

# Report on the Legislative Consent Memorandum for the Skills and Post 16 Education Bill

16 December 2021

- 1.** On 9 July 2021, the Minister for Education and Welsh Language laid a Legislative Consent Memorandum (“the LCM”) for the Skills and Post 16 Education Bill currently before the UK Parliament.
- 2.** On 13 July 2021, the Business Committee referred the LCM to the Children, Young People and Education Committee (“the Committee”); the Economy, Trade and Rural Affairs Committee; and the Legislation, Justice and Constitution Committee for consideration. The Business Committee set a reporting deadline of 21 October 2021. We considered the LCM at our meetings on 23 September and 7 October.
- 3.** Subsequently a supplementary LCM was laid by the Welsh Government on 29 October. The Business Committee set a reporting deadline of 16 December. We considered the supplementary LCM at our meetings on 18 November, 2 December and 13 December.
- 4.** The Welsh Government tabled a further supplementary LCM (“SLCM 3”) on Friday 10 December. The reporting deadline meant we were unable to consider SLCM 3 in detail at our meeting on 13 December. However, we are aware of the contents of this additional SLCM.
- 5.** This report considers both the LCM and the supplementary LCM. It has been drafted to help inform the Plenary debate on the LCM.



---

## 2. The LCM

**6.** Paragraph 5 summarises the Bill and its policy objectives. Paragraphs 6-12 set out the provisions in the Bill for which consent is sought. Paragraphs 13-14 set out the Welsh Government's views on the provisions being made in a UK Bill, rather than via Senedd legislation.

## 3. Provisions in the Bill for which consent is sought

**7.** The UK Government has sought a legislative consent motion in relation to clause 14 of the Bill only. The Welsh Government considers that the legislative consent of the Senedd is also required in relation to clauses 1 and 4. As we are considering the LCM laid by the Welsh Government, this report covers the three clauses that the Welsh Government believes consent is needed for.

### **Clause 1 (Local skills improvement plans) and clause 4 (interpretation)**

**8.** Clause 1 provides for local skills improvement plans, introducing duties on providers to co-operate with designated employer representative bodies to develop local skills improvement plans and have regard to the plans once they have been developed.

**9.** The clause states that relevant providers must co-operate with a designated employer representative body in the development of a local skills improvement plan for a specified area (defined as an area in England). The relevant providers must help to keep plans under review and updated as required and have regard to the latest plan published by the Secretary of State when making decisions on relevant provision in the specified area.

**10.** Relevant providers will need to take account of guidance published by the Secretary of State in developing local skills improvement plans.

**11.** Clause 4 provides for the meaning of certain phrases used in clause 1, of which the relevant phrases for the purposes of this LCM are:

“relevant provider” means a provider of post-16 technical education or training which is—

(a) an institution within the further education sector (within the meaning given by section 91(3) of the Further and Higher Education Act 1992),

---

(b) a higher education provider (within the meaning given by section 83(1) of the Higher Education and Research Act 2017),

(c) an independent training provider, or

(d) 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.

“specified area” which means an area in England.

**12.** The definition of “relevant provider” would encompass a Welsh provider, such as a sixth form college.

**13.** The UK Government is not seeking the legislative consent of the Senedd for these two clauses. However, paragraph 9 of the LCM states that:

*“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.”*

### **Clause 14 (Support for Lifelong learning)**

**14.** This clause modifies section 22 of the Teaching and Higher Education Act 1998 (“the 1998 Act”) which provides the Secretary of State and the Welsh Ministers with a concurrent wide regulation-making power to make regulations authorising or requiring the making of grants or loans for any prescribed purposes to eligible students in connection with their undertaking higher or further education courses designated by or under regulations.

