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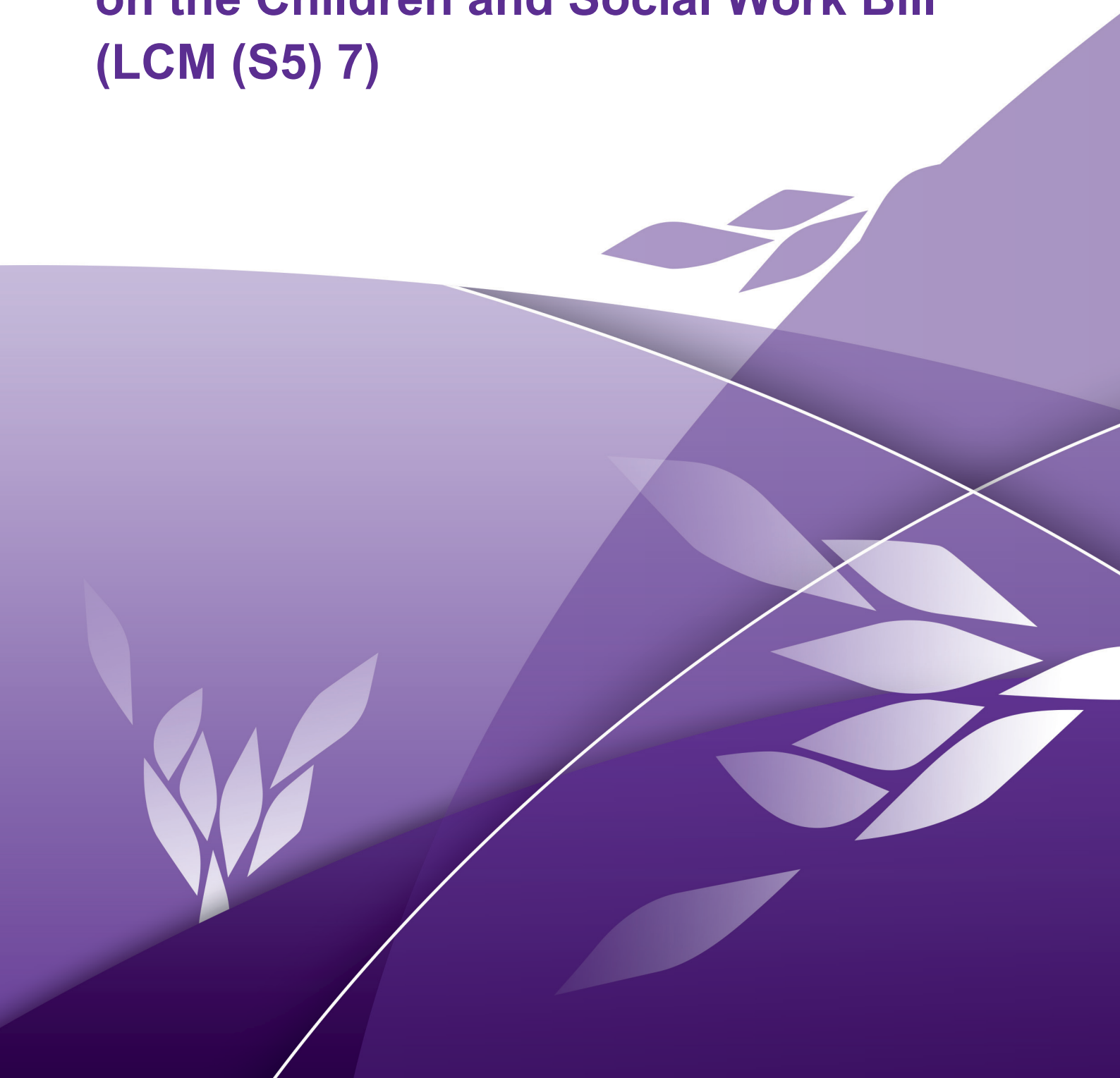
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Education and Skills Committee

Legislative Consent Memorandum on the Children and Social Work Bill (LCM (S5) 7)



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Education and Skills Committee

Remit: To consider and report on matters falling within the responsibility of the Cabinet Secretary for Education and Skills.



