

# Children's Wellbeing and Schools Bill:

## Report on the Legislative Consent Memorandum

19 September 2025

### 1. Introduction

1. This report considers the Legislative Consent Memorandum ("LCM"), and the two Supplementary LCMs ("SLCMs") of the Children's Wellbeing and Schools Bill ("the Bill").

#### The Bill

2. The Bill was introduced in the House of Commons on 17 December 2024. It has passed through the House of Commons. At the time of writing it was at Committee stage in the House of Lords.

3. The long title of Bill states that it is a Bill to:

*"A Bill to make provision about the safeguarding and welfare of children; about support for children in care or leaving care; about regulation of care workers; about regulation of establishments and agencies under Part 2 of the Care Standards Act 2000; about employment of children; about breakfast club provision and school uniform; about attendance*



*of children at school; about regulation of independent educational institutions; about inspections of schools and colleges; about teacher misconduct; about Academies and teachers at Academies; repealing section 128 of the Education Act 2002; about school places and admissions; about establishing new schools; and for connected purposes.”<sup>1</sup>*

## **The Legislative Consent Memorandum**

**4.** Standing Order 29.1 provides that the Welsh Ministers must lay a legislative consent memorandum where a UK Bill makes provision “in relation to Wales that has regard to devolved matters.”<sup>2</sup> The Welsh Government must lay a memorandum in relation to such a Bill normally no later than two weeks after:

- its introduction to the first House of UK Parliament that makes provision in relation to Wales; and
- amendments are tabled or agreed to any Bill that make (or would make) provision in relation to Wales.<sup>3</sup>

**5.** The Cabinet Secretary for Education (“the Cabinet Secretary”) laid an LCM in relation to this Bill on 24 March 2025.<sup>4</sup> A Supplementary LCM (“SLCM No 2”) was laid by the Cabinet Secretary on 28 May 2025.<sup>5</sup> A final SLCM (“SLCM No 3”) was laid by the Cabinet Secretary on 12 June 2025.<sup>6</sup>

**6.** The Business Committee referred the LCM to the Legislative, Justice and Constitution Committee and our committee with a reporting deadline of 16 May 2025.<sup>7</sup> The deadline was subsequently extend to 11 July 2025.<sup>8</sup> The Business Committee referred the two SLCMs to the same committees with the same

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<sup>1</sup> UK Parliament website, Parliamentary Bills, Children's Wellbeing and Schools Bill [accessed 14 July 2025]

<sup>2</sup> Senedd Cymru, Standing Orders of the Welsh Parliament, January 2025, Standing Order 29.1

<sup>3</sup> Senedd Cymru, Standing Orders of the Welsh Parliament, January 2025, Standing Order 29.2

<sup>4</sup> Welsh Government, Legislative Consent Memorandum, Children's Wellbeing and Schools Bill, March 2024

<sup>5</sup> Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No.2), Children's wellbeing and Schools Bill, May 2025

<sup>6</sup> Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No.3), Children's Wellbeing and Schools Bill, June 2025.

<sup>7</sup> Business Committee, Timetable for consideration: Legislative Consent Memorandum on the Children's Wellbeing and Schools Bill, March 2025

<sup>8</sup> Business Committee, Revised timetable for consideration Legislative Consent Memorandum on the Children's Wellbeing and Schools Bill, April 2025

extended deadline. After SLCM No 3 was laid, the Business Committee agreed a new reporting deadline for all memoranda of 19 September 2025.<sup>9</sup>

**7.** Paragraph 7 of SLCM No. 3 sets out a summary of what the Bill does as a whole.<sup>10</sup>

## 2. Provisions requiring consent

**8.** On introduction, the Bill applied to England only. However, the LCM states that amendments tabled on 10 March 2025 require the consent of the Senedd.<sup>11</sup> SLCM No 2 outlines that an amendment tabled on 13 May 2025 requires the Senedd's consent.<sup>12</sup> Finally, SLCM No 3 states that, after further consideration, additional provisions which relate to children not in school and consequential provisions also require the Senedd's consent.<sup>13</sup>