**15.** Paragraph 11 of the LCM states that:

*“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."*

## 4. Reasons for making these provisions

**16.** Paragraph 13 of the LCM sets out the reasons why the Welsh Government considers that clauses 1 and 4 require the consent of the Senedd and why such consent should not be given:

*"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."*

**17.** In paragraph 18 of the LCM, the Minister adds that the provisions in clauses 1 and 4 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."*

**18.** Paragraph 14 of the LCM sets out the reasons why the Welsh Government considers that it is appropriate for the Bill to contain devolved provision in clause 14:

*"Clause 14 enables the UK Government's intention to introduce a system of modular student support is 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."*

## 5. The Supplementary LCM

- 19.** The Supplementary LCM ("the SLCM") laid on 29 October was in relation to the amendments made to the Bill in the Houses of Lords which affect clauses 1 and 4 of the Bill only.
- 20.** The SLCM notes that the Welsh Government does not recommend that legislative consent should be granted by the Senedd in relation to clauses 1 and 4 of the Bill, as amended.
- 21.** While the Welsh Government remain of the view that legislative consent is required for these two clauses, no motion has been sought by the UK Government in respect of these two clauses.

### **Clause 1 (Local skills improvement plans) and clause 4 (interpretation)**

- 22.** These clauses provide for local skills improvement plans. The relevant amendment introduces the words "English-funded", so that clause 1, as amended, introduces duties on English-funded providers to co-operate with designated employer representative bodies to develop local skills improvement plans and have regard to the plans once they have been developed.
- 23.** Clause 4 provides for the meaning of certain phrases used in clause 1, of which the relevant amendments for the purpose of the SLCM are:

*"the addition of a definition for "English-funded", which is stated to mean education or training which is funded wholly or partly by the Secretary of State; a combined authority ; the Greater London Authority; or a local authority in England;*

*confirmation that education or training provided by the Secretary of State includes education or training in respect of which amounts are paid directly to the provider of the education or training by the Secretary of State in accordance with provision in regulations made under section 22(1) of the Teaching and Higher Education Act 1998 (financial support for students) by virtue of section 22(2)(h) or (i) of that Act;*

*confirmation that where a relevant provider that provides English-funded post-16 technical education or training enters into arrangements under which*

---

*all or part of that education or training is provided by another relevant provider, the education or training provided under the arrangements is to be treated as English-funded post-16 technical education or training provided by the second relevant provider (as well as by the first)."*

## **Welsh Government view**

**24.** In the SLCM, the Welsh Government set out their reasons why consent should not be given to these clauses as amended:

*"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.*

*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."*

---

**25.** They also set out their concerns that these clauses could have financial implications for Welsh institutions which deliver post 16 education or training “considered to be material to a specified area in England. They say:

*“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.”*

## 6. Committee consideration and conclusions

**26.** We considered the LCM at our meeting on 23 September. Following that meeting we wrote to the Minister for Education and Welsh Language; to seek further information on a number of key issues including:

- What changes the Welsh Government is seeking to clauses 1 and 4 that would enable them to recommend consent; and details of the discussions they have had with the UK Government on possible amendments;
- Clarity on where the Welsh Government’s information about the UK Government’s intentions to make regulations implementing the Life Long Entitlement under clause 14 has come from;
- Clarity as to whether the changes in clause 14 will apply or not when the powers are exercised by Welsh Ministers; and whether Welsh Ministers have any intention to use the powers, if modified;
- Why the Welsh Government is not seeking consent for clause 18 (list of relevant providers), when there is nothing in the clause which limits its application to England only;
- Why the Welsh Government is not seeking consent for clause 25 (institutions within the further education sector: procedure for designation) when the Explanatory Notes to the Bill state that the clause applies to Wales; and a corresponding provision would be within the legislative competence of the Senedd.
- Why there was a seven week delay in laying the LCM.

**27.** A copy of the letter, along with the response from the Minister for Education and the Welsh Language is included in Annex 1.

---

**28.** We also wrote to the Secretary of State for Education. A copy is included in Annex 2. As of writing, we have not yet received a response.

**29.** Following our consideration of the SLCM, we wrote to the Minister for Education and Welsh Language on 19 November seeking further information on:

- How the amendments to clauses 1 and 4 may have increased the possibility of Welsh institutions being subject to the duties;
- Seeking further information on the on-going discussions with the UK Government about amending the Bill to address the Welsh Government concerns;
- Whether the new clause 25 (provision of opportunities for education and skills development) would require the legislative consent of the Senedd.

