

LEGISLATIVE CONSENT MEMORANDUM

Schools 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 Schools Bill (“the Bill”) was introduced in the UK Parliament, the House of Lords, on 11 May 2022. Through engagement with UK Government, we understand that the provisions of the Bill as introduced extend to England and Wales but save for consequential amendments to legislation applying in both England and Wales, are limited in their application to England. The proposed consequential amendments in the Bill to the Education Act 1996 serve to re-state the law as it applies in Wales. On the basis that the provisions of the Bill as introduced make no changes to the law in Wales beyond re-statement, I consider that the consent of the Senedd is not required in relation to those provisions.
3. On 30 May, *Amendment 96* was tabled for consideration during the Lords Committee Stage, which commenced on 8 June and concluded on 27 June. The amendment was agreed on 20 June and has been incorporated within the Bill as amended at Lords Committee stage in Schedule 3, paragraph 1). The amendment makes provision which falls within the legislative competence of the Senedd. The Bill as amended at Lords Committee stage and published on 27 June can be found at: [Schools Bill \[HL\] - Parliamentary Bills - UK](#)
4. I wrote to the Llywydd outlining the position in paragraph 2 above and setting out that the laying of this Legislative Consent Memorandum has been delayed due in part to the UK Government only notifying me of the proposed amendment on 31 May, after it had been tabled.

Policy Objective(s)

5. The UK Government’s stated policy objectives are that:
 - a. The Bill underpins the aims set out in the Opportunity for All: Strong schools with great teachers for your child White Paper and its ambitions to improve the education system.
 - b. The Bill includes measures that build on the recommendations of various consultations including the Children Not in School consultation, the Regulating independent educational institutions consultation, the Fair school funding for all: completing our reforms to the National Funding Formula consultation, the Teacher Misconduct:

regulating the teaching profession consultation and the School attendance: improving consistency of support consultation.

6. The UK Government assert that the Bill delivers the primary legislation needed to level up school standards, strengthen attendance and improve safeguarding for children wherever they are educated in England. Part 2 of the Bill provides for a new framework for schools funding in England.

Summary of the Bill

7. The Bill is sponsored by the Department for Education.
8. The Bill includes measures that:
 - Introduce a power permitting the Secretary of State to make regulations prescribing 'academy standards'. These regulations will set out the requirements on academy proprietors which will be capable of applying consistently across all academy trusts.
 - Provide the Secretary of State with a suite of intervention powers in relation to academy proprietors' operation of their academies.
 - Ensure local authorities transfer land to site trustees if they provide a new alternative site for a Church academy.
 - Provide protections for pupils taking part in daily acts of collective worship and religious education provision in academy schools with a religious designation.
 - Provide a regulation-making duty and power regarding the governance of academies which are already, or will be in the future, designated as academies with a religious character.
 - Set out a duty for the Secretary of State to designate an academy school as a grammar school and set out in statute that the only way to remove a grammar school's selective admission arrangements is following a parental ballot process.
 - Introduce additional circumstances in which the Secretary of State may convert maintained schools into academies and extend the circumstances in which they may issue an Academy Order for the purpose of converting a maintained school to an academy.
 - Place a duty on the Secretary of State to determine funding for all mainstream schools through a single, directly applied national funding formula.

- Ensure policies to promote regular school attendance are written, publicised, and followed. This measure also extends the Secretary of State's power to make regulations about leave of absence.
- Introduce the local authority registration of children of compulsory school age who are not educated full-time at schools and a duty on parents and certain providers of out-of school education to provide local authorities with information for the register. This measure introduces monetary sanctions for education providers who do not comply and enables the Secretary of State to issue statutory guidance. The measure also enables changes to the school attendance order regime in England.
- Expand the category of institutions subject to the regulatory regime relating to independent schools, in Chapter 1 of Part 4 of the Education and Skills Act 2008, to capture more institutions providing all or the majority of a child's education but which are not regulated at present.
- Introduce a power for the Secretary of State to impose relevant restrictions where a material change to an independent educational institution's registration details is implemented without prior approval from the Secretary of State. Also, what constitutes a material change, and the basis upon which applications for the approval of a material change are to be considered, are altered. In addition, the Secretary of State will be given the power to set standards to reject proprietors on the basis that they are not fit and proper, both where there is a material change consisting in a change of proprietor and on other occasions such as where there is an application to register an independent educational institution.
- Change the basis upon which a court determines a statutory appeal against certain decisions to remove an independent educational institution from the register of independent educational institutions, from a full-merits review to a judicial review basis.
- Enable the Secretary of State to suspend the registration of an independent educational institution where there are breaches of the independent educational institution standards and there may be a risk of harm to students attending that institution. In addition, in such circumstances, the Secretary of State would be able to require a proprietor to stop providing boarding accommodation to students.
- Enhance powers to investigate and act against criminal offences by schools, notably against those operating illegal unregistered schools.
- Enable increasing data sharing between Ofsted and other inspectorates to remove barriers to efficiency.
- Strengthen the remit of the Teaching Regulation Agency to handle teacher misconduct and the prohibition of teachers from the profession,

