

The Welsh Government's Legislative Consent Memoranda on the Children's Wellbeing and Schools Bill

September 2025



1. Background

The UK Government's Children's Wellbeing and Schools Bill

1. The Children's Wellbeing and Schools Bill¹ (the Bill) was introduced into the House of Commons and had its first reading on 17 December 2024. It is sponsored by the Department for Education.

2. The Explanatory Notes to the Bill state:

"The Children's Wellbeing and Schools Bill ("the Bill") has 38 measures aiming to deliver the Labour Party's 2024 commitments to remove barriers to opportunity in schools and improve the education system to make it more consistent and safer for every child.

*It also seeks to deliver commitments in the Labour Party's 2024 manifesto on Children's Social Care by strengthening regulation, improving quality of care to ensure it meets children's needs and keeping children rooted in their families and local communities where possible."*²

3. The long title to the Bill states that it is 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."*³

¹ The Children's Wellbeing and Schools Bill, as introduced (Bill 151)

² Explanatory Notes to the Children's Wellbeing and Schools Bill, as introduced, paragraphs 1 and 2

³ The Children's Wellbeing and Schools Bill, as introduced, page 1

4. The Bill completed its passage through the House of Commons on 18 March 2025. The Bill had its first reading in the House of Lords on 19 March 2025.⁴ At the time of writing this report, the Bill was at Committee stage in the House of Lords.

The Welsh Government's Legislative Consent Memorandum

5. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant UK Bill makes provision in relation to Wales that has regard to devolved matters.

6. On 24 March 2025, Lynne Neagle MS, the Cabinet Secretary for Education (the Cabinet Secretary), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.⁵

7. The Business Committee agreed that the Children, Young People and Education Committee and the Legislation, Justice and Constitution Committee should report on the Memorandum by 16 May 2025.⁶ The reporting deadline was later extended to 19 September 2025.⁷

Provision for which the Senedd's consent is required

8. The Memorandum states:

*"The Bill was introduced as an England only Bill. Amendments were tabled on 10 March 2025 which require the consent of the Senedd in so far as they relate to education and social care in Wales."*⁸

9. The areas within the Bill that will apply to Wales are those that relate to:

- children in secure accommodation;
- the extension of the offence of ill-treatment of a child by a care worker to cover 16- and 17-year-olds;

⁴ HL Bill 84 (as brought from the Commons)

⁵ Welsh Government, Legislative Consent Memorandum on the Children's Wellbeing and Schools Bill, 24 March 2025

⁶ Business Committee, Timetable for consideration: Children's Wellbeing and Schools Bill, March 2025

⁷ Business Committee, Timetable for consideration: Supplementary Legislative Consent Memorandum (No. 3) on the Children's Wellbeing and Schools Bill, June 2025

⁸ Memorandum, paragraph 8

- children not in school.⁹

10. The specific clauses for which consent is being sought are as follows (the clauses refer to the Bill as amended in Public Bill Committee¹⁰):

- Clause 11 – Use of accommodation for deprivation of liberty (clause 10 of the Bill as introduced)
- Clause 20 – Ill-treatment or wilful neglect: children aged 16 and 17 (clause 19 of the Bill as introduced)
- Clauses 25 to 30¹¹ – Children not in school (clauses 24 to 29 of the Bill as introduced)
- Schedule 1 of the Bill as introduced – Children not in school: consequential amendments.¹²

11. The UK Government agrees that consent is required for these provisions.¹³

Delegated powers

12. The Bill as amended provides the Welsh Ministers with various regulation making powers. The Memorandum sets out a table of the scrutiny procedures that will be applied to these powers¹⁴ and states:

"Amendments make it clear that the Welsh Ministers make the regulations in respect of Wales and the Secretary of State makes the regulations in respect of England."¹⁵

The Welsh Government's position

13. The Cabinet Secretary states in the Memorandum:

"Officials hold regular meetings with UKG officials. Discussions on the content of the Bill began in September 2024, and over

⁹ Welsh Government, Written Statement on the Children's Wellbeing and Schools Bill, 10 March 2025

¹⁰ Bill 177, as amended in Public Bill Committee

¹¹ Although page 6 of the Memorandum refers in a title to "Part 2 – Children not in school, Clauses 25-30 (introduced as Clauses 24-29) and Schedule 1" the narrative that follows does not expressly refer to clause 30 (clause 29 as introduced) or Schedule 1; see paragraph 46 of the report.

