

Y Pwyllgor Plant a Phobl Ifanc

**Bil Addysg Bellach ac Uwch (Llywodraethu a
Gwybodaeth) (Cymru)**

**Ymatebion i'r Ymgynghoriad
Mai 2013**

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Y Pwyllgor Plant a Phobl Ifanc

**Further and Higher Education (Governance and
Information) (Wales) Bill**

**Consultation Responses
May 2013**

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(Llywodraethu a Gwybodaeth)
(Cymru)**

**Further and Higher Education
(Governance and Information)
(Wales) Bill**

Ymatebion i'r Ymgynghoriad

Consultation Responses

* Ar gael yn Saesneg yn unig / Available in English only

REF:	Cyfluniad	Organisation
FEHE 1	Colegaucymru	Colegaucymru
FEHE 2 *	Coleg Gwent	Coleg Gwent
FEHE 3 *	University and College Union, Cangen Casnewydd, Coleg Gwent	University and College Union, Coleg Gwent, Newport Branch
FEHE 4 * FEHE 4A* FEHE 4B*	University and College Union (UCU Cymru)	University and College Union (UCU Wales)
FEHE 5 *	Estyn	Estyn
FEHE 6 *	University and College Union, Cangen Crosskeys	University and College Union, Crosskeys Branch
FEHE 7 *	UNSAIN Cymru	UNISON Cymru
FEHE 8 *	Cymdeithas Ddysgedig Cymru	The Learned Society Wales
FEHE 9	Undeb Cenedlaethol Athrawon Cymru (UCAC)	Undeb Cenedlaethol Athrawon Cymru (UCAC)
FEHE 10*	Undeb Cenedlaethol Myfyrwyr Cymru	National Union of Students Wales
FEHE 11 *	Y Gymdeithas Genedlaethol i Blant Byddar	National Deaf Children's Society
FEHE 12 *	NIACE Dysgu Cymru	NIACE Dysgu Cymru
FEHE 13*	Addysg Uwch Cymru	Higher Education Wales
FEHE 14*	NASUWT, Cymru	NASUWT, Cymru
FEHE 15*	Prifysgol Caerdydd	Cardiff University
FEHE 16*	Cyngor Cyllido Addysg Uwch Cymru	Higher Education Funding Council for Wales
FEHE 17*	Agored Cymru	Agored Cymru
FEHE 18*	CITB Cymru	CITB Cymru Wales
FEHE 19*	Leighton Andrews AC y Gweinidog dros Addysg a Sgiliau	Leighton Andrews AM, Minister for Education and Skills



Y Bil Addysg Bellach ac Uwch (Llywodraethu a Gwybodaeth)

Cyflwyniad i'r Pwyllgor Plant a Phobl Ifanc

Mai 2013

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Cyflwyniad

- ❶ Lluniwyd y papur hwn gan ColegauCymru i ymateb i'r Bil Addysg Bellach ac Uwch (Llywodraethu a Gwybodaeth), a elwir o hyn allan y Bil ABU.
- ❷ Mae'r ymateb hwn yn canolbwyntio ar adran addysg bellach (AB) y Bil. Nid yw'r adran ar gyflenwi gwybodaeth mewn perthynas â benthyciadau a grantiau myfyrwyr yn ddadleuol ac nid oes gan ColegauCymru sylw i'w wneud.

Statws Cyfreithiol colegau AB a sefydliadau AB yng Nghymru

- ❶ Mae ColegauCymru yn cynrychioli'r 19¹ o golegau addysg bellach (AB) a sefydliadau AB yng Nghymru.² Yn 2011/12, roedd 214,850 o fyfyrwyr unigol yn mynychu coleg a 229,615 o ymgofrestriadau.³ Yn 2011/12 roedd gan y colegau drosiant o £462m gyda buddsoddiad o £365m (79% o gyfanswm yr incwm) gan Lywodraeth Cymru, yn cynnwys dysgu seiliedig ar waith.
- ❷ Mae gan golegau AB rôl hanfodol i'w chwarae wrth gyflenwi'r sgiliau sydd eu hangen ar Gymru i wneud cyfraniad sylweddol i economi Cymru. Cred ColegauCymru y bydd y newidiadau sydd wedi'i gosod yn y BIL ABU o fudd sylweddol i golegau wrth iddynt barhau i ddarparu gwasanaeth o ansawdd uchel i ddysgwyr, busnesau a chymunedau lleol.
- ❸ Mae'r colegau yn elusennau addysgol a'u diben allweddol yw darparu addysg a hyfforddiant. Ers iddynt gael eu corffori maent wedi'u hysgogi gan fuddion eu dysgwyr a'u cymunedau. Ni chânt eu gyrru gan elw. Yn wir, byddent yn colli eu statws elusennol pe dewisent wneud hynny.
- ❹ Mae disgwyl i rôl reoleiddiol Llywodraeth Cymru dros golegau gael ei chryfhau yn fuan. Yn ddiweddar, cyflwynodd Gweinidog Addysg Llywodraeth Cymru achos i Swyddfa Cabinet y DU i Weinidogion Cymru gael eu penodi'n Brif Reoleiddiwr dros golegau AB a sefydliadau AB dynodedig yng Nghymru. Mae hyn yn cyd-fynd â newidiadau a wnaed gan Ddeddf Elusennau 2006 (nad ydynt wedi'u cynnwys yn Neddf Elusennau 2011). Mae'r colegau AB wedi croesawu rôl reoleiddiol arfaethedig newydd Llywodraeth Cymru.
- ❺ Roedd Adolygiad Humphreys⁴ yn ystyried colegau AB fel mentrau cymdeithasol sy'n bodoli i ddarparu buddion cymdeithasol i'w cymunedau lleol. Yn yr ystyr hwn, maent yn sefydliadau nid-er-elw sy'n cyflenwi gwasanaethau cyhoeddus ond heb fod yn rhan uniongyrchol o'r llywodraeth.

¹ Mae'r 19 yn cynnwys Coleg Harlech/CAG(G); CAG De Cymru; Coleg Cymunedol YMCA; a Choleg Merthyr Tudful, Prifysgol Morgannwg.

² Yn y papur hwn, caiff y termau 'coleg AB' a 'coleg' eu defnyddio i gwmpasu colegau AB a sefydliadau AB.

³ *Addysg Bellach, Dysgu Seiliedig ar Waith a Dysgu Cymunedol yng Nghymru 2011/12 SDR 48/2013*, Llywodraeth Cymru, Mawrth 2013.

⁴ *Adolygiad Annibynnol o Drefniadau Llywodraethu Sefydliadau Addysg Bellach yng Nghymru* (Adroddiad Humphreys), Llywodraeth Cymru, Mawrth 2011.

Y Bil ABU: Sylwadau cyffredinol

- ❶ Mae ColegauCymru yn croesawu darpariaethau'r Bil a fyddai'n gwaredu cyfyngiadau a rheolaethau diangen penodol ar golegau mewn modd a fyddai'n galluogi'r Swyddfa Ystadegau Gwladol i adfer i'r colegau eu statws fel 'sefydliadau nid-er-elw sy'n gwasanaethu aelwydydd' (NPISH). Hwn oedd y statws a fodolai cyn cyhoeddiad y Swyddfa Ystadegau Gwladol ym mis Hydref 2010 y dylai colegau AB yn y DU gael eu hystyried yn rhan o'r llywodraeth ganolog.
- ❷ Yn y Papur Gwyn ar y Bil ABU arfaethedig, mae Llywodraeth Cymru yn cydnabod aeddfedrwydd y sector AB yng Nghymru ac mai colegau sydd yn y safle gorau i bennu anghenion eu dysgwyr a'u cymunedau. Mae hyn yn ategu'r datganiad yn Llythyr Blaenoriaethau'r Gweinidog Addysg bod colegau *"yn gwneud cyfraniad sylweddol tuag at ein heconomi a'n cymdeithas ac wedi ymateb yn dda i anghenion unigolion a chyflogwyr yng Nghymru"*.⁵
- ❸ Mae'r colegau yn cefnogi'n gryf y pwyslais y mae Llywodraeth Cymru yn rhoi ar gydweithio a chydweithredu yng Nghymru. Mae'r colegau eisoes yn cydweithio'n agos. Yn wir, mae bodolaeth ColegauCymru ynddo ei hun a'i rwydweithiau helaeth a thraddodiad o rannu arferion da dros flynyddoedd lawer yn dystiolaeth gadarn o sut mae colegau wedi cymryd at weithio mewn partneriaeth. Mae hyn yn rhan allweddol o ethos y colegau yng Nghymru. Mae'r berthynas â sefydliadau AU wedi gwella'n sylweddol ac mae eisoes gan y colegau bartneriaethau ffyniannus ag ysgolion lleol, neu'n gweithio'n galed i'w datblygu.
- ❹ Mae'r colegau AB wedi ymdrechu i godi safonau a gwella eu gwasanaethau i ddysgwyr. Maent wedi ymwneud yn gadarnhaol â'r agenda Trawsnewid. Cyflawnwyd hyn mewn partneriaeth â Llywodraeth Cymru a chyda chefnogaeth ac arweiniad cryf ganddi.
- ❺ Mae'r colegau yn cydnabod eu bod yn derbyn arian y trethdalwyr, ac yn gweithredu oddi mewn i gyd-destun polisi gweinyddiaeth etholedig, ddatganoledig. Maent yn awyddus i gyflenwi'r agenda sgiliau a osodwyd gan Lywodraeth Cymru. Bydd hyn yn galw am berthynas waith adeiladol barhaus rhwng Llywodraeth Cymru a'r colegau, gan weithio drwy ColegauCymru, i sicrhau bod colegau yn parhau i weithredu mentrau'r llywodraeth ac yn rhannu arferion da.
- ❻ Nid yw'r Bil ABU yn effeithio ar wiriadau statudol eraill ar y colegau. Bydd y colegau AB yn dal i fod yn destun arolygiad Estyn, yn ogystal ag amryw safonau ac archwiliadau ariannol a chyfrifyddol, a'r gyfraith sy'n rheoli elusennau a chwmnïau, ac hefyd Fframwaith Ansawdd ac Effeithiolrwydd Llywodraeth Cymru.

⁵ *Blaenoriaethau ar gyfer y Sector Addysg Bellach: 2012/13-2013/14*. Llythyr oddi wrth Leighton Andrews AC, y Gweinidog Addysg a Sgiliau, a anfonwyd i benaethiaid colegau, 29 Mai 2012.

