

# **The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Skills and Post-16 Education Bill**

January 2022



# 1. Background

## **The UK Government's Skills and Post-16 Education Bill**

1. The Skills and Post-16 Education Bill<sup>1</sup> (the Bill) was introduced into the House of Lords on 18 May 2021. It is sponsored by the Department for Education.
2. The Bill completed its stages in the House of Lords on 25 October 2021 and had its first reading in the House of Commons on 26 October 2021, where it has had its first and second reading. Committee stage in the House of Commons was completed on 7 December 2021. A date for Report Stage is yet to be announced.

## **The Welsh Government's Legislative Consent Memorandum and Supplementary Legislative Consent Memorandum (Memorandum No. 2)**

3. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant UK Bill makes provision in relation to Wales for any purpose within the legislative competence of the Senedd or which modifies the Senedd's legislative competence.
4. On 9 July 2021 Jeremy Miles MS, the Minister for Education and Welsh Language (the Minister), laid before the Senedd a Legislative Consent Memorandum<sup>2</sup> (the Memorandum) in respect of the Bill.
5. On 29 October 2021 the Minister laid before the Senedd a Supplementary Legislative Consent Memorandum<sup>3</sup> (Memorandum No. 2) in respect of the Bill<sup>4</sup> submitted to the House of Commons following amendment in the House of Lords.
6. We reported on these Memoranda on 24 November 2021.<sup>5 6</sup>

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<sup>1</sup> [Skills and Post-16 Education Bill, as introduced](#) (HL Bill 5)

<sup>2</sup> Welsh Government, [Legislative Consent Memorandum, Skills and Post-16 Education Bill](#), July 2021

<sup>3</sup> Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 2\), Skills and Post-16 Education Bill](#), October 2021

<sup>4</sup> [Skills and Post-16 Education Bill](#) (Bill 176)

<sup>5</sup> Legislation, Justice and Constitution Committee, [The Welsh Government's Legislative Consent Memoranda on the Skills and Post-16 Education Bill](#), November 2021

<sup>6</sup> We are also aware that the Children, Young People and Education Committee exchanged correspondence with the Minister in relation to the Memorandum and Memorandum No. 2 in late November. The CYPE Committee correspondence is available on the Senedd's [website](#)

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**7.** Paragraphs 8 to 16 of that report set out the clauses of the Bill which, at that point in time, the Welsh Government considered required the Senedd's consent, and identify where disagreement existed between the Welsh and UK Governments.

## **The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3)**

**8.** On 10 December 2021 the Minister laid before the Senedd a further Supplementary Legislative Consent Memorandum<sup>7</sup> (Memorandum No. 3) in respect of amendments considered during the House of Commons Committee Stage.

**9.** The Business Committee agreed that the Economy, Trade and Rural Affairs Committee, the Children, Young People and Education Committee, and the Legislation, Justice and Constitution Committee, should report on Memorandum No. 3 by 11 January 2022.<sup>8</sup>

## **Update on the position since the publication of the Memorandum and Memorandum No. 2**

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**10.** Paragraphs 7 to 11 of Memorandum No. 3 provide an update on the position since the publication of the earlier legislative consent memoranda.

**11.** Paragraph 9 confirms that, since the laying of Memorandum No. 2, further amendments were made to the Bill in the House of Lords which made provision within the legislative competence of the Senedd.

**12.** Paragraphs 12 to 17 of Memorandum No. 3 set out the Welsh Government's view on government and non-government proposed amendments to note since the publication of Memorandum No. 2.

**13.** Memorandum No. 3 notes that UK Government proposed amendments were made to clauses 1 and 4 of the Bill.<sup>9</sup>

**14.** Memorandum No. 3 also notes that non-government amendments were accepted at House of Lords Report Stage which introduced new clauses 18 and 25 to the Bill. Memorandum No. 3 states that "These clauses would require the consent of the Senedd if they remained in the

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<sup>7</sup> Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 3), Skills and Post-16 Education Bill, December 2021

<sup>8</sup> Business Committee, Timetable for consideration of the Supplementary Legislative Consent Memorandum (No. 3) on the Skills and Post-16 Education Bill, December 2021

<sup>9</sup> Welsh Government, Memorandum No. 3, paragraphs 12 to 14

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Bill".<sup>10</sup> (See below, paragraphs 18 to 21, for further detail.) We discussed new clause 25 in our report laid in November on the earlier Memoranda.

## **The Welsh Government's position on the amendments made to the Bill**

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**15.** Paragraphs 18 to 23 of Memorandum No. 3 set out the Welsh Government's position on the amendments made to the Bill.