¹² Memorandum, paragraphs 9 to 48

¹³ Memorandum, paragraph 49. See also Explanatory Notes to H.L. Bill 84 (as brought from the House of Commons), Annex A

¹⁴ Memorandum, paragraph 47

¹⁵ Memorandum, paragraph 47

the autumn these expanded to consider extending certain provisions to cover Wales. UKG officials and Welsh Government officials have continued to be in regular contact since then to develop provisions.”¹⁶

- 14.** The Cabinet Secretary states the following prior to setting out a detailed rationale for the clauses that require consent:¹⁷

“Taking provision in this UK Bill enables delivery of a positive provision for Wales. Whilst provision could be brought forward in a Senedd Bill, doing so would impact upon delivery of other legislative priorities and could not be delivered within the same timescales as through the UK Bill. Being a part of this Bill ensures that the children of Wales are subject to the same protections as the children of England.”¹⁸

- 15.** The Cabinet Secretary concludes:

“In my view it is appropriate to deal with these provisions in this UK Bill as these will enhance existing and proposed Welsh Government policy in relation to elective home education and children missing education; as well as providing access to accommodation for and protective measures for children in social care and health settings. The provisions will address important legislative gaps across both nations and will support local authorities and partners to meet their existing safeguarding duties. Having the Bill make relevant provisions for Wales in respect of children not in school brings equal protections to the children of Wales and England. I therefore recommend the Senedd consents to this Bill making provision in devolved areas.”¹⁹

¹⁶ Memorandum, paragraph 6

¹⁷ Memorandum, paragraphs 51 to 62

¹⁸ Memorandum, paragraph 50

¹⁹ Memorandum, paragraph 66

Evidence from the Welsh Government on 12 May 2025

Approach and timeline of events

16. On 10 March 2025 the Cabinet Secretary, and Dawn Bowden MS, Minister for Children and Social Care (the Minister), jointly published a Written Statement on the Bill.²⁰ It noted that the Bill applied to England only on introduction and stated:

"If equal measures are not implemented in Wales, this would result in fewer protections for our children than their counterparts in England.

With this in mind, we have discussed the Bill with the UK government and have asked that certain provisions within the Children's Wellbeing and Schools Bill, be applied to Wales in the same way as England.

(...)

Committee Stage of the Bill has concluded and amendments to extend the clauses covering the areas above to Wales are currently being considered at Report Stage.

Subject to agreement with the UK government other areas of the Bill may be included at a later stage. Should additional provisions be extended to Wales, a further update will be issued."

17. We considered the Written Statement at our meeting on 17 March 2025.²¹ At that meeting, we agreed to invite the Cabinet Secretary and the Minister to give evidence. We wrote to the Cabinet Secretary and the Minister on 21 March 2025.²² We also wrote to the Llywydd as Chair of the Business Committee to highlight our concerns with the Written Statement relating principally to the requirements of Standing Order 29.²³

18. Report stage proceedings were completed on 18 March 2025,²⁴ eight days after the statement was laid and six days before the Memorandum was laid.

²⁰ Welsh Government, Written Statement on the Children's Wellbeing and Schools Bill, 10 March 2025

²¹ ~~Legislation, Justice and Constitution Committee~~, 17 March 2025

²² ~~Letter to the Cabinet Secretary for Education and the Minister for Children and Social Care~~, 21 March 2025

²³ ~~Letter to the Llywydd~~, 21 March 2025

²⁴ ~~Children's Wellbeing and Schools Bill, Report stage proceedings (House of Commons)~~

19. The evidence session took place on 12 May 2025.²⁵

20. We asked the Cabinet Secretary when she first became aware of the Bill, given that the Memorandum refers to regular meetings between Welsh and UK government officials and discussions on its content beginning in September 2024.²⁶ In response, the Cabinet Secretary provided a detailed timeline of events.²⁷ In particular, she said:

- she first became aware of the Bill when briefed by officials on what was in the King's Speech²⁸ (which took place on 17 July 2024²⁹);
- she agreed that her officials should explore whether there were benefits to extending some or all of the provisions to Wales, either by joining the Bill or introducing a Welsh Government Bill to the Senedd;³⁰
- following introduction of the Bill on 17 December 2024, she indicated in a call with Stephen Morgan MP that she was keen to extend certain provisions to Wales, if possible.³¹

21. The Minister also indicated that detailed discussions around the social care elements of the Bill started around the autumn time and that she was fully briefed by officials in January 2025. She added that "all of the inter-ministerial engagement around the Bill has been directed via the Cabinet Secretary for Education, and my engagement in this process has been with my officials."³²