- Roedd Llythyr Blaenoriaethau ar gyfer colegau AB y Gweinidog Addysg, a anfonwyd ym mis Mai 2012,⁶ yn amlinellu pedwar maes allweddol ar gyfer y ddau sector dros y ddwy flynedd, 2012/13 a 2013/14:

- codi safonau a chyrhaeddiad
- gwella dilyniant a chymorth i ddysgwyr
- ymwneud mwy â chyflogwyr ac annog menter
- datblygu darpariaeth cyfrwng Cymraeg.

Mae'r blaenoriaethau hyn, a atgyfnerthir yn aml mewn areithiau i gynadleddau ac mewn cyfarfodydd â chynrychiolwyr ColegauCymru, yn darparu fframwaith clir a defnyddiol y mae colegau yn gweithredu ynddo ac y gallant ymateb i anghenion unigryw eu dysgwyr a'u cymunedau lleol oddi mewn iddo. Mae ColegauCymru yn cefnogi parhau â chyfeiriad polisi drwy gohebiaeth o'r fath.

- Mae ColegauCymru yn croesawu y rôl allweddol a ragwelir iddo yn y Papur Gwyn o ran *'arwain y sector a sicrhau synnwyr o gyfrifoldeb cyffredin ar draws yr holl golegau'*. Mae'r gydnabyddiaeth hon yn ategu barn Adolygiad Thomas, a nododd fod ColegauCymru *'wedi dod yn sefydliad egniol a gwerthfawr ar y cyd sy'n dangos ymrwymiad teilwng i wella addysg a hyfforddiant yng Nghymru'*.⁷ Mae Bwrdd ColegauCymru yn croesawu'r her hon a bydd yn dymuno cydweithio'n agos â Llywodraeth Cymru i lunio cod llywodraethu a chod ymarfer sy'n cwmpasu'r berthynas rhwng colegau AB a Llywodraeth Cymru.
- Mae ColegauCymru yn cydnabod mai'r Swyddfa Ystadegau Gwladol, ac nad Llywodraeth Cymru, fydd yn penderfynu yn y pen draw p'un a yw colegau AB yn cael eu hystyried yn sefydliadau nid-er-elw sy'n gwasanaethu aelwydydd neu'n endidau sector cyhoeddus y llywodraeth ganolog. Petai'r Bil arfaethedig yn newid yn hanfodol drwy welliannau sylweddol, y mae perygl y bydd yn rhagduedu'r Swyddfa Ystadegau Gwladol i wrthod y statws a ddymunir. Mae ColegauCymru yn credu y gall y Bil sicrhau newidiadau cadarnhaol yn ogystal â chyflawni'r nod o fodloni meini prawf y Swyddfa Ystadegau Gwladol ar gyfer statws NPISH a gobeithia yn fawr na fydd fersiwn derfynol y Bil, gan gynnwys unrhyw welliannau a dderbynnir wrth iddo fynd drwy'r Cynulliad, yn mynd yn groes i'r canlyniadau hyn a ddymunir.

C1 P'un a oes angen am y Bil

- Oes, y mae angen y Bil hwn ar frys.
- Mae'r memorandwm esboniadol yn rhoi cyfrif clir o bwysigrwydd y Bil.

⁶ ibid.

⁷ *Strwythur y Gwasanaethau Addysg yng Nghymru (Adolygiad Thomas)* Mawrth 2011, op. cit. Pennod 5 para 16.

- Mae'n gosod tri opsiwn. Byddai gwneud dim (opsiwn 1) yn golygu bod y colegau AB yn dod yn rhan o lywodraeth ganolog. Byddai'r colegau yn colli eu cymhelliant i gynhyrchu gwarged sydd ar hyn o bryd yn cael ei fuddsoddi i wella gwasanaethau i ddysgwyr. Byddai'r asedau yn ogystal â'r rhwymedigaethau yn eiddo i'r Llywodraeth. Gallai fod i hyn oblygiadau o ran yr arian a ddyrennir i Lywodraeth Cymru drwy fformiwla Barnett.
- Mae costau ychwanegol opsiwn 1 yn dangos amcangyfrif o £77,348 y flwyddyn am gostau gweinyddol a rheoli ariannol ychwanegol. Mae'r cyfrifiad hwn yn seiliedig ar mai 18 coleg sydd. Gan dybio bod y cynlluniau uno arfaethedig presennol yn cael eu gwireddu a bod tri choleg yn debygol o fod yn eiddo yn gyfan gwbl i brifysgolion yn 2013/14, byddai cyfanswm o 12 coleg AB yn cael eu heffeithio. Er hynny, mae ColegauCymru yn credu bod yr amcangyfrif hwn o'r costau yn llawer rhy isel. Bu i chwaer-fudiad ColegauCymru yn Lloegr, yr Association of Colleges, egluro mewn cyfathrebiad personol i brif weithredwr ColegauCymru:

'Caiff cyfrifon llywodraeth eu gweithredu i wahanol safonau cyfrifyddu rhyngwladol felly byddai gofyn i'r cyflwyniadau a wneir gan y Colegau fod ar sail wahanol (e.e. yn nhermau pennu gwerth asedau neu rwymedigaethau pensiwn cynllun pensiwn llywodraeth leol). Byddai angen i drafodion rhwng colegau a rhwng coleg a'r llywodraeth gael eu debydu. Byddai hyn yn cynnwys debygu arian oddi wrth CCAU(C), Sgiliau Adeiladu, contractau'r Weinyddiaeth Amddiffyn a thrafodion Cronfa Gymdeithasol Ewrop (sawl cant ohonynt i gyd). Mae Trysorlys y DU yn gofyn am gyllidebau a chyfrifon rheoli misol. Nid yw'n glir p'un a fyddai'r gofyniad hwn yn cael ei drosglwyddo i lawr i golegau ond byddai baich gweinyddol ychwanegol.'

- Y golled ariannol fwyaf fyddai gwariant cyfalaf. Fel a nodwyd yn y Memorandwm Esboniadol, byddai cyfanswm gwariant cyfalaf gan goleg mewn unrhyw flwyddyn yn cyfrif yn erbyn unrhyw gyllideb cyfalaf yr Adran Addysg a Sgiliau, nid dim ond y gyllideb cyfalaf a roddir i golegau gan Lywodraeth Cymru. Felly byddai'r rhaglen gyfalaf arfaethedig o £58.5m, y mae Llywodraeth Cymru yn talu 50% tuag ati, yn cael ei haneru – colled syfrdanol o ryw £29m.
- Mae Opsiwn 2 yn cynnig sefydlu corff ariannu tebyg i Gyngor Cyllido Addysg Bellach Cymru. Byddai'r cynnig hwn yn newid sylweddol ym mholisiau Llywodraeth Cymru a fu'n hyrwyddo 'gwladwriaeth di-gwango yng Nghymru' ac mae wedi uno â nifer o Gyrrff a Noddir gan y Cynulliad gan gynnwys ELWa. Ni fyddai sefydlu cwango newydd, serch hynny, yn cael unrhyw effaith ar y statws a bennir i golegau gan y Swyddfa Ystadegau Gwladol. Er enghraifft, mae dau gyngor cyllido yn Lloegr (er bod i'r ddau statws asiantau gweithredol, neu fe fydd yn fuan) ond mae colegau yno wedi' pennu yn sefydliadau nid-er-elw sy'n gwasanaethu aelwydydd. Fel a nodwyd yn y Memorandwm Esboniadol, byddai cost rhedeg cyngor cyllido ar wahân yn £1.84m y flwyddyn a fyddai'n cael ei dalu, mae'n siŵr, ar draul dysgwyr.
- Opsiwn 3 – mae'r Bil ABU (Llywodraethu a Gwybodaeth) yn angenrheidiol.

- Mae'r pwerau sydd gan Weinidogion Cymru ar hyn o bryd yn deillio o Ddeddf Addysg Bellach 1992. Roedd y ddeddfwriaeth 20 oed hon, a roddodd i golegau AB eu statws corfforedig, yn newid mawr i golegau a oedd gynt yn eiddo i awdurdodau addysg lleol. Roedd yn cynnwys nifer o reolaethau a oedd yn bwysig i sector newydd a oedd yn cael ei draed dano. 21 mlynedd yn ddiweddarach ac mae pethau wedi newid cryn dipyn. Mae ColegauCymru yn ystyried bod angen addasu Deddf 1992 yn y ffyrdd a gynigir gan y Bil ABU.

- Mae'n werth ailadrodd bod Papur Gwyn ABU wedi nodi:

'mae Llywodraeth Cymru yn cydnabod aeddfedrwydd y sector AB yn Nghymru ac yn credu mai colegau sydd yn y safle gorau i bennu sut y dylid diwallu anghenion eu dysgwyr a'u cymunedau lleol; yn seiliedig yn y diwylliant Cymreig cryf a bywiog o gydweithio, cydweithredu a gweithio mewn partneriaeth. Mae'r diwylliant hwn yn ganolog i lwyddiant y sector i'r dyfodol'.

C2 Y darpariaethau allweddol sydd wedi'u gosod yn y Bil a ph'un a ydynt yn briodol i gyflawni'r diben a nodir

- Mae'r darpariaethau allweddol yn briodol. Mae'r Bil arfaethedig yn canfod cydbwysedd priodol rhwng rhoi mwy o gyfrifoldebau i golegau reoli eu hunain a'r gydnabyddiaeth o'r angen i golegau weithio oddi mewn i'r meysydd polisi eang a osodir gan y Llywodraeth.
- Bydd gan golegau fwy o ymreolaeth dros eu hofferyn ac erthyglau llywodraethu. Er hynny, bydd dal gofyn i gyrff llywodraethu benodi pennaeth / prif weithredwr a chlerc a chynnwys dysgwyr a staff yn eu haelodaeth. Bydd diogelwch hefyd i sicrhau na fydd corff llywodraethu y cyflwyno newidiadau a fyddai'n arwain at gollu statws elusen.
- Bydd ColegauCymru yn falch o gydweithio â Llywodraeth Cymru i ddatblygu cod llywodraethu i'r sector gan ymgorffori saith egwyddor Nolan o safonau ym mywyd cyhoeddus a rhannu'r arferion da sy'n bodoli yng Nghymru a thu hwnt.
- Mae'r Bil yn darparu diogelwch rhag i golegau allu trosglwyddo ei eiddo, hawliau a rhwymedigaethau i unrhyw gorff arall o'u dewis. Caiff rheoliadau eu pasio yn ei gwneud yn ofynnol i gyhoeddi gwybodaeth, ac yn nodi'r gofynion ymgynghori a'r cyrff y gellir trosglwyddo eiddo a hawliau iddynt.
- Bydd gan Weinidogion Cymru bwerau ymyrryd gan gynnwys y pŵer i gyfarwyddo'r corff llywodraethu i benderfynu diddymu ei hun o dan amgylchiadau penodol, er na chaiff pŵer anghyfngedig y gweinidogion i ddiddymu corfforaeth AB ei gadw pe ddaw'r Bil yn Ddeddf fel ag y mae.
- Mae'r Bil yn rhoi i goleg y pŵer i gynnal ei hun drwy drefniadau is-gorff megis cwmni cyfyngedig neu sefydliad elusennol corfforedig. Mae ColegauCymru yn

ymwybodol y bu i goleg yn Lloegr ddechrau ymchwilio i'r syniad o ailsefydlu ei hun yn gwmni cyfyngedig trwy warant ond y penderfynwyd yn erbyn hynny, wrth gydnabod bod gan gorfforaethau AB fynediad gwell at gyllid addysg uwch, trwyddedau Asiantaeth Ffiniau'r DU a chyfnodau hir o adfer diffygion pensiwn cynllun pensiwn llywodraeth leol o gymharu â chwmnïau cyfyngedig trwy warant. Hyd yn oed yn Lloegr felly, lle y caiff marchnad mwy cystadleuol ei hannog ym myd addysg, ni fu i'r un coleg drosglwyddo ei asedau na'i rwymedigaethau i gorff arall.