**9.** Annex A to the Explanatory Notes to the Bill, as updated on 20 March 2025, indicates that the UK Government considers that the legislative consent of the Senedd is required for clauses 11, 20, 30 to 35 and Schedule 2 (previously 25-30 and Schedule 1) of the Bill. The LCM uses the clause numbering following Report Stage of the Bill, and agrees that consent is required in relation to clauses 11, 20 and 25-29. However, no detailed reference is made in the LCM to clause 30 and Schedule 1 (now clause 35 and Schedule 2). SLCM No 3 subsequently covered clause 35 and Schedule 2.

### Clause 11

**10.** Clause 11 of the Bill amends the reference in section 25 of the Children Act 1989 ("the 1989 Act"), which deals with the use of accommodation for restricting the liberty of a child in England. References in section 25 to "restricting" liberty are changed to "depriving" children of their liberty, to better reflect the nature and purpose of this section.

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<sup>9</sup> Business Committee, Timetable for consideration: Supplementary Legislative Consent Memorandum (No. 3) on the Children's Wellbeing and Schools Bill, June 2025

<sup>10</sup> Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No.3), Children's Wellbeing and Schools Bill, paragraph 7, June 2025

<sup>11</sup> Welsh Government, Children's Wellbeing and Schools Bill LCM, paragraph 10, 24 March 2025

<sup>12</sup> Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No.2), Children's wellbeing and Schools Bill, May 2025

<sup>13</sup> Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No.3), Children's Wellbeing and Schools Bill, June 2025

**11.** Clause 11 also introduces amendments to section 25 of the 1989 Act to provide a statutory framework to allow local authorities in England and Wales to authorise the deprivation of liberty of children in alternative placement types beyond just a secure children's home within England. It brings into the scope of section 25 of the 1989 Act accommodation provided for the purpose of care and treatment of children, which is capable of being used to deprive a child of their liberty, as defined in the new subsection (1B) ("relevant accommodation").

**12.** As amended by clause 11, section 25 will apply in Wales to the extent that a Welsh local authority is seeking to place a child in relevant accommodation in England. The LCM states that currently:

*"In the absence of provision in the UK Bill dealing with a Welsh local authority wishing to place a child in relevant accommodation in England, then any placement by a Welsh local authority involving a deprivation of liberty, that is not in secure accommodation in England, would necessitate the use of the inherent jurisdiction of the High Court. It would be likely to create uncertainty about the correct test for the courts to apply when Welsh local authorities applied for authorisation to place a child in the new type of secure setting in England and create uncertainty for Welsh local authorities and service providers. Ultimately it may hamper the opportunities for children with very specific needs from Wales from having the same access to the "relevant accommodation" as children from an English local authority.*

*With only 1 Secure Children's Home (SCH) in Wales and 13 SCHs in England, there are not enough placements within SCHs in Wales to meet demand. A change to the law to include Welsh local authorities in the test to be applied when placing children in "relevant accommodation" in England will ensure that children benefit from the safeguards and protections afforded by a statutory scheme."*<sup>14</sup>

## Clause 20

**13.** Clause 20 of the Bill amends the Criminal Justice and Courts Act 2015 ("the 2015 Act"). The amendments relate to existing criminal offences in the 2015 Act

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<sup>14</sup> Welsh Government, Children's Wellbeing and Schools Bill LCM, paragraphs 51-52, 24 March 2025

prohibiting the ill-treatment or wilful neglect of individuals by care workers and care providers in health and social care settings.

**14.** The LCM explains that the existing offences cover ill-treatment and neglect of adults by individual workers or care providers whilst in receipt of health or social care. The ill-treatment or wilful neglect of children receiving health care is also caught by the current offences; however, ill-treatment or wilful neglect inflicted upon children receiving social care is not.