22. When we asked why the Cabinet Secretary waited until the day amendments were tabled in the UK Parliament to advise the Senedd of her intention to seek provision in the Bill for Wales, she said:

*"As the provisions tabled were as amendments to the Bill, for confidentiality reasons, I wasn't able to share the detail of these before they were made public through their tabling. We had very scarce information on the Bill up until its publication in December."*³³

²⁵ Legislation, Justice and Constitution Committee, 12 May 2025

²⁶ Memorandum, paragraph 6

²⁷ Legislation, Justice and Constitution Committee, 12 May 2025, RoP [12 to 15]

²⁸ Legislation, Justice and Constitution Committee, 12 May 2025, RoP [12]

²⁹ Oral statement to Parliament, *The King's Speech 2024*, 17 July 2024

³⁰ Legislation, Justice and Constitution Committee, 12 May 2025, RoP [13]

³¹ Legislation, Justice and Constitution Committee, 12 May 2025, RoP [14]

³² Legislation, Justice and Constitution Committee, 12 May 2025, RoP [16]

³³ Legislation, Justice and Constitution Committee, 12 May 2025, RoP [18]

23. She also provided more information about the timeline of events including that policy instructions were passed to the Office of the Parliamentary Counsel at the end of January 2025 with some further exchanges on the provisions.³⁴ She also explained that she and the Minister:

*"... tabled a written statement on the 10 March to inform Members that the UK Government would be tabling amendments to the Bill to include Wales in some of the measures. I was keen to make sure that Members had prior notice ahead of those being laid by the UK Government later that day, and I did that, obviously, to ensure as much transparency as we could ahead of the laying of the LCM. That reflects previous practice where Welsh Government has proactively engaged with the UK Government with a view to developing devolved provisions within a UK Bill."*³⁵

24. We noted that the Memorandum was laid six days after the Report Stage proceedings were completed in the House of Commons but that there was no account or summary of these proceedings included in the Memorandum. When questioned on this point, the Cabinet Secretary acknowledged that "if the committee's view is that we should have provided more information in relation to that, then obviously we're very happy to take that away and look at it."³⁶

Consideration given for making provision in a Senedd Bill

25. The Cabinet Secretary told us that the Welsh Government had discussions about whether it would be possible to develop a Senedd Bill.³⁷ She added:

"You'll be aware that we have a legislative programme already. We're coming to the very end of this Senedd term. And I was also very mindful that I didn't want us to be in a position where children in Wales had less protection than children over the border. So, as far as I'm concerned—and, as I say, with that lens of what was best for children—this seemed like the most appropriate way to do that. There is the potential for cross-border issues arising from the Bill, and we were really keen, especially with the child protection aspects of the Bill, to ensure

³⁴ Legislation, Justice and Constitution Committee, 12 May 2025, RoP [19]

³⁵ Legislation, Justice and Constitution Committee, 12 May 2025, RoP [20]

³⁶ Legislation, Justice and Constitution Committee, 12 May 2025, RoP [23]

³⁷ Legislation, Justice and Constitution Committee, 12 May 2025, RoP [26]

that those issues didn't arise. So, it seemed to me to be the quickest, most appropriate way to do this under the circumstances.”³⁸

26. We queried whether using a UK Bill was the quickest approach to making primary legislation and the Cabinet Secretary acknowledged that conversations with the Senedd through the Business Committee had not taken place about a Welsh Government Bill being presented and becoming law before dissolution.³⁹ The Minister indicated that the Welsh Government was discussing internally the existing legislative programme “and what we were already struggling to deliver”, adding that “the timescale just would not have enabled us to introduce further primary legislation in the last year of this Senedd term.”⁴⁰

27. When we suggested that it was the Welsh Government that did not have the capacity to deliver a Bill, rather than the Senedd, the Cabinet Secretary said:

“Obviously, there has to be time found for legislation. We did look at the capacity issues, and there will be capacity issues arising from dealing with the secondary legislation associated with this legislation. And it would also have been a question of officials to work on that then as well.”⁴¹

28. In terms of justifying her purpose for legislating and the corresponding approach adopted, the Cabinet Secretary said:

“I recognise that the way that this has been done does impact on the scrutiny to date, but what I would say to the committee is that we will have further opportunities to scrutinise the detail of this, because we are going to have to bring forward the implementation through secondary legislation, and there will be lots of opportunities for scrutiny through that; lots of opportunities for consultation through that. My officials have already been talking to the children's commissioner about leading on the consultation with affected families. So, while I recognise that, from a committee scrutiny point of view, it's not an optimum situation, I have had to balance that with the