C3 Y goblygiadau ariannol sy'n codi o'r Bil

- Fel a nodwyd yn yr ateb i gwestiwn 1, byddai costau ychwanegol pe na chaiff y Bil ei basio neu pe caiff cyngor cyllido ei sefydlu. Ar adeg o gynni ariannol, y mae'n anochel y byddai'r costau ychwanegol hyn yn cael effaith andwyol ar y gwasanaethau a ddarperir i ddysgwyr.
- Ni fyddai'r Bil ei hun yn arwain at gynnydd mewn costau. Gallai'r colegau wynebu rhywfaint o gostau cyfreithiol cymharol fach petaent yn dewis newid eu hofferyn a'u herthyglau llywodraethu. Gallai banciau osod rheolau llymach wrth roi benthyg arian.

C4 Rhwystrau posibl i weithredu'r darpariaethau allweddol a ph'un a yw'r Bil yn rhoi ystyriaeth iddynt

- Nid oes rhwystrau i weithredu'r darpariaethau allweddol. I bob diben, mae'r Bil yn cadarnhau statws y colegau fel sefydliadau nid-er-elw sy'n gwasanaethu aelwydydd, fel y maent wedi bod ers 1993 (hyd nes i'r Swyddfa Ystadegau Gwladol newid eu statws yn 2010) ac mae'r colegau AB yn ddigon aeddfed i ymdopi â'r rhyddid pellach a roddir yn y Bil.

C5 P'un a oes unrhyw ganlyniadau anfwriadol yn codi o'r Bil

- Roedd sawl ymateb i'r Papur Gwyn yn mynegi pryder y byddai'r colegau AB a'u graddau newydd o ryddid yn anwybyddu'r polisïau a osodir gan Lywodraeth Cymru ym maes addysg bellach; yn anwybyddu cytundebau cenedlaethol ar gyflogau; yn gwerthu asedau cyhoeddus; neu hyd yn oed yn dewis preifateiddio eu hunain fel, yr honnir, sy'n digwydd yn Lloegr, ac yn canolbwyntio ar elw yn hytrach na dysgwyr a'u cymunedau. Gall ColegauCymru roi sicrwydd clir na fydd yr un o'r rhain yn digwydd.

- Bydd ColegauCymru yn datblygu ei berthynas â Llywodraeth Cymru ymhellach. Rydym yn cydnabod bod llywodraeth etholedig yn disgwyl i'w pholisïau addysgol gael eu gweithredu. Bydd Llywodraeth Cymru yn parhau i osod amodau ynghlwm wrth y cyllid y bydd yn ei roi i'r colegau a bydd memorandwm ariannol diwygiedig.

- Er hynny, er mwyn sicrhau bod y Swyddfa Ystadegau Gwladol yn derbyn y gall colegau gael statws sefydliadau nid-er-elw sy'n gwasanaethu aelwydydd, ni all Llywodraeth Cymru osod rheoliadau sy'n effeithio'n uniongyrchol ar gyfeiriad strategol y colegau. Nodwyd yn y Papur Gwyn ABU bod y statws a roddir gan y Swyddfa Ystadegau Gwladol:

'yn cael ei bennu ar sail ble mae'r rheolaeth, yn hytrach nag ar sail perchnogaeth neu b'un a yw'r endid yn derbyn arian cyhoeddus. Mae canllawiau rhyngwladol yn diffinio rheolaeth fel y gallu i bennu polisi corfforaethol cyffredinol.'

- Roedd y Papur Gwyn hefyd yn dyfynnu'r Llawlyfr Ewropeaidd ar Ddiffyg a Dyledion Llywodraeth sy'n nodi, yn achos ysgolion, mai:

'y llywodraeth gyffredinol sy'n rheoli ysgol os oes angen ei chymeradwyaeth i greu dosbarthiadau newydd, gwneud buddsoddiadau sylweddol newydd mewn trefniant cyfalaf sefydlog gros neu fenthyca; neu os y gall atal yr ysgol rhag dod â'i pherthynas â'r llywodraeth i ben.'

- Mae pob coleg AB a sefydliad AB yng Nghymru yn aelod o ColegauCymru. O'r herwydd, mae'n cydweithio'n agos, ar ran yr holl sector AB yng Nghymru, â Llywodraeth Cymru, fel cyfaill beirniadol, yn trafod ac yn rhoi sylwadau ar bolisïau allweddol ac yn eu troi yn weithredoedd a argymhellir.

- Enghraifft dda yw'r symudiad tuag at Drawsnewid. Roedd y datblygiad hwn yn un o bolisïau allweddol Llywodraeth Cymru. Gwnaeth penaethiaid AB, gyda chefnogaeth eu cyrff llywodraethu, benderfyniadau rhagweithiol i uno â cholegau eraill, ac â'u prifysgol leol mewn dau achos. Ni orfodwyd y Trawsnewid hwn gan Lywodraeth Cymru. Yn hytrach, gosododd Llywodraeth Cymru ei chyfeiriad polisi ac ymatebodd y colegau yn gadarnhaol. Ni ymatebodd sectorau addysg eraill yn yr un modd.

- Ceir enghreifftiau eraill.

- Mae cydraddoldeb cyflog, a drafodwyd rhwng ColegauCymru a'r cyd-undebau llafur ac a gyflwynwyd yn 2005/2006, wedi'i anrhydeddu gan y colegau AB.
- Mae ColegauCymru a'r cyd-undebau llafur wedi bod yn trafod contract cyffredin am y tair blynedd diwethaf ac y maent yn agos i ddod i gytundeb.
- Mae sawl coleg wedi cyflwyno neu yn y broses o gyflwyno cyrff llywodraethu ar ffurf aelodaeth yn unol â'r hyn a argymhellwyd gan Humphreys.

- Bydd ColegauCymru yn sicrhau ei fod yn argymhell i'r colegau eu bod yn cynnal cydraddoldeb cyflog rhwng darlithwyr ac athrawon ysgol; yn anrhydeddu unrhyw gontract cyffredin os yw wedi'i gytuno â'r cyd-undebau llafur; ac yn cefnogi

cyflwyno cyrff aelodaeth yn unol â'r hyn a osodwyd yn adroddiad Humphreys ar drefniadau llywodraethu.

- Mae rhai sylwebwyr wedi codi'r mater o golegau'n cael eu cymell gan elw o ganlyniad i fwy o ryddid. Bydd colegau yn cadw statws 'sefydliadau nid-er-elw sy'n gwasanaethu aelwydydd'. Mae hyn yn datgan yn glir nad yw colegau yn bodoli er mwyn creu elw. Bydd y colegau yn parhau yn elusennau ac mae'n debygol mai'r Prif Reoleiddiwr fydd Llywodraeth Cymru. Byddai canolbwyntio ar elw yn hytrach na'r dysgwyr yn peryglu statws coleg fel sefydliad elusennol. Er hynny, bydd y colegau yn parhau i fod y yn entrepreneuriaid ac yn ceisio cynhyrchu incwm (bron i £100m yn 2011/12) y tu allan i'r cyllid a gânt gan Lywodraeth Cymru. Mae hyn yn helpu sefyllfa ariannol y colegau yn gyffredinol ac yn darparu refeniw ychwanegol gwerthfawr sy'n cael ei ail-fuddsoddi er budd dysgwyr.
- Yn olaf, tynnwyd sylw gan rai i athroniaeth addysg gystadleuol dros Glawdd Offa a ph'un a fyddai'r Bil ABU yn annog gweithgarwch tebyg gan golegau AB yng Nghymru. Wrth gwrs, mae agenda gwleidyddol ac addysgol gwahanol iawn yn Lloegr. Yn Lloegr, mae academaïau, ysgolion rhydd, ysgolion stiwdio a cholegau technegol prifysgol yn cael eu sefydlu, gan gystadlu'n uniongyrchol yn aml â cholegau sy'n perfformio'n dda. Mae'r pwyslais ar ddewis a chystadleuaeth. Yng Nghymru, ceir agenda o bartneriaeth a chydweithredu y mae colegau wedi chwarae eu rhan yn llawn ynddo a byddant yn parhau i wneud hynny. Er hynny, nid yw'r colegau yn bod yn hunanfodlon wrth ystyried safonau ansawdd. Maent yn parhau'n gystadleuol ymysg ei gilydd yn eu hysfa i godi safonau a gwella eu gwasanaethau i ddysgwyr, cymunedau a busnesau.

C6 Barn rhanddeiliaid

- Mae'r penaethiaid a'r cyrff llywodraethu wedi datgan yn glir eu bod yn cefnogi'r Bil. Mae'r cyrff llywodraethu yn cynnwys llywodraethwyr sy'n cynrychioli amrywiaeth eang o randdeiliaid gan gynnwys awdurdodau lleol, y gymuned leol, byd busnes, staff a myfyrwyr.
- Mae adroddiad Llywodraeth Cymru ar yr ymatebion i'r ymgynghoriad ar y Papur Gwyn yn datgan bod 'yr ymatebion a dderbyniwyd gennym oddi wrth ddarparwyr dysgu yn cytuno yn gyffredinol â chynigion y Papur Gwyn. Roedd mwyafrif yr undebau llafur, ar y llaw arall, yn anghytuno â'r cynigion'.
- Mae'r cyrff llywodraethu yn cydnabod y bydd y rhyddid pellach yn rhoi mwy o gyfrifoldeb arnynt hwy. Serch hynny, bydd y rhyddid pellach hefyd yn arwain at fanteision hirdymor i ddysgwyr, busnesau lleol a chymunedau lleol.