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Background

1. A Legislative Consent Memorandum (“LCM”)¹ on provisions in the Children and Social Work Bill² was lodged at the Scottish Parliament by the Cabinet Secretary for Education and Skills on 15 December 2016.
2. The Children and Social Work Bill is a UK Government Bill and its first reading was in the House of Lords on 19 May 2016. The Bill concerns children in care and care leavers, safeguarding children arrangements, and the regulation of social workers.
3. The Bill did not extend to Scotland when it was introduced. Amendments were tabled on 7 December 2016 by the UK Government that requires the Scottish Parliament’s consent under the Sewel Convention. The LCM states that:

” The provisions which make the Bill a “relevant” Bill under Chapter 9B of Standing Orders relate to the crossborder placing of children in secure accommodation in England, Wales and Scotland and are considered necessary to deal with a gap in the law which has been identified in relation to the placement of children in secure units in Scotland by local authorities in England and Wales.

4. These provisions were introduced to fill a legislative gap identified in a judgement of High Court of Justice Family Division on 12 September 2016. In a small number of cases, local authorities in England and Wales had placed children in secure accommodation in Scotland after gaining an order under section 25 of the Children Act 1989 (“the 1989 Act”).
5. In his judgement, Sir James Mundy, President of the Family Division, stated “there are serious [gaps] in the law which, it might be thought, need urgent attention” and later he stated:

” It is, in my judgment, clear that a judge in England cannot make a secure accommodation order under section 25 of the 1989 Act if the child is to be placed in a unit in Scotland.³

Scrutiny of the Memorandum

Timing

6. The Scottish Parliament’s decision on whether to give its consent to the UK Parliament to legislate on its behalf must be made in time for the UK Parliament to be able to amend the Bill if necessary, i.e. before the final amending stage at the UK Parliament.

7. The LCM was lodged on 15 December 2016. At that time the Bill had progressed from the House of Lords and was in the Committee Stage in the House of Commons, the next stage will be the Report Stage which is the final amending stage in the Commons. UK Parliament website stated that:

” The Public Bill Committee is scheduled to conclude by 17 January 2017, but could finish earlier.⁴

8. The Committee therefore has had very little time in which to consider the LCM.

Policy

9. The Committee recognises that the LCM is required to enable the continuation of existing practice to allow local authorities in England and Wales to place children in Scottish secure accommodation. For this reason and the short timescale to consider the LCM, the Committee did not undertake an in-depth consideration of the policy.
10. However, the Committee was keen to receive confirmation that children within the same unit in Scotland have substantially equal rights regardless of whether they come from a Scottish local authority or are from elsewhere. The Committee wrote to the Scottish Government to seek more information on the timescales and judicial oversight of cross-border placements from England or Wales in comparison to a child placed from a Scottish local authority in secure accommodation in Scotland.
11. The Scottish Government responded on 6 January 2017 and the letter is included in Annexe A of this report. The Cabinet Secretary for Education and Skills confirmed that while the judicial systems that deal with orders to place children in secure accommodation differ between Scotland and England and Wales, the timescales and judicial oversight of these orders and placements are similar.

Conclusion

12. The LCM includes a draft legislative consent motion in the following terms:

“That the Parliament agrees that amendments to the Children and Social Work Bill, introduced in the House of Commons on 7 December, which relate to the crossborder placement of children in secure accommodation, so far as these provisions fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

13. On the basis that the LCM is required to enable the continuation of existing practice with regard to the cross-border placement of children in secure units and in light of the re-assurances received from the Scottish Government highlighted above, the Committee recommends that the

Parliament agree to a legislative consent motion in the terms outlined in the memorandum.