**30.** A copy of this letter is included in Annex 1.

**31.** The Minister responded on 25 November 2021. A copy of the letter is included in Annex 1. In the letter, he states that discussions around clauses 1 and 4 were ongoing, and that amendments had been tabled which addressed his concerns. He also indicated that a further supplementary LCM would be laid “as soon as possible” to reflect these amendments.

**32.** SLCM 3 was subsequently laid on 10 December. In it, the Minister stated that the amendments tabled to the Bill addressed his concerns about the “imposition of statutory duties on Welsh institutions.” He added that the amendments “remove the need for the Senedd’s legislative consent to be sought for clauses 1 and 4.” We note this. However, it is disappointing that SLCM 3 was not laid with sufficient time for the Committee to consider it in detail.

**33.** In relation to the current clause 15 (which was clause 14 in the original Bill), we believe the Senedd should grant consent as the Welsh Government confirmed that the modifications set out in clause 14 do not affect the powers of the Welsh Ministers. The Minister for Education and the Welsh Language also noted that should the powers of the Welsh Ministers be changed in a similar way, it would be done by way of primary legislation.

**34.** We are content with the further explanation provided by the Welsh Government on clause 18 and do not believe that this clause requires consent. It would have been helpful for this additional information to have been included in the original Memorandum. However, on clause 25, which became clause 35 in the Bill as amended in the House of Lords and subsequently clause 31 following amendments in the House of Commons, the Minister accepts that it would apply “in relation to Wales.” However, he goes on to state that “it makes no changes to the law - it is simply clarifying and restating the law in respect of Wales and it is my view that the consent of the Senedd is not required.” We note that the test as to whether a provision requires consent

---



---

of the Senedd is not whether the provision changes the law, or clarifies or restates it. The test set out in Standing Order 29 is whether the provision is for any purpose within the legislative competence of the Senedd. We therefore believe that consent of the Senedd should still be sought, even if in this instance the provision is clarifying and restating existing law.

**35.** We note the Minister's reasons for the delay in laying the initial LCM, and while we acknowledge the challenges, we do not believe there should have been such a delay to it being laid. It is important that the timelines set out in the Senedd's Standing Orders should be adhered to, unless there are exceptional circumstances. More broadly, we are disappointed at the delays to the laying of the Supplementary LCMs.

---

# Annex 1 Correspondence with the Minister for Education and Welsh Language

Jeremy Miles MS  
Minister for Education and Welsh Language

Dyddiad | Date 24 September 2021

Pwnc | Subject: Skills and Post 16 Education Bill LCM

Dear Jeremy,

We considered this LCM at our Committee meeting on 23 September. As you will recall, we indicated that we would be writing to seek clarity on a number of issues. We are also writing to the Secretary of State for Education (a copy of which is attached.)

As the Committee must report on this LCM by 21 October we would appreciate a response as soon as possible, and no later than Friday 1 October, to enable us to consider it at our meeting on 7 October.

*Clauses 1 (Local Skills improvement plans) and 4 (interpretation)*

The LCM states that the Welsh Government does not recommend that legislative consent should be given for these two clauses.

Can you outline what amendments the Welsh Government would want made to each of these provisions to enable you to recommend consent? Can you also outline the discussions you have had with the UK Government in relation to getting the amendments that you are seeking, and any response you have had?

*Clause 14 (Support for lifelong learning)*

The LCM states that the modifications that clause 14 will make to section 22 of the Teaching and Higher Education Act 1998 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.” It also states that 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 LCM does not indicate where this information about the UK Government’s intentions has come from. Can you clarify where this information has come from?

There is nothing in the Bill to indicate that the modifications to section 22 of the 1998 Act will only apply when they are exercised by the Secretary of State. The LCM does not clarify the position, or detail why modifications made under this clause do not relate specifically to functions of Welsh Ministers. Can you provide this clarity? If the Welsh Ministers’ powers are changed by the modifications to section 22, can you confirm how they are changed and whether the Welsh Ministers have any intention to use these modified powers and, if so, for what purpose? Could you also confirm that if the changes are agreed that you will have the same powers as the Secretary of State in relation to student finance? This information will enable us to determine whether to recommend in our report to the Senedd that consent should be given to clause 14.

