

## **Agenda Supplement – Legislation, Justice and Constitution Committee**

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Meeting Venue:

Committee Room 1, Senedd

Meeting date: 11 December 2023

Meeting time: 13.30

For further information contact:

**P Gareth Williams**

Committee Clerk

0300 200 6565

[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

### **Hybrid – Supplementary Pack**

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Please note the documents below are in addition to those published in the main Agenda and Reports pack for this Meeting

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#### **4 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3 – previously considered**

(14.40 – 14.45)

##### **4.2 SL(6)417 – The Apprenticeships (Specification of Apprenticeship Standards for Wales) (Modification) Order 2023**

(Pages 1 – 7)

Attached Documents:

LJC(6)-35-23 – Paper 23 – Report

LJC(6)-35-23 – Paper 24 – Welsh Government response



## **SL(6)417 – The Apprenticeships (Specification of Apprenticeship Standards for Wales) (Modification) Order 2023**

### **Background and Purpose**

The Specification of Apprenticeship Standards for Wales (**SASW**) specifies the requirements that must be met for recognised Welsh apprenticeship frameworks to be issued. This Order modifies the SASW. The modifications include, in brief:

- widening participation among apprentices with learning difficulties and learning disabilities by offering flexibility as regards essential skills requirements,
- allowing additional proxy qualifications as a recognised alternative to essential skills,
- including a new section on degree and professional apprenticeships, which removes the essential skills requirements for apprenticeships at this level.

### **Procedure**

Negative

The Order was made by the Welsh Ministers before it was laid before the Senedd. The Senedd can annul the Order within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date it was laid before the Senedd.

### **Technical Scrutiny**

The following 13 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

#### **1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

The Order fails to precisely define the document that is the SASW. There is no reference to the publisher, the date it was published or the ISBN number and there is no hyperlink to the document. Contrast this to the clear approach taken by the UK Government in an equivalent Order that modified the Specification of Apprenticeships Standards in England in 2018:

<https://www.legislation.gov.uk/uksi/2018/946/article/2/made>

When legislation refers to documents, it is important that readers know precisely which document is being referred to and where they can find it.



## 2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

It is unclear what is the status of the Welsh language version of the SASW. The Welsh language version of the Order makes modifications to the Welsh language version of the SASW. We assume that these modifications are intended to have legal effect.

However, both the English and Welsh versions of the Order that gave effect to the original SASW back in 2013<sup>1</sup> gave effect only to “The Specification of Apprenticeship Standards for Wales (SASW)”, i.e. the English language version of the SASW.

Therefore, it is unclear when the Welsh language version of the SASW was given legal effect and what is the current status of the Welsh language version.

When the SASW was last modified in 2016,<sup>2</sup> it was modified in the English language only.

## 3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

In the Welsh language version, the date of the Minister’s signature is in English.

## 4. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

In new paragraph 1 of the SASW, there appears to be an error at the end of the following sentence, with our emphasis added:

“It includes a new section on degree and professional apprenticeships (levels 6 and 7), which removes the essential skills requirements for apprenticeships **at this level**”.

By referring to “levels 6 and 7” we wonder whether “at this level” should read “at these levels”, as this would save any confusion arising as to what “at this level” means.

## 5. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

The existing SASW contains two columns – a first column that includes the text of the requirement, and a second column that includes a reference to the relevant section of the Apprenticeships, Skills, Children and Learning Act 2009; see this extract from the current SASW for example:

6. A framework must be at a minimum of 37 credits but may where appropriate exceed this; in many cases frameworks will significantly exceed 37 credits. A framework must not be so narrow that it is only relevant to a specific workplace where the apprenticeship was attained.
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Section 31(2)(a)
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<sup>1</sup> The Apprenticeships (Specification of Apprenticeship Standards for Wales) Order 2013

<sup>2</sup> By the Apprenticeships (Specification of Apprenticeship Standards for Wales) (Modification) Order 2016



However, where the Order inserts a new paragraph (such as paragraph 16A), it inserts only the first column – no second column is inserted. If there is no relevant section of the 2009 Act to refer to, for the sake of clarity, it would still be helpful to include a second column to explain that.

On a related note, where the Order modifies an existing paragraph (such as paragraph 6 above), the Order does not state that the modification is to the first column only. However, we assume that is the case and that the second column remains unmodified.

#### **6. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

In the new paragraph 10, the sub-paragraphs (a), (b) and (c) are linked by the conjunctions “and” after sub-paragraph (a) and “or” after sub-paragraph (b). However, the drafting guidelines in Writing Laws for Wales warn against mixing different conjunctions when linking divisions as has been done in these sub-paragraphs. This is because it leads to ambiguity when interpreting the relationship between the sub-paragraphs.

#### **7. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

In the new paragraph 16A, in the Welsh text, the words that correspond to “Essential Communication Skills and Essential Application of Number Skills” have been translated differently and inconsistently in the first place they occur on page 6 compared with the second time where it is correct.

On the first occasion it is incorrectly translated as meaning “Essential Communication and Application of Number Skills”.

#### **8. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

We note the following inconsistencies in terminology.

- In the Schedule, in the English text, the phrase “learning difficulty or disability” is used in several places. However, in the new paragraph 16A “learning difficulty or learning disability” is used. And in the new paragraph 24, “learning difficulties or a learning disability” is used. Therefore, there is a variation in the terminology which creates uncertainty.
- In the new paragraph 16A in the Welsh text, in the fifth paragraph, the phrase “learning difficulty or disability” has been translated as meaning “learning difficulty or learning disability” leading to a difference between the English and Welsh text.