Q7 Lefel y manylion ar wyneb y Bil o gymharu ag unrhyw bwerau sydd wedi'u cynnwys yn yr is-ddeddfwriaeth

- Ni all ColegauCymru wneud sylw ar hyn o bryd. Mae'r Bil yn canfod cydbwysedd priodol rhwng rhoi mwy o gyfrifoldebau i golegau reoli eu hunain a'r gydnabyddiaeth o'r angen i golegau weithio oddi mewn i'r meysydd polisi eang a osodir gan y Llywodraeth.

Y Bil ABE: Casgliad

- Ar ran y colegau AB yng Nghymru, mae ColegauCymru yn croesawu penderfyniad Llywodraeth Cymru i gyhoeddi'r Bil ABU. Mae'r Bil yn cydnabod aeddfedrwydd y sector AB a'r ffaith y bydd colegau AB yn gweithredu'n gyfrifol â'r rhyddid pellach a osodir yn y Bil.
- Bydd ColegauCymru a'r colegau yn parhau i gydweithio'n agos â Llywodraeth Cymru ac yn ceisio gweithredu ei pholisïau sydd â'r nod o wella cyfleoedd addysg a hyfforddiant i ddysgwyr, cymunedau a byd busnes.



The Further and Higher Education (Governance and Information) Bill

Submission to Children & Young People Committee

May 2013

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Introduction

1. This paper has been drawn up by ColegauCymru in response to the Further and Higher Education (Governance and Information) Bill (henceforth entitled FHE Bill).
2. This response focuses on the further education (FE) section of the Bill. The section on the supply of information in connection with student loans and grants is non-contentious and ColegauCymru has no comment to make.

The Legal Status of FE colleges and FE institutions in Wales

3. ColegauCymru represents the 19¹ further education (FE) colleges and FE institutions in Wales.² In 2011/12, there were 214,850 individual students attending college and 229,615 enrolments.³ Colleges in 2011/12 had a turnover of £462m with Welsh Government investment, including work-based learning, of £365m (79% of total income).
4. FE colleges have a crucial role to play in delivering the skills that Wales needs to make a significant contribution to the economy of Wales. ColegauCymru believes that the changes set out in the FHE Bill will be of considerable benefit to colleges in continuing to provide a high quality service to learners, businesses and local communities.
5. Colleges are educational charities and their key purpose is to provide education and training. Since incorporation, they have been motivated by the interests of their learners and communities. They are not driven by profit. Indeed, their charitable status would be lost if they chose to do so.
6. The Welsh Government's regulatory role over colleges is expected to be strengthened shortly. The Welsh Government Minister for Education recently submitted a case to the UK Cabinet Office for Welsh Ministers to be appointed as the Principal Regulator for FE colleges and designated FE institutions in Wales. This is in keeping with changes made by the Charities Act 2006 (which are not contained in the Charities Act 2011). The FE colleges have welcomed the Welsh Government's proposed new regulatory role.
7. The Humphreys Review⁴ considered FE colleges as social enterprises existing to provide social benefits to their local communities. In this sense, they are not-for-profit organisations delivering public services but not directly part of government.

1 The 19 include Coleg Harlech/WEAN; WEA South; YMCA Community College; and Merthyr Tydfil College, University of Glamorgan
2 In this paper the terms 'FE college' and 'college' are used to cover FE colleges and FE institutions.
3 *Further Education, Work-Based Learning and Community Learning in Wales 2011/12 SDR 48/2013*, Welsh Government, March 2013.
4 *Independent Review of the Governance Arrangements of Further Education Institutions in Wales* (the Humphreys Report), Welsh Government, March 2011.

The FHE Bill: General comments

8. ColegauCymru welcomes the provisions in the Bill that would remove certain unnecessary restrictions and controls on colleges in such a way as to enable the Office for National Statistics (ONS) to restore to colleges their status as 'not for profit institutions serving households' (NPISH). This was the status that existed prior to the ONS announcement in October 2010 that FE colleges in the UK should be classified as part of central government.
9. In the White Paper on the proposed FHE Bill, the Welsh Government recognised the maturity of the FE sector in Wales and that colleges are best placed to determine the needs of their learners and communities. This echoes the statement in the Education Minister's Priorities Letter that colleges "*make a significant contribution towards our economy and society and have responded well to the needs of individuals and employers in Wales*".⁵
10. Colleges strongly support the Welsh Government's emphasis on collaboration and cooperation in Wales. Colleges already work closely together. Indeed, the very existence of ColegauCymru and its extensive networks and tradition of sharing good practice over many years provide solid evidence of how colleges have embraced partnership. This is a key part of the college ethos in Wales. Relationships with HE institutions have improved considerably and colleges already have in place, or are working hard to develop, fruitful partnerships with local schools.
11. FE colleges have striven to raise standards and improve their services to learners. They have engaged positively in the Transformation agenda. This has been achieved in partnership with, and with strong guidance and support from, the Welsh Government.
12. Colleges recognise that they are recipients of taxpayers' money, operating within the policy context of an elected, devolved administration. They are keen to deliver the skills agenda set out by the Welsh Government. This will require continued constructive working relationships between the Welsh Government and colleges, working through ColegauCymru, to ensure that colleges continue to implement government initiatives and share good practice.
13. The FHE Bill does not affect other statutory checks on colleges. FE colleges will still be subject to Estyn inspection, as well as various financial and accountancy standards and audits, and charity and company law, as well as the Welsh Government's Quality and Effectiveness Framework.
14. The Education Minister's Priorities Letter for FE colleges, sent in May 2012,⁶ outlined four key areas for the sector over the two years 2012/13 and 2013/14:

5 *Priorities for the Further Education Sector: 2012/13-2013/14*. Letter from Leighton Andrews AM, Minister for Education and Skills, sent to college principals 29 May 2012.

6 *ibid*.

- ❶ raising standards and attainment
- ❷ improving learner progression and support
- ❸ building on employer engagement and encouraging enterprise
- ❹ developing Welsh-medium provision.

These priorities, frequently reinforced in speeches to conferences and at meetings with ColegauCymru representatives, provide a clear and helpful policy framework within which colleges operate and within which they can respond to the unique needs of their learners and local communities. ColegauCymru supports the continuation of such communication through policy direction.

15. ColegauCymru welcomes the key role envisaged for it in the White Paper in *‘leading the sector and ensuring a sense of shared responsibility across all colleges’*. This acknowledgement is an endorsement of the views of the Thomas Review, which stated that ColegauCymru *‘has become a collectively energetic and valued organisation showing exemplary commitment to improving education and training in Wales’*.⁷ The ColegauCymru Board embraces this challenge and will wish to work closely with the Welsh Government in drawing up a code of governance and a code of practice covering the relationship between FE colleges and the Welsh Government.
16. ColegauCymru recognises that the final decision on whether to classify FE colleges as NPISH or as central government public sector entities lies with the ONS, not the Welsh Government. There is a risk that, were the proposed Bill to change materially through substantive amendments, it may predispose the ONS to deny the classification sought. ColegauCymru believes the Bill will be able to deliver positive changes whilst simultaneously achieving the objective of satisfying the ONS criteria for NPISH classification and very much hopes that the final version of the Bill, including any amendments accepted during its passage through the Assembly, will not thwart these desired outcomes.

Q1 Whether there is a need for the Bill

17. Yes, there is an urgent need for this Bill.
18. The explanatory memorandum gives a clear account of the importance of the Bill.
19. It sets out three options. To do nothing (option 1) would mean that FE colleges becoming part of central government. Colleges would lose their incentives to generate surpluses which are currently invested in improving services for learners. Assets as well as liabilities would belong to the Government. This

⁷ *The Structure of Education Services in Wales (the Thomas Review)* March 2011, op. cit. Chapter 5 para 16.

could have implications for funds allocated to the Welsh Government through the Barnett formula.

20. The added costs of option 1 show an estimate of £77,348 per year for added administrative and financial management costs. This calculation is based on there being 18 colleges. Assuming the current proposed mergers go through and that there are three colleges likely to be wholly owned by universities in 2013/14, a total of 12 FE colleges would be affected. Even so, ColegauCymru believes that these costs are a considerable underestimate. The Association of Colleges, ColegauCymru's sister organisation in England, pointed out in a personal communication to the chief executive of ColegauCymru that:

'Government accounts are carried out to different international accounting standards so the returns made by Colleges would need to be made on a different basis (e.g. in terms of valuing assets or local government pension scheme (LGPS) pension liabilities). Inter-College transactions and college/government transactions would need to be netted off. This would involve netting off funding from HEFC(W), Construction Skills, MoD contracts and ESF transactions (several hundred in all). UK Treasury requires monthly budgets and management accounts. It isn't clear whether this requirement would be handed down to colleges but there would be an added administrative burden.'

21. The biggest financial loss would be capital spend. As pointed out in the Explanatory Memorandum, the total capital spend by a college in any year would count against any DfES capital budget, not just the capital budget given to colleges by the Welsh Government. Thus the planned £58.5m capital programme, towards which the Welsh Government is paying 50%, would be halved – a dramatic loss of around £29m.
22. Option 2 proposes the setting up of a funding body similar to the Further Education Funding Council for Wales. This proposal would represent a major step change in the policies of the Welsh Government which promoted a 'quango free state in Wales' and has merged with a number of Assembly Sponsored Bodies including ELWa. Setting up a new quango would in any case have no impact on the classification by ONS of colleges. For example, there are two funding councils in England (although both have or soon will have executive agency status) yet colleges there have been classified as NPISH. As pointed out in the Explanatory Memorandum, the cost of running a separate funding council would be £1.84m per year which presumably would be paid for at the expense of learners.
23. Option 3 – the FHE (Governance and Information) Bill is a necessity.
24. The powers that Welsh Ministers currently have derive from the Further Education Act 1992. This 20 year old legislation, which gave FE colleges incorporated status, was a major change for colleges, previously been owned by local education authorities. It included a number of controls that were important for a new sector just finding its feet. Move forward 21 years and matters have

changed radically. ColegauCymru considers that the 1992 Act needs to be amended in the ways proposed by the FHE Bill.