³⁸ Legislation, Justice and Constitution Committee, 12 May 2025, RoP [26]

³⁹ Legislation, Justice and Constitution Committee, 12 May 2025, RoP [27 to 32]

⁴⁰ Legislation, Justice and Constitution Committee, 12 May 2025, RoP [33]

⁴¹ Legislation, Justice and Constitution Committee, 12 May 2025, RoP [35]

decision that I've taken around protecting the rights of children and doing what's best for them."⁴²

29. We also raised concerns about the extent to which the legislative framework is being confused by using a UK Bill and the control of the policy agenda, not least since the suite of provisions was developed for a situation in England. As a result, we highlighted that legislation could have been developed that was more in tune with Welsh Government policy.⁴³

30. The Cabinet Secretary told us that:

"... it's important to recognise that this is part of a suite of measures in relation to children who are educated at home and children who are missing education. We published statutory guidance on elective home education in 2023, which was in response to numerous concerns that were raised about home education, and you'll be aware that some of those situations had in fact led to tragedy. So, we introduced the statutory guidance on home education back in 2023, but we and local authorities were concerned that we needed to do more. Not so long ago, I took the regulations on the children missing education database through the Senedd. That is separate but aligned to this, because that is designed to make sure that we know where all the children are, which, at the moment, is quite challenging, and we're piloting that in seven areas.

But this latest provision, through the UK Government's primary legislation, is really designed to strengthen our position through the children not in school registers, through the strengthening of school attendance orders, and vitally through the child protection proceedings as part of it. So, I think, taken all together, they form a suite of actions to protect the rights of children, to safeguard them, and also to ensure that they get a high-quality education, which is their right. But there will, as I said, be further consultation. We will have control over how this is taken forward through subordinate legislation, which will be subject to scrutiny of the Senedd and full consultation."⁴⁴

⁴² Legislation, Justice and Constitution Committee, 12 May 2025, RoP [39]

⁴³ Legislation, Justice and Constitution Committee, 12 May 2025, RoP [43 and 46]

⁴⁴ Legislation, Justice and Constitution Committee, 12 May 2025, RoP [44 to 45]

31. The Cabinet Secretary did not think it was a case of knocking a “square peg into a round hole”, adding:

“... there have been calls for many years for strengthened legislation in this space, since the death of Dylan Seabridge back in 2011 (...) the Children's Commissioner for Wales used her legal powers to review the Welsh Government's activity in this space in the last Senedd. At the time, I was Chair of the Children, Young People and Education Committee. We supported the children's commissioner in her actions and also wrote numerous letters ourselves. And a key ask of the children's commissioner and the safeguarding board for Wales was for there to be a register of children who are not in school. So, I think that it is entirely in keeping with the way that policy has been developed in Wales for several years. I think that it consolidates it and strengthens it in a way that we can have much more assurance through.”⁴⁵

32. The Minister also noted that the UK Government, in developing the legislation, identified a loophole about the protection of 16- and 17-year-olds who remain in the care system, which the Bill closes. She added:

“And the second aspect is about us continuing with the situation that we currently have, where looked-after children in Wales can be placed in accommodation in England, if that is considered to be the most appropriate accommodation for them (...) the provisions of the amendment as it applies to Wales means that, if there is a new type of accommodation that is ahead of us in terms of its development in England, we would be able to place Welsh children there if we considered that to be appropriate. And it may well be that we will have to legislate similarly to enable that to happen the other way around, from England into Wales as well.”⁴⁶

33. We then asked why this Bill is seen as the earliest opportunity to legislate on this issue since the tragic death of Dylan Seabridge in 2011. In response the Cabinet Secretary:

“I think that that's a fair question. I have set out some of the background to this in terms of the children's commissioner's

⁴⁵ Legislation, Justice and Constitution Committee, 12 May 2025, RoP [47]

⁴⁶ Legislation, Justice and Constitution Committee, 12 May 2025, RoP [49]

*review, the statutory guidance. I can only really answer for myself. I came into post at the end of March last year. The children missing education database regulations were in the process of being worked up then, and obviously I supported those. Then the opportunity arose, and I saw immediately in the King's Speech that there was an opportunity to strengthen the legislation, and I have been keen to take that opportunity to do that. So, as far as I'm concerned, I have taken the earliest opportunity that I could to follow up an issue that I have raised concerns about consistently for many years."*⁴⁷