**15.** There is existing provision in section 1 of the Children and Young Persons Act 1933 for a wide-ranging offence of child cruelty and neglect, but this only applies to children under the age of 16 and therefore 16 and 17 year olds are not afforded the same protections. The amendments proposed by clause 20 of the Bill seek to close this loophole for 16 and 17 year olds.

**16.** The clause applies to care workers in the following settings in Wales:

- a care home service or a residential family centre service;
- a place where accommodation is provided to disabled children;
- youth detention accommodation.

**17.** The LCM states:

*"The proposed amendments in clause 20 will enable 16 and 17-year-olds to be protected in the same way as children under the age of 16. This is a positive outcome for this age group. Waiting to legislate in Wales on similar provisions if they are already in place in England would result in comparably fewer protections for children in Wales. If the Welsh Government intended to legislate in this area the delay would result in a period where children in Wales are not subject to the same protections as England."*<sup>15</sup>

## **Clauses 25-30 and Schedule 1**

**18.** These provisions are clauses 30-35 and Schedule 2 in the most recent version of the Bill, but are referred to as clauses 25-30 and Schedule 1 in the LCM therefore the same numbering is used in this report in the context of the LCM.

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<sup>15</sup> Welsh Government, Children's Wellbeing and Schools Bill LCM, paragraph 52, 24 March 2025

The amendments that include provision for Wales are shown in clauses 30-35 and Schedule 2 of the most recent version of the Bill.

**19.** The clauses applied to England only when the Bill was introduced, but now apply to England and Wales following amendments tabled during the Bill's progression through the House of Commons.

## **Clause 25**

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**20.** Clause 25 of the Bill amends the Education Act 1996 ("the 1996 Act") to add a new section 434A. This requires a parent to seek local authority consent for certain children to receive education otherwise than at school, for example, via home education. Such children must be of compulsory school age and be either:

- registered at a special school maintained by the local authority,
- registered at an independent school which is wholly or mainly concerned with providing full time education to persons for whom an individual development plan is maintained;
- subject to an enquiry under section 47 of the 1989 Act (which requires local authorities to make such enquiries as they deem necessary regarding children who are subject to an emergency protection order, in police protection, or who the authority has reasonable cause to consider may suffer significant harm); or
- on a child protection plan.

**21.** When applied to Wales, the amendments made by clause 25 expand the existing local authority mechanism whereby the withdrawal of children from special schools, as referred to at the first bullet point above, already requires local authority agreement.

**22.** Proprietors of a school will have to notify the local authority if they become aware of a parent's intention to withdraw a relevant child from school to receive education other than at school. An application for such withdrawal can be made by a parent or, with the parent's consent, the proprietor of the school.

**23.** The LCM states that the clause also gives the Welsh Ministers regulation making powers setting out steps that a school must take to ensure that the child is not removed before consent is given by the local authority and imposing a duty on school proprietors to ensure that this does not happen. This is not a new regulation making power but uses an existing power in section 434 of the 1996

Act to ensure that regulations made under that power can make such provision. Regulations under section 434 of the 1996 Act are subject to the negative scrutiny procedure in the Senedd.

**24.** Clause 25 also sets out provisions regarding:

- a local authority granting or refusing consent, including requiring them to make a timely decision; when consent must be refused; and that consideration must be given to learning environments when considering a request;
- notification of applications; and
- the steps parents can take if they are aggrieved by the local authority's decision.

**25.** The LCM states:

*"For many children who may be at risk of harm, education settings are a protective factor. Children who are not regularly in school and therefore not visible to teachers or other practitioners, who are considered at risk of actual or likely significant harm, are a priority group. The intention is for local authorities to proactively identify children not in school in their local area and which of those children are known to children's social care."<sup>16</sup>*

## **Clause 26**

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**26.** Clause 26 also amends the 1996 Act to provide for the creation of compulsory registers of children not in school in each local authority area in Wales, and impose a duty on local authorities to support the children on their registers, should a parent request this. The registers must include details of children who are not registered in a school, children who are registered but the school has agreed for them to be absent for some or all of the time to receive their education elsewhere, and children who are registered but attend on a part time basis.

