

LEGISLATIVE CONSENT MEMORANDUM

Children's Wellbeing and Schools Bill

1. This legislative consent memorandum is laid under Standing Order ("SO") 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru¹ if a UK Parliamentary Bill makes provision in relation to Wales that has regards to devolved matters.
2. The Children's Wellbeing and Schools Bill ("the Bill") was introduced in the House of Commons on 17 December 2024. The Bill can be found at: [Children's Wellbeing and Schools Bill](#)

Policy Objective(s)

3. The UK Government's stated policy objectives are:

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 strengthen social care regulation to improve quality of care to ensure it meets children's needs, keeping children rooted in their families and local communities where possible.

Summary of the Bill

4. The Bill is sponsored by the Department for Education.
5. The Bill makes provision to:
 - mandate local authorities to offer 'Family Group Decision Making'; (clause 1 as introduced)
 - ensure child protection and safeguarding by strengthening the role of education in safeguarding, improving information sharing across multi-agency services, and enabling a single unique identifier ('consistent identifier') to support children and families (Clauses 2-4 as introduced)
 - support children in care, leaving care or in kinship care and carers requiring local authorities to publish a kinship local offer, extend the virtual school head role to children in kinship care as well as those with a social worker, strengthen support for eligible care leavers through 'Staying Close'; and requiring local authorities to publish information to ensure care leavers have a planned and supportive transition to adulthood. (clauses 5-8 as introduced)

¹ Please note in accordance with Welsh Government policy we refer to the legislature in Wales as "Senedd Cymru" on first use and "the Senedd" thereafter unless the context stipulates otherwise.

- legislate for accommodation of looked after children introducing regional co-operation arrangements to harness local authority buying power, and providing a statutory framework to authorise a deprivation of liberty for children who need it to keep them safe, in accommodation other than a Secure Children's Home, designed with the primary purpose of care and treatment. (Clauses 9-10 as introduced)
- empower the regulator, Ofsted, to tackle breaches of the Care Standards Act 2000, including against unregistered children's homes; limit the use of agency social workers; and closing a legal gap around low-level abuse (ill treatment or wilful neglect) of children aged 16 and 17, (Clauses 11-12 as introduced)
- establish a 'Financial Oversight Regime' to increase financial and corporate transparency of difficult-to-replace care providers and their corporate owners, as well as a 'Provider Oversight Regime'; (Clause 13 as introduced)
- enable the Secretary of State for Education to implement a cap on the profits of non-local authority providers of children's social care in future, and to impose monetary penalties and the procedure for imposing such penalties. (Clauses 14-17 as introduced)
- regulate for the use of agency workers for children's social work. (Clause 18 as introduced)
- extend the legislation on protection against ill-treatment or wilful neglect so that it applies to children aged 16 and 17 in certain care and detention settings. (Clause 19 as introduced)
- legislate in relation to the employment of children, by introducing new arrangements on the employment of children in England. (Clause 20 as introduced)
- legislate to ensure free breakfast clubs are available to all children; (Clause 21 as introduced)
- legislate in relation to food and drink to be provided at Academies (Clause 22 as introduced)
- limit the number of branded uniform items that schools can require (Clause 23)
- introduce a local authority consent mechanism for withdrawal of certain children from school (Clause 24 as introduced)
- introduce a duty on local authorities to have and maintain Children Not in School registers and provide support to home-educating parents and provide for guidance to support this. (Clause 25 and 28 as introduced)
- improve the efficiency of the school attendance order process (Clause 26 as introduced)
- strengthen and improve legislation in respect of independent educational institution, including around School Teacher Pay and conditions (Clause 30-37 as introduced)
- make technical changes related to when Ofsted needs to report on the quality of certain other inspectorates and to give Ofsted powers to share information with them. (Clause 38 as introduced)
- strengthen the system for regulating the teaching profession (Clause 39 as introduced)

- improve school teachers qualifications requiring Qualified Teacher Status (Clause 40 as introduced)
- place duties on Academy schools in relation to the new National Curriculum; provision for improving behaviour; and Teacher pay and conditions (Clauses 41 to 46 as introduced) ;
- Introduce new powers in relation to school places and admissions, (Clauses 47-50 as introduced) and
- makes provisions in respect of establishment of new schools (Clauses 51 - 55 as introduced)

Engagement with the UK Government

6. Officials hold regular meetings with UKG officials. Discussions on the content of the Bill began in September 2024, and over 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.
7. The Bill interacts with:
 - The Education Act 1996
 - Children Act 1989
 - Children Act 2004
 - Care Standards Act 2000
 - Education and Skills Act 2008
 - The Education Act 2002
 - The Academies Act 2010
 - School Standards and Framework Act 1998
 - Data Protection Act 2008

Provisions in the Bill for which consent is required

8. 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.