34. We followed this by asking if the Minister's reference to the Welsh Government struggling to deliver its legislative agenda was one of the reasons why the Welsh Government did not consider bringing forward a Bill in parallel with a UK Government Bill for England, to provide an opportunity for both Parliaments to undertake scrutiny concurrently, so that there were no gaps in provision between England and Wales.⁴⁸ The Cabinet Secretary replied by saying:

*"... we did consider our own Bill, but it wasn't felt to be practical in terms of timing, et cetera, in terms of the work that was already in train by officials in education, and also in terms of an already packed legislative programme."*⁴⁹

35. The Cabinet Secretary was content that the approach followed the Welsh Government's own principles⁵⁰ for using UK Government Bills to legislate in a devolved area,⁵¹ adding:

"Our principles state that it would be appropriate where Welsh-made provision could not otherwise be delivered within a suitable time frame, and also where the interconnected nature of the relevant Welsh and English administrative systems mean that it is most effective and appropriate for provision for both to be taken forward at the same time in the same legislative instruments. So, I spoke earlier about the fact that I'm concerned about the cross-border issues and the implications of having less protection in Wales when there is more protection

⁴⁷ Legislation, Justice and Constitution Committee, 12 May 2025, RoP [56]

⁴⁸ Legislation, Justice and Constitution Committee, 12 May 2025, RoP [60]

⁴⁹ Legislation, Justice and Constitution Committee, 12 May 2025, RoP [61]

⁵⁰ Welsh Government, [Principles on UK Legislation in devolved areas](#), December 2024

⁵¹ Legislation, Justice and Constitution Committee, 12 May 2025, RoP [63]

for children in England. So, that was a consideration in relation to that.”⁵²

36. The Cabinet Secretary indicated that the absence of references to certain clauses and a Schedule was an oversight, which would be corrected with a supplementary legislative consent memorandum.⁵³ An official accompanying the Cabinet Secretary also indicated that consideration was being given to provisions around child employment in relation to England in the Bill and how they might apply to Wales, given the reserved nature of some of those elements.⁵⁴

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2)

37. The Cabinet Secretary laid a Supplementary Legislative Consent Memorandum (Memorandum No. 2) in respect of the Bill on 28 May 2025.⁵⁵

38. The Business Committee agreed a revised reporting deadline for the memoranda of 11 July 2025.⁵⁶ The reporting deadline was later extended to 19 September 2025.⁵⁷

Provision for which the Senedd's consent is required (including delegated powers)

39. The Cabinet Secretary wrote to the Committee on 28 May 2025 notifying it of the laying of Memorandum No. 2 which relates to amendments to clause 26 (Employment of children in England) of the Bill (as brought from the House of Commons⁵⁸) that engage Standing Order 29.⁵⁹

40. Memorandum No. 2 provides the following information about why the Senedd's consent is required for amendments to clause 26:

“Part II of the Children and Young Persons Act 1933 (“the 1933 Act”) sets out the existing legal framework for child employment

⁵² Legislation, Justice and Constitution Committee, 12 May 2025, RoP [63]

⁵³ Legislation, Justice and Constitution Committee, 12 May 2025, RoP [75]

⁵⁴ Legislation, Justice and Constitution Committee, 12 May 2025, RoP [87]

⁵⁵ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 2\) Children's Wellbeing and Schools Bill](#), 28 May 2025

⁵⁶ Business Committee, [Timetable for consideration: Supplementary Legislative Consent Memorandum \(No. 2\) on the Children's Wellbeing and Schools Bill](#), June 2025

⁵⁷ Business Committee, [Timetable for consideration: Supplementary Legislative Consent Memorandum \(No. 3\) on the Children's Wellbeing and Schools Bill](#), June 2025

⁵⁸ HL Bill 84 (as brought from the Commons)

⁵⁹ [Letter from Lynne Neagle MS, Cabinet Secretary for Education](#), 28 May 2025

in England and Wales. A “child”, for the purposes of the 1933 Act, means a person who is not over compulsory school age.

(...)

Proposed amendments to section 18 of the 1933 Act on introduction of the Bill initially only applied to England. Amendments to clause 26 tabled by the UK Government on 17 May 2025 ahead of the Committee Stage starting in the House of Lords on 20th May, now extend amendments to section 18 of the 1933 Act to both England and Wales.

Clause 26 of the Bill substitutes section 18 of the 1933 Act with a new section 18 (Restrictions on employment of children) and section 18A (Regulations under section 18: further provision).

