

The Schools Bill

Report on the Legislative Consent Memorandum

November 2022

Executive summary

The Schools Bill makes provision for the regulation of Academies in England; about school and local education funding; about the attendance of children at school; about the regulation of independent educational institutions; about teacher misconduct; and for connected purposes. It was introduced in the House of Lords on 11 May 2022.

The Welsh Government's Legislative Consent Memorandum states that paragraph 1 of schedule 2 to the Bill as amended requires the Senedd's consent. This paragraph amends section 494 of the Education Act 1996, which applies to England and Wales and provides for recoupment of amounts by local authorities in cases where a pupil is excluded from a school in one local authority area and subsequently provided with education in another local authority area (including cross border recoupment of funding between English and Welsh local authorities).

The Children, Young People and Education Committee agrees that the provision inserted into paragraph 1 of schedule 2 to the Schools Bill (as amended) by amendment 96 requires the legislative consent of the Senedd.

We also recommend that the Senedd agrees to the inclusion of amendment 96 in paragraph 1 of schedule 2 to the Bill. Sioned Williams MS does not agree with this recommendation.



1. Background

The Schools Bill

1. The Schools Bill (“the Bill”) was introduced in the House of Lords on 11 May 2022, and is sponsored by the Department for Education. The long title of the Bill states that it is a Bill to:

“Make provision for the regulation of Academies; about school and local education funding; about the attendance of children at school; about the regulation of independent educational institutions; about teacher misconduct; and for connected purposes.”¹

2. The Bill had its first reading upon introduction on 11 May 2022. It has since had its 2nd reading and progressed through the Lords’ Committee and Report stages. At the time of writing, the date of the 3rd reading has not been announced.

3. On 30 May 2022 an amendment (amendment 96) was tabled during the House of Lords Committee stage. The amendment was agreed on 20 June, and was incorporated into paragraph 1 of schedule 2 to the Bill, as amended. This amendment makes provision that falls within the legislative competence of the Senedd and therefore requires the Welsh Government to lay a Legislative Consent Memorandum under Standing Order 29.

The Legislative Consent Memorandum

4. The Welsh Government laid a Legislative Consent Memorandum (“the Memorandum”) on 7 July 2022 under Standing Order 29.2.²

5. The Business Committee referred the Memorandum to the Children, Young People and Education Committee and to the Legislation, Justice and Constitution Committee under Standing Order 29.4, with a reporting deadline of 17 November 2022. On 20 September 2022, the Business Committee agreed a new reporting deadline of 1 December 2022.

¹ UK Parliament, ‘[Schools Bill \[HL\] \[As amended on report\]](#)’, 18 July 2022

² Welsh Government, ‘[Legislative Consent Memorandum: Schools Bill](#)’, 7 July 2022

Our scrutiny

6. We considered the Memorandum during a Committee meeting on 21 September 2022. We subsequently wrote to the Minister for Education and Welsh Language on 3 October³ to request more information. The Minister replied on 10 November.⁴ We considered his response on 17 November, and agreed this report (subject to some changes) on 23 November.

2. Provisions in the Bill that require the Senedd's consent

Paragraph 1 of Schedule 2 to the Bill⁵

Overview of the provisions

7. Paragraph 1 of schedule 2 to the Bill inserts amendments to section 494 of the Education Act 1996, which applies (as will the amendments) in England and Wales. The Memorandum states that:

"Section 494 provides for recoupment of amounts by local authorities in cases where a pupil is excluded from a school in one local authority area and subsequently provided with education in another local authority area (including cross border recoupment of funding between English and Welsh local authorities). The amendments serve to expand the scope of the section to encompass academies."⁶

The Welsh Government's view

8. The Welsh Government's view is that consent is required for the amendments made to paragraph 1 of schedule 2 to the Bill under amendment 96 because the amendment "makes

³ Senedd Cymru, '[Letter from the Chair of the Children, Young People and Education Committee to the Minister for Education and Welsh Language](#)', 3 October 2022

⁴ Welsh Government, '[Letter from Minister for Education and Welsh Language to the Chair of Children, Young People and Education Committee and the Chair of Legislation, Justice and Constitution Committee](#)', 10 November 2022

⁵ Note: the Welsh Government's Memorandum incorrectly states that amendment 96 inserts amendments to paragraph 1 of schedule 3, rather than paragraph 1 of schedule 2.

