

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 2)

HIGHER EDUCATION AND RESEARCH BILL Amendments in Relation to Financial Support for Students and the Student Complaints Scheme

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly.
2. The Higher Education and Research Bill (the “Bill”) was introduced in the House of Commons on 19 May 2016. The Bill is now at Committee Stage in the House of Lords. References to clause numbers are to HL Bill 76 as introduced in the House of Lords on 22 November. The latest copy of the Bill can be found at:

<http://services.parliament.uk/bills/2016-17/highereducationandresearch.html>

Policy Objectives

3. 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.

Summary of the Bill

4. The Bill is sponsored by the Department for Education. 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).

Provision in the Bill for which consent is required

Consent is required for the following provisions.

Financial Support for Students payable to Welsh students undertaking HE courses at English Institutions

5. 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).
6. The above provisions were included in the Legislative Consent Memorandum laid before the Assembly on 17 November and revised on 1 December 2016. Consent is now sought for amendments to clauses 82(2) and 82(4) tabled by Viscount Younger of Leckie and included in the House of Lords Committee Stage amendments as at 3 January 2017. The amendments provide that regulations made by the Welsh Ministers under what will be section 22(2)(aa) and section 22(2A) of the Act 1998 may refer to matters determined or published by the Office for Students or other persons whether before or after the regulations are made and to matters determined or published by the Secretary of State or other persons whether before or after the regulations are made.
7. The effect of the amendments would be that Welsh Government's student support regulations could refer to the most up to date information about 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.
8. Regulations made by the Welsh Ministers under section 22 of the 1998 Act in relation to Wales are currently subject to the negative resolution procedure. They will continue to be subject to that procedure when that section is amended by clause 82 of the Bill. Clause 118 of the Bill confers powers upon the Welsh Ministers to commence certain provisions in respect of clause 82 by way of regulations. The Welsh Ministers will be able to commence clause 82 in so far as that clause inserts new section 22(2)(aa) and 22(2A) into the 1998 Act in relation to Wales. There is no

Assembly procedure applicable in relation to the above powers of the Welsh Ministers to make commencement regulations.

Independent Higher Education Student Complaints Scheme

9. The Bill as introduced provided that, where an HE provider in England ceases to be a qualifying institution for the purpose of the independent student complaints scheme, that provider will be considered to be a transitional member of the scheme for 12 months after the date of deregistration. This means that complaints against such providers will continue to be considered during that period for those acts or omissions that took place before the provider became a transitional member.
10. Consent is sought for an amendment to clause 83 and an amendment to clause 118 tabled by Viscount Younger of Leckie and included in the House of Lords Committee Stage amendments as at 3 January 2017. This 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. The amendment makes provision where a provider ceases to be a qualifying institution so that such a provider will be considered to be a transitional member of the complaints scheme for the lesser of 12 months, or the period beginning with the date it ceases to be a qualifying institution and ending when it becomes a qualifying institution again. Complaints against transitional members will be considered where the act or omission complained of took place before the provider became a transitional member.
11. A minor technical change is also made to section 11(e) of the Higher Education Act 2004 to make the provision clearer by clarifying it applies to an institution not already caught by any preceding paragraph of section 11. Clause 118 confers powers upon the Welsh Ministers to commence the provisions of clause 83 insofar as they apply to Wales by way of regulations. There is no Assembly procedure applicable in relation to the above powers of the Welsh Ministers to make commencement regulations. (clause 113(7) applies).
12. Consent is required for the above listed provisions because they fall within the legislative competence of the National Assembly for Wales in so far as they relate to education and training under paragraph 5 of Part 1, Schedule 7 to the Government of Wales Act 2006.

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

Financial Support for Students payable to Welsh students undertaking HE courses at English Institutions

13. If the amendments to clause 82 are not applied to Wales there is a risk that the amount of tuition fee support payable to Welsh students

undertaking HE courses at English institutions may not be in line with the tuition fees charged. Without this amendment a situation might arise whereby the fees payable by Welsh students in respect of an academic year exceed the amount of student support payable under the Welsh Government's regulations leading to such students having to cover the difference themselves. The Welsh Government considers it is necessary for the annual student support regulations to be able read across to the most recent information about English institutions' Teaching Excellence Framework ratings and also to the register of English providers as at the start of an academic year, to ensure alignment between the tuition fee support payable and the fees charged to Welsh students undertaking higher education courses in England.

Independent Higher Education Student Complaints Scheme

14. The independent higher education student complaints scheme was established in 2005 under the Higher Education Act 2004 and is currently operated on an England and Wales basis by the Office of the Independent Adjudicator (OIA). All higher education providers in Wales that offer courses that are designated for statutory student support are subject to the complaints scheme.
15. 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 will offer the same level of protection to students studying at Welsh providers as those studying in English providers.

Financial implications

16. There are no financial implications for the Welsh Government if the National Assembly for Wales consents to the provisions applying to Wales.

Conclusion

17. It is the view of the Welsh Government 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. The tuition fee support provisions are required to ensure that Welsh students are not disadvantaged in relation to the most recent ratings. The current student complaints system operates on an England and Wales basis and the transitional protection the provision offers would ensure that students studying at Welsh institutions would have the same access to the scheme as those studying at other institutions in the UK.

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Cabinet Secretary for Education
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