

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



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref JMEWL/4183/21

Huw Irranca Davies MS
Chair
Legislation, Justice and Constitution Committee
SeneddLJC@senedd.wales

18 January 2022

Dear Huw,

I am writing following the Legislative Consent Motion debate on the Skills and Post-16 Education Bill ("the Bill") held on 11 January.

I am grateful for the Legislation, Justice and Constitution Committee's scrutiny of the three Legislative Consent Memoranda I have laid on the Bill. I thank the Committee for their detailed observations and conclusions. I apologise for not providing a formal response to the Committee's first report published on 24 November on the initial Legislative Consent Memorandum and the supplementary Legislative Consent Memorandum (LCM) (Memorandum No.2) in advance of the debate on the Motion.

I should like to take this opportunity to respond to recommendations of both the November report and those of the Committee's subsequent report published on 10 January concerning the supplementary LCM (Memorandum No.3).

Clauses 1 and 4 (Local Skills Improvement Plans and Interpretation)

Recommendation 1 (24 November report): *The Minister should, 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.*

The Welsh Government considered clauses 1 and 4 of the Bill as introduced to Parliament did not respect the devolution settlement as they sought to impose duties on Welsh further and higher education institutions. I wrote to the Secretary of State for Education on 9 July 2021 setting out my concerns. I also stated that I was not content to recommend that the consent of the Senedd be given for these clauses.

The UK Government tabled amendments to these clauses which were accepted at House of Lords Report stage on 12 October 2021. Unfortunately those amendments did not adequately address the issue of concern, namely the imposition of statutory duties on

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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.

Welsh institutions which I did not consider to be either necessary or proportionate. I wrote again to the Secretary of State for Education on 29 October 2021 requesting further amendments be brought forward to remove Welsh institutions from the local skills improvement plans duties.

Discussions continued at official level and the UK Government brought forward amendments for House of Commons Committee stage which were accepted and had the effect of removing Welsh institutions from clause 1 of the Bill. The supplementary LCM (Memorandum No. 3) I laid on 10 December 2021 updated the Senedd on the effect of these amendments and stated the consent of the Senedd was no longer required in respect of clauses 1 and 4.

Clause 25 (Provision of opportunities for education and skills development)

***Recommendation 2** (24 November report): The Minister should, 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.*

Clause 25 of the Bill as submitted to the House of Commons was included in the Bill following the acceptance of a non-government amendment at House of Lords Report stage. This clause 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. It also imposed requirements on employers in relation to spending funds for people on apprenticeships who are under the age of 25.

I agree with the Committee's assessment that clause 25 of the Bill as submitted to the House of Commons extended to the England and Wales jurisdiction and nothing in its content restricted its application to England. Had this clause remained in the Bill the consent of the Senedd would have been required.

The UK Government brought forward amendments which were accepted at House of Commons Committee stage which removed this clause from the Bill. The supplementary LCM (Memorandum No.3) updated the Senedd about the inclusion of this clause in the Bill in the Lords, its effect and its subsequent removal.

Clause 31 (Institutions within the further education sector: designation)

***Recommendation 1.** (10 January report): 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.*

I note both the Legislation, Justice and Constitution Committee and the Children, Young People and Education Committee consider that the consent of the Senedd should be sought for this clause. I have reached a different view. I also believe that the clause in question is currently clause 32.

Clause 32 of the Bill as amended at House of Commons Committee stage (clause 25 at introduction) makes provision about the designation of institutions in the further education sector. It amends sections 28 and 89 of the Further and Higher Education Act 1992 to change the mechanism by which the Secretary of State can designate educational institutions in England as falling within the statutory further education sector. The substantive amendments to the 1992 Act concern procedural changes to the designation of institutions in England only. Subsection (2) of the clause applies in relation to Wales.

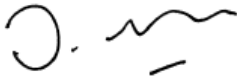
However this clause makes no changes to the law - it is simply clarifying and restating the law in respect of Wales.

In my view the restatement of the law as it applies to Wales is merely in consequence of the substantive provision which is made in respect of England. Although restating the law for Wales in respect of this matter would be for a purpose within the legislative competence of the Senedd, this restatement is consequential on changes to the law in section 28 of the Further and Higher Education Act 1992 for England. This situation is excepted in SO 29.1(i) which defines a relevant Bill as a Bill under consideration in the UK Parliament which makes provision in relation to Wales "for any purpose within the legislative competence of the Senedd (apart from incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the legislative competence of the Senedd)". Consequently, as I set out in the Legislative Consent debate held on 11 January it is my belief the consent of the Senedd is not required in respect of clause 32.

I trust the responses I have provided above will prove useful and I thank you once again for your work.

I am copying this letter to Jayne Bryant MS, Chair of the Children, Young People and Education Committee.

Yours sincerely,

A handwritten signature in black ink, consisting of a circular initial followed by a series of wavy lines and a short horizontal stroke.

Jeremy Miles AS/MS
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Minister for Education and Welsh