The amendments give the Welsh Ministers as the “appropriate national authority” for Wales a new regulation-making power to regulate child employment. This new regulation-making power for the Welsh Ministers replace the existing local authority power to make child employment byelaws. Regulations made under the amendment would be made under the negative procedure.”⁶⁰

41. Memorandum No. 2 also sets out the position of the UK Government:

“The Secretary of State for Education wrote to the Cabinet Secretary for Education on 13 May 2025 regarding amendments to Clause 26 (Employment of Children) of the Children's Wellbeing and Schools Bill ahead of Committee Stage in the House of Lords on 20 May. The Secretary of State notes that the government amendments contain provision within the legislative competence of the Senedd and that she considered a legislative consent motion is required despite the employment reservation in Schedule 7A of the Government of Wales Act 2006. However, DfE recognise that any matter relating to child employment also touches on child welfare, which is devolved.”⁶¹

⁶⁰ Memorandum No. 2, paragraphs 10, 14 to 16

⁶¹ Memorandum No. 2, paragraph 25

The Welsh Government's position

42. The Cabinet Secretary states:

*"Employment rights and duties are reserved under the Government of Wales Act 2006; however, safeguarding/welfare is devolved. We have undertaken a competence analysis of these provisions and are of the view that the test in Standing Order 29 is met and that the Bill makes "relevant provision" in relation to Wales that has regard to devolved matters."*⁶²

43. The Cabinet Secretary adds:

"Being a part of this Bill ensures that the children of Wales are subject to the same protections as the children of England in relation to child employment.

*It ensures there is parity in the law across England and Wales in this area. If these amendments aren't stated to apply to Wales, Wales would still have the existing byelaw system whereas the Secretary of State in England would be able to exercise their regulation-making powers in this area. One advantage of introducing regulation-making powers is that there would be consistency in regulation and a standard approach to requiring child employment permits across Wales (as opposed to possible variation in this respect which arises from continuing to allow local authorities to introduce and implement their local byelaws)."*⁶³

44. The Cabinet Secretary concludes:

"In my view it is appropriate to deal with these provisions in this UK Bill as these will enhance existing and proposed Welsh Government policy in relation to child employment and safeguarding. To the best of my knowledge we have never received any requests from local authorities to approve byelaws. From discussions with local authority safeguarding leads they have been supportive and in agreement with the proposed amendments to the legislation. The legislation appears to more or less replicate and normalise existing practice, in so much as anecdotally we believe there has already been considerable

⁶² Memorandum No. 2, paragraph 28

⁶³ Memorandum No. 2, paragraphs 29 and 30

variance from current arrangement by employers from provisions which date back to before World War Two, and which are not commensurate with modern working practices, Therefore, I recommend that the Senedd supports the proposals and gives its consent."⁶⁴

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3)

45. The Cabinet Secretary laid a Supplementary Legislative Consent Memorandum (Memorandum No. 3) on 12 June 2025 in respect of the Bill.⁶⁵

Provision for which the Senedd's consent is required (including delegated powers)

46. Memorandum No. 3 states that the following clauses (of the Bill as brought from the House of Commons⁶⁶) that require consent were omitted from the Memorandum in error⁶⁷ (see the Cabinet Secretary's evidence at paragraph 36):

- Clause 35 (Children not in school: consequential amendments) and Schedule 2,⁶⁸ which relate to powers to make consequential amendments in respect of Clause 32⁶⁹ (School Attendance Orders)⁷⁰
- Clause 63 (Power to make consequential provision)⁷¹, which provides for the Secretary of State to make consequential provision including amendments to primary legislation, including to Acts of the Senedd⁷²
- Clause 66 (Commencement)⁷³ relates to commencement powers and states when the provisions in the Bill would come into force in Wales. It provides the Welsh Ministers with the power to make regulations to commence clauses 30 to 35⁷⁴ and Schedule 2 (the children not in

⁶⁴ Memorandum No. 2, paragraph 34

⁶⁵ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 3\) Children's Wellbeing and Schools Bill](#), 12 June 2025

⁶⁶ HL Bill 84 (as brought from the Commons)

⁶⁷ Memorandum No. 3, paragraph 15

⁶⁸ Clause 29 and Schedule 1 of the Bill as introduced

⁶⁹ Clause 26 as introduced

⁷⁰ Memorandum No. 3, paragraph 11

⁷¹ Clause 56 as introduced

⁷² Memorandum No. 3, paragraph 13

⁷³ Clause 59 as introduced

⁷⁴ Clauses 24 to 29 of the Bill as introduced; clauses 25 to 30 of the Bill as amended in Public Bill Committee in the House of Commons. See footnote 10.

