

Legislative Consent Memorandum

Children's Wellbeing and Schools Bill

Background

1. This memorandum has been lodged by Jenny Gilruth MSP, Cabinet Secretary for Education and Skills in accordance with Rule 9B.3.1(c) of the Parliament's Standing Orders.
2. The Children's Wellbeing and Schools (CWS) Bill was introduced by the UK Government in the House of Commons on 17 December 2024. The Bill is available on the UK Parliament website via this link: [Children's Wellbeing and Schools Bill - Parliamentary Bills - UK Parliament](#).

Content of the Bill

3. The Bill as introduced aims to break the link between young people's background and their future success. It will put in place a package of support to drive high and rising standards throughout the education and care systems so that every child can achieve and thrive. It will protect children at risk of abuse, stopping vulnerable children falling through cracks in services, and deliver a core guarantee of high standards with space for innovation in every child's education. While this is an overview of the Bill, the two areas where provisions are proposed to extend to Scotland through parliamentary amendments are community-based accommodation and child employment.
4. These proposed provisions aim to provide more flexibility to children and young people while still maintaining their safeguards and wellbeing. It should be noted that these changes are relatively narrow in scope and are explained in more detail in the following section.
5. The UK Government tabled amendments to the Children's Wellbeing and Schools Bill on 13 May 2025 which extend to Scotland.

Provisions which require the consent of the Scottish Parliament

6. The Bill is a relevant Bill under Rule 9B.1.1 of the Standing Orders, as the Scottish Government considers it makes provision applying to Scotland for purposes within the legislative competence of the Scottish Parliament and alters the executive competence of the Scottish Ministers. The UK Government has sought legislative consent for the provisions as the amendments alter executive competence by conferring powers onto Scottish Ministers, and the Scottish Government agrees that consent is required.

Child Employment

7. The Children's Wellbeing and Schools Bill will by amendment extend provisions to Scotland. The amendments will make changes to Part III of the Children and Young Persons (Scotland) Act 1937 ("the 1937 Act"), specifically by inserting new sections 28 and 28A and consequential amendments to sections 31, 35, 36, 37, 38 and 110(1) of that Act, regulating children's employment in Scotland, replacing current provisions for byelaws and child employment permits, and conferring instead new regulation-making powers on the Scottish Ministers in respect of these matters. The principal changes made by these provisions are as follows:

- children will be able to work up to an hour before school. Previously they were not allowed to work before school.
- children will be able to work until eight o'clock in the evening. Previously this was seven o'clock.
- children will be able to work on a Sunday for the same number of hours as they currently can on a Saturday which is a maximum of five hours if they are fourteen years old, or a maximum of eight hours if they are fifteen to sixteen years old. Previously they could only work up to two hours on a Sunday.
- children will be able to work the same number of hours as they currently can on a Saturday as outlined in the paragraph above, and therefore references to restrictions on Sunday working in subsections 28(e) and 28(g) will be removed.
- the new provisions would still allow local authorities to approve child employment permits, but this would be done in accordance with regulations made by the Scottish Ministers. Therefore, a child may not be employed to work in Scotland except in accordance with a permit (a "child employment permit") granted by a local authority in Scotland on an application made in accordance with regulations made by the Scottish Ministers.
- regulations made under section 28 are subject to the negative procedure.

Community-based and Secure Accommodation

8. Provisions in relation to community-based accommodation require the legislative consent of the Scottish Parliament, as they make amendments to legislation in devolved areas which would be within that Parliament's competence and alter the Scottish Ministers' executive competence. The Scottish Government considers that it is appropriate for these changes to be made by the UK Parliament as they arise in consequence of changes made to expand the settings within which a child may be deprived of their liberty in England.

9. The Bill proposes a statutory mechanism for children to be placed in new care settings in England which will provide an alternative to traditional secure accommodation. These will be community-based care settings which can provide for both deprivation and restriction of liberty measures, as required to keep children and others safe. The measures proposed in the Bill reflect the intention that these settings will be brought within the existing Ofsted registration and inspection regime, which is similar to the Care Inspectorate regime in Scotland.

10. Amendments made to Scottish legislation via the Bill (in clause 11) will update the definition of “secure accommodation” in respect of England. In particular, they will revise definitions in section 93 of the Children (Scotland) Act 1995 and section 202(1) of the Children’s Hearings (Scotland) Act 2011 to bring them into alignment with section 25 of the Children Act 1989 (“the 1989 Act”), as amended by the Bill. The amended section 25 will permit children to be deprived of their liberty in the new, community-based care settings where appropriate. This will have the effect that where a child could otherwise be placed from Scotland into secure accommodation in England, there will be an option for them to go to a community-based care setting as described above. The Bill does not affect the wider legal checks and balances applicable to any such placement (which would only ever occur where appropriate and in the best interest of the child), and the Scottish Ministers will retain existing secondary legislation powers to make provision about such placements. For example, the power in section 75 of the Children (Scotland) Act 1995 could be used to make provision about the placement of certain children into the new settings in England.

