concerns about the process and timescales for bringing forward the supplementary Memorandum and related Legislative Consent Motion.

22. In this case, we have been asked to consider and report on a Memorandum that seeks consent for provisions that were inserted into the Bill in May last year, and for amendments to the Bill that were tabled two days before the Committee's reporting deadline. Whilst the Committee acknowledges the explanation provided by the Deputy Minister for the delay in laying the supplementary Memorandum and Motion, we believe this has impacted on our ability to give them appropriate consideration.

23. In relation to the recent amendments tabled after the supplementary Memorandum was laid, we do not believe it is appropriate for the Assembly or one of its committees to be asked to consider the giving of legislative consent without first being given full details of the relevant provisions to be inserted into the UK Bill, and sufficient time within which to consider them.

24. We understand that the Constitutional and Legislative Affairs Committee is undertaking an inquiry into the procedures for Legislative Consent Motions and the position in the other devolved legislatures. In light of the issues outlined above, we draw this report to their attention in order to inform their deliberations.

**Y Pwyllgor Plant a Phobl Ifanc
Children and Young People Committee**

Cynulliad
Cenedlaethol
Cymru

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Assembly for
Wales



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Gwenda Thomas AM
Deputy Minister for Children and Social
Services
Welsh Government

12 January 2012

Dear Gwenda

**Supplementary Legislative Consent Memorandum (LCM) relating to the
Welfare Reform Bill**

As you will be aware, the Business Committee referred the above LCM to the Children and Young People Committee on 10 January, with a reporting deadline of 20 January.

The Committee discussed the LCM at its meeting this morning and agreed that I should write to you in the following terms.

Timing

1. The Scottish Parliament has already considered the Welfare Reform Bill at length last year and it has been the subject of 4 committee reports between October and December, including consideration of the amendments that were laid before the Assembly for consideration on 3rd January 2012. Could you explain why the LCM relating to these amendments has been laid much later in the Assembly than in the Scottish Parliament?

Points of clarification

2. Schedule 13, paragraph 3 (the proposed new Schedule 1) – relating to removing the duty of consulting the Welsh Ministers when a Minister of the Crown appoints other members of the Social Mobility and Child Poverty Commission. Paragraph 11 of the Memorandum states that if

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consent was withheld for the LCM, “the logical consequence would be that reference to the Welsh strategy and consultation of the Welsh Ministers would be removed.” This statement seems to contradict the LCM, because if the LCM is agreed then consultation in relation to appointments to the Commission board with the Welsh Ministers will be removed in any event. The Committee would be grateful for clarification as to whether the reference to ‘consultation’ is in relation to appointments to the Commission board or to the Welsh Child Poverty Strategy. Could you also clarify the reasoning for removing the duty of consultation with the Welsh Ministers in relation to appointments?

3. Paragraph 7 of the Memorandum states that the UK Government is considering further amendments to the Bill to be tabled at the Lords Report stage (11th January 2012). It states that these amendments will remove the requirement for the Commission’s annual statement to present views on the progress made towards implementing devolved strategies. If the Commission will no longer report on the performance of the Welsh child poverty strategy, do you intend to report annually on progress made/targets met?

I would be grateful for a response by **Tuesday 17 January** in order that the Committee may be able to consider this at its meeting the following day.

A copy of this letter goes to the Chair of the Constitutional Affairs Committee in view of their recent inquiry into the granting of powers to Welsh Ministers in UK laws, particularly the procedures for Legislative Consent Motions compared to the position in the other devolved legislatures.

Yours sincerely



Christine Chapman
Chair

Gwenda Thomas AC / AM
Y Dirprwy Weinidog Plant a Gwasanaethau Cymdeithasol
Deputy Minister for Children and Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref : LF/GT/20/12

Christine Chapman
Chair
Children and Young People Committee
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16th January 2012

Dear Christine,

Supplementary Legislative Consent Memorandum (LCM) relating to the Welfare Reform Bill

I am responding to your letter dated 12 January 2012 concerning the LCM on the provisions in the Welfare Reform Bill relating to the Social Mobility and Child Poverty Commission.