#### *Additional clauses*

##### *Clause 18 (List of relevant providers)*

Clause 18 of the Bill enables the Secretary of State to make regulations which provide for the Secretary of State to keep a list of “relevant providers” in respect of “relevant education or training” who meet certain conditions, to be specified in the regulations. There is nothing on the face of the Bill to state that a Welsh provider cannot be a “relevant provider”. Clause 18(3) then sets out what is meant by “relevant education or training”, again there is nothing on the face of the Bill that says that such education or training has to be provided in England only. There is also nothing in clause 18 which limits its application to England only. Can you detail why you do not consider that this clause requires the consent of the Senedd?

##### *Clause 25 (Institutions within the further education sector: procedure for designation)*

This clause amends the Further and Higher Education Act 1992. It changes the mechanism by which the Secretary of State can designate educational institutions in England as falling within the statutory FE sector. Clause 25(2) makes provision to clarify the appropriate authority to make designation orders in relation to educational institutions in Wales. The Explanatory Notes to the Bill state that this clause applies to Wales; and that the corresponding provision would be within the legislative competence of the Senedd. In light of this, can you outline why the Welsh Government does not consider that consent of the Senedd is required for this clause?

*Delay in laying the LCM*

Standing Order 29.2(i) requires an LCM to be laid normally no later than two weeks after the introduction of the Bill. In this instance, there was over a seven week delay between being the Bill being introduced, and the LCM being laid by. Can you outline why there was such a delay?

I look forward to receiving your response.

Yours sincerely,



Jayne Bryant MS  
Chair

Enc: Letter to Secretary of State for Education

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Ein cyf/Our ref JMEWL/2376/21

Jayne Bryant MS  
Chair Children, Young People and Education Committee  
Welsh Parliament

1 October 2021

Dear Chair,

Thank you for your letter of 24 September concerning the Legislative Consent Memorandum (LCM) for the UK Government's Skills and Post-16 Education Bill (the "Bill"). You raised a number of queries relating to specific provisions of the Bill to which I have provided a response below.

### **Clauses 1 (Local Skills improvement plans) and 4 (interpretation)**

The Welsh Government does not recommend that the legislative consent of the Senedd should be given in respect of clauses 1 and 4 of the Bill as introduced. In July I wrote to the Secretary of State for Education setting out my concerns about the practical effect of these clauses. My Department's assessment is that these clauses would apply to Welsh further education providers or higher education institutions if their provision of post-16 technical education is deemed material to a specified area in England. This 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.

My expectation is that duties would not be imposed on Welsh providers in respect of provision delivered in Wales as 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. In particular, I do not want any Welsh institutions who are not in receipt of funding from the Secretary of State to be subject to duties to have regard to Local Skills Improvement Plans in England. I therefore would expect amendments to be made in respect of clauses 1 and 4 that address these concerns and to restrict their application to institutions in Wales who are in receipt of funding from the Secretary of State.

Following my letter there have been productive discussions at officials' level which have informed the Department for Education's intention to bring forward amendments in respect of clauses 1 and 4. My officials are currently awaiting sight of the proposed amendments concerning the application of local skills improvement plans to Welsh institutions. I anticipate that the Secretary of State will be writing to me on this matter ahead of laying amendments for Report Stage in the House of Lords. Subject to a legislative competence assessment of the effect of those amendments the Legislative Consent Memorandum will be updated in due course.

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400

[Gohebiaeth.Jeremy.Miles@llyw.cymru](mailto:Gohebiaeth.Jeremy.Miles@llyw.cymru)  
[Correspondence.Jeremy.Miles@gov.wales](mailto:Correspondence.Jeremy.Miles@gov.wales)

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

## **Clause 14 (Support for lifelong learning)**

The UK Government's policy intentions regarding the introduction of a Lifelong Loan Entitlement (LLE) are set out in their white paper Skills for jobs: lifelong learning for opportunity and growth. Further detail on the proposals is provided in the Impact Assessment accompanying the Bill which states: "*The current student finance system is underpinned by primary and secondary legislation. The government seeks to modify existing regulation-making powers in primary legislation to make specific provision for student finance in respect of modules of courses.*" The Impact Assessment also states that "*In order to introduce the LLE from 2025, secondary legislation will need to be laid in Parliament by summer 2024. We will consult on the detail and scope of the LLE this year.*"