school provisions, and the regulations that will be required to bring them into effect).⁷⁵

47. The Cabinet Secretary indicates that the UK Government has set out its position on consent, namely that clauses relating to children not in school are within the competence of the Senedd (including therefore clause 35 and Schedule 2).⁷⁶

48. As regards clause 63, the Cabinet Secretary states that there are currently no equivalent powers for the Welsh Ministers in the Bill and that this issue has been raised with the UK Government, with a view to seeking relevant powers for the Welsh Ministers.⁷⁷

49. The Cabinet Secretary states:

"Being a part of this Bill ensures that the children of Wales are subject to the same protections as the children of England in relation to children not in school.

*The children not in school provisions ensure parity in the law across England and Wales in this area and provide Wales with powers to commence provisions. The Welsh Government is pursuing powers for Welsh Ministers in relation to consequential powers."*⁷⁸

50. The Cabinet Secretary concludes:

*"In my view it is appropriate to deal with these provisions in this UK Bill as these will enhance existing and proposed Welsh Government policy in relation to children not in school. Therefore, I recommend that the Senedd supports the proposals and gives its consent."*⁷⁹

2. Committee consideration

51. As we note above, we considered the Memorandum and took evidence from the Cabinet Secretary and the Minister on 12 May 2025.

⁷⁵ Memorandum No. 3, paragraph 14

⁷⁶ Memorandum No. 3, paragraphs 16 to 17

⁷⁷ Memorandum No. 3, paragraphs 18

⁷⁸ Memorandum No. 3, paragraphs 19 to 20

⁷⁹ Memorandum No. 3, paragraph 22

52. We considered our report at our meeting on 14 July 2025⁸⁰ and agreed it at a further meeting on 15 September 2025.⁸¹

Our view

53. We note the Welsh Government's assessment of the provisions within the Bill that require the consent of the Senedd, as set out in the Memorandum, Memorandum No. 2 and Memorandum No. 3.

54. We also note the position of the UK Government as regards consent.

Conclusion 1. We agree with the Welsh Government's assessments, as set out in the Legislative Consent Memoranda laid to date by the Cabinet Secretary, of the provisions within the Bill which require the consent of the Senedd in accordance with Standing Order 29.

55. We have previously expressed our views and concerns on the Welsh Government's principles for using UK Bills to legislate⁸² and discussed its refreshed principles with the Counsel General and Minister for Delivery, Julie James MS, at an evidence session on 9 December 2024.⁸³ We note the views expressed by the Cabinet Secretary on this matter. Related to this we also note her comment that there has been proactive engagement with the UK Government with a view to developing devolved provisions within the UK Government's Bill, in line with previous Welsh Government practice.

56. The Committee's general view is that the way to achieve outcomes that are in the best interests of Wales is to legislate by means of a Bill introduced to, and scrutinised by, the Senedd.

57. A Bill introduced to the Senedd would, for example, allow this Committee to give detailed consideration to all the regulation-making powers being delegated to the Welsh Ministers (in all probability for use in the Seventh Senedd) and to make recommendations for amendments to the Bill where necessary. This process would include considering the level of detail on the face of the Bill relevant to those powers and the extent of the powers being delegated, including

⁸⁰ Legislation, Justice and Constitution Committee, 14 July 2025

⁸¹ Legislation, Justice and Constitution Committee, 14 July 2025

⁸² Legislation, Justice and Constitution Committee, [Annual Report 2021/22](#), October 2022

⁸³ ~~Legislation, Justice and Constitution Committee~~, 9 December 2024, See also a subsequent exchange of correspondence; ~~Letter to the Counsel General and Minister for Delivery~~, 17 December 2024; ~~Letter from the Counsel General and Minister for Delivery~~, 9 January 2025

how the Cabinet Secretary would intend to use them and an assessment of how they could be used.

58. We note that of the eleven regulation-making powers (excluding those to commence provisions), nine are subject to the affirmative procedure or the affirmative procedure in the first instance.⁸⁴ We note the Cabinet Secretary's comments that implementation through secondary legislation will provide lots of opportunities for consultation and scrutiny. However, the Senedd and its elected Members will face voting on instruments subject to the affirmative procedure on an 'all or nothing' basis because subordinate legislation is not subject to line-by-line scrutiny and is not amendable. Furthermore, the time available for scrutiny of subordinate legislation by Senedd Committees and Senedd Members is limited.⁸⁵

59. We believe that, at the very least, it should have been possible to legislate in parallel with the UK Government to enable Members of the Senedd to have a greater say on legislation relating to children in Wales. This is particularly the case given that these matters have been under consideration in Wales for over a decade.

