



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.

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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.

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.

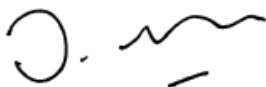
Clause 25 (Institutions within the further education sector: procedure for designation)

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