The Welsh Ministers' powers are not changed by the proposed modifications to section 22 of the Teaching and Higher Education Act 1998 as provided for by Clause 14 of the Bill. The reasons for this are as follows. Clause 14 amends the 1998 Act to provide a gloss to section 22 of that Act (which is an enabling power for making the student support regulations in both Wales and England) so that modules of higher education courses (and not just such courses as a whole) are able to attract student support. The gloss has effect only in so far as functions are exercisable by the Secretary of State. Some of the Secretary of State's functions are exercisable in relation to Wales concurrently with the Welsh Ministers, though none of those functions are the subject of textual amendments to be made by the Bill. However, only the Secretary of State's functions are to be amended leaving the Welsh Ministers' functions in respect of student support intact.

The Secretary of State's function in respect of making regulations under section 22(1) authorising the making of grants or loans in connection with the undertaking modules of HE or FE courses is exercisable in relation to England only. The need for legislative consent is a consequence of the incomplete separation of powers as between the Secretary of State and the Welsh Ministers when the student support functions under the 1998 Act were devolved to Wales.

Subject to passage of the Bill the Welsh Ministers' powers under section 22 of the 1998 Act would not be the same as those of the Secretary of State. The Welsh Minister's powers would remain as at present and would refer to whole courses but not to modules of such courses. My letter of the 9 July to the Secretary of State for Education stated that if similar provision is to be sought for Wales, it should be achieved by way of a Senedd Bill. Additionally, I informed the Secretary of State in July that it would be helpful to receive more detail on the UK Government's proposals to introduce a Lifelong Loan Entitlement and that I should welcome further information about how the proposed entitlement will impact budget consequential, and how loans for the Lifelong Loan Entitlement might be made available to the Welsh Government.

As things stand the UK Government has not published its detailed proposals for the operation and delivery of the proposed Lifelong Loan Entitlement and I have not received any further information about these proposals from the Secretary of State. We touched on this matter during my evidence to the Committee on 23 September where I indicated that advice will be provided on the LCM once the discussions with the Westminster Government have been concluded.

## **Clause 18 (List of relevant providers)**

According to the [Explanatory Notes](#) to the Bill clauses 18 to 21 “enable the Secretary of State to make regulations to provide for a list of post-16 education or training providers, in particular Independent Training Providers (“ITPs”), to indicate which providers have met conditions that are considered to prevent or mitigate risks associated with the disorderly exit of a provider from the provision of education and training. Education or training is funded by various funding authorities.”

Clause 18 provides that the Secretary of State may by regulations make provision: (a) for the Secretary of State to keep a list of relevant providers in respect of relevant education or training who meet conditions specified in the regulations for being on the list in respect of that education or training; (b) in connection with the list.

The purpose of the list is to prevent funding authorities from entering into funding arrangements with providers which are not listed (and to ‘regulate’ funding arrangements) - see clause 19. The effect of the definition of “relevant training provider” in Clause 18 means that certain independent Welsh providers of education and training could fall within scope of the regulation making power. They could, for example include private training providers operating in Wales who offer post-16 education or training provision in England. However, only in so far as they are funded by persons in England (see clause 19(7)) and in relation to the provision of education and training wholly or mainly in England. It is my view that clauses 18 to 21 therefore do not constitute “relevant provision” within the meaning of Standing Order 29.1 and consequently the consent of the Senedd is not required. Clause 20 contains provisions for the interpretation of clauses 18 and 19. Clause 21 makes ‘ancillary’ and procedural provisions in respect of regulations under clauses 18 and 19.

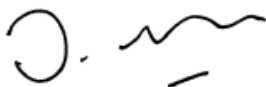
### **Clause 25 (Institutions within the further education sector: procedure for designation)**

Clause 25 makes amendments to the Further and Higher Education act 1992 and it applies in relation to Wales. However, it makes no changes to the law - it is simply clarifying and restating the law in respect of Wales and it is my view that the consent of the Senedd is not required.

### **Delay in laying the LCM**

It is important that any legislation affecting further and higher education in Wales takes into consideration the specific Welsh context. The laying of the legislative consent memorandum for this Bill was delayed due to the need to consider the legal and policy implications for Wales arising from the complex provisions in the Bill and discussing with Whitehall the effect that draft provisions are capable of having in relation to Wales.

