

LEGISLATIVE CONSENT MEMORANDUM

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. 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 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 providers to co-operate in the development of and have regard to the plans;
 - a duty for all further education (FE) corporations, sixth form college corporations and designated institutions 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.

Provisions in the Bill for which consent is required

6. Clauses 1 and 4 deal with local skills improvement plans (LSIPs). The Bill seeks to create a legal framework to facilitate stronger employer and provider engagement in local skills systems in England. The intention is that the framework will ensure employers have more influence over the skills system, which will assist providers to respond to employers' skills needs and reshape their offer. Employer representative bodies will work with employers, providers and local stakeholders to develop LSIPs that set out the key changes needed to ensure technical education and training is more responsive to local labour market skills needs.
7. Clause 1 places duties on relevant providers that provide post-16 technical education or training that is material to a specified area defined in clause 1(2). The term "specified area" is defined in clause 4(1) and Clause 2(1) as an area in England. Clause 1(3) requires relevant providers to co-operate with the employer representative body in the development of a local skills improvement plan for a specified area for submission to the Secretary of State for approval and publication. If there is an approved local skills improvement plan for the specified area, clause 1(4) requires the relevant provider to co-operate with the employer representative body for that area

to assist that body to keep the plan under review and develop a replacement plan for submission to the Secretary of State where required. It also requires the relevant provider to have regard to the plan when making decisions on relevant provision in the specified area as well as any relevant guidance published by the Secretary of State.

8. Clause 4(1) defines the term “relevant provider” as a provider of post-16 technical education or training which is:
 - an institution within the further education sector (within the meaning given by section 91(3) of the Further and Higher Education Act 1992),
 - a higher education provider (within the meaning given by section 83(1) of the Higher Education and Research Act 2017),
 - an independent training provider, or
 - a local authority in England, a 16 to 19 Academy or a school that is specified or described in regulations made by statutory instrument by the Secretary of State.
9. As Welsh providers may deliver post-16 technical education or training that is considered to be material to a specified area in England certain Welsh providers may fall within scope of the above duties in relation to such provision.
10. Clause 14 amends the Teaching and Higher Education Act 1998 to provide a gloss to section 22 of that Act (which is an enabling power for making student support regulations in both Wales and England) so that the funding of modules of HE or FE courses (and not just such courses) are able to attract student support.
11. Certain of the Welsh Ministers functions under section 22 of the 1998 Act are exercisable in relation to Wales concurrently with the Secretary of State. None of the modifications relate specifically to functions exercisable by Welsh Ministers under this provision. However, the UK Government intends in future to make regulations implementing the Lifelong Loan Entitlement and will rely on the Secretary of State’s amended functions under section 22 of the 1998 Act for this purpose. The approach adopted by the UK Government in respect of its proposed amendments to section 22 of the 1998 Act means that the modifications applied in relation to course modules will carry forward into provisions that are exercisable by the Secretary of State (concurrently with the Welsh Ministers) in relation to Wales and therefore are amendments with regard to devolved matters in Wales.
12. Consent is required for these provision(s) because they make provision with regards to devolved matters in so far as they relate to education.

Reasons for making these provisions for Wales in the Skills and Post-16 Education Bill

13. Clauses 1 and 4 of the Bill have the potential to affect Welsh institutions delivering post-16 technical education which is material to an area in England. It is the Welsh Government's view that these clauses could have the effect of imposing duties on Welsh institutions providing education only in Wales which is accessed by students from England if the provision was material to a specified English area as well as on Welsh institutions providing such education in England. Such duties could require Welsh institutions to have regard to the skills needs of employers in England at the same time as responding to the skills needs of Welsh employers and the priorities of the Welsh Government.
14. Clause 14 enables the UK Government's intention to introduce a system of modular student support in relation to England-domiciled students. The need for the legislative consent of the Senedd is a consequence of the concurrency of powers as between the Secretary of State and the Welsh Ministers in relation to Wales in respect of the student support functions under The Teaching and Higher Education Act 1998 as they were devolved to Wales. Clause 14 does not directly affect the Welsh Ministers' student support functions. The UK Government's proposal to introduce modular student support in England may have implications for the Welsh Government's student support regime. In principle, however, the Welsh Government is supportive of a more flexible system of student support.

Financial implications

15. 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.
16. There are no financial implications in Wales arising from clause 14 should the Senedd consent to the provisions. This is because the provisions only apply to the exercise of the Secretary of State's functions in relation to student support held concurrently with those of the Welsh Ministers. The provisions do not enable revised arrangements for student support in Wales.

Conclusion

17. It is my view that it is appropriate to deal with the amendments in respect of section 22 of the Teaching and Higher Education Act 1992 in this UK

Government Bill as the provisions amend the Secretary of State's functions in relation to student support and do not directly impact the Welsh Ministers' student support functions. I therefore recommend that the Senedd gives its consent to clause 14.

18. Clauses 1 and 4 of the Bill have implications for Welsh institutions as set out above. I cannot recommend the Senedd gives consent to these provisions in the Bill as introduced on 18 May 2021. I consider 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. I have written to the Secretary of State for Education to request that the Bill be amended to address my concerns.

Jeremy Miles MS
Minister for Education and Welsh Language
9 July 2021