Part 1 – Children’s Social Care

9. There are two provisions within the Bill which are relevant to social care in Wales and fall within the “making a child-centred government” area of the Bill, these are:
 - **Clause 11:** the extension of the statutory criteria which an English or Welsh local authority must show as being met when placing a child in secure accommodation in England to placing a child in other circumstances where there is a deprivation of liberty in England.

- **Clause 20:** extension of existing criminal offences of ill-treatment or wilful neglect by care providers or individual care workers in social care settings to cover 16/17-year-olds.

Clause 11 (introduced as clause 10)

10. In England, children who require a deprivation of their liberty for their safety are increasingly placed in unregistered, inadequate placements under a Deprivation of Liberty Order (DOLO) made through the Inherent Jurisdiction of the High Court due to a lack of suitable, registered placements. The UK Government is proposing to facilitate new types of provision ("Community Secure Children's Homes") which will provide suitable, therapeutic accommodation and care for children with complex needs linked to trauma who require a deprivation of liberty.
11. This programme includes a legislative proposal to provide a statutory basis for a court-authorised deprivation of liberty where it is needed to keep a child safe in this new form of provision. The overall intention is to improve outcomes for children with complex needs, ensuring they are kept safe and given the support they need, with appropriate safeguards and rights, while reducing reliance on the use of Deprivation of Liberty Orders and unregistered and unsuitable homes.
12. Clause 11 makes amendments to section 25 of the Children Act 1989. Section 25 makes provision for the circumstances when a child who is being looked after by a local authority may be deprived of their liberty and sets out what conditions must be met before placing that child in a secure accommodation setting.
13. Under the amendments that are proposed under clause 11, children may be deprived of their liberty and accommodated in a new type of accommodation ("relevant accommodation") as an alternative to the existing "secure accommodation" setting that is already set out in section 25.
14. The already existing subsection 1(a) sets out the conditions that must be met prior to a local authority depriving a child of their liberty and placing them in secure accommodation. Section 25(1) states that they cannot be placed in secure accommodation unless it appears:

he has a history of absconding and is likely to abscond from any other description of accommodation; and if he absconds, he is likely to suffer significant harm; or that if he is kept in any other description of accommodation, he is likely to injure himself or other persons.
15. It is proposed under the Bill that this same test will be extended in a new subsection 1A to also include a placement in "relevant accommodation".
16. A definition of what constitutes "relevant accommodation" is provided in a new subsection 1B as follows:

it is provided for the purposes of the care and treatment of children, and it is capable of being used (in whole or in part), in connection with the provision of such care and treatment, for the purpose of depriving children of their liberty.

17. As drafted in the Bill as introduced, the test under subsection 1A that must be met in order to place a child in relevant accommodation will only apply to English local authorities.
18. Currently, if a child is being placed in secure accommodation in Wales, and they are going to be deprived of their liberty, then the test as to placement falls under section 119 of the Social Services and Well-Being (Wales) Act 2014. Alternatively, an application to the High Court under its inherent jurisdiction may be made to deprive a child of their liberty and place them anywhere other than a secure accommodation unit.
19. If a Welsh local authority wishes to place a child in England in a setting which provides care and treatment and wishes to deprive that child of their liberty, then they must either apply under section 25 to place them in secure accommodation in England, or as above an application to the High Court under its inherent jurisdiction may be made.
20. In the absence of provision dealing with a Welsh local authority wishing to place a child in relevant accommodation in England, then any placement involving a deprivation of liberty, that is not in secure accommodation in England, by a Welsh local authority, would necessitate the use of the inherent jurisdiction of the High Court. This is problematic, as children are often placed in poor quality unregistered placements and because section 25 protections – including entitlement to legal aid that is not merit or means tested, and regular statutory review points – are not available for children deprived of liberty under inherent jurisdiction.
21. 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.