Yours sincerely,



**Jeremy Miles AS/MS**

Gweinidog y Gymraeg ac Addysg  
Minister for Education and Welsh Language



Jeremy Miles MS

Minister for Education and Welsh Language

Dyddiad | Date 19 November 2021

Pwnc | Subject: Skills and Post 16 Education Bill supplementary LCM

Dear Jeremy,

We considered this supplementary LCM at our Committee meeting on 18 November. We have a number of queries to help inform our consideration.

As the Committee must report on this LCM by 15 December we would appreciate a response as soon as possible, and no later than Friday 26 November, to enable us to consider it at our meeting on Thursday 2 December.

*Clauses 1 (Local Skills improvement plans) and 4 (interpretation)*

Paragraph 15 of the SLCM notes that the amendments made to clauses 1 and 4 of the Bill "have potentially increased the possibility of Welsh institutions being subject to the duties in respect of local skills improvement plans for England". As there is no further detail in the SLCM as to how, in practice, the amendments will potentially have this effect, can you provide us with this?

In your previous correspondence with the Committee you indicated that productive discussions at officials' level were undertaken in relation to amendments to these clauses of the Bill. The SLCM confirms that the amendments which have been made do not address your concerns. Are you able to explain why such discussions have resulted in amendments being made to the Bill which do not address your concerns? Can you confirm whether further discussions are ongoing with the Department of Education and if so whether they are likely to result in further amendments being made to the Bill which will address your concerns?

Can you also provide clarity as to the detail of amendments that you would need to see made to the Bill in order to recommend that the Senedd gives its consent to clauses 1 and 4 of the Bill?

*New clause 25 [Provision of opportunities for education and skills development]*

We noted that a new clause 25 has been inserted into the Bill. 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.

Although the Explanatory Notes note that this clause is intended to apply to people in England, this is not reflected on the face of the Bill. Can you confirm whether you consider that the new clause 25 of the Bill requires the legislative consent of the Senedd and if not, why not?

I look forward to receiving your response.

Yours sincerely,



Jayne Bryant MS

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

**Jeremy Miles AS/MS**  
**Gweinidog y Gymraeg ac Addysg**  
**Minister for Education and Welsh Language**



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref JMEWL/4025/21

Jayne Bryant MS  
Chair Children, Young People and Education Committee  
Senedd Cymru  
[SeneddChildren@senedd.wales](mailto:SeneddChildren@senedd.wales)

25 November 2021

Dear Jayne,

Thank you for your letter of 19 November concerning the supplementary Legislative Consent Memorandum (Memorandum No.2) (SLCM No.2) for the UK Government's Skills and Post-16 Education Bill ("the Bill") laid on 29 October. You raised queries relating to the provision made by clauses 1 and 4 and by clause 25 of the Bill to which I have provided a response below.

### **Clauses 1 (Local Skills improvement plans) and 4 (interpretation)**

The amendments made to clauses 1 and 4 of the Bill at House of Lords Report stage on 12 October had the effect of potentially increasing the possibility of Welsh institutions being subject to the duties in respect of local skills improvement plans (LSIPs) for England. The amendments to clause 1 limit the education and training within scope of the LSIP duties to "English funded" post-16 technical education and training. However, the amendments to clause 4 which define "English funded" include student support provided by the Secretary of State. It is my view that the combined effect of these amendments could potentially result in the courses of Welsh institutions, undertaken by English domiciled students in receipt of UK Government student support, being considered as being "material" to the skills needs of a local area in England. The Bill provides that where post-16 technical education which is material to local area in England then institutions providing that education are to be subject to the LSIP duties set out in clause 1(3), 1(4) and 1(5). The inclusion of financial support for students in the definition of "English funded" provision is of particular concern as this approach potentially brings a wide range of post-16 education and training offered by Welsh institutions within scope of the LSIPs duties.