**27.** The Welsh Ministers are provided with regulation making powers regarding eligibility to be on a register and the form and publication of the register. On the first occasion these regulations are made they will be subject to the affirmative

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<sup>16</sup> Welsh Government, Children's Wellbeing and Schools Bill LCM, paragraph 34, 24 March 2025

Senedd procedure, thereafter they will be subject to the negative procedure. The Welsh Ministers will also have the power to prescribe certain types of information to be included in the register, which will be subject to the affirmative Senedd procedure.

**28.** The provisions impose a duty on parents of home-educated children, and other out of education providers, to provide information for inclusion on the local authority's register. Failure to do so on the part of the parents may lead to the school attendance order ("SAO") process being commenced. Failure to do so on the part of out of education providers may result in a fine being imposed, with the amount of such fine being set by the Welsh Ministers. The first time the amount is set, it would be subject to the Senedd's affirmative procedure and the negative procedure thereafter. There is also provision for information sharing for safeguarding and welfare reasons, which involves the Welsh Ministers prescribing what information can be shared and with whom.

**29.** Further regulation making powers are given to the Welsh Ministers to prescribe the minimum amount of time that a child must spend with an out of education provider for the information sharing requirements to be imposed and to provide exceptions to the duty upon such providers to comply with a notice to provide information. Both powers are subject to the Senedd affirmative procedure.

## **Clause 27**

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**30.** Clause 27 introduces changes to the SAO process aimed at making it more efficient and reducing the time children spend in unsuitable education. The new provisions:

- introduce statutory timeframes for issuing and processing SAOs;
- make it an offence for parents to withdraw a child who is subject to an SAO from school without following a procedure; and
- align the maximum penalty for breaching an SAO with the offence of knowingly failing to ensure a child attends school.

**31.** Local authorities will be provided with the power to review whether it is in the best interests of the child to be in school and insist that the child be registered at a school, where the child is subject to an enquiry under section 47 of the 1989 Act or on a child protection plan and already being home educated.



**32.** The provisions set out details of how an SAO works in practice.

**33.** The Welsh Ministers are provided with regulation making powers to prescribe details of an SAO, which are subject to the negative Senedd scrutiny procedure.

## **Clause 28**

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**34.** This clause deals with data protection. To ensure that the handling and processing information under the new duties imposed regarding applications for consent to withdraw a relevant child; children not in school registers; the offence of failure to comply with an SAO; or the provision of information by out of education providers is done so in line with data protection legislation.

## **Clauses 29 and 30 and Schedule 1**

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**35.** Clause 29 inserts provision into the 1996 Act to ensure that local authorities must have regard to guidance issued by the Welsh Ministers when exercising their functions in relation to children not in school registers and the revocation of SAOs.

**36.** No detail is included in the LCM regarding clause 30 and Schedule 1, although it is referenced in the heading for Part 2. Clause 30 introduces Schedule 1, which sets out consequential amendments relating to clause 27.

**37.** Clause 30 and Schedule 1 were subsequently covered in SLCM No 3, by which point they had been renumbered to clause 35 and Schedule 2.

## **Clause 26**

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**38.** SLCM No 2 outlines details of a new clause 26 for which consent is being sought. This is a different clause to clause 26 which is covered in the LCM and is detailed above.

**39.** The amendments to clause 26 of the Bill relate to Part II of the 1933 Act, predominantly section 18. Section 18 sets out age limits and restrictions on the hours that children can work and the type of work they can undertake. It includes a power for local authorities to make byelaws which may cover matters such as requiring employers to secure child employment permits from the local authority before a child starts work; prescribing the hours, times and type of work children may undertake; and authorising the employment of 13 year old children in "light work". A model form of such byelaws is available to local

authorities in Wales which require employers to obtain an employment permit from the local authority before employing a child. Such byelaws are approved by the Welsh Ministers. It is an offence under section 21 of the 1933 Act to employ a child in contravention of the provisions in Part II of the 1933 Act or as set out in local authority byelaws.