Clause 20 (introduced as clause 19)

22. Clause 20 of the Bill makes amendments to sections 20, 21 and 25 of the Criminal Justice and Courts Act 2015 (“the 2015 Act”). The amendments relate to existing criminal offences in the 2015 Act prohibiting the ill-treatment or wilful neglect of individuals by care workers and care providers in health and social care settings. The offences, in their current form, came into force in England and Wales on 13 April 2015.
23. The offences currently cover ill-treatment and neglect of adults (those aged 18 years and above) by individual workers or care providers and whilst in receipt of health or social care.

24. The ill-treatment or wilful neglect of children (those under 18 years) receiving health care is also caught by the current offences; however, ill-treatment or wilful neglect inflicted upon children receiving social care is not currently captured.
25. Section 1 of the Children and Young Persons Act 1933 makes provision for an offence of child cruelty and neglect. The offence captures neglect and is wide enough to cover a range of ill-treatment and abuse inflicted upon children and can be relied upon as an alternative criminal charge against those who ill-treat or neglect children in receipt of social care.
26. However, section 1 of the Children and Young Persons Act 1933 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 and ensure equity of protection for 16- and 17- year-olds. This would represent a positive outcome for this age group and we would want to see this extended to Wales.
27. The clause will apply 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 in Wales.

Part 2 – Children not in school, Clauses 25-30 (Introduced as Clauses 24-29) and Schedule 1

28. Amendments to Clauses 25-29 (Clauses 24-29 as introduced) extend the children not in school provisions, which were introduced as England only, to Wales.
29. Amendments to Clause 25 (Clause 24 as introduced) make provisions to insert a new section 434A in the Education Act 1996, after section 434, in respect of requiring local authority consent for withdrawal of certain children from school. The provisions require a parent to seek local authority consent to receive education otherwise than at school (for example, to home educate the child) if they meet the criteria of a “relevant child”, that being that their child is: of compulsory school age; is a registered pupil at a school; and either;
- registered at a special school maintained by the local authority, or
 - 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; or
 - the child is subject to an enquiry under Section 47 of the Children Act 1989; or
 - where the child is on a child protection plan.

30. In Wales there is already a local authority consent mechanism in place for children who attend special schools whereby if a parent wants to deregister from the school, the request is referred to the local authority for review and agreement. The provisions under Clause 25 means a wider cohort of children will benefit from a consent mechanism.
31. Provisions under Clause 25 also place duties on the proprietors of a school to notify a local authority if they become aware that a parent of a relevant child registered at their school intends to withdraw the child from school to receive education otherwise than at school. The Clause provides Welsh Ministers with regulation making powers relating to steps a school must take to ensure a relevant child remains registered at the school until confirmation is received from the local authority of the outcome of the request to withdraw the child, to ensure the child is not removed from the register before consent is given. Provisions also allow for a proprietor of a school where the child is registered, to make an application to the relevant local authority on behalf of the parent for consent to withdraw the child from the school to home educate, where the parent has given consent.
32. Clause 25 details provisions in respect of the local authority granting or refusing consent of a parent's request to home educate a relevant child. The provisions require local authorities to make timely decision on whether to grant the request and set out the detail of when consent to a request must be refused and detail as to whom decisions are to be communicated to. When considering the request the local authority must consider the home environment and other learning environments when determining whether or not children should be required to attend school.
33. Provisions also set out the processes parents can take should they be aggrieved by the decision of the local authority in respect of the application to withdraw their child from school.
34. 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.
35. Clause 26 amends the Education Act 1996 by inserting new sections after Section 436A which makes provisions to create a compulsory registers of children not in school in each local authority area in Wales, and a duty on local authorities to support the children on their registers (should a parent request this).
36. The provisions require local authorities to create and maintain a register of eligible children who live in the local authority area and are of compulsory school age where:
 - the child is not registered at a school;

- the child is registered as a pupil at a relevant school but the school have agreed for the child to be absent for some or all of the time and receive some or all of their education otherwise than at a relevant school; or
- the child is singularly registered at a relevant school but attends on a part-time basis.

A relevant school includes maintained schools (including special schools and PRUs), further education institutes that provide education for children age 14 years and above, and independent schools.