25. It is worth repeating that the FHE White Paper stated that:

'the Welsh Government recognises the maturity of the FE sector in Wales and believes that colleges, rather than government, are best placed to determine how the needs of their learners and local communities should be met; based within the strong and vibrant Welsh culture of collaboration, co-operation and partnership working. This culture is central to the future success of the sector'.

Q2 The key provisions set out in the Bill and whether they are appropriate to deliver its stated purpose

26. The key provisions are appropriate. The proposed Bill strikes an appropriate balance between giving colleges greater responsibility to manage themselves and the recognition of the need for colleges to work within the broad policy areas set out by Government.

27. Colleges will have greater autonomy over their instrument and articles of government. Governing bodies will nonetheless still be required to appoint a principal/chief executive and clerk and to include learners and staff in their membership. There will also be protection ensuring that a governing body must not introduce changes that would lead to the loss of charitable status.

28. The White Paper stated that *'the Welsh Government will work alongside ColegauCymru to develop a Code of Governance for the sector which incorporates the Nolan principles and best practice'.*

29. ColegauCymru will be pleased to undertake this task to ensure high standards of governance are maintained.

30. The Bill provides safeguards against colleges being allowed to transfer its properties, right and liabilities to any other body of their choosing. Regulations will be passed requiring the publication of information, consultation requirements and the bodies to which property and rights can be transferred.

31. Welsh Ministers will have intervention powers including the power to direct the governing body to resolve to dissolve itself in certain circumstances, though the unrestricted ministerial power to dissolve a FE corporation will not be retained if the Bill as it becomes an Act.

32. The Bill gives a college the power to conduct itself through a subsidiary arrangement such as a limited company or charitable incorporated organisation. ColegauCymru is aware that in England, a college made initial explorations of the idea of re-establishing itself as a company limited by guarantee but decided against it when it recognised that FE corporations have better access to higher

education funding, UK Border Agency licences and lengthy LGPS pension deficit recovery periods than companies limited by guarantee. Even in England, then, where a more competitive market in education is encouraged, no college has transferred its assets or liabilities to another body.

Q3 The financial implications arising from the Bill

33. As noted in answer to question 1, there would be added costs if the Bill was not passed or if a funding council was put in place. These added costs at a time of financial stringency would inevitably have a detrimental impact on the services provided for learners.
34. The Bill itself would not lead to increased costs. Colleges may incur some modest legal costs if they choose to change their instrument and articles of government. Banks may apply stricter rules when lending money.

Q4 Potential barriers to the implementation of the key provisions and whether the Bill takes account of them

35. There are no barriers to the implementation of the key provisions. The Bill in effect endorses the NPISH status of colleges that they have enjoyed since 1993 (until the ONS reclassification in 2010) and FE colleges are mature enough to absorb the increased freedoms given in the Bill.

Q5 Whether there are any unintended consequences arising from the Bill

36. Several responses to the White Paper expressed concern that the FE colleges with their newly acquired freedoms would disregard the policies for further education set by the Welsh Government; ignore national agreements on pay; sell off public assets; or even choose to privatise themselves as was apparently the case in England, and focus on profit rather than learners and their communities. ColegauCymru can give clear assurances that none of these will happen.
37. ColegauCymru will further develop its relationship with the Welsh Government. We recognise that an elected government expects its educational policies to be carried out. The Welsh Government will continue to set down conditions attached to its funding of colleges and there will be a revised financial memorandum.
38. However, in order to ensure that the ONS accepts that colleges can be classified as NPISH, the Welsh Government cannot set out regulations directly impacting

on the strategic direction of colleges. The FHE White Paper pointed out that ONS classification is:

'determined by where control lies, rather than by ownership or whether the entity is publicly financed. International guidance defines control as the ability to determine general corporate policy.'

39. The White Paper also quoted from the European Manual on Government Deficit and Debt which states that in the case of schools:

'the general government controls a school if its approval is needed for creating new classes, making significant investments in gross fixed capital formation or borrowing; or if it can prevent the school from ending its relationship with government.'

40. ColegauCymru has in membership all the FE colleges and FE institutions in Wales. As such, it works closely on behalf of the whole FE sector with the Welsh Government, as a critical friend, discussing and commenting on key policies and translating these into recommended actions.

41. A good example is the move towards Transformation. This development was a key Welsh Government policy. FE principals, supported by their governing bodies, took proactive decisions to merge with other colleges and in two instances with their local university. This Transformation was not imposed by the Welsh Government. Rather, the Welsh Government set out its policy direction and colleges responded positively. Other education sectors did not respond in a similar way.

42. There are other examples.

- Pay parity, negotiated between ColegauCymru and the joint trade unions and introduced in 2005/2006, has been honoured by FE colleges.
- ColegauCymru and the joint trade unions have been negotiating a common contract for the past three years and are close to an agreement.
- Several colleges have introduced or are in the process of introducing membership style governing bodies on the lines of that recommended by Humphreys.

43. ColegauCymru will ensure that it recommends to colleges that they retain pay parity between lecturers and school teachers; honour any common contract if agreed with the joint trade unions; and support the introduction of membership bodies on the lines set out in the Humphreys report on governance arrangements.

44. Some commentators have raised the issue of colleges being motivated by profit as a result of increased freedoms. Colleges will retain the 'not for profit institutions serving households' status. This clearly states that colleges are not in existence in order to make profit. Colleges will remain charities and the Principal Regulator will likely be the Welsh Government. A focus on profits rather than the

learner would endanger an institution's charitable status. However, colleges will continue to be entrepreneurial and seek to generate income (in 2011/12 almost £100m) outside of their Welsh Government funding. This helps colleges' overall financial position and brings in valuable additional revenue that is reinvested for the benefit of learners.

45. Finally, attention has been drawn by some to the competitive education philosophy across the border in England and whether the FHE Bill will encourage similar activity by FE colleges in Wales. There is of course a very different political and educational agenda in England. In England, academies, free schools, studio schools and university technical colleges are being established, often in direct competition with high performing colleges. The emphasis is on choice and competition. In Wales, there is a partnership and cooperation agenda in which colleges have played their full part and will continue to do so. In terms of quality standards, however, colleges are not complacent. They remain competitive with each other in their drive to raise standards and improve their services to learners, communities and business.

Q6 The views of stakeholders

46. Principals and governing bodies have indicated clearly their strong views in support of the Bill. Governing bodies comprise governors drawn from a wide range of stakeholders including local authorities, the local community, business, staff and students.
47. The Welsh Government report on the responses to the consultation on the White Paper states 'the responses we received from learning providers generally agreed with the proposals in the White Paper. In contrast, the majority of trades unions disagreed with the proposals'.
48. Governing bodies recognise that the new freedoms will place greater responsibility on them. However the increased freedoms will bring long term benefits to learners, local business and local communities.

Q7 The level of detail on the face of the Bill compared to any powers contained in subordinate legislation

49. ColegauCymru is not able to comment at present. The Bill strikes an appropriate balance between giving colleges greater responsibility to manage themselves and the recognition of the need for colleges to work within the broad policy areas set out by Government.

The FHE Bill: Conclusion

50. On behalf of FE colleges in Wales, ColegauCymru welcomes the decision of the Welsh Government to publish the FHE Bill. The Bill recognises the maturity of the FE sector and the fact that FE colleges will act responsibly with the increased freedoms set out in the Bill.

51. ColegauCymru and colleges will continue to work closely with the Welsh Government and seek to implement its policies aimed at improving education and training opportunities for learners, communities and business.

**“Consultation – The Further and Higher Education (Governance and Information)
(Wales) Bill 2013**

A response from Coleg Gwent, 08 May 2013

To: CYPCommittee@wales.gov.uk

The Explanatory Memorandum prepared by the Welsh Government describes the Bill’s main purposes in the following terms:

“The ... Bill seeks to enhance the autonomy and decision making abilities of Further Education Institutions by removing and modifying existing legislative controls on them.

The Bill also gives effect to the Welsh Government policy to allow data relevant to student grants and loans to be shared by Her Majesty’s Revenue & Customs (HMRC) with the Welsh Ministers and anyone to whom the Welsh Ministers delegate or transfer functions. The data sharing gateway is an integral part of a project to modernise the Student Finance Wales delivery service to simplify and create efficiencies in that service.”

1. Is there a need for a Bill for these purposes? Please explain your answer.

Yes. The FE sector has been independent of local authorities for some 20 years now, and has thrived and matured in that time. We have always worked very closely with the government to put their policies in place, usually very successfully, and that relationship has improved considerably since devolution. We are a highly professional sector and have demonstrated that we can govern ourselves successfully, act together through Colegau Cymru, and work well to implement Welsh Government (WG) objectives. It is also clear from the ONS decision to reclassify colleges as part of the public sector that it is in the interests of Welsh Government to make its own arrangements. Classification as NPISH will serve that purpose well. More independence for FECs will be welcome but it will not affect colleges’ commitment to working with WG and implementing their priorities, nor will it significantly reduce the influence which WG will have over the sector. Coleg Gwent’s recent development of a model of two tier governance, very closely aligned with the recommendations in the Humphreys Report, is an example of independent action by a college to take up

government policy and implement it well in the context of our own operations. We will continue to operate in that way.

2. Do you think the Bill, as drafted, delivers the stated objectives as set out in the Explanatory Memorandum? Please explain your answer.

Yes. It is clearly beneficial in terms of the modernisation of student finances in Wales. It will also deliver additional benefits as stated above: it recognises the maturity of the sector and the close relationship colleges have with WG and it avoids the pitfalls of public sector status.

3. Are the sections of the Bill as drafted appropriate to bring about the purposes described above? If not, what changes need to be made to the Bill?

Yes.

4. How will the Bill change what organisations do currently and what impact will such changes have, if any?

In our view the effect on college behaviour will be very limited. It has always been the case, even when colleges were in the private sector following incorporation, that we have been highly responsive to government policies and preferences. We are the sector that has successfully improved participation, completion and attainment over the last 15 years. We have always borrowed money with great care, albeit having to ask permission to do so. It will be useful to be able to operate more easily through subsidiaries, and the symbolism of being independent is welcome. The close relationship with WG will continue because it is in our interest and we share the government's priorities. Colegau Cymru will continue to be the voice of the sector, led well by highly professional officers and governed well by college principals and chairs. The controls retained by WG together with the high level of funding received by all colleges from that source are more than adequate to ensure that colleges are controlled remain a strong asset to the nation.

5. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?

We can see none once the bill is in law.

6. Do you have any views on the way in which the Bill falls within the legislative competence of the National Assembly for Wales?

No.

7. What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?

In answering this question, you may wish to consider Section 5 of the Explanatory Memorandum, which contains a table summarising the powers delegated to Welsh Ministers in the Bill to make orders and regulations, etc.