¹ Scottish Parliament [*Legislative Consent Memorandum Children and Social Work Bill*](#)

² UK Parliament [*Children and Social Work Bill \[HL\] 2016-17*](#)

³ High Court of Justice Family Division [*\[2016\] EWHC 2271 \(Fam\)*](#)

⁴ UK Parliament [*Children and Social Work Bill \[HL\] 2016-17*](#)

Annexe A

Letter from the Cabinet Secretary for Education and Skills (6 January 2017)

Dear Convener,

Thank you for your letter of 22 December seeking information on the timescales and judicial oversight of cross-border placements from England or Wales as compared to Scottish children placed in secure accommodation in Scotland. Information on those matters is set out below.

Placements without authority (emergency placements)

In cases where a child is placed in secure accommodation without the authority of an English or Welsh court, or a Scottish court or children's hearing, the maximum period that a child can be kept in secure accommodation is an aggregate of 72 hours (whether or not those hours are consecutive) in any period of 28 consecutive days (see regulation 10 of the Children (Secure Accommodation) Regulations 1991 ['the 1991 Regulations'] and regulation 5 of the Secure Accommodation (Scotland) Regulations 2013) ['the 2013 Regulations']). This is the same in both jurisdictions.

A minor difference is that in Scotland there is the opportunity for a 24 hour extension for Scottish cases, as noted below. That extension is not available in relation to children coming from England and Wales.

For placements from Scotland, the 72 hour period can be extended by a further period of 24 hours in limited cases where the Principal Reporter has determined that it will be necessary for a compulsory supervision order to be made in respect of the child but considers that it would not be reasonably practicable to arrange a hearing within the 72 hour period.

Placements with authority

If a child is kept in secure accommodation for longer than the periods mentioned above, some form of judicial authority is required. For the placements from England or Wales, the authority would be a secure accommodation order made under section 25 of the Children Act 1989.

In Scotland, the equivalent authority would be a compulsory supervision order (or interim compulsory supervision order) with a secure accommodation authorisation made by a children's hearing or a sheriff under the Children's Hearings (Scotland) Act 2011 ['the 2011 Act']. In both cases, the court or children's hearing must determine that the relevant criteria for placing a child in secure accommodation is met before making an order. Further information on the timescales and review of such orders is set out below.

Placements from English local authorities

As outlined above, in cases where a child is placed in secure accommodation on the authority of an English or Welsh court, the maximum period for which the court in England or Wales may authorise a child to be kept in secure accommodation is 3 months (see regulation 11 of the 1991 Regulations) and a court may authorise a child to be kept in secure accommodation for a further period not exceeding 6 months at any one time (regulation 12 of the 1991 Regulations).

Placement from Scottish local authorities

There is no equivalent statutory maximum period for which a child from Scotland can be kept in secure accommodation under a compulsory supervision order. However, the order and placement is kept under regular review by the children's hearing and the chief social worker as follows:-

If a compulsory supervision order includes a secure accommodation authorisation the children's reporter must arrange a review hearing before the end of three months of the order being made, varied or continued (section 135 of the 2011 Act). The children's hearing may specify that a review be held earlier if required. In effect, this means that the children's hearing must review an order authorising a child to be placed in secure accommodation at least every 3 months.

In addition to the review of the orders by the children's hearing, a placement is kept under very regular review by the chief social worker. Where a Scottish child is placed in secure accommodation with the authority of a compulsory supervision order, the placement has to be reviewed by the chief social worker within 7 days, and monthly thereafter (see regulation

10 of Children's Hearings (S) Act 2011 (Implementation of Secure Accommodation Authorisation) (S) Regulations 2013). If the chief social worker considers that it is unnecessary for the child to remain in the secure accommodation, the child must be removed from the secure accommodation without the need for a further hearing.

The amendments made by the current Bill to the 1991 Regulations and the 2013 Regulations are technical in nature and do not introduce substantive policy changes either side of the border. They are consequential amendments to allow the existing timescales and procedures detailed above to work seamlessly and to remain clearly enforceable in relation to cross-border placements.

I hope that the Committee finds the foregoing information helpful.

JOHN SWINNEY