60. Nevertheless, we recognise the personal commitment of the Cabinet Secretary to the matters that are the subject of these memoranda. In addition, we acknowledge the comprehensive reasoning for the approach taken that has been provided by the Cabinet Secretary and the Minister.

61. We welcome the Cabinet Secretary's willingness to reflect on whether the Memorandum should have contained information about the outcome of Report Stage proceedings. While we acknowledge that this is not a requirement of Standing Order 29, we would have found it helpful to our scrutiny. We intend to draw this matter to the attention of the Business Committee so that it may consider it in any review it undertakes of that Standing Order as we approach the Seventh Senedd and following on from our letter in June 2024 recommending a full procedural review.⁸⁶

62. Paragraph 50 of the Memorandum states that:

*"Whilst provision could be brought forward in a Senedd Bill,
doing so would impact upon delivery of other legislative*

⁸⁴ Memorandum, paragraph 47; Memorandum No. 2, paragraph 16.

⁸⁵ By virtue of Standing Orders 21 and 27.

⁸⁶ Letter to the Business Committee, 5 June 2024

priorities and could not be delivered within the same timescales as through the UK Bill."

63. We explored the point made about a Bill introduced to the Senedd not being able to be delivered within the same timescales as if using a UK Government Bill introduced to the UK Parliament. The Cabinet Secretary and Minister acknowledged that the Welsh Government had not discussed these issues with the Business Committee, which is responsible for allocating Bills to Committees for scrutiny, and also the timetables for that scrutiny. This is important because it has often been the case in the Sixth Senedd that the Welsh Government has justified its use of a UK Government Bill to legislate in a devolved area on grounds that it would essentially be quicker to use such a Bill rather than introduce a Bill to the Senedd. This conclusion cannot be reached, however, if discussions have not been held with the Senedd via the Business Committee or scrutiny Committees (and equally without knowledge of timings in each House of the UK Parliament). If the Welsh Government is minded to follow such an approach of discussing timetabling with Senedd Committees, it should do so before embarking on discussions with the UK Government about using one of its Bills and committing the significant resources needed for that purpose.

Recommendation 1. Before stating that the capability and capacity of the Senedd has prevented the Welsh Government from introducing its own Bills to the Senedd and therefore resulted in the Welsh Government requesting and/or accepting the offer of provisions being included in Bills being introduced to the UK Parliament, the Welsh Government should first engage with the Business Committee and discuss the procedural opportunities available to the Welsh Government that would enable it to bring forward its own legislation.

64. We note that clause 11 of the Bill as introduced, which make provision in a devolved area is subject to commencement by the Secretary of State, in contrast to clauses 30 to 35 and Schedule 2 of the Bill as brought from the Commons which are subject to commencement by the Welsh Ministers.

Recommendation 2. The Cabinet Secretary should explain why clause 11 is subject to commencement by the Secretary of State rather than the Welsh Ministers, including why no requirement for consent is included should that be relevant.

65. Paragraph 26 of Memorandum No. 2 refers to the amendment to clause 26 of the Bill (as introduced to the House of Lords) as being, in the main, a way to replace the local authority byelaw making power with a regulation-making power

for the Welsh Ministers. In that paragraph, the Cabinet Secretary also states that one other effect of the amendment is to permit a child to work until 8pm, rather than 7pm, but that this remains in line with international obligations. We are unclear about which international obligations are being referred to.

Recommendation 3. The Cabinet Secretary should clarify to which international obligations she is referring in paragraph 26 of Memorandum No. 2.

66. We note that discussions remain ongoing with the UK Government about clause 63 of the Bill.

Recommendation 4. The Cabinet Secretary should provide an update on the discussions with UK Government about clause 63 of the Bill (as brought from the Commons) and confirm that, in line with the Welsh Government's principles on UK legislation in devolved areas, she is seeking conferral of powers on the Welsh Ministers alone and not concurrent powers to be exercised with UK Ministers.

67. We also note that Memorandum No. 3 does not include the Senedd scrutiny procedure attached to the making of regulations under clause 66, as required by Standing Order 29.3(iv).

Recommendation 5. The Cabinet Secretary should confirm the scrutiny procedure to be applied to the making of regulations under clause 66 of the Bill (as brought from the Commons).