**40.** The amendments to the new clause 26 form part of the replacement of the existing section 18 of the 1933 Act to give the Welsh Ministers, as “the appropriate national authority”, a new regulation-making power to regulate child employment in Wales. This replaces the existing local authority power to make byelaws in this area. Local authorities would only be able to grant a permit on an application made in accordance with any regulations made by the Welsh Ministers.

**41.** SLCM No 2 states that regulations under the proposed power in the Bill provide for the Welsh Ministers to authorise the employment of 13 year old children in certain types of “light work”; make provision in relation to child employment permits (including the application process, what must be contained in a permit, revoking permits or setting conditions and rights of appeal against refusal of a permit); and record keeping. Other amendments will enable children to work for more than 2 hours on a Sunday and before or after school (although the overall number of hours a child may work and the type of work they can do is unchanged).

**42.** Paragraph 26 of SLCM No 2 states that other effects of the amendments to clause 26 of the Bill include:

- Prohibiting the employment of a child otherwise than in accordance with a permit.
- Permitting a child to work until 8pm. This is rather than 7pm, but still in line with international obligations.
- Removing the restriction on children only being allowed to work for two hours on a Sunday. The overall number of hours a child can work in a week will however remain unchanged.
- Permitting a child to work for an hour before school. This is already allowed under most local authority byelaws.

**43.** SLCM No 2 notes that:

*"Employment rights and duties are reserved under the Government of Wales Act 2006; however, safeguarding/welfare is devolved. Part II of the 1933 Act currently applies to England and Wales and sets out age limits and restrictions on the hours that children can work and the type of work which they can be employed to do. Section 18 of the 1933 Act also makes provision for local authorities to make byelaws in connection with child employment."*<sup>17</sup>

## **Clause 63**

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**44.** Clause 63 provides for the Secretary of State to make consequential provision including amendments to primary legislation, including to Acts of the Senedd. There are currently no equivalent powers for the Welsh Ministers in the Bill and SLCM No. 3 states that this issue has been raised with the UK Government.

## **Clause 66**

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**45.** Clause 66 of the Bill provides the Welsh Ministers with a regulation making power to bring the provisions of the Bill relating to children not in school into force in Wales. SLCM No 3 does not set out which Senedd procedure (if any) to which the subordinate legislation to be made is to be subject. Standing Order 29.3(iv) states that a legislative consent memorandum should set this out.

## **Approach to scrutiny**

**46.** We first considered the LCM at our meeting on 2 April. At this meeting we agreed to write to the Welsh Government and the Children's Commissioner. Our letter to the Welsh Government raised technical points, clarifying whether the Senedd consent was needed for some clauses.<sup>18</sup>

**47.** On the 1 May 2025 the Children's Commissioner wrote to us outlining her support of the LCM. She called it a "significant move toward strengthening" safeguarding children in Wales. She commended the Welsh Government for "taking this opportunity to enhance child protection measures ..." Although she highlighted that the LCM did not reference children's rights, and that no

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<sup>17</sup> Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No.2), Children's Wellbeing and Schools Bill, paragraph 21, 28 May 2025

<sup>18</sup> Letter to the Cabinet Secretary for Education from CYPE Committee Chair, Children's Wellbeing and Schools Bill LCM, 7 May 2025

Children's Rights Impact Assessment (CRIA) had been published alongside the LCM:

*"... I would strongly urge the publication of a CRIA which sets out why these particular proposals have been selected to apply to Wales (and not other provisions of the Bill) and what actions the Welsh Government are taking on any areas where they have chosen not to legislate."<sup>19</sup>*

**48.** We then wrote to the Children's Commissioner to seek her views on the provisions within clause 11 with specific questions on the impact of this proposed legislative change in Wales'.<sup>20</sup> We were particularly interested in her views on this element of the LCM because of our previous scrutiny of the experiences of care experienced children and in particular the significant concerns we heard about the number of children in the care of Welsh local authorities who were being deprived of their liberty.<sup>21</sup>

