

## Subordinate Legislation Committee

### **Report on the Apprenticeships, Skills, Children and Learning Bill: Powers Delegated to Welsh Ministers**

#### **Introduction**

1. The Subordinate Legislation Committee is entitled to consider powers granted to the Welsh government to make subordinate legislation under the following Standing Order –

“15.6 Subject to 15.7, the Committee may also consider and report on:-

(ii) the appropriateness of provisions in proposed Assembly Measures and in Bills for Acts of the United Kingdom Parliament that grant powers to make subordinate legislation to the Welsh Ministers, the First Minister or the Counsel General;”

2. This paper will outline the delegated powers granted to Wales as part of this Bill and make recommendations with regards to these powers.

#### **Background**

3. The Apprenticeships, Skills, Children and Learning Bill contains provisions on a range of issues relating to the matters referred to in its short title. Legislative competence has been devolved to the National Assembly in relation to many of these matters, so that significant parts of the Bill have very little, if any, relevance to Wales. The following analysis of the Bill is based on the version that was introduced.

#### **Delegated Powers in the Bill**

4. The following powers to make subordinate legislation are delegated to Ministers by the Bill –

The Bill contains delegated powers for Welsh Ministers to make subordinate legislation in relation to apprenticeships as follows –

Clause 5 (7):-The **prescribed manner** in which the Welsh certifying authority must issue a certificate relating to an apprenticeship framework to a person who applies to the authority, is the manner **prescribed by regulations made by the Welsh Ministers**.

Clause 5 (5):-**Regulations made by the Welsh Ministers** to make provision for alternative Welsh completion conditions to apply in cases where a person works otherwise than under a Welsh apprenticeship agreement.

Clause 6 (1):-**The prescribed manner** in which a Welsh certifying authority may issue a certificate relating to an apprenticeship framework to a person

who applies to the authority, is the manner prescribed by regulations made by the Welsh Ministers.

Clause 7 (2):-**Regulations made by the Welsh Ministers** may make provision about the supply of copies of apprenticeship certificates issued under clause 5 or 6.

Clause 8:- This clause contains the power for Welsh Ministers to designate the Welsh certifying authority. During the Committee Stage in the House of Commons, this clause was amended to require the designation to be **by order**.

Clause 9(2):-**Regulations made by Welsh Ministers** may add to the matters to be stated on the apprenticeship certificate in addition to those matters in clause 9(1).

Clause 16 (3):-**The Welsh Ministers may issue guidance** to persons designated to issue apprenticeship frameworks generally, or to issue apprenticeship frameworks relating to a particular apprenticeship sector.

Clause 20 (1):-**The Welsh Ministers may by order** provide for an existing vocational specification to be treated as if it were an apprenticeship framework.

Clause 26 (3):-**The Welsh Ministers may by order** provide that a specification of apprenticeship standards is to have effect, and that it is to have effect subject to modification (clause 27).

By virtue of clause 248(7), the negative Assembly procedure would apply to any Statutory Instruments made under these powers.

## **Part 2: LEA Functions (clauses 40-56)**

Clause 49 includes a power for Welsh Ministers **to make regulations** (subject to the negative procedure) and to issue guidance in relation to the duty imposed on the local authority in which the child or young person is ordinarily resident to promote the fulfilment of the detainee or former detainee's learning potential.

## **Part 3: The Young People's Learning Agency for England (clauses 57-77)**

Section 65 permits the Agency to provide services to Welsh Ministers, to any other person, wholly or partly funded from public funds, who has functions relating to education or training or to any other person specified, or of a description specified, **by order** made by the [Welsh Ministers] for the purposes of this section.

## **Part 4: The Chief Executive of Skills Funding (clauses 78-118)**

Clause 103 permits the provision of services to Welsh Ministers, to any other person, wholly or partly funded from public funds, who has functions relating to education or training or to any other person specified, or of a description specified, **by order** made by the [Welsh Ministers] for the purposes of this section.

### **Part 12:-Miscellaneous (clauses 237-247)**

Clause 246 empowers Welsh Ministers **by regulation** to establish procedures in relation to complaints about maintained schools in Wales and to issue related guidance.

Clause 251 empowers the Secretary of State to make consequential and transitional provisions. There is no corresponding power for Welsh Ministers.

Clause 255 permits Welsh Ministers **by order** to commence the Welsh provisions of the Bill.

