

## SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 3)

### 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 completed its passage through the House of Lords on 25 October. Non-government amendments were made to the Bill during Lords Report stage and form part of the Bill as introduced for consideration in the House of Commons. The Bill is currently at Commons Committee stage. The Bill can be found at: [Skills and Post-16 Education Bill \[HL\] publications - Parliamentary Bills - UK Parliament](#)
3. On 23 November the UK Government tabled amendments to clauses 4, 18 and 25 (these clause numbers refer to the Bill as introduced at Commons Committee stage) for consideration during Commons Committee stage which have implications for the legislative competence of the Senedd. These amendments were agreed on 2 and 7 December. This memorandum has been laid as soon as possible after the tabling of these amendments and to allow for analysis of their effect.

### Policy Objective(s)

4. 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

5. The Bill is sponsored by the Department for Education.
6. 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**

7. 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 15 (clause 14 as introduced, Support for lifelong Learning) but had concerns about the potential implications for Welsh further and higher education institutions arising from clauses 1 and 4.

8. On 29 October I laid a Supplementary Legislative Consent Memorandum (Memorandum No. 2) which updated the Senedd on the UK Government amendments made to clauses 1 and 4 of the Bill at the House of Lords Report stage on 12 October 2021.
9. Since the Supplementary Legislative Consent Memorandum (Memorandum No.2) was laid the Bill has progressed through the House of Lords where further amendments were accepted which make provision falling within the legislative competence of the Senedd.
10. This Supplementary Legislative Consent Memorandum (Memorandum No.3) updates the Senedd on further amendments accepted in the Lords and sets out my position on the UK Government's amendments tabled for, and subsequently agreed at, House of Commons Committee stage which make provision requiring the consent of the Senedd.
11. 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).

## **Amendments to note since the publication of Legislative Consent Memorandum (No.2)**

### **Clauses 1 and 4**

12. Clauses 1 and 4 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. UK Government amendments to these clauses were agreed at House of Lords Report stage and further UK Government amendments were tabled for consideration during House of Commons Committee stage and agreed on 2 December. Clauses numbers relate to the version of the Bill as introduced to the House of Commons.
13. Clause 1 – Local skills improvement plans: amendments made in respect of clause 4 mean that the duties provided for by clause 1 will no longer apply to Welsh higher and further education institutions.
14. Clause 4 – Interpretation: amendments have been made to the definition of 'relevant provider' in clause 4 as follows:
  - amending the definition of a further education institution, so that a further education institution is defined as an institution in England within the further education sector under section 91(3) of the Further and Higher Education Act 1992;

- amending the definition of a higher education institution, so that only an English higher education institution within section 83(1) of the Higher Education and Research Act 2017 is captured under the definition of a higher education institution;
- amending the definition of independent training providers (ITPs), so that only ITPs who carry on activities, or partly carry on activities, which relate to the provision of post-16 technical education and training in England are captured; and
- clarifying that the Secretary of State only has power to make regulations to include a local authority in England, a 16-19 academy or a school in England within the definition of relevant provider.

### **Non-government amendments made at Lords Report stage**

15. Non-government amendments accepted at House of Lords Report stage introduced clauses 18 and 25 to the Bill. These clauses would, require the consent of the Senedd if they remained in the Bill.

#### **Clause 18**

16. Clause 18 was included in the Bill as a consequence of a non-government amendment accepted at House of Lords Report Stage. This clause is connected to provision at clause 15 concerning the Secretary of State's student support functions (a subject of the Memorandum laid before the Senedd on 9 July) and places the Secretary of State under a duty, from within one year of the commencement of clause 15, to prepare and publish annually a report on the impact on the overall levels of skills in England and Wales of the rules regarding eligibility for funding of persons undertaking further or higher education courses. The report must be laid before both houses of Parliament.

#### **Clause 25**

17. Clause 25 was included in the Bill as a consequence of a non-government amendment accepted at House of Lords Report Stage. This clause provides that any person of any age has the right to free education on an approved course up to Level 3 supplied by an approved provider of further or technical education, if they have not already studied at that level; and that funding must be provided to the approved provider for that purpose. It also imposes requirements on employers in relation to spending funds for people on apprenticeships who are under the age of 25. Clause 25 extends to the England and Wales jurisdiction and nothing in its content restricts its application to England.