**49.** The Children's Commissioner's response stated that as this provision was coming from "a policy direction that has not been led by the Welsh Government" she understood why the Welsh Government was not bringing forward their own legislation. However, she had concerns about the "limited detail available as to how the new type of provision envisaged will operate." As Wales is taking steps to eliminate profit from children's care services, she was unclear as to whether these new arrangements could include a profit element. She also highlighted that concerns about the new accommodation were shared by her counterpart in England and other children's charities. She raised a number of other questions, and stated that currently "there is not enough detail available to give a firm support to these proposals."<sup>22</sup>

**50.** In addition, we have received correspondence from people raising concerns about the clauses 25-30 and Schedule 1 in the original LCM, which relate to school attendance. Three came from individuals<sup>23</sup> and two from organisations:

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<sup>19</sup> Letter to the CYPE Committee Chair from the Children's Commissioner for Wales, 1 May 2025

<sup>20</sup> Letter to the Children's Commissioner for Wales from CYPE Committee Chair, Children's Wellbeing and Schools Bill LCM, 7 May 2025

<sup>21</sup> Senedd Cymru website, Services for care experience children: exploring radical reform [accessed 9 July 2025]

<sup>22</sup> Letter to CYPE Committee Chair from Children's Commissioner for Wales, 16 June 2025

<sup>23</sup> CYPE Committee, 5 June 2025, Paper to note 5.10, Legislative Consent: Children's Wellbeing and Schools Bill, Information from individual, CYPE Committee, 12 June 2025, Paper to note 3.1, Legislative Consent: Children's Wellbeing and Schools Bill, Information from individual and CYPE Committee, 18 June 2025, Paper to note 5.1, Legislative Consent: Children's Wellbeing and Schools Bill, Information from individual

Education Otherwise<sup>24</sup> and Home Ed Cymru<sup>25</sup>. Some of the concerns they highlighted included:

- lack of scrutiny both at Westminster and the Senedd;
- how the proposals will interact with recent Wales specific legislation and policy;
- the lawfulness of the proposals;
- lack of consultation with home educators and children and young people;
- lack of redress proposals in the proposals; and
- amount of data collection and the personal nature of the data being collected.

Alongside this, we have all been contacted individually in our capacities as constituency and regional Members. We note these concerns.

**51.** We considered SLCM No 2 at our meeting on 12 June and SLCM No 3 at our meeting on 25 June 2025.

**52.** We note that the Legislation, Justice and Constitution Committee took oral evidence from the Cabinet Secretary for Education and the Minister for Children and Social Care on the LCM on 12 May 2025.

### 3. Our view

**53.** We agree with the Welsh Government's position that the Senedd's consent is required for all of the clauses covered in the LCM and SLCMs.

**Conclusion 1.** Clauses 11, 20, 25-30 and Schedule 1 (as set out in the LCM); clause 26 (as set out in SLCM No 2); and clauses 35, 63 and 66 (as set out in SLCM No 3) do require Senedd consent.

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<sup>24</sup> CYPE Committee, 2 April 2025. Paper to note 4.7, Legislative Consent: Children's Wellbeing and Schools Bill. Email correspondence to the CYPE Committee from Education Otherwise

<sup>25</sup> CYPE Committee, 2 April 2025. Paper to note 4.8, Legislative Consent: Children's Wellbeing and Schools Bill. Email correspondence to the CYPE Committee from Home Ed Cymru and CYPE Committee, 25 June 2025. Paper to note 4.1, Legislative Consent: Children's Wellbeing and Schools Bill. Information from Home Ed Cymru

**54.** We are satisfied that the Senedd should provide consent for all the clauses covered in the LCM and SLCMs.

**Recommendation 1.** The Senedd should grant consent for Clauses 11, 20, 25-30 and Schedule 1 (as set out in the LCM); clause 26 (as set out in SLCM No 2); clauses 35, 63 and 66 (as set out in SLCM No 3) of the Children's Wellbeing and Schools Bill.