Financial Implications

In our view it is important for WG to have such powers to give full effect to their policies for the benefit of Wales.

8. What are your views on the financial implications of the Bill?

In answering this question you may wish to consider Part 2 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the Bill.

The FE sector welcomes the increased financial independence of colleges. We also welcome the fact that FECs' assets and surpluses will stay in our control and have no negative effect on the finances of Wales as a self-governing nation.

9. Are there any other comments you wish to make about specific sections of the Bill?

The financial sector currently sees colleges as blue chip public organisations and that helps a lot with our ability to borrow funds at sensible rates. That view will need to be reinforced by the right public messages as this bill is implemented, without compromising the status of colleges or the role of WG. Correct and appropriate behaviour of colleges and WG in the future will also be important to maintain that. That is possibly the only potential risk of these changes that requires additional thought outside the Bill itself.



UCU Newport Branch

Children and Young People Committee: Consultation on the Further and Higher Education (Governance and Information) (Wales) Bill

1. In the autumn the University College Union (UCU) Crosskeys Branch launched a campaign to “Keep Further Education in the Public Sector”. UCU Newport Branch was fully supportive of this campaign. A petition was signed by 246 signatories, including many Newport Branch UCU members and their families and was first considered by the National Assembly’s Petitions Committee on 19th February 2013¹. In our petition we call upon the National Assembly for Wales to urge the Welsh Government to ensure:
 - i. Further education, along with publicly funded assets, is retained within the public sector.
 - ii. Colleges continue to be bound by the national agreements in FE, such as the national pay scales.
 - iii. The introduction of an all-Wales contract for FE lecturers.
 - iv. Welsh Ministers do not dissolve colleges and give colleges the ability to transfer the property, rights and liabilities to another body.
2. Whilst UCU has responded centrally on behalf of the Union UCU Newport Branch thought it would be appropriate to contribute to this consultation given our petition and on-going campaign.
3. The Further and Higher Education (Governance and Information) (Wales) Bill seeks to enhance the autonomy and decision making abilities of Further Education Institutions by removing and modifying existing legislative controls on them. We recognise that in October 2010, the Office of National Statistics (ONS) announced that it would reclassify colleges as part of central government for the purpose of national accounts, and this Bill has partly arisen in response to this reclassification. We also accept that the change in ONS classification will have significant implications for Further Education Institutions (FEIs) including any surpluses generated by colleges would be accounted for as Welsh Government funds and FEIs would be unable to retain a surplus in order to build reserves for future projects.
4. However, this Bill risks alienating and demoralising teachers and lecturers since the increase in college freedoms may allow colleges to remove themselves from nationally agreed pay scales and current negotiations to

¹ <http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?lId=5790&Opt=0>

[Type text]

establish national terms and conditions; and dissolve themselves and transfer their assets and liabilities to another body.

5. In a letter dated 8th May 2013 to the Petitions Committee from the Minister for Education, he states there are no plans for Academies and privately-run institutions in Wales. If governing bodies are given the power to dissolve the corporation and transfer a corporation's rights and assets to a person or bodies, to whom could these responsibilities and assets be transferred to if the Minister has already ruled out privately-run institutions in this letter? The Minister confirms that transferred assets would have to be solely used for charitable purposes. Could charitable and third sector organisations end up running our FEIs? The Minister has also not explained why it might be necessary for a FEI to dissolve itself and transfer its property, rights and liabilities to another body. It is these unanswered questions and uncertainties which are of grave concerns to teachers and lecturers.
6. UCU's preferred option is the introduction of a Wales Funding Council. Running costs for the HEFCW are currently £2.9 million per annum². If a Funding Council was set up for the further education sector then some functions currently undertaken by the Welsh Government would transfer to the new body and there would be a reduction in Welsh Government direct running costs totalling £1.06m³. Therefore we have calculated that the net cost of introducing a Funding Council would be £1.84m.
7. The Welsh Government's regulatory impact assessment for introducing an Assembly Bill makes a naïve assumption that the introduction of a Bill would not cost a penny extra to the public purse. It is suggested the policy and legislative process for achieving the proposed powers will be managed by officials within the DfES. Thus there will be no costs to the Welsh Government creating the new provisions⁴. Also, it is claimed by the Welsh Government that the implementation of the policies following creation of the necessary provisions will not result in additional costs for the FEIs in Wales⁵. However, it is suggested that doing nothing and maintaining the current system (Option 1) would cost the Welsh Government and FEIs £77,348 per annum⁶.
8. In exercising its persuasion we believe the Welsh Government's regulatory impact assessment is biased towards Option 3 and the facts have been presented to make this option appear as a credible solution to the problem when outstanding questions remain.

² Further and Higher Education (Governance and Information) (Wales) Bill – Explanatory Memorandum: Paragraph 83, Page 22

³ Further and Higher Education (Governance and Information) (Wales) Bill – Explanatory Memorandum: Paragraph 85, Page 23

⁴ Further and Higher Education (Governance and Information) (Wales) Bill – Explanatory Memorandum: Paragraph 94, Page 24

⁵ Further and Higher Education (Governance and Information) (Wales) Bill – Explanatory Memorandum: Paragraph 95, Page 25

⁶ Further and Higher Education (Governance and Information) (Wales) Bill – Explanatory Memorandum: Paragraph 65, Page 18

[Type text]

9. One of the risks for Option 3 suggests that an Assembly Bill not may resolve the ONS accounting issue as it may arise that the legislation does not give the ONS Classification Committee the assurances needed that key steps have taken place to increase the autonomy of FE colleges and the reversal of the public sector categorisation for national account purposes fails⁷. It is possible the Minister could be pressing ahead with this Bill that would not resolve the ONS classification issue some 18 months down the line, which, in our opinion, is not prudent governance on the part of the Welsh Government.
10. In conclusion, UCU Newport Branch is concerned about the impact of this Bill upon the teaching profession. Our members are loyal and passionate educators who believe in putting the learner at the heart of our education system. We believe the result of this Bill will alienate and demoralise teachers and lecturers since the increase in college freedoms may allow colleges to remove themselves from nationally agreed pay scales and current negotiations to establish national terms and conditions; and dissolve themselves and transfer their assets and liabilities to another body.
11. UCU Newport Branch members are angry since the 2011 Welsh Labour National Assembly for Wales election manifesto declared “FE colleges as public assets which belong to their local communities and its community of staff and learners”. One commitment in the manifesto was to “ensure the parity of esteem for teachers and lecturers by maintaining the current link between their pay and conditions” as well as “introduce an all-Wales contract for FE lecturers”. If this Bill is passed it could undoubtedly result in industrial action; teachers and lecturers will feel betrayed by the Welsh Labour Government for introducing the break-up of FE in the public sector. We hope that AMs will vote according to their conscience and values and “Keep Further Education in the Public Sector.”

Roy McCabe – UCU Coleg Gwent Newport Branch Branch Chair
John James – UCU Coleg Gwent Newport Branch Vice Chair

⁷ Further and Higher Education (Governance and Information) (Wales) Bill – Explanatory Memorandum: Paragraph 97, Page 24



**WALES
CYMRU**

RESPONSE TO:

**The Further and Higher Education
(Governance and Information)
(Wales) Bill**

CONSULTATION

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UCU Wales response to the consultation on Higher and Further Education (Governance and Information) (Wales) Bill

1. The University and College Union (UCU Wales) represents more than 7,000 academics, lecturers, trainers, instructors, researchers, managers, administrators, computer staff, librarians, and postgraduates in universities, colleges, adult education and training organisations across Wales.

2. UCU Wales is a politically autonomous but integral part of UCU, the largest post-school union in the world: a force for educators and education that employers and government cannot ignore.

3. UCU was formed on the 1st June 2006 by the amalgamation of two strong partners – the Association of University Teachers (AUT) and the National Association of Teachers in Further and Higher Education (NATFHE) – who shared **a long history of defending and advancing educators’** employment and professional interests.

4. We welcome the opportunity to respond to the consultation on the Further and Higher Education (Governance and Information) (Wales) Bill.

5. The content of our evidence is based on the explanatory memorandum, the information we have received through formal briefings with civil servants and advice sought from counsel in regard to the impact that the legislation will have on nationally agreed pay scales and an All Wales contract. We are currently seeking further advice from counsel, regarding the legal process chosen by the civil servants.

5. During discussions on the white paper and from the advice UNISON and UCU sought in regard to the white paper (attached at appendix one) it became clear to us that the rationale for the bill as laid out in the Explanatory Memorandum, left key questions unanswered.

6. The memorandum at page 6 states

“any surpluses generated by colleges would be accounted for as Welsh Government funds; FEIs would be unable to retain a surplus in order to build reserves for future projects; and additional financial information and accounting requirements.”

7. The first question we find difficult to answer is why, when schools can have total reserves amounting to £67,269,000¹ for the financial year 2011/12 and remain in the public sector; do colleges need to return to NPISH classification to do the same thing? If schools, which are classified as public sector, are able to run surpluses, there does not appear to be an insurmountable problem. College

¹ <https://statswales.wales.gov.uk/Catalogue/Local-Government/Finance/Revenue/Delegated-School-Outturn>

reserves for 2012 totalled £123,736,626. (appendix 3). UCU are concerned that the proposals set out in the Bill, allow for reserves to be diverted into the private sector. Money, which in our opinion, would be better utilised if it remained within the public sector and the control of the Welsh Government.

8. Secondly, why are the additional financial and accounting requirements so onerous as to require such a significant change to the FE sector as this bill will create?

9. And lastly, why do we not have sight of the draft regulations which will protect the significant assets which are currently, public sector assets?

10. We are concerned that the drive behind the Bill is more to do with pressures from the Treasury than problems regarding surpluses or the ability to borrow money. Discussions around the reclassification of colleges in England revealed that the ONS, in responding to a letter from Martin Doel of the AoC, stated that;

“the classification decision [to place colleges in the public sector] is for statistical purposes only. It introduces no new controls over borrowing by the FE sector, but merely reflects the powers that already exist.”

(appendix two para.6)

11. Therefore UCU question the need to implement a bill that seeks to reclassify FE, as it would appear that **the “negative impacts for the FE sector” that have** been attributed to reclassification of the sector to central government, will not be realised?