- In the English text of the Schedule, there is reference to both “maths” and “mathematics”. It is unclear why both terms have been used when “maths” is not used in the existing SASW.
- Uncertainty arises in respect of the name of one qualification listed in the Schedule. In particular, on pages 12 and 18 of the Order, there is reference to an International Baccalaureate Diploma Standard or Higher Level Qualification in...Mathematical. The use of “Mathematical” at the end on its own does not appear to be right.
- In the Schedule, in the English text, the term “proxies” is used in the new paragraphs 25A and 36. However, “proxy qualifications” is used elsewhere in the Schedule and in the existing SASW. In the Welsh text, it has been translated as “proxy qualifications” throughout the Schedule and the existing translation of SASW. Therefore, the English text is inconsistent in using the term “proxies” in places.
- In the Schedule, in the English text, the acronym “IBO” is used in the first column of the tables on several occasions in relation to the “IBO Middle Years Programme Level 1 / 2 Certificate”. However, that acronym is not used elsewhere in the tables, where “International Baccalaureate” is used in full. In addition, the website of the organisation appears to use “IB” as its acronym. The Welsh text has repeated the full name of the International Baccalaureate in Welsh on each occasion in the corresponding places.
- In the new paragraph 35, there is reference to exceptions “for people”. However, a parallel provision in new paragraph 24 refers to exceptions “for apprentices”.

**9. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

The Order replaces the current paragraph 24 with a new paragraph 24. However, the new text of paragraph 24 appears to deal with a matter that is dealt with in current paragraph 25. This would mean that the SASW as modified by this Order would have two paragraphs (i.e. paragraphs 24 and 25) that deal with the same matter, but in slightly different ways.

We would be grateful if the Welsh Government could confirm that the new paragraphs 24, 25A and 25B have been correctly numbered and will fit into the new SASW as intended.

**10. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

In the new table immediately after new paragraphs 25B and 36A, the heading “English qualification” appears above the first column. However, that column includes qualifications relating to the Welsh language and British Sign Language. It is unclear why those kinds of qualifications are included under the heading “English qualification”.



### **11. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

In the Welsh language version of the Schedule, the phrase “Pre U” (which we understand to refer to a pre university qualification) has not been translated in the name of certain qualifications. Did the Welsh Government consider giving the phrase a Welsh translation?

### **12. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In new paragraph 35, there is a difference between the Welsh and English texts – the Welsh text includes additional words. As a result, “as outlined in paragraph 16A” is translated as meaning “as well as those qualifications outlined in paragraph 16A”.

### **13. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

Paragraph 13 of the Schedule changes the “heading at paragraph 38”. There are no headings “at” paragraph 38. There is a broad heading that captures paragraphs 38 to 42 and there is a narrower heading that captures paragraph 38 to 40. We assume the change is to the broader heading, but this should have been made clear in the Order.

## **Merits Scrutiny**

The following 2 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

### **14. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd**

New paragraph 16A of the SASW recognises that apprentices with a learning difficulty or a learning disability may experience barriers to participation in apprenticeships. Consequently, paragraph 16A permits exceptions in relation to certain minimum requirements. As regards the minimum requirements for Essential Communication Skills and Essential Application of Number Skills, the minimum requirements can be adjusted, but only when specified conditions are met (see the requirement for “all” conditions in paragraph 16A to be met).

Given that paragraph 16A provides for reasonable adjustments, we would be grateful if the Welsh Government could clarify the relationship between paragraph 16A and the duty to make reasonable adjustments under the Equality Act 2010. The Equality Act 2010 is less prescriptive as to when reasonable adjustments can be made.

### **15. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd**

We have noted above some of the modifications this Order makes to the SASW. However, the Explanatory Memorandum states: “there is no policy change” and “no new policies are being implemented”.



In paragraph 5, the Explanatory Memorandum says:

*As there is no policy change, no public consultation was undertaken. The purpose of the Order is solely to enable the current legislation to be updated to meet the apprenticeships policy commitments, where technical and public consultations have taken place.*

We would be grateful if the Welsh Government could clarify what those policy commitments are, and where and when they were set out. This will help us understand the Welsh Government's position that the Order does not implement new policy.

## **Welsh Government response**

A Welsh Government response is required to each reporting point.

## **Committee Consideration**

The Committee considered the instrument at its meeting on 4 December 2023 and reports to the Senedd in line with the reporting points above.



## **Government Response: The Apprenticeships (Specification of Apprenticeship Standards for Wales) (Modification) Order 2023**

### Technical Scrutiny points 1 to 13:

The technical points are accepted. The Government intends to revoke this Order before it comes into force and make another Order addressing those points early in 2024.

### Merit Scrutiny point 1:

New paragraph 16A recognises that the reasonableness of an adjustment will depend on an individual's circumstances, and the criteria set out when it is likely to be reasonable to adjust the minimum communication or number skills of requirements.

### Merit Scrutiny point 2:

The policy commitments referred to in the Explanatory Memorandum are those outlined in:

- 'Aligning Apprenticeships to the needs of the Welsh economy' (2017) (see <https://www.gov.wales/sites/default/files/publications/2018-03/aligning-the-apprenticeship-model-to-the-needs-of-the-welsh-economy.pdf> which was the subject of a formal consultation in 2015 (see <https://www.gov.wales/written-statement-publication-summary-report-responses-consultation-aligning-apprenticeship-model>), and
- 'The Inclusive Apprenticeships: Disability Action Plan for Apprenticeship' (2018), which was developed in consultation with specialist disability organisations following a report by the Economy and Infrastructure and Skills Committee (see <https://www.gov.wales/sites/default/files/publications/2018-11/inclusive-apprenticeships-disability-action-plan-for-apprenticeships-2018-21-1.pdf>).