

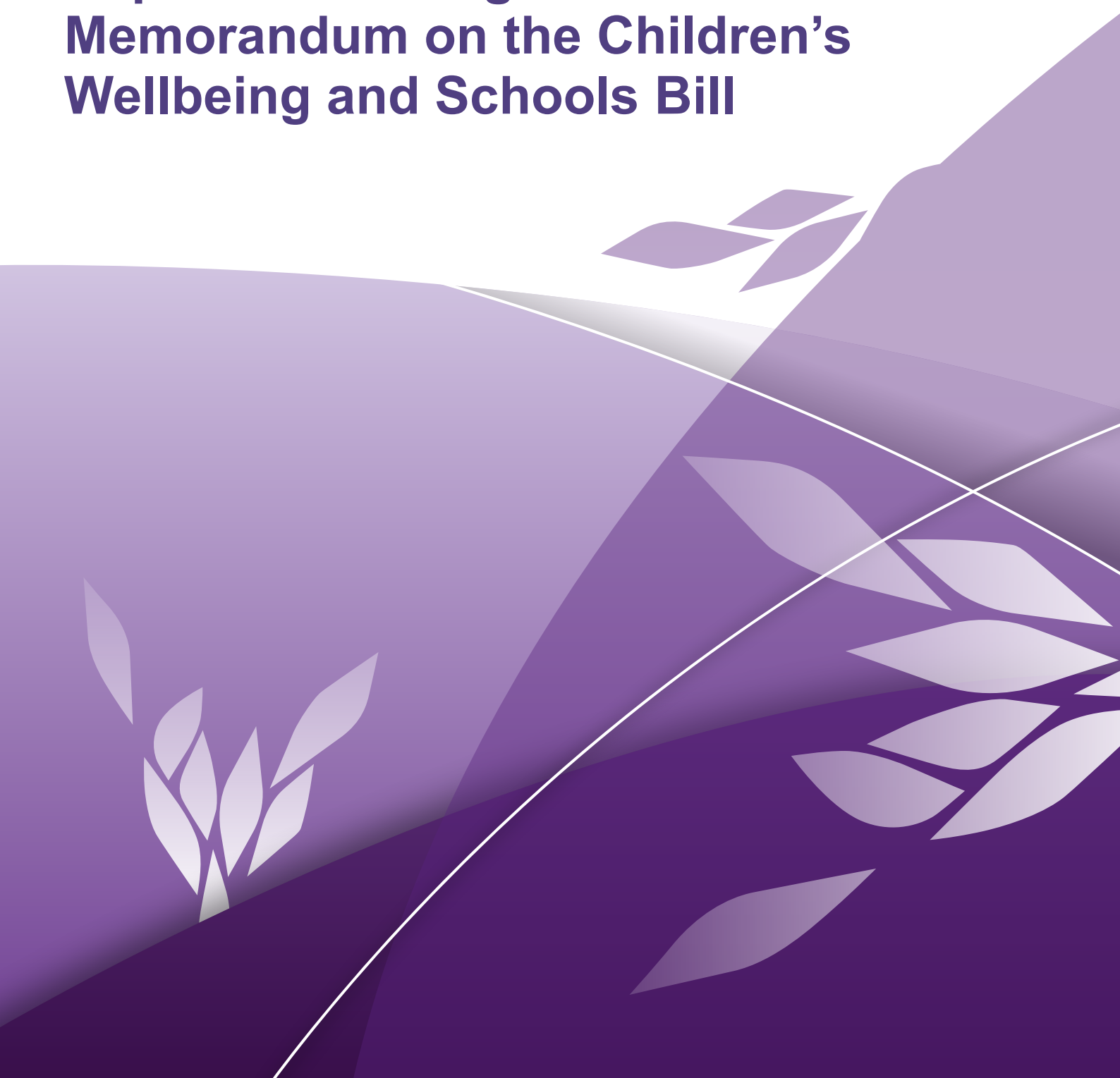


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Education, Children and Young People Committee

Report on the Legislative Consent Memorandum on the Children's Wellbeing and Schools Bill



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Education, Children and Young People Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Education and Skills and matters relating to the Historical Abuse Inquiry, redress and languages falling within the responsibility of the Deputy First Minister.



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Introduction

1. The [Children's Wellbeing and Schools Bill](#) is a UK Government Bill introduced in the House of Commons on 17 December 2024.
2. The UK Government [tabled amendments](#) to the Bill on 13 May 2025 which extend to Scotland. The Bill is currently at Committee stage in the House of Lords and it is likely that the Bill will reach final amending stage at Westminster while the Scottish Parliament is in recess, although no exact dates have been set for the Report Stage and third reading at this point. In order to meet the timescales for consent, the motion on the Bill must be taken in the Chamber before summer recess.

The Bill

3. The Bill, as introduced, states that it aims to break the link between young people's backgrounds 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 the cracks in services, and deliver a core guarantee of high standards with space for innovation in every child's education.
4. The two areas where provisions are proposed to extend to Scotland through parliamentary amendments are community-based accommodation and child employment. These proposed provisions aim to provide more flexibility to children and young people while still maintaining their safeguards and wellbeing.

Legislative Consent Memorandum

5. The Sewel Convention is the convention that the UK Parliament will not normally legislate on matters devolved to the Scottish Parliament without its consent. [Chapter 9B of the Parliament's Standing Orders](#) sets out the rules and procedures for seeking legislative consent under the convention.
6. The Children's Wellbeing and Schools Bill falls under Rule 9B.1.1 of the Standing Orders, as it makes provisions applying to Scotland for purposes within the legislative competence of the Parliament.
7. A [Legislative Consent Memorandum](#) (LCM) was lodged on 12 June by Jenny Gilruth, Cabinet Secretary for Education and Skills. The LCM provides an overview of the Bill and sets out the provisions for which the Scottish Government considers consent is required from the Scottish Parliament.

Provisions requiring consent

Child employment

8. 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

9. 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.
10. 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.
11. 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 interests 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.
12. 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.
13. The Scottish Government recommends that consent be given to the clauses identified in the LCM.

Committee consideration

14. The Education, Children and Young People's Committee was designated as lead committee on the LCM by the Parliamentary Bureau on 17 June 2025.
15. The Committee considered the LCM at its meeting on 18 June 2025 and agreed that, given the timescales involved in consideration of this LCM, there was insufficient time to undertake any meaningful scrutiny.

Delegated Powers and Law Reform Committee scrutiny

16. The Delegated Powers and Law Reform Committee will consider the LCM at its meeting on 24 June 2025.

Conclusion

17. The Committee notes the LCM and the lack of time available for the Committee to undertake meaningful scrutiny. The Committee also notes that the whole Parliament will decide whether consent should be given to the UK Parliament to legislate for the relevant provisions in this Bill. This decision will take place prior to the Scottish Parliament's summer recess.