11. Further, section 25 of the 1989 Act applies to Scotland and section 25(5A) currently provides authority for secure care providers in Scotland who host children from England and Wales to restrict the child’s liberty. The Bill makes broader amendments to section 25 to replace references to “restriction” of liberty to “deprivation” of liberty, including in section 25(5A). These are more reflective of the factual and legal position in relation to secure accommodation and will bring the legislation into alignment with the new Scottish definition of “secure accommodation” in the Children’s Care and Justice (Scotland) Act 2024.

Reasons for recommending legislative consent

12. The Scottish Government is recommending consent for the provisions on child employment which will provide Scottish children with more flexibility in terms of options for their employment. From existing stakeholder engagement, the changes are welcomed by children and local authorities. The Scottish Government had not planned for these changes, so there is no alternative suitable legislative vehicle that would allow the Scottish Government to make these amendments.

13. The centralisation of regulation for the employment of children and arrangements governing the issuing of permits would create consistency across both nations and also within Scotland. Consenting to these provisions will ensure there is one set of regulations across all Scottish local authorities which take into account local knowledge. It will be easier for children and young people to navigate and function within this set of regulations as it is consistent regardless of where children and young people live whilst maintaining their safeguarding and wellbeing.

14. The Scottish Government values the new option brought by the Bill to place a child from Scotland into community-based provision which provides an alternative to traditional secure accommodation in England. While the Scottish Government considers it is unlikely that children will be placed from Scotland into community-based provision allowing for this option is in line with article 3 of the UNCRC, which requires that the best interests of the child are a primary consideration in all actions involving them. Therefore, the Scottish Government is recommending consent for these provisions to be extended to Scotland.

Consultation

15. The speed at which this Bill, and these amendments, have been introduced, means there has not been a full consultation on these specific proposals but engagement with key stakeholders has taken place and no outright objections raised.

16. In the limited time available, engagement with relevant stakeholders including children and young people, businesses, local authorities and third sector children's organisations has occurred but has not been extensive. There was a general consensus gathered during the engagement that the changes around child employment and community-based accommodation would bring benefits.

Financial implications

17. There are limited financial implications of the changes to child employment other than the publication of guidance to support local councils in navigating the changes.

18. There would be no additional costs to the Scottish Government in respect of the provisions extending to Scotland around community-based accommodation. The provisions will be developed by the UK Government. If local authorities in Scotland wished to use the facilities for children, then they would pay for the placement, as they currently do, when placing a child in secure accommodation in England. This particular provision will be supported by a capital investment from the UK Government to build more community provision in England. At this stage, the cost of placing children in these settings is not known - the operational and financial frameworks will be developed during the UK Government's piloting phase.

Post EU scrutiny

19. Aspects of the Children and Young Persons (Scotland) Act 1937 comprise assimilated law (the new name for retained EU law) because they implement the Council Directive 94/33/EC of 22 June 1994 on the protection of children at work. The draft amendments to the Bill provide for the amendment of these provisions on the face of the Bill and by Scottish Statutory Instrument (SSI). The Bill replaces section 28 of the 1937 Act regarding restrictions on the employment of children but the replacement largely replicates the existing legislation with slight changes only regarding hours worked on weekdays and allowing Sunday work. These changes continue to align with the Council Directive 94/33/EC. Whilst the Scottish Government alignment policy applies to future SSIs, and will be considered in the course of legislative development, these SSIs replace local authority byelaws through centralisation and allow for little deviation from the central provisions as detailed in the new section 28A. The SSIs proposed will not be for the purpose of amending the 1937 Act.

Conclusion

20. The Scottish Government recommends consent to the relevant provisions in this Bill for the reasons set out in paragraphs 12-14.

Draft motion on legislative consent

21. The draft motion, which will be lodged by Jenny Gilruth, Cabinet Secretary for Education and Skills, is:

“That the Parliament, in relation to the Children’s Wellbeing and Schools Bill, as amended, agree that the clauses affecting child employment and community-based and secure accommodation, so far as these matters fall within the legislative competence of the Scottish Parliament and amend the executive competence of Scottish Ministers, should be considered by the UK Parliament.”

Scottish Government
June 2025

This Legislative Consent Memorandum relates to the Children's Wellbeing and Schools Bill (UK legislation) and was lodged with the Scottish Parliament on 12 June 2025

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