

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 2)

Skills and Post-16 Education Bill

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 Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Skills and Post-16 Education Bill (“the Bill”) was introduced in the House of Lords on 18 May 2021. The Bill is now at Report stage in the House of Lords and is expected to receive its Third Reading on 25 October. The Bill can be found at: [Skills and Post-16 Education Bill \[HL\] publications - Parliamentary Bills - UK Parliament](#)

Policy Objective(s)

3. The UK Government’s stated policy objectives are to make the necessary legislative underpinning for the reforms set out in the Skills for Jobs White Paper. The UK Government also considers that the Bill aims to improve the functioning of the skills and post-16 education system and support the introduction of a Lifetime Skills Guarantee. The UK Government, through this Bill seeks to bring forward measures to address recommendations made in the Review of Post-18 Education and Funding, to build on the aims of the Review of Post-16 Qualifications at Level 3 and below, and to support implementation of the UK Government’s reforms to technical education qualifications, such as the introduction of T Levels (courses equivalent to 3 A levels involving an industry placement) and higher technical qualifications.

Summary of the Bill

4. The Bill is sponsored by the Department for Education.
5. The Bill as introduced to Parliament makes provision for:
 - a statutory underpinning for local skills improvement plans;
 - a power for the Secretary of State for Education to designate employer representative bodies to lead the development of the plans with duties on further education, higher education and independent training providers (along with schools and academies in England) to co-operate in the development of and have regard to the plans;
 - a duty for further education (FE) corporations, sixth form college corporations and designated institutions in England to review how well the education or training provided by the institution meets local needs, and assess what action the institution might take to meet local needs;

- a power for the Institute for Apprenticeships and Technical Education to define and approve new categories of technical qualifications that relate to employer-led standards and occupations in different ways, and to have an oversight role for the technical education offer in each occupational route, including mechanisms to manage proliferation;
- changes to primary legislation relating to the introduction of a Lifelong Loan Entitlement including changes to the regulation-making powers of the Secretary of State to provide student finance in order to make specific provision for funding of modules of higher education (HE) and FE courses and for prescribing an overall maximum amount of funding that learners can access;
- the Secretary of State for Education to make regulations for the purpose of securing or improving the quality of FE initial teacher training;
- put beyond doubt the Office for Students' ability to assess the quality of HE providers in England, and make decisions on compliance and registration by reference to minimum requirements for quality;
- the Secretary of State for Education to make regulations to provide for a list of post-16 education or training providers, in particular Independent Training Providers, to indicate which providers have met conditions that are designed to prevent or mitigate risks associated with the disorderly exit of a provider from the provision of education and training;
- extend the statutory intervention powers applicable to FE corporations, sixth form college corporations and designated institutions under the Further and Higher Education Act 1992 so as to enable the Secretary of State for Education to intervene where there has been a failure to meet local needs, and to direct structural change where that is required to secure improvement; and
- make amendments to clarify and improve the operation of the FE insolvency regime for FE bodies, relating to the use of company voluntary arrangements, transfer schemes and the designation of institutions.

Update on the position since the publication of the first Legislative Consent Memorandum

6. I laid a Legislative Consent Memorandum on 9 July 2021, based on the Bill as introduced into Parliament. The Memorandum confirmed I am supportive of clause 14 but had concerns about the potential implications for Welsh further and higher education institutions arising from clauses 1 and 4.
7. This Supplementary Legislative Consent Memorandum (Memorandum No. 2) updates the Senedd on the UK Government's amendments made to clauses 1 and 4 of the Bill at the House of Lords Report Stage on 12 October 2021.
8. My view on these clauses has not changed.

Amendments to note since the publication of the first Legislative Consent Memorandum, for which consent is required