My officials have been engaged with officials at the UK Government Department for Education for several months and have had productive discussions regarding the application of clauses 1 and 4 to Welsh institutions. The amendments brought forward by the UK Government for consideration at Lords Report stage were an improvement compared to the Bill as introduced insofar as they established a nexus to the funding of post-16 provision by the Secretary of State. However, the amendments did not adequately address the

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400

[Gohebiaeth.Jeremy.Miles@llyw.cymru](mailto:Gohebiaeth.Jeremy.Miles@llyw.cymru)  
[Correspondence.Jeremy.Miles@gov.wales](mailto:Correspondence.Jeremy.Miles@gov.wales)

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

fundamental issue of concern, namely the imposition of statutory duties on Welsh institutions which I do not consider to be either necessary or proportionate. The issue of proportionality and the likelihood of Welsh institutions delivering post-16 technical education that is considered to be “material” to a local area in England were raised by my officials when they had sight of draft amendments in early October. However, the timetable for the UK Government finalising their amendments for Report stage did not allow for a full analysis or redrafting of the amendments ahead of their tabling.

I wrote to the Secretary of State for Education on 29 October setting out my concerns, noting that LSIPs are for the purpose of post-16 education being available to meet skills needs of employers in specified areas of England and that the imposition of legal duties on Welsh institutions in respect of these plans is unnecessary. I informed the Secretary of State that I would like to see amendments brought forward to remove Welsh institutions from the LSIP duties.

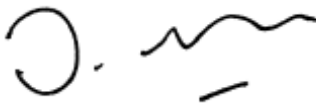
Discussions have been ongoing at official level and much progress has been made in recent weeks to address my concerns. I am pleased to be able to inform you that the UK Government has tabled amendments for consideration at Commons Committee Stage. Those amendments address my concerns and are available here: [skills.pbc.rm.1124.fm \(parliament.uk\)](https://skills.pbc.rm.1124.fm/parliament.uk). I intend to lay a further supplementary LCM as soon as possible to reflect these amendments.

**Clause 25 (Institutions within the further education sector: procedure for designation)**

Clause 25 was added to the Bill at Report stage in the House of Lords. The amendments tabled by the UK Government on 24 November for House of Commons Committee Stage seek to remove this clause from the Bill.

I am also copying this letter to the Chair of the Legislation, Justice and Constitution Committee, Huw Irranca-Davies MS.

Yours sincerely,

A handwritten signature in black ink, consisting of a large 'J' followed by a wavy line and a short horizontal stroke.

**Jeremy Miles AS/MS**

Gweinidog y Gymraeg ac Addysg  
Minister for Education and Welsh Language

---

# Annex 2 Letter to Secretary of State for Education

The Rt Hon Nadhim Zahawi MP  
Secretary of State for Education

Dyddiad | Date 24 September 2021

Pwnc | Subject: Skills and Post 16 Education Bill LCM

Dear Secretary of State,

I am writing on behalf of the Children, Young People and Education Committee, a cross party Committee of the Senedd Cymru. We have been referred the Skills and Post 16 Education Bill Legislative Consent Memorandum ("the LCM") for scrutiny.

We have limited time available for scrutiny of this LCM; and must report by 22 October. We would therefore appreciate a swift response to our request for information, and preferably in time for consideration at our next meeting on Thursday 7 October.

I have attached a copy of the Welsh Government's LCM for your reference. We are aware that the UK Government is only seeking the Senedd's consent for clause 14. However, the LCM is seeking the Senedd's view on three clauses (1, 4 and 14.) We have therefore considered all three clauses.

We have also written to the Minister for Education and Welsh Language on this LCM. A copy of which is attached for your reference.

*Clauses 1 (Local Skills improvement plans) and 4 (interpretation)*

The LCM states that the Welsh Government does not recommend that legislative consent should be given for these two clauses as they believe that this could lead to duties being placed on Welsh providers. Do you agree with this analysis?

Can you outline what discussions you, your predecessor or your officials have had with the Welsh Government in relation to these clauses, and what amendments they have sought in order to enable them to recommend that the Senedd approves legislative consent. I would also be grateful if you would confirm whether you are aware of any intention to table amendments to the Bill to reflect the Welsh Government's representations?

If you want any further information on this letter, please contact me.

Yours sincerely,



Jayne Bryant MS  
Chair

Enc: Skills and Post 16 Education Bill LCM

Letter to Minister for Education and Welsh Language

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.