by expanding the scope of those who can face these proceedings and enabling referrals to be considered regardless of where the referral comes from.

Provision in the Bill for which consent is required

Amendment 96 -Education Act 1996 (as incorporated within the Bill as amended at Lords Committee Stage in Schedule 3, paragraph 1):

9. Amendment 96 (as incorporated within the Bill as amended at Lords Committee Stage in Schedule 3, paragraph 1) makes an amendment to Schedule 3 of the Bill (consequential amendments relating to Part 2) as laid. It inserts amendments to section 494 of the Education Act 1996, which applies (as will the amendments) in England and Wales. Section 494 provides for recoupment of amounts by local authorities in cases where a pupil is excluded from a school in one local authority area and subsequently provided with education in another local authority area (including cross border recoupment of funding between English and Welsh local authorities). The amendments serve to expand the scope of the section to encompass academies.
10. It is the view of the Welsh Government that the Senedd's consent is required for this provision on the basis that the amendment makes provision with regard to devolved matters, and for a purpose within the legislative competence of the Senedd (namely the funding of Welsh schools).

UK Government view on the need for consent

11. It is the UK Government's view that amendment 96 (as incorporated within the Bill as amended at Lords Committee Stage in Schedule 3, paragraph 1) to the Bill contains provision within the legislative competence of the Senedd.

Reasons for making these provisions for Wales in the Schools Bill

12. Amendment 96 (as incorporated within the Bill as amended at Lords Committee Stage in Schedule 3, paragraph 1) is consequential to clause 42 (in Part 2) of the Bill. Clause 42 (Clause 41 in the Bill as introduced) deals with budget adjustments for excluded pupils and is intended to put the budget adjustments on a consistent statutory footing across the sector in England (for local authority maintained schools and academies). It provides the Secretary of State with a regulation making power to make provision for a budget deduction to be made in respect of a pupil who is permanently excluded from an academy or a maintained school, and replaces the power in section 47(2)(c) of the School Standards and Framework Act 1998 in England.

13. The amendment will extend the arrangements in section 494 of the Education Act 1996 to encompass academies, which exist only in England. The application of the amendment in Wales will be limited to cross border recoupment for exclusions, where a pupil moves from an English academy to a Welsh maintained school or vice versa, and will mean that the funding will follow the pupil. This replicates existing cross-border practice in relation to academies and therefore this amendment merely formalises such arrangements.
14. Were the Senedd minded to enact these reciprocal obligation provisions itself, it would be restricted from making the amendments without the consent of the Secretary of State by paragraph 8 of Schedule 7B to the Government of Wales Act 2006, on the basis that they will serve to confer/impose a function on an English public authority - to the extent that they will require an English local authority to pay money to a Welsh local authority in circumstances where a pupil is permanently excluded from an academy school and is subsequently provided with education in a maintained school in Wales.
15. On this basis and in view of the consequential nature of the amendments, the narrow application of the same in Wales, and the interconnected nature of the relevant Welsh and English administrative systems, it is considered to be appropriate and proportionate for the provision to be made within this UK Bill. This approach will facilitate certainty and continuity in respect of the reciprocal cross border funding obligations.
16. The amendments made by the provision are non-contentious and do not imply an endorsement of the wider schools policy in England as they are limited to the issue of funding transfers in cases of excluded pupils.

Financial implications

17. There are no financial implications to Wales in respect of this amendment as it seeks to replicate the current provision, whilst including academies.

Conclusion

18. For the reasons outlined in paragraphs 12 to 16, I recommend that the Senedd gives its consent in respect of this provision within the UK Schools Bill.

Jeremy Miles, MS
Minister for Education and Welsh Language
7 July 2022