9. Consent is required in respect of clauses 1 and 4 which deal with local skills improvement plans (LSIPs). The Memorandum of 9 July set out the effect of these clauses in the Bill as introduced to Parliament. Amendments to these clauses have been agreed at House of Lords Report stage. Clause numbers relate to the latest version of the Bill. It is not yet known which, if any, of these amendments will remain in the Bill.
10. Clause 1 - Local skills improvement plans: amendments made in respect of “English funded” post-16 technical education and training to subsections (1), (2), (4)(b) and (6)(c) are relevant to the duties imposed by Clause 1 on Welsh institutions. These amendments are intended to ensure that the duties regarding local skills improvement plans apply only in relation to post-16 technical education or training that is English-funded. The amendments to Clause 4 define what constitutes “English-funded”.
11. Clause 4 – Interpretation: amendments introducing new subsections (1A), (1B) and (1C). These amendments are intended to ensure that Chapter 1 of Part 1 of the Bill applies only in relation to post-16 technical education or training that is funded by the Secretary of State or an authority in England. This includes student support provided by the Secretary of State. Where such education or training is sub-contracted by one provider to another, both are treated as providing it.
12. This Supplementary Legislative Consent Memorandum sets out my position on these amendments.
13. Where amendments have been made to clauses which were in the Bill on Introduction and were identified in the first Legislative Consent Memorandum as engaging standing order 29.1(i), there is no change to our position that these clauses require the consent of the Senedd by virtue of standing order 29.1(i).

Welsh Government position on the amendments made to the Bill

14. I wrote to the Secretary of State for Education setting out my concerns about the imposition of duties on Welsh institutions and the potential effects of those duties. My officials have engaged with the UK Government’s Department for Education to explore how the Bill might be adjusted to take account of those concerns. Although I am encouraged that the UK Government has brought forward amendments to limit the scope of post-16 education and training falling within the scope of the local skills improvement plans duties the amendments agreed at Report Stage in the House of Lords on 12 October do not adequately address my concerns.

15. It is my view that the amendments made to clauses 1 and 4 of the Bill at Report Stage have potentially increased the possibility of Welsh institutions being subject to the duties in respect of local skills improvement plans for England. The provisions will also create uncertainty for Welsh institutions as to whether their post-16 education and training provision may be subject to the duties proposed under Clause 1 relating to the preparation of and contribution to local skills improvement plans (LSIPs). Institutions may not know if certain of their courses are considered to be “material” to the skills needs of a local area in England. This position could change year on year depending on the numbers of students from England who elect to study at Welsh institutions. This is of particular concern as the amendments bring student support funds within the definition of what constitutes “English funded” post-16 education and training. Furthermore, the Bill does not define the meaning of “technical” post-16 education and training and opens up the possibility of a wide range of our further and higher institutions’ courses potentially being within scope of the LSIPs duties.
16. The purpose of the proposed LSIPs is to address the skills needs of local areas in England. I am concerned that placing duties on Welsh institutions to have regard to the skills needs of local areas in England could divert the resources away from those institutions responding to the skills needs of Wales. I am not opposed to Welsh further and higher education institutions electing to enter into funding arrangements with the UK Government for specified provision and the UK Government attaching terms and conditions to such funding. However, I do not consider the imposition of statutory duties on Welsh institutions to be either necessary or proportionate.

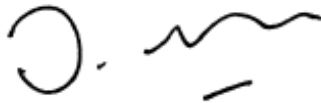
Financial Implications

17. It remains the position that clauses 1 and 4 could have financial implications for Welsh institutions where such institutions deliver post-16 education or training which is considered to be material to a specified area in England. It is difficult to assess the size of such implications which may arise from new administrative requirements associated with complying with the duties imposed by clause 1 or having competing demands on the funding which is made available to them by the Welsh Ministers. The implications for an individual institution will depend on whether its provision is considered to be material to a specified area in England.

Conclusion

18. As set out above, the Senedd’s consent is required for clauses 1 and 4 of the Skills and Post-16 Education Bill. While I welcome the engagement of the UK Government to date in respect of the need to make changes to the Bill as it stands, I consider that further amendments will need to be made to the Bill to address my concerns in respect of the potential impacts arising from the duties proposed to be placed on Welsh institutions providing post-16 education and training.

19. A key concern for the Welsh Government is that the imposition of duties on Welsh institutions is a devolved matter. Furthermore, these provisions could place unnecessary burdens on Welsh institutions. This could have the effect of diverting the resources of an institution in Wales contrary to the devolved requirement to direct resources in response to the priorities of the Welsh Government and those identified by the Regional Skills Partnerships in Wales.
20. The UK Government's proposed amendments to clauses 1 and 4 do not address my concerns set out above. I cannot recommend the Senedd gives consent to these provisions in the Bill on the basis of the amendments brought forward to date.
21. We will continue to monitor the Bill's developments and update the Senedd as appropriate.

A handwritten signature in black ink, consisting of a circular mark on the left and a series of wavy lines extending to the right, ending in a short horizontal stroke.

Jeremy Miles MS

Minister for Education and Welsh Language
28 October 2021