### **Issues raised in evidence**

5. The Deputy Minister for Skills gave evidence to the Committee 27<sup>th</sup> April 2009. In taking evidence from the Minister the Committee sought clarification and further details on:

- The level of deliberation between UK Government officials and Welsh government officials in the preparation of the Bill and the lack of legislative competence sought by the Welsh government
- Scrutiny of the Bill, particularly in Westminster as there were no Welsh MPs on the Public Bill Committee.
- Time taken for consultation between Welsh Ministers and the UK Government
- Whether further amendments to the Bill had been sought.
- Why the opportunity to seek measure making powers was not realised.
- Amendments to the Welsh clauses where by the designation of the certifying authority should be made by Order.
- Reasons for not seeking legislative competence and measure making powers regarding foundation degrees.
- The balance between the need for UK comparability and flexibility in apprenticeship standards.
- The English only obligations on careers advisors to ensure pupils are advised on apprenticeships.
- The implementation of the 'right to request time to train'.
- Powers to make consequential and transitional provisions under clause 251.

## Conclusions of the Committee

6. The Committee was concerned that the Welsh Ministers had not used this opportunity to secure Measure-making powers, the Committee also felt that the reason put forward of lack of time and resources should not be used as justification for not seeking Measure making powers. The Committee refers to the conclusion of the Committee report on Business Rate Supplements<sup>1</sup>.

*'The Committee notes that the Assembly Government did not seek measure-making powers for the National Assembly on this subject. Whilst understanding that approach in relation to this area where the Government had no specific proposals for Wales, the Committee recommends that the Assembly Government take advantage of opportunities to seek such powers when Bills relate to fields within Schedule 5 to the Government of Wales Act 2006.'*

### Recommendation 1

**The Committee reasserts its previous recommendation that the Welsh government takes greater advantage of opportunities to seek such powers when Bills relate to fields within Schedule 5 to the Government of Wales Act 2006.**

7. The Committee questioned the Deputy Minister on the communications between Welsh Ministers and UK Ministers in the development of the Bill. In response to this the Deputy Minister stated:

*'that is not the sort of detail that we would expect to provide because it is about confidential working arrangements between the two Governments ..... it is only right that the confidentiality that generally applies to joint working between different administrations is respected.'*<sup>2</sup>

8. The Committee, while respecting the need for confidentiality between different administrations, considers a measure of co-operation from the Minister on this point would have greatly aided the committee and enabled it to better perform its role as set out in Standing Order 15.6 (ii), which specifies the Committee can consider and report on the appropriateness of provisions in proposed Assembly Measure and in Bills for Acts of the United Kingdom Parliament that grant powers to make Subordinate Legislation to the Welsh Ministers, the First Minister or the Counsel General.

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<sup>1</sup> <http://www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid/cr-ld7459-e.pdf?langoption=3&ttl=CR-LD7459%20%20Report%20on%20the%20UK%20Business%20Rate%20Supplements%20Bill%3A%20Powers%20Delegated%20to%20Welsh%20Ministers>

<sup>2</sup> RoP, para 39-40, 27 April 2009, Subordinate Legislation Committee

## **Recommendation 2**

**The Committee is of the view that there is a requirement for greater transparency in the scrutiny process. To allow full and open scrutiny the Committee recommends that Welsh Ministers become more open to the scrutiny process and are prepared to answer questions on the discussions between Welsh Ministers and UK Ministers.**

9. In response to questions on scrutiny of the Bill, particularly in Westminster, the Minister stated '*Scrutiny at Westminster is a matter for Parliament, to make sure that its scrutiny processes are all that they should be.*'<sup>3</sup> The Committee question this stance and would draw the Ministers attention to the report of the Enterprise and Learning Committee report which stated,

'the legislative process by which the Welsh clauses were incorporated into a major UK bill was far from satisfactory and left little room for thorough scrutiny either at Westminster or by the National Assembly'<sup>4</sup>.

10. The Committee has concerns on this point and feel that it was important that Bills with implications for Wales are effectively scrutinised in Wales and in Westminster, particularly with regard to having Welsh MPs involved in Parliamentary scrutiny of clauses having implications for Wales, the Committee noted that the Public Bill committee at Westminster, in this case, did not include any Welsh MPs.

## **Recommendation 3**

**To enhance the scrutiny of any legislation made under this Bill the Committee recommends that all draft orders and regulations are referred to the Enterprise and Learning Committee for scrutiny.**

11. The Committee considered clauses 20 (1) and 26(3) which respectively permit Welsh Ministers by order to provide for an existing vocational specification to be treated as if it were an apprenticeship framework and that a specification of apprenticeship standards is to have effect, and also that it is to have effect subject to modification (clause 27). It was agreed that the negative procedure that would be applicable by virtue of clause 248(7) would provide insufficient opportunity for the scrutiny of such orders by the National Assembly.

## **Recommendation 4**

**The Committee recommend that orders made pursuant to clauses 20, 26 and 27 are made subject to the affirmative procedure.**

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<sup>3</sup> RoP, para 38, 27 April 2009, Subordinate Legislation Committee

<sup>4</sup> [http://www.assemblywales.org/apps/kilchildlearn\\_bill-\\_committee\\_report-final.e.pdf](http://www.assemblywales.org/apps/kilchildlearn_bill-_committee_report-final.e.pdf)