I appreciate that the Committee was able to discuss the LCM at short notice and have provided responses to each of the points raised in your letter below.

Timing

1. The first LCM on the Welfare Reform Bill, concerning information sharing provisions, was considered by the previous Assembly in March 2011. The provisions on the Social Mobility and Child Poverty Commission were inserted into the Bill in May 2011. This supplementary LCM was laid at the earliest opportunity following the conclusion of negotiations with the UK Government to secure further amendments to these provisions. It was not until mid November 2011 that the UK Government offered further legislative concessions and not until late in December that it confirmed it would start the process to table those further amendments in the House of Lords.

It was in Welsh interests to hold off agreement to table a Legislative Consent Motion, signifying agreement to what the Bill would contain relating to the Commission, until we were satisfied as to what that content would finally be. Standing Order 29.6 requires that "When a legislative consent memorandum is laid, the government must table a motion ("a legislative consent motion") which must seek the Assembly's agreement to the inclusion of a relevant provision in a relevant Bill."

The Standing Orders of the Scottish Parliament differ from those of the National Assembly. The Scottish Government need only table a Legislative Consent Motion after the committee which has considered a Legislative Consent Memorandum has reported. Therefore it was able to state in the memorandum laid in October that it was not yet content with what the Bill contained regarding the Commission; but when it came to table the Legislative Consent Motion which was debated on 22 December, it was able to propose that the Parliament should give its consent on that point.

Points of Clarification

2. The Secretary of State's duty to consult with Welsh Ministers and other Devolved Administrations on appointments to the Commission was initially set out in the Child Poverty Act 2010. The UK Government has decided that there should no longer be a duty to consult with Devolved Administrations on appointing new members to the Social Mobility and Child Poverty Commission.

The reason that the UK Government made this decision was that it concluded there was an asymmetry between the Secretary of State having to consult the Devolved Administrations, and not having to be consulted in turn on appointments made by the Devolved Administrations.

There is now agreement at Ministerial level that the UK Government and Welsh Government will consult each other on any new appointments being made to the Commission.

The Legislative Consent Motion relates to all the provisions in the Bill relating to the Social Mobility and Child Poverty Commission which are within the legislative competence of the Assembly. The logical consequence of rejecting the motion would be that references to Wales regarding the Commission would be removed namely, reference to the Welsh strategy and to the Welsh Ministers, including the requirement for the Secretary of State to consult the Welsh Ministers before preparing a statement on child poverty in 2020.

3. The amendments proposed in terms of the reporting arrangements would remove the requirement for the Commission's annual report to present views on progress in implementing the devolved strategies. The report will instead describe the measures taken by Welsh Ministers in accordance with the Welsh Strategy. This will preserve the direct accountability of the Welsh Ministers to the National Assembly for Wales for reporting on progress, which is why the Welsh Government sought this legislative change to the Bill. It will also re-instate what was previously provided for and agreed to by the Assembly in the Child Poverty Act 2010 as originally enacted.

In terms of reporting arrangements within Wales, the Welsh Government will follow those arrangements set out in the Children and Families (Wales) Measure 2010, which are:-

Section 3(6) provides that the Welsh Ministers must in 2013 and in every third year after 2013:

(a) publish a report containing an assessment of the extent to which;

(i) the objectives contained in their strategy for contributing to the eradication of child poverty have been achieved, and

(ii) if an objective has not been achieved, progress that has been made towards achieving the objective;

(b) lay a copy of the report before the National Assembly for Wales.

The Welsh Ministers will also provide the Commission with an annual update on the measures taken by the Welsh Ministers, in accordance with a Welsh Strategy. This is an administrative agreement rather than being provided for by way of legislative amendment in the Bill.

I hope the information provided in this letter has helped to clarify the position. If any further detail is required my officials will be available to answer any additional questions.

A copy of this letter has been sent to the Chair of the Constitutional Affairs Committee.

*Yours sincerely,
Gwenda.*

Gwenda Thomas AC / AM

Y Dirprwy Weinidog Plant a Gwasanaethau Cymdeithasol
Deputy Minister for Children and Social Services