

National Assembly for Wales

Enterprise and Business Committee

October 2014

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



Report on the Legislative Consent Memorandum – Small Business, Enterprise and Employment Bill

Background

1. On 17 July 2014, the Minister for Economy, Science and Transport laid a Legislative Consent Memorandum for the Small Business, Enterprise and Employment Bill, which is currently before the UK Parliament.
2. On 16 September 2014, the Business Committee referred the Memorandum to the Enterprise and Business Committee for consideration and agreed a reporting deadline of 16 October 2014.
3. The Committee considered the Memorandum on 24 September.

Small Business, Enterprise and Employment Bill (“the Bill”)

4. The Bill is sponsored by the Department for Business, Innovation and Skills (“BIS”). The main policy objectives of BIS for the Bill are to open up new opportunities for small businesses to compete, access finance to create jobs, grow, innovate and export.

5. The Bill makes provision about:

- improved access to finance for businesses and individuals;
- regulatory provisions relating to business and certain voluntary and community bodies;
- the exercise of procurement functions by certain public authorities;
- the creation of a Pubs Code and Adjudicator for the regulation of dealings by pub-owning businesses with their tied pub tenants;
- the regulation of the provision of childcare and provision about information relating to the evaluation of education;
- the regulation of companies;
- company filing requirements;

- disqualification from appointments relating to companies; and provision about insolvency;
- the law relating to employment; and for connected purposes.

Provisions in the bill for which consent is sought

6. There are two provisions in the Bill for which consent is sought:

Part 1 Access to Finance	Clause 9	Exports
Part 6 Education and Training	Clauses 67-69	Education Evaluation

Clause 9: Exports - Power of the Secretary of State under section 1 of the Export and Investment Guarantees Act 1991 (the "EIGA")

7. Clause 9 amends section 1 of the EIGA in 3 ways.

- The amended section 1(1) will empower the Secretary of State, acting through the Export Credits Guarantee Department, to make arrangements which they consider are conducive to supporting or developing (in both cases whether directly or indirectly) exports or potential exports, of goods, services or intangible assets by persons carrying on business in the United Kingdom.
- Also, the amended section 1 (1) will broaden the powers of the Secretary of State with regard to support for exports in certain respects. Principally, it will make it easier for the Secretary of State to support more complex export contracting structures, to support businesses engaged in exporting or in exporting supply chains in the United Kingdom and to provide support for exports of intangibles, such as licences of software or other intellectual property.
- The new section 1(5) empowers the Secretary of State to provide advice to exporters in addition to the financial support which he is already empowered to provide.

8. These provisions apply in relation to Wales but do not include powers for Welsh Ministers.

9. Although the Welsh Ministers have some powers that would enable them to support exporters, it is only the Secretary of State that has powers over assistance in connection with exports of goods and services by means of export guarantees under Section 1 of the Export and Investment Guarantees Act 1991.

Clauses 67-69: Education Evaluation

10. Three separate clauses that apply in relation to Wales deal with education evaluation and seek to make the sharing of information between the Welsh Ministers, UK Government Departments, schools colleges and assessment centres easier. Each clause is dealt with separately below.

Clause 67: Assessments of effectiveness

11. This clause amends Part 3 of the Education and Skills Act 2008 (“the 2008 Act”) to widen the information that can be shared under that Part and the purposes for which it can be used.

12. In particular, Clause 67 enables information to be shared between the Welsh Ministers, and other persons, for example, the Higher Education Funding Council for Wales (HEFCW) and the Student Loans Company for the purpose of assessing the effectiveness of education and training.

13. In the 2008 Act, the Welsh Ministers already have what the LCM calls a “legislative gateway” to enable further education student data to be linked with related HMRC earnings and employment records. However, they say that legislation is required to extend this to include schools and higher education student information.

14. Paragraph 20 of the LCM states that:

“Extending the current gateway to include schools and higher education student data will allow the Welsh Ministers (and HEFCW, for example) to hold this link data in an anonymised form and analyse it, to provide new and improved information on learning outcomes by tracking students through education into the labour market.”

15. Clause 67 applies in relation to Wales and contains no powers for the Welsh Ministers.

Clause 68: Qualifications

16. This clause inserts a new section 253A into the Apprenticeships, Skills, Children and Learning Act 2009 (“the 2009 Act”). New section 253A enables persons in England and Wales to share “student information” with a range of persons.

17. “Student information” is defined in subsection (6) of new section 253A as information relating to an individual who is seeking or has sought to obtain, or has obtained, a “regulated qualification” as defined by section 130 of the 2009 Act or a “relevant qualification” as defined by the Section 30 of the Education Act 1997.

18. Student information will only be capable of being shared under new section 253A if it falls within a description prescribed in regulations. Regulations will also determine the circumstances in which sharing of student information may take place and the persons or categories of person with whom it may be shared. Clause 68 (2) contains a power for the Welsh Ministers to make regulations. These regulations are proposed to be subject to annulment in pursuance of a resolution of the National Assembly for Wales.

Clause 69: Destinations

19. This clause inserts a new section 49B into the Further and Higher Education Act 1992. Subsection (2) of the new section enables the Welsh Ministers to share such information with further education institutions in Wales.

20. “Destination information”, in relation to further education institutions, means information relating to their former students, including information on activities of the students once they have left the institution (subsection (3) of the new section).

21. Regulations will prescribe what those activities are. Under subsection (5) of the new section, destination information that is received under the new section is not to be published in a form which identifies the individual to whom it relates.

22. Clause 69 (3) (b) contains a power for the Welsh Ministers to make regulations. These regulations would be subject to annulment in pursuance of a resolution of the National Assembly for Wales.

Legislative Competence

23. The provisions to which Clause 9 (Exports) refers relate to a matter within the National Assembly's legislative competence under Subject 4 "*Economic development*" of Schedule 7 to the Government of Wales Act 2006 and specifically "the promotion of business and competitiveness".

24. The provisions to which Clauses 67-69 (Education Evaluation) refer come within the National Assembly's legislative competence under Subject 5 "*Education and training*" of Schedule 7 to the Government of Wales Act 2006 in so far as they relate to "education, vocational, social and physical training and the careers service, and the promotion of advancement and application of knowledge".

25. The legislative consent of the Assembly is therefore, required in accordance with Standing Order 29.6, and also from the perspective of the UK Government in accordance with the revised Devolution Guidance Note 9.

Advantages of utilising this Bill rather than Assembly legislation

26. It is the view of the Welsh Government that it is appropriate to deal with these 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. The inter-connected nature of the relevant Welsh and English administrative systems mean that it is most effective and appropriate for the Bill provisions for both to be taken forward at the same time in the same legislative instrument.

Conclusion

27. The Committee notes that the Bill proposes that the regulations under clauses 68 and 69 be made through the "negative" procedure. However, it is our view that, as they deal with issues relating to the sharing of potentially sensitive information about individuals, the "affirmative" procedure would be more appropriate and that is our recommendation.