12. UCU Wales are fundamentally opposed to the proposal to enhance the autonomy and decision making abilities of Further Education Institutions (FEIs) in Wales and believe that the consequences of this bill have not been fully considered by the Welsh Government, nor will it be if the procedure chosen to introduce the legislation remains the same. In our opinion, should the proposal become legislation, we will see the slow privatisation of post 16 educational provision in Wales. It will not produce wholesale change overnight, but it will **allow Principals to ‘privatise’ any part of the service.** The consequences of which are likely to lead to a profit driven/target lead culture, **focussed on “value for money”, which** is not conducive to fostering quality education that puts the needs of students and the community at its heart, which from our perspective, is the key mission of Further Education.

13. We also believe that the continued marketisation of the sector will further erode the educational contribution and professionalism of teachers and lecturers; decisions will increasingly be based on managerial models rather than educational models. Already we have seen a shift in this culture since incorporation in 1992; students are no longer referred to as students, but as learners, customers or consumers, qualifications are now outcomes or output and the focus has been on how much output can be achieved in the shortest possible time at the least cost. This in our opinion may represent value for money, but it does not represent quality education. For the Welsh Government to truly be able to realise its vision of a world class education system that not only provides job opportunities, but also lifelong chances, improved health and

wellbeing and helps to tackle child poverty, we need to re-examine the proposals as set out in the Bill.

14. We agree with the First Minister in that,

"We want to ensure better life chances for our young people by helping them to achieve their potential. Education is fundamental to building a just, inclusive and fair society."

Education is the key to a just, inclusive and fair society. Already education is being rationed and funded based on age; the reality is that free education ends at 18. Affordable education and training after 18 and throughout life will be affected by privatisation of post 16 education in Wales, and is not the path Wales should follow.

15. UCU is undertaking research into the culture of managerialism and the erosion of educational professionalism and has found that increasingly, the views and commitment of teaching staff are not taken into account in institutional arrangements. The experience, knowledge and judgement of professional practitioners has been pushed aside by a target driven culture of audit and inspection, causing much damage to education, in its true sense. UCU wish to redress this balance.

16. **UCU Wales' concerns regarding the privatisation** of the FE sector are based on what we see happening in England., where we see examples of for-profit subsidiaries being set up with staff being transferred to private providers on inferior terms. There have also been problems associated with outsourcing, offshoring and sub-contracting. (See appendix two paras. 15 - 22). We do not wish to see this mirrored in Wales. The loss of public money to the private sector is not, in our opinion a good use of scarce resources. We would prefer to see such scarce resources remain in the public sector, for the purpose of funding FE provision. UCU already has evidence that the use of public-private partnerships has meant that the pressure to keep the cost of bids down, is leading colleges to cut staff costs, increase casualisation or transfer staff to cheaper contracts in order to be competitive.

17. The previous government placed additional funding within the sector to establish an all Wales pay scale for lecturers in Wales to provide pay parity with school teachers. The advice to schools from the education minister in England is to dismantle, for the good of the school, the current terms and conditions of school teachers. A fact that we believe will be replicated in colleges in Wales if the current bill is passed into legislation. We would also hope that the Welsh Government would not seek to support the culture of job insecurity associated with fixed term and hourly paid contracts.

18. With regard to the purpose of the Bill UCU Wales are concerned that the legislation that Welsh Government seeks, will not achieve the aim of reclassifying the FE Sector to NPISH. It states clearly in the memorandum that one of the risks of introducing the Bill is that,

"The legislation does not give the ONS Classification Committee the assurances needed that key steps have taken place to increase autonomy of FE colleges and

the reversal of the public sector categorisation for national account purposes fails.”

19. UCU question the efficacy of the Bill, if it’s “key powers” for ONS re-classification, have not yet been established as fit for purpose? We are currently awaiting advice from counsel on this matter.

20. UCU Wales believes that FE sector in Wales should remain in the public sector and that many of the successes of the past decade have resulted from the level of control the Welsh Government has used to persuade the sector to do its bidding.

21. UCU are concerned that , based on our experience of what is happening in England, the Bill is being driven by the policies of Westminster and the pressures of the Treasury to reduce the National debt. As this is not an issue for Wales, we question why it is necessary to follow this course of action.

Responses to the specific questions set by the committee are addressed below.

Consultation Questions

General

1. The Explanatory Memorandum prepared by the Welsh Government describes the Bills main purposes in the following terms:

“The ...Bill seeks to enhance the autonomy and decision making abilities of Further Education Institutions by removing and modifying existing legislative controls on them

The Bill also gives effect to the Welsh Government policy to allow data relevant to student grants and loans to be shared by Her Majesty’s Revenue & Customs (HMRC) with the Welsh Ministers and anyone to whom the Welsh Ministers delegate or transfer functions. The data sharing gateway is an integral part of a project to modernise the Student Finance Wales delivery service to simplify and create efficiencies in that service.”

Is there a need for a Bill for these purposes? Please explain your answer.

UCU question the need for the Bill, if the main objectives of the Bill are to remove and modify existing legislative controls in order to reverse the ONS classification from Central Government to NPISH.

UCU have concerns that removing and modifying existing legislative controls, will not be in the best interest of the learners or the wider community.

The legislation *could* result in the reversal, but there is a risk that it will not give the ONS Classification Committee the assurances needed to do so. Therefore it is questionable that there is a need for the Bill, if it is not guaranteed that it will achieve what it proposes to do.

2. Do you think the Bill, as drafted, delivers the stated objectives as set out in the Explanatory Memorandum? Please explain your answer.

As already stated, it is acknowledged in the Memorandum that the Bill will not necessarily result in reclassification by the ONS, which therefore would not deliver one of the stated objectives of the Bill. Thus the need to remove and modify existing legislative controls on FECs in order to achieve this aim, without the certainty of obtaining that objective, seems to be an unnecessary exercise, other than it having the potential to allow privatisation of the post 16 education sector.

3. Are the sections of the Bill as drafted appropriate to bring about the purposes described above? If not, what changes need to be made to the Bill?

We are awaiting advice from counsel on this matter

4. How will the Bill change what organisations do currently and what impact will such changes have, if any?

UCU are concerned that greater autonomy for FECs to make changes to their Instruments and Articles of Government, will enable colleges to determine the shape and size of their own governing bodies, with no guarantees that staff or student members will be included. It is important that *elected* members of the different staff groups and students retain places on governing bodies, to ensure that their interests are represented accurately. We would want to see the schedule amended to reflect representation from the academic staff and support staff, which is elected by the constituent bodies.

The ability of FECs to dissolve themselves, borrow funds and establish subsidiary arrangements without the consent of Welsh Ministers, provides the potential for FECs to dissolve themselves and set up as profit making enterprises.

There is an implicit assumption that the needs of the learners and of the community will be better met if there is less control from Welsh Ministers. UCU do not believe this to be the case. Further Education should remain in the Public Sector. The proposal to repeal restrictions and controls on FECs, raises concerns that this will open up post-16 education to privatisation. We believe that the best interest of our members, our students and the wider community are best met by a system that is funded and controlled by the public and is accountable to the citizens of Wales.

It is clear that through franchising and sub-contracting arrangements in the post 16 education and training sector in England, public money is being diverted into the for-profit private sector.

UCU would like to know what safeguards will be put in place to ensure that public money remains in the public sector? Why do we not have the draft

regulations tabled at the same time? The memorandum at section 24 on page seven states that the Bill makes provision for Regulations to prescribe the publication of the information, consultation requirements and the bodies to which property and rights can be transferred.

We are also very concerned that the introduction of the Bill as it stands will herald the disintegration of the National Pay Scales for Lecturers in FE and will impact adversely on the National Contract Negotiations. It is our understanding that Welsh Ministers would have no powers to prevent this from happening, should the Bill progress. Without the intervention of the Ministers the National Pay Scales would not have been agreed and the Contract Negotiations would not have progressed as far as they have done.

Disparity of pay and conditions amongst lecturers in Wales is likely to lead to the demoralisation of the workforce, increase difficulties in recruiting appropriately qualified staff and lead to a decline in the quality of educational provision, which **we do not believe will serve the aim of the Welsh Government to "help everyone reach their potential, reduce inequality, and improve economic and social well-being"**.

We would also like to know what safeguards will be put in place to ensure that the National Pay Scale for FE Lecturers in Wales and a national contract for all staff in FE will be maintained and implemented in FECs?

5. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?

Trade Union dissent and possible industrial action.

6. Do you have any views on the way in which the Bill falls within the legislative competence of the National Assembly for Wales?

We are awaiting advice from counsel on this matter.

Powers to make subordinate legislation

7. What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?

In answering this question, you may wish to consider Section 5 of the Explanatory Memorandum, which contains a table summarising the powers delegated to Welsh Ministers in the Bill to make orders and regulations, etc.

We are awaiting advice from counsel on this matter.

Financial Implications

8. What are your views on the financial implications of the Bill?

In answering this question you may wish to consider Part 2 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the Bill.

As previously stated, UCU has concerns that the removal and modification of existing legislation on FECs, runs the risk of the privatisation of the post 16 education sector and the loss of public money to private enterprise. The cost of which could potentially be greater than the £77,348 per annum, estimated to maintain the current system.

UCU also seek to question why reclassification to central government, is considered a negative impact? Why is it not possible for college reserves to be returned to Welsh Government funds and redistributed to colleges where there is a need? We believe that with proper mechanisms in place, the Welsh Government would be able to retain any surpluses and re-invest them in Further Education. UCU Wales urge the Welsh Government to consider this option as a way of retaining control over the sector, which we believe is essential to the continued success of FE in Wales.

With regard to the HMRC-SLC verification of household income, it is agreed that an automated verification system would be preferable to a manual system, in terms of data sharing. It will hopefully simplify the process for students. However, there are concerns that information held by HMRC may not always accurately reflect the actual household income at the time of application, if HMRC the information used is relevant to the previous financial year.

UCU would like to know what safeguards will be put in place to ensure that students do not suffer detriment, if current household income differs from the information held by HMRC?

This would be particularly important for students from lower income households, where inadequate finance could cause unnecessary hardship and possibly deter some from entering Higher Education.

Other comments

9. Are there any other comments you wish to make about specific sections of the Bill?

UCU welcome the proposal that there will be an enhanced intervention power for the Welsh Minister, where a governing body is mismanaging its affairs; however if Estyn are proposing to possibly increase their inspection cycle up to nine years, the Minister may not be informed of such mismanagement early enough for intervention to be effective?

Section 25 of the memorandum makes reference to the "repeal of the requirement for Welsh Ministers to have an intervention policy", which seems to contradict the proposal that they will have enhanced intervention powers

UCU would like to know what mechanisms will be put in place to monitor appropriate management of college affairs.

UCU are concerned that enhancing the autonomy and decision making abilities of FEIs, will not necessarily benefit the needs of the learners and the local community, as there is the potential for the needs of shareholders to outweigh the needs of education.