### **Clauses 1 and 4**

**16.** With regards to clauses 1 and 4 of the Bill, in Memorandum No. 3 the Minister states:

*"I am pleased 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."*<sup>11</sup>

**17.** The Minister adds that, in his view, the amendments made to clause 4 remove the need for the Senedd's consent to be sought for clauses 1 and 4 of the Bill, as "the provisions will now only apply in respect of education or training in England which is funded by English authorities".<sup>12</sup>

### **Clauses 18 and 25 (as numbered in the Bill version introduced into the House of Commons)**

**18.** Memorandum No. 3 notes that clause 18 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.<sup>13</sup>

**19.** Clause 25 of the Bill 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. In Memorandum No. 3 the Minister states that the right

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<sup>10</sup> Welsh Government, Memorandum No. 3, paragraphs 15 to 17

<sup>11</sup> Welsh Government, Memorandum No. 3, paragraph 18

<sup>12</sup> Welsh Government, Memorandum No. 3, paragraph 19

<sup>13</sup> Welsh Government, Memorandum No. 3, paragraph 20

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to free education and the resourcing of such a right is a matter on which the Senedd would be expected to legislate.<sup>14</sup>

**20.** In Memorandum No. 3 the Minister states that, if these clauses were to remain in the Bill, both clauses would require the consent of the Senedd but that he would not be content to recommend that the Senedd gives its consent.<sup>15</sup>

**21.** Memorandum No. 3 confirms the position that the UK Government amendments tabled to the Bill on 23 November 2021, and subsequently accepted at House of Commons Committee Stage on 7 December, have removed clauses 18 and 25 from the Bill.<sup>16</sup>

### **The Welsh Government's conclusion in Memorandum No. 3**

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**22.** Memorandum No. 3 confirms that the Welsh Government no longer considers that the Senedd's legislative consent is required for clauses 1 and 4 of the Bill.

**23.** In Memorandum No. 3 the Minister states:

*"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."<sup>17</sup>*

**24.** Memorandum No. 3 further confirms the Welsh Government's view that the Senedd's consent is required for clause 15 of the Bill (formerly clause 14 of the Bill as introduced), as set out in the Memorandum laid in July 2021, and that the Minister recommends that the Senedd gives its consent to this provision.

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<sup>14</sup> Welsh Government, Memorandum No. 3, paragraph 22

<sup>15</sup> Welsh Government, Memorandum No. 3, paragraphs 20 and 22

<sup>16</sup> Welsh Government, Memorandum No. 3, paragraphs 21 and 23

<sup>17</sup> Welsh Government, Memorandum No. 3, paragraph 28

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## 2. Committee consideration

**25.** We considered Memorandum No. 3 at our meeting on 10 January 2022.<sup>18</sup>

**26.** Given the Welsh Government's proposal to hold a debate on the relevant consent motion for the Bill on 11 January, and taking into account the reporting deadline set by the Senedd's Business Committee, we also agreed our report on 10 January 2022.

### Our view

**27.** We note that Memorandum No. 3 concerns amendments made to clauses 1 and 4 of the Bill by the House of Commons, and also the removal of new clauses 18 and 25 added to the Bill by the House of Lords.

**28.** As stated earlier in our report, we originally reported on the first Memorandum and Memorandum No. 2 on 24 November 2021. At the time of writing this report, the Minister has not responded to the recommendation and conclusions made in that report.

**29.** Recommendation 1 in our earlier report asked that the Minister, in advance of the Senedd's debate on the relevant consent motion, confirm what amendments the Welsh Government would need to see made to clauses 1 and 4 of the Bill in order for it to recommend that the Senedd provides its consent to the Bill.

**30.** We note that amendments have now been made to the Bill which have led the Welsh Government to determine that the Senedd's legislative consent is no longer required in respect of clauses 1 and 4.

**Conclusion 1.** While we agree with the Welsh Government's assessment regarding clauses 1 and 4, it would have been preferable, in order to assist the Senedd's scrutiny of the legislative consent memoranda, if the Minister had provided further detail at the outset regarding the specific changes he wished to see made to the Bill in order to recommend that consent be given.

**Conclusion 2.** We note the Minister's view regarding clause 15 of the Bill (originally numbered clause 14 in the Bill as introduced to the House of Lords and as referred to in our earlier report) and agree that the consent of the Senedd should be sought.

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<sup>18</sup> [Legislation, Justice and Constitution Committee, 10 January 2022](#)

**31.** Recommendation 2 in our earlier report asked that the Minister, in advance of the Senedd's debate on the relevant consent motion, confirm why the Senedd's consent should not be sought for new clause 25 in the Bill as submitted to the House Commons. We note that this clause has now been removed from the Bill.

**32.** Conclusion 3 in our earlier report stated our view that the consent of the Senedd should be sought for clause 35 in the Bill (originally numbered clause 25 in the Bill introduced to the House of Lords). This clause is now numbered clause 31 in the Bill as amended in the House of Commons. As previously highlighted, the Minister has not formally responded to our earlier report and this particular conclusion made in that report.

**Conclusion 3.** We remain of the view that that the consent of the Senedd should be sought in relation to clause 31 of the Bill.

**Recommendation 1.** The Minister should, in advance of the debate on the relevant consent motion, confirm why the Senedd's consent should not be sought for clause 31 of the Bill as amended in the House Commons.