### **Welsh Government position on the amendments made to the Bill**

#### **Clauses 1 and 4**

18. I am pleased to be able to inform the Senedd that the amendments brought forward by the UK Government in respect of clauses 1 and 4 address my concerns about the imposition of statutory duties on Welsh institutions. These amendments remove Welsh further and higher education institutions from the scope of the local skills improvement plans duties under clause 1 of the Bill.
19. It is my view that the UK Government's amendments made to clause 4 of the Bill on 2 December 2021 remove the need for the Senedd's legislative consent to be sought for clauses 1 and 4. This is because the provisions will now only apply in respect of education or training in England which is funded by English authorities. I welcome the approach adopted by the UK Government in respect of Welsh institutions.

### **Clause 18 (as introduced to the Commons)**

20. Clause 18 as introduced to the Commons, placed the Secretary of State under a duty to prepare and publish annually a report on the impact on the overall levels of skills in England and Wales of the rules regarding eligibility for funding of persons undertaking further or higher education courses. The levels of skills in Wales is a matter on which the Senedd would expect to legislate. If this clause were to remain in the Bill I would not be content to recommend that the Senedd gives it consent.
21. The UK Government amendments tabled on 23 November and subsequently accepted at House of Commons Committee Stage on 7 December have removed clause 18 from the Bill.

### **Clause 25 (as introduced to the Commons)**

22. Clause 25 of the Bill as introduced to the Commons provided that any person of any age has the right to free education on an approved course up to Level 3 supplied by an approved provider of further or technical education, if they have not already studied at that level; and that funding must be provided to the approved provider for that purpose. The right to free education and the resourcing of such a right is a matter on which the Senedd would be expected to legislate. If this clause were to remain in the Bill I would not be content to recommend that the Senedd gives it consent.
23. The UK Government amendments tabled on 23 November and subsequently accepted at House of Commons Committee stage on 7 December have removed clause 25 from the Bill.

### **Financial Implications**

24. In light of the UK Government amendments accepted at House of Commons Committee stage there are no financial implications for Welsh further and higher education institutions arising from clauses 1 and 4.

25. Clause 18 places the Secretary of State under a duty to prepare and publish annually a report on the impact on the overall levels of skills in England and Wales of the rules regarding eligibility for funding of persons undertaking further or higher education courses. There are no duties placed on the Welsh Ministers. This clause has been removed from the Bill at House of Commons proceedings on the 7 December.
26. Clause 25 provides that any person of any age has the right to free education on an approved course up to Level 3 supplied by an approved provider of further or technical education, if they have not already studied at that level; and that funding must be provided to the approved provider for that purpose. This clause has been removed from the Bill at House of Commons proceedings on the 7 December.

## **Conclusion**

27. As set out above, it is my view that the Senedd's consent is no longer required for clauses 1 and 4 of the Skills and Post-16 Education Bill. I welcome the acceptance by the UK Government of the need to make further amendments in respect of the application of local skills improvement plans duties to Welsh institutions. I consider the amendments tabled on 23 November which now form part of the Bill address my concerns in respect of the potential impacts arising from the duties that would otherwise be placed on Welsh institutions providing post-16 education and training.
28. Our key concern was that the imposition of duties on Welsh institutions is a devolved matter. The UK Government's amendments respect the devolution settlement and avoid the imposition of any unnecessary statutory requirements being placed on Welsh institutions.
29. Consent is required for clause 15 of the Bill (formerly clause 14 of the Bill as introduced) which amends the Secretary of State's functions under section 22 of the Teaching and Higher Education Act 1998 as set out in Legislative Consent Memorandum I laid on 9 July. I recommend that the Senedd gives its consent to this provision.
30. We will continue to monitor the Bill's passage through Parliament and update the Senedd as appropriate.

**Jeremy Miles MS**  
**Minister for Education and Welsh Language**  
**10 December 2021**