It is the view of UCU that since incorporation there has been an increase in the marketisation of the education system, alongside this the scope of professional educationalists to make their own judgements has become more and more limited. Focus on productivity and quality assurance policies has eroded the focus on the holistic education of the individual.

UCU would welcome the opportunity to explore this issue further with Welsh Government Ministers so that we can work towards a truly first class education system in Wales that not only prepares its citizens for employment, but also for life, regardless of their age or financial circumstances.

**IN THE MATTER OF THE WELSH GOVERNMENT'S WHITE PAPER
ON THE FURTHER AND HIGHER EDUCATION (WALES) BILL**

OPINION

introduction

1. I am asked to advise the University and College Union (“UCU”) on the Welsh Government’s proposal, set out in its White Paper, ‘Further and Higher Education Wales Bill’, to de-regulate further education institutions (“FEIs”) in Wales¹. In October 2010, the Office for National Statistics (“ONS”) decided to change the classification of FEIs (for public accounts purposes) from “not for profit institutions serving households” to “central government”. In May 2012, ONS re-classified FEIs in England after the Education Act 2011 (“the 2011 Act”) came into force, but ONS did not re-classify FEIs in Wales.

2. One explicit aim of the Welsh Government’s proposal is to counter the effect the decision which ONS made in October 2010, as it affects FEIs in Wales². The aim is to decrease the control exercised by the Welsh Government over FEIs, in the hope that this will ensure that they are classified once more as NPISHs. At the same, time, however, I am told that the Minister for Education and Skills has been advised that the de-regulation of FEIs will not prevent the Welsh Government from meeting its manifesto commitments in this field. There are two: to “ensure parity of esteem between college lecturers and school teaching staff by maintaining the current link between their pay and conditions” and to “introduce an all-Wales contract for FE lecturers”³.

3. I am asked to advise whether I agree that these three aims (de-regulation, re-classification, and continuing control of employment terms of staff) are compatible. There are really 3 issues: whether
 - a. the changes proposed in the White Paper are likely to result in the re-classification

¹As far as I can tell, the White Paper is not accompanied by a draft Bill.

²See, for example, the “Overview” at the start of the White Paper, and the third paragraph of the Ministerial foreword.

³Welsh Labour Manifesto 2011, page 37, second and third bullets.

- of FEIs in Wales; and
 - b. the proposed legislation is inconsistent with continuing controls over pay and conditions of staff; and
 - c. if controls over pay and conditions of staff are kept, those might or would affect re-classification.
4. In this Opinion I will consider:
- a. the instruments which deal with classification,
 - b. ONS's general approach to classification,
 - c. ONS's classification of FEIs,
 - d. the relevant legislative provisions,
 - e. the White Paper,
 - f. UCU's response, and
 - g. the issue on which I am asked to advise.

a. the instruments which deal with classification

(1) the European System of National and Regional Accounts 1995

5. The European System of National and Regional Accounts 1995 ("ESA 95") is "an internationally compatible accounting framework for a systematic and detailed description of a total economy"⁴. It was adopted in a Council Regulation dated 25 June 2006 (Council Regulation 2223/96), and has been amended since. ESA 95 is a long document, with many classifications and sub-classifications.
6. The system recognises five types of unit: non-financial corporations, financial corporations, general government, households, and non-profit institutions serving households ("NPISHs") (ESA 95, paragraph 1.28). The sector "non-financial corporations" includes public non-financial corporations (S1101). These are "all non-financial corporations that are subject to control (see paragraph 2.26) by government units" (ESA 95, paragraph 2.28).
7. Paragraph 2.26 of ESA 95 provides that "Control over a corporation is defined as the ability to determine general corporate policy by choosing appropriate directors, if

⁴ESA 95, paragraph 1.01.

necessary. A single institutional unit (...a government unit) secures control by owning more than half the voting shares, or otherwise controlling more than half the shareholders' voting power. In addition, government secures control over a corporation as a result of special legislation decree or regulation which empowers the government to determine corporate policy or to appoint the directors.”

8. The key distinction for current purposes is between the general government sector (S.13) and NPISHs (S.15). “Central government” is defined as including “all institutional units which are other non-market producers (see paragraph 3.26⁵) whose output is intended for individual and collective consumption, and mainly financed by compulsory payments made by units belonging to other sectors, and/or all institutional units principally engaged in the redistribution of national income and wealth”⁶. The “institutional units” included in sector 13 include “non-profit institutions recognised as independent legal entities which are other non-market producers and which are controlled and mainly financed by general government”⁷.
9. A further category is the private non-profit institution (“NPI”). A NPI is “a legal or social entity created for the purpose of producing goods and services whose status does not permit them to be a source of income, profit or other financial gains for the units that establish, control, or finance them....any surpluses they make cannot be appropriated by other institutional units” (ESA 95, paragraph 3.31). “If less than 50% of production costs are covered by sales, an institutional unit is an other non-market producer and classified to the sector NPISH. But other non-market NPIs that are controlled and mainly financed by general government are classified to the general government sector” (ibid, paragraph 3.32).
10. Paragraph 2.87 of ESA 95 defines NPISHs (S.15). They are NPIs which are separate legal

⁵ESA 95 distinguishes between market output (P11), output produced for own final use (P12) and other non-market output (P13) (ESA 95, paragraph 3.16. “Other non-market output” covers output that is provided free, or at prices which are not significantly different, to other units” (ibid, paragraph 3.23). An “other non-market producers” are “local KAU or institutional or institutional units whose major part of output is provided free or at economically insignificant prices” (ibid, paragraph 3.26). A ‘KAU’ is a “kind-of-activity-unit” (ibid, list of abbreviations and acronyms).

⁶Ibid, paragraph 2.68.

⁷Ibid, paragraph 2.69.b).

entities, which serve households and which are private other non-market producers. “Their principle resources, apart from those derived from occasional sales, come mainly from voluntary contributions, in cash or kind from households in their capacity as consumers, from payments made by general governments, and from property income”. S.15 includes a list of the main NPISHs; trade unions, professional or learned societies, consumers’ associations, political parties, churches or religious societies, including those financed, but not controlled by, governments) social, recreational and sports clubs, charities, relief and aid organisations financed by voluntary transfers in cash or in kind from other institutional units. Charities which serve non-resident units are included, and entities “where membership gives right to a predetermined set of goods and services” are excluded.

11. Schools are dealt with specifically in paragraph 3.36 of ESA 95. A school mainly financed by payments from government which are linked to the number of pupils, is, by implication, an other non-market producer. If it is a public producer, that is, “when it is mainly financed and controlled by the government, it should be classified in the sector general government”.

(2) *Eurostat’s Manual on Government Deficit and Debt (“MGDD”)*

12. Eurostat’s Manual on Government Deficit and Debt (“MGDD”) provides further guidance on classification. At paragraph I.2.3, it deals with the “Concept of public institutional unit”. It says,

“A public producer is a producer that is controlled by general government. All other producers are private producers.

• Public producers are found either in the corporations’ sectors (if they are market) or in the general government sector (if they are non-market or if they are not institutional units).

• Control is defined as the ability to determine the general (corporate) policy or programme of an institutional unit by appointing appropriate directors or managers, if necessary. Control may be exercised by government directly or indirectly (through a public holding corporation for example).

• Owning more than half the shares of a corporation is a sufficient, but not a necessary, condition for control. Government can also exercise control over a corporation through special legislation, decree or regulation that empowers the government to determine corporate policy or to appoint the directors.

• This definition of control is also applicable to NPIs. But in cases where the criteria set out above are not formally satisfied, or where special legislation is lacking, a more

operational definition of control is necessary. The government secures the control of a unit when it influences the management of this specific unit, independently of general supervision exercised on all similar units. Public intervention in the form of general regulations applicable to all units working in the same activity should not be considered as relevant when deciding whether the government holds control over an individual unit.

Control in the example of schools

· General government controls a school if its approval is needed to create new classes, make significant investments in gross fixed capital formation, borrow or if it can prevent the school from ending its relationship with government.

· However, general government does not control the unit if it just finances the school or supervises the quality of education the school has to provide (fixing general programmes, or the maximum number of pupils per class)."

b. ONS's general approach to classification

(1) ONS's classification process

13. In January 2012, ONS issued a paper⁸ on its classification process. Paragraphs 21-24 are as follows:

"21. The guidance is extensive but two main stages can be identified when classifying an entity to an institutional sector. The first involves a decision on whether the entity is within the public or private sectors, and the second a decision on whether it is a market or non-market producer.

22. In summary, the difference between the public and private sectors is determined by where control lies, rather than by ownership or whether or not the entity is publicly financed. International guidance defines control as the ability to determine general corporate policy. For example, this control can be exercised through the appointment of directors, control of over half of the shareholders' voting power, through special legislation or decree, or through regulation.

23. As a result NACC will examine an entity to see whether there are any factors that enable any part of the public sector, either individually or collectively, to determine the general corporate policy of the entity. This includes recognition that government, or other sectors, may also control a unit through contractual arrangements. If this control is established, the entity is classified to the public sector.

24. Having decided whether an entity is part of the public or private sectors, the second important aspect for sector classification is to determine whether it is a market or non-market entity. Public sector market entities are classified as public corporations (for example, Royal Mail and Manchester Airport Group); public sector non-market entities are classified in the general government sector (for example, government departments

⁸UK National Accounts sector and transaction classification: A summary of the classification process (ONS, January 2012), page 6.

and the BBC). General government is then subdivided into sub-sectors, including central government, state government and local government. Private sector market entities are classified as private corporations, and private sector non-market entities are generally classified to a sector known as Non-profit Institutions Providing Services to Households.”

(2) public control

14. In September 2012, ONS sent an email to UCU. This referred to ESA 95 and to MGDD (both in general terms, to paragraphs 2.26 and 1.2.3 specifically). It went on to say that ‘general corporate policy’ is not defined anywhere in MGDD, but that ONS uses 14 indicators of public control. These are whether the public sector can
- a. determine aspects of how the body delivers its outputs;
 - b. have a final say in the sale/acquisition of fixed assets;
 - c. take a share of proceeds of asset disposals;
 - d. close the body;
 - e. prevent the body from ending its relationship with the public sector;
 - f. veto any takeover (except in the case of an conventional special share);
 - g. change the constitution of the body, or veto changes to it;
 - h. decide what sort of financial transactions the body can undertake, or limit them;
 - i. prevent the body from receiving certain types of income from other sources;
 - j. exert numerous minor controls over how the body is run;
 - k. exert financial control as part of a general system of