Legal Advice Note

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM
CHILDREN AND FAMILIES BILL

Background

1. On the 3rd December 2013, Gwenda Thomas AM, Deputy Minister for Social Services gave notice of a motion in the following terms –

“To propose that the National Assembly for Wales, in accordance with Standing Order 29.6, agrees that provisions in the Children and Families Bill, relating to amendments to section 98(1) of the Adoption and Children Act 2002 in so far as they fall within the legislative competence of the National Assembly for Wales, should be considered by the UK Parliament.”

2. This supplementary Legislative Consent Memorandum (“LCM”) and accompanying documents were tabled due to an amendment moved to the Children and Families Bill (“the Bill”) in the House of Lords at its reporting stage.

The Bill

3. The Bill was introduced in the House of Commons on the 4th February 2013. The Bill can be found at - http://services.parliament.uk/bills/2012-13/childrenandfamilies.html

4. The main purpose of the Bill (according to the Explanatory Note) is to make legislative changes to reform support to children and families. The first half of the Bill seeks to improve services for children and young people by reforming the systems for adoptions, looked after children, family justice and special educational needs. The second half seeks to encourage growth in the childcare sector, shared parental leave and ensuring children in England have strong advocates for their rights.
Legislative Competence

5. The supplementary LCM identifies the Assembly's legislative competence under 'Adoption' under the social welfare heading in Part 1 of Schedule 7, of the Government of Wales Act 2006 (“GOWA 2006”) as being relevant.

Provision in the Bill for which consent is sought

6. Paragraph 5 of the LCM describes the provision for which consent is sought. Consent of the Assembly is sought to enable the proposed amendment to section 98(1) of the Adoption and Children Act 2002 to apply to Wales as well as England.

Section 98 – Pre-commencement adoptions: information

7. Section 98(1), as it currently stands, allows regulations to be made that help a person adopted before 30 December 2005, who has reached the age of 18, to obtain information about their adoption and make contact with their relatives.

8. The amendment will extend the regulation making power in section 98(1). The amendment as tabled gives a regulation making power to make “provision for the purpose of facilitating contact between persons with a prescribed relationship to a person adopted before the appointed day and that person’s relatives.” The type of relatives who will be affected by the new provision will be set out in regulations which will be made by Welsh Ministers. As set out in the LCM, this power could allow regulations to specify that relatives of people adopted before 30 December 2005 can have access to intermediary services to facilitate contact between the descendants and the adopted person’s birth relatives, regardless of whether the adopted person is living or dead.

9. The House of Lords Select Committee on Adoption Legislation published their final report in March 2013. Based on evidence received, including that from the British Association of Adoption and Fostering (BAAF), the Select Committee recommended that section 98 of the Adoption and Children Act 2002 be amended to bring within its scope the direct descendants of adopted persons. The Select Committee’s final report can be found at: http://www.publications.parliament.uk/pa/ld201213/ldselect/ldadopt/127/12702.htm. See paragraph 12 below for the relevant extract from the report.

10. In the LCM, the Deputy Minister states that the exclusion of persons related to adopted persons from the current definition of relatives in section 98 of the Act creates an unfair anomaly in the legislation. The LCM also states that dis-applying the amendment to Wales may be
seen as discriminating against Welsh adoptees and their families, and may create problems in relation to cross border issues.

Further background to the amendment

11. The Children and Young People Committee (“the CYP Committee”) undertook an inquiry into adoption during 2012 and submitted their report as evidence to the Select Committee on Adoption Legislation. Although the CYP Committee heard about the importance of the relationship between adopted persons and their birth relatives during the inquiry, issues relating to intermediary services and contact did not form part of the CYP Committee terms of reference and therefore no specific recommendations were made in this regard.

12. The following is an extract from the Select Committee which highlights the current issue with the law and why an amendment should be made to section 98:

http://www.publications.parliament.uk/pa/ld201213/ldselect/ldadopt/127/12712.htm

“Access to information by descendants of adopted people

272. The descendants of adopted persons seeking access to information about the birth family of the adopted person can currently face significant barriers, depending on the amount of information already within their possession. Regulations provide that adopted persons and ‘relatives’ of an adopted person may apply for an intermediary service to assist in obtaining information about an adoption, and to facilitate contact between adopted persons and their relatives. The descendants of an adopted person, however, do not fall within the scope of the word ‘relative’, as defined in section 98 of the 2002 Act.

273. In practice this means that whilst birth relatives are able to take advantage of the Regulations to help trace descendants of the adopted person, the descendants of the adopted person are unable to seek assistance to contact surviving birth family members of the adopted person. We received evidence stating that this can be a significant problem for the children and grandchildren of adopted persons trying to establish their own genealogical background.

274. We believe that the exclusion of descendants of adopted persons from the definition of relatives in section 98 of the Adoption and Children Act 2002 creates an unfair anomaly in the legislation. This can be a cause of significant distress. We recommend that the Government amend section 98 of the Act to bring within its scope the direct descendants of adopted persons. The Adoption Information and
Intermediary Services (Pre-Commencement Adoptions) Regulations 2005 should be amended accordingly."

**Conclusion**

13. It is the view of Legal Services that the Bill will make provision in relation to Wales, for a purpose within the Assembly’s legislative competence.

14. Standing Order 29.7 provides that the Assembly must consider a legislative consent motion which has been tabled.

**Legal Services**

**December 2013**