

Children, Young People and Education Committee: Report on the Supplementary Legislative Consent Memorandum for the Higher Education and Research Bill

Background

1. On 5 January, Kirsty Williams AM, Cabinet Secretary for Education laid a Supplementary Legislative Consent Memorandum¹ for the Higher Education and Research Bill². The Memorandum relates to clauses in the Bill which include provisions within the legislative competence of the Assembly.
2. An earlier Legislative Consent Memorandum³ for the Higher Education and Research Bill relating to provisions for alternative student finance was laid on 17 November and considered by the Committee on 14 December 2016. The Committee's Report on the initial Memorandum was laid on 12 January 2017.⁴
3. Standing Order 29 includes details about the process for consent in relation to UK Parliament Bills. When the UK Parliament wishes to legislate on a subject matter which has already been devolved to the National Assembly for Wales, convention requires it to receive the consent of the Assembly before it may pass the legislation in question. Such consent is given by the Assembly through Legislative Consent Motions (LCMs).
4. Before a LCM can be tabled, a Legislative Consent Memorandum relating to the legislation in question must be laid and may be considered by an Assembly committee or committees. In this case, the Memorandum has been referred by the Business Committee to the Children, Young People and Education Committee to consider and report on it.

¹ [Supplementary Legislative Consent Memorandum \(Memorandum No 2\): Higher Education and Research Bill](#)

² [Higher Education and Research Bill](#)

³ [Legislative Consent Memorandum: Higher Education and Research Bill](#)

⁴ [Children, Young People and Education Committee: Report on the Legislative Consent Memorandum for the Higher Education and Research Bill](#)



Policy Objective(s) and Summary of the Bill

5. The UK Government's stated policy objectives are to increase competition and choice in the English higher education sector, raise standards and strengthen the United Kingdom's capabilities in research and innovation. It makes provision for:

- establishing a new regulatory and teaching funding body for the English HE sector – the Office for Students (OfS);
- operation by the OfS of a register of HE providers in England and a quality and standards ratings scheme (the Teaching Excellence Framework (“TEF”));
- the OfS to grant degree awarding powers and university title for HE providers in England (where providers apply for degree awarding powers or university title);
- the Secretary of State to require application-to-acceptance data from organisations who offer a shared and centralised admissions service for HE providers in England for the purpose of research;
- arrangements for alternative student finance payments in England and Wales;
- deregulation of higher education corporations in England; and
- a new research and innovation body: United Kingdom Research and Innovation (UKRI).

The provisions which are the subject of the Legislative Consent Memorandum

6. The Bill as amended at House of Commons Committee Stage made provision at clause 82 for the Welsh Ministers to exercise their regulation making powers under section 22 of the Teaching and Higher Education Act 1998 (the 1998 Act) so as to be able to:

- make the annual higher education student support regulations in such a way that they designate courses provided by institutions in England by reference to matters determined or published by the OfS or other persons (such as the proposed register of providers); and



– set maximum amounts of student support payable to Welsh students undertaking courses of higher education at English institutions by way of reference to matters determined or published by the Secretary of State or other persons (such as the Teaching Excellence Framework ratings).

7. The UK Government tabled further amendments to the Bill at House of Lords Committee Stage. The Supplementary Memorandum deals with those amendments, which relate to Financial Support for Students and the Student Complaints Scheme.

Reasons for making these provisions for Wales in the Higher Education and Research Bill

Financial Support for Students

8. Amendments to clauses 82(2) and 82(4) of the Bill make it clear that regulations made by the Welsh Ministers under section 22 of the Teaching and Higher Education Act 1998 may refer to matters determined or published by the Office for Students (OfS), the Secretary of State or other persons whether the determination or publication is before or after the regulations were made.

9. The effect of the amendments would be that Welsh Government's student support regulations could refer to the most up to date information about Teaching Excellence Framework (TEF) ratings and the register of providers to be published by the OfS rather than rely on information already published at the time when the regulations are made.

10. The Welsh Government state that if these amendments were not to apply to Wales then there could be a risk that the amount of support payable to Welsh students undertaking HE courses at English institutions would not be in line with the fees charged by those institutions. This could mean that the fees payable by Welsh students could exceed the amount of student support payable under the Welsh Government's regulations and require such students to cover the difference i.e. pay upfront fees.

Student Complaints scheme

11. Amendments to clauses 83 and 118 will result in the transitional protection for students in connection with the independent higher education complaints scheme contained in clause 83(3) of the Bill applying in relation to qualifying institutions in Wales.



12. The Welsh Government state that, as the complaints scheme operates on an England and Wales basis, it is desirable for the legal underpinning of the scheme to remain consistent in both administrations. Ensuring that the new transitional protection provision applies to qualifying institutions in Wales will ensure that the scheme offers the same level of protection to students studying at Welsh providers as those studying in English providers.

Legislative Competence

13. The Supplementary Memorandum correctly identifies that the relevant provisions of the Bill fall within the legislative competence of the National Assembly for Wales, insofar as it relates to education and training under paragraph 5 of Part 1, Schedule 7 to the Government of Wales Act 2006. As such, the consent of the National Assembly for Wales is required. There are no legal issues which the Committee has identified.

Appropriateness of the legislative approach

14. As set out in the Supplementary Memorandum, the Welsh Government believes that it is appropriate to deal with the provisions in this UK Bill as it represents the most practicable and proportionate legislative vehicle to enable these provisions to apply in relation to Wales.

15. The Welsh Government has also confirmed that there are no financial implications for the Welsh Government if the National Assembly for Wales consents to the provisions applying to Wales.

Committee Consideration and Conclusion

16. The Committee considered the Supplementary Memorandum on 1 February 2017. The Committee is content that the Bill will make provision in relation to Wales, for a purpose within the Assembly's legislative competence. On the basis of the Supplementary Memorandum presented, the Committee has no concerns with the approach being taken.