37. Clause 26 provides Welsh Ministers with the power to make regulations around when a child who is registered at a school and in receipt of Education Otherwise Than at School (EOTAS), is eligible or not to be on the children not in school (CNIS) register.
38. Clause 26 sets out the detail of the content and maintenance of the (CNIS) register requiring that the child's name, date of birth, home address, along with the name and home address of each parent of the child, and the name of each parent providing education to the child is kept along with further details of the amount of time the child receives an education. The provisions also set out detail of a range of additional information which should be held on the register, in respect of the child, where the local authority holds such information. This includes details such as specific needs of the learner, such as Additional Learning Needs (ALN) needs or details of known safeguarding concerns.
39. Under Clause 26, duties are placed on the parents of children who are home educated and deregistered from a school, to provide information to their local authority to support them in maintaining their CNIS register.
40. Clause 26 also makes provisions where a child receives education from someone other than a parent. Where out of education providers provide part of a child's education, Clause 26 places a duty on those providers to share relevant information with the local authority for the purposes of maintaining the CNIS register. Where the out of education provider does not comply with the duties, the legislation provides for monetary penalties to be issued. Schedule 31A provides the detail around those monetary penalties and provides Welsh Minister with regulation making powers to prescribe the detail of those fines.
41. Provision sets out when and with whom details of the CNIS register can be shared to safeguard and promote the welfare of the child and to support the maintenance of other local authority CNIS registers, where a child is known to be moving for example. The provisions prevent publication of any of the data contained within the CNIS register.
42. Clause 27 (Clause 26 as introduced) introduces changes to the School Attendance Order (SAO) process to make it more efficient, reducing the time children may spend in unsuitable education (this process may also

be used where parents do not comply with their new duty to provide information for Children Not in School registers) by:

- Introducing statutory timeframes for issuing and processing SAOs;
 - Making it an offence for parents to withdraw a child subject to an SAO from school without following the proper procedure. Parents convicted of breaching an SAO can be prosecuted again if they continue to breach it without local authorities having to begin the process again.
 - Aligning the maximum penalty for breaching an SAO with the offence of knowingly failing to ensure a child attends school.
43. Provisions create a power whereby if a child is subject to a s.47 Children Act 1989 enquiry or on a child protection plan and is already being home educated, the local authority will have the power to review whether it is in the best interests of the child to be in school and can then insist that the child be registered at a school.
44. Clause 27 provides regulation making powers to the Welsh Ministers to prescribe details of a school attendance order.
45. Clause 28 (Clause 27 as introduced) makes provision to insert a new section in the Education Act 1996 after section 436P relating to children not in school and attendance orders in Wales: data protection. The provision ensures that the handling and processing of information in respect of the new duties introduced under Clauses 25-27 (applications for consent to withdraw a relevant child; the CNIS register; offence of failure to comply with a school attendance order; or provision of information by out of education providers) is done so in line with data protection legislation.
46. Clause 29 (Clause 28 as introduced) makes provision to insert a new section “Guidance on children not in school and school attendance orders” in the Education Act 1996 after section 436Q, requiring local authorities to have regard to guidance issued by Welsh Ministers when exercising their functions in respect of the CNIS register and the revocation of school attendance orders.
47. The provisions contain a number of secondary legislation making powers. 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.

The procedures to be followed when making the regulations are set out below:

New draft section	Affirmative	Negative –
436(B)(6)	First set	Second and subsequent sets

436C(2)	Always affirmative	
436C(4)	First set	Second and subsequent sets
436E(1)(a)	Always affirmative	
436E(7)	Always affirmative	
436E(9)	First set	Second and subsequent sets
436F(1)	First set	Second and subsequent sets
436F(2)	Always affirmative	
436I(5)		Always negative
Para 5 of Schedule 31	First set	Second and subsequent sets

48. Consent is required for these provision(s) because they contain provision for a purpose within the legislative competence of the Senedd in so far as they relate to education and social care in Wales. The Children Social Care provisions ((Clauses 11 and 20)(Clauses 10 and 19 as introduced)) and the Children not in school provisions ((Clauses 25-29) (Clauses 24-28 as introduced) in the Children’s Wellbeing and Schools Bill would make “relevant provision” as regards to devolved matters.

UK Government view on the need for consent

49. The Secretary of State for Education wrote to the Cabinet Secretary for Education on Monday 10 March 2025, noting that the government amendments to clauses 11, 20 and 25-29 contain provision within the legislative competence of the Senedd and that she considered a legislative consent motion is required.

Reasons for making these provisions for Wales in the Children’s Wellbeing and Schools Bill

50. 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.

Clause 11

51. 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.

52. 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.

Clause 20

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.

53. All parents have a legal responsibility to ensure their child receives a suitable, efficient, full-time education. Most parents choose to fulfil this responsibility by sending them to school, whilst others choose to fulfil it by undertaking education otherwise than at a school (for example, home educating their children).
54. The number of home-educated children in Wales is increasing. Most parents who home-educate do so in their children’s best interests, and many home educated children receive a suitable education that supports them to thrive. However, local authorities have expressed concerns during regular engagement with the Welsh Government that not all children educated at home are being educated properly and some are at risk of or suffering harm.
55. Increasingly, parents of children with complex needs are choosing to home-educate and may not be well prepared or equipped to provide a suitable education. Whilst in Wales there is a local authority consent mechanism in place for children who attend special schools, there is currently no duty on parents to notify local authorities when they are home educating. Local authorities are unlikely to be aware of all the children not in school in their areas, including those who are not receiving a suitable education or those who are at risk of harm. Therefore, some children may be spending long periods of time receiving unsuitable education or, in some cases, no education at all, without intervention; and there are also

children who may be in unsafe home environments and under the radar of practitioners that are there to protect them.

56. Provisions made under Clauses 25-29 of the Bill will support local authorities in doing this.
57. Although children who are already on the Child Protection Register (CPR) are already seen by Social Services in Wales, requirements made through the children not in school provisions will create an additional mechanism to safeguard these children, potentially reducing the risk of missed opportunities to safeguard them.
58. Whilst there is no evidence that being home-educated is in itself a safeguarding risk, Elective HE children are less visible to authorities and therefore there are fewer opportunities for professionals/agencies to report issues.
59. In order to address these issues, the Welsh Government has progressed work on the Children Missing Education (CME) database instead. The CME database is a mechanism to help local authorities identify children who are missing, or potentially missing, education by using non-clinical health records and comparing these against local authority held information on children living in the local authority to help identify any children who are not known to them.
60. Whilst the CME database pilot regulations strengthen CME policy in Wales, the children not in school provisions proposed in this Bill would enhance the policy (from a safeguarding perspective) with the CNIS register, school attendance order (SAO), strengthened suitability assessment and child protection clauses applying alongside the CME database arrangements.
61. In addition to the introduction of the regulations to pilot the CME database, the Welsh Government introduced statutory EHE guidance in 2023, to support local authorities to undertake their duty under section 175 of the Education Act 2002, which is to make arrangements to undertake their education functions with a view to safeguarding and promoting the welfare of children. Despite the introduction of the statutory guidance local authorities report continued difficulties in identifying home-educated children and being able to engage with the family, and continue to call for stronger measures. The children not in school provisions will provide for these stronger measures.
62. Furthermore the provisions in the Bill as introduced, would have resulted in local authorities in England having greater levels of contact with EHE children than local authorities in Wales. If the provisions were not extended to Wales, as proposed by the tabled amendments, duties on families in Wales would be considered less stringent than in England. Having the Bill make relevant provisions for Wales in respect of children

not in school would create equal protection for the children of Wales and England.

Financial implications

63. It is unlikely there will be financial implications for Wales in respect of social care clauses however the UK Government is updating its Regulatory Impact Assessment which may highlight financial implications it has identified, and officials are awaiting further information on this.
64. It is likely that there will be financial implications for Wales, specifically for Local Authorities and 'out of education' providers in respect of administration costs and potentially IT requirement costs. UKG are currently considering and revising the financial implications within the Regulatory Impact Assessment. We are seeking more details on this, the likely cost for Wales and what this will mean in practice.
65. Measures within the Bill in respect of monetary penalties for out of education providers provide for Welsh Ministers to determine the levels of those penalties through regulation making powers. Full consideration of the financial implications will be undertaken during future development of those regulations which will be consulted on.

Conclusion

66. 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.

Lynne Neagle MS
Cabinet Secretary for Education
24 March 2025