⁶ Welsh Government, '[Legislative Consent Memorandum: Schools Bill](#)', 7 July 2022, page 4

provision with regard to devolved matters, and for a purpose within the legislative competence of the Senedd (namely the funding of Welsh schools).⁷

9. The Welsh Government’s Memorandum explains that amendment 96 will enable funding to follow a pupil where a pupil has been excluded from an academy in England and moves to a maintained school in Wales, or vice versa. These arrangements were already in place in relation to English maintained schools, but did not extend to academies (which exist only in England).

10. The Welsh Government has recommended that the Senedd gives its consent to these provisions being included within the Schools Bill.

11. It argues that the Senedd would require consent of the Secretary of State to enact these provisions itself because they will confer/impose a function on an English public authority (to pay money to a Welsh local authorities where a pupil is excluded from an academy in England and provided with education in a maintained school in Wales).

12. It goes on to state that the provisions are “consequential”, with “narrow application of the same in Wales”. In light of the “interconnected nature of the relevant Welsh and England administrative systems”, the Welsh Government considers that it is “appropriate and proportionate” for this provision to be made within a UK Bill.⁸

The UK Government’s view

13. The UK Government agrees that amendment 96 (amending paragraph 1 of schedule 2 to the Bill) contains provision within the legislative competence of the Senedd.⁹

Section 52(2)

Overview of the provisions

14. Clause 52(2) of the Bill as amended provides the Secretary of State with the regulation-making power to make provision that is consequential on the Act, as the Bill will become once it received Royal Assent. This includes a Henry VIII power to amend other Acts for this purpose.

15. Although the power in clause 52(2) of the Bill is to make consequential amendments, this power could be used to amend law that applies in Wales. There is nothing in the Bill which

⁷ Welsh Government, ‘[Legislative Consent Memorandum: Schools Bill](#)’, 7 July 2022, page 4

⁸ Welsh Government, ‘[Legislative Consent Memorandum: Schools Bill](#)’, 7 July 2022, page 5

⁹ Welsh Government, ‘[Legislative Consent Memorandum: Schools Bill](#)’, 7 July 2022, page 4

would require the UK Government to consult or obtain the consent of the Welsh Government before making such amendments.

16. In our letter to the Minister for Education and Welsh Language, we asked whether the Welsh Government had any concerns over clause 52(2).

17. The Minister assured us that the “the provision is narrowly framed (in consequence of the Bill) and will not, in my view, enable UK Government Ministers to make any substantive changes to devolved legislation.”¹⁰

Our view

18. We agree with the Welsh Government and the UK Government that amendment 96 makes provision in relation to Wales for a purpose within the legislative competence of the Senedd. The Senedd’s consent is required for that provision.

Conclusion 1. The provision inserted into paragraph 1 of schedule 2 to the Schools Bill (as amended) by amendment 96 requires the legislative consent of the Senedd.

19. We agree with the Welsh Government that the provision is sensible, uncontroversial and administrative. We therefore recommend that the Senedd gives its consent to the provision set out in amendment 96 to be included in the School Bill. Sioned Williams MS expressed concern about the principle of legislation which will apply in Wales being enacted via a UK Government Bill rather than a Welsh Government Bill. For this reason, she does not agree with this recommendation.

Recommendation 1. The Senedd should give its consent for the provision inserted into paragraph 1 of schedule 2 to the Schools Bill (as amended) by amendment 96 to be included in the Schools Bill. Sioned Williams MS does not agree with this recommendation.

20. We are satisfied with the Welsh Government’s assurances that the provisions in clause 52(2) will not enable UK Government Ministers to make any substantive changes to devolved legislation.

¹⁰ Welsh Government, ‘[Letter from Minister for Education and Welsh Language to the Chair of Children, Young People and Education Committee and the Chair of Legislation, Justice and Constitution Committee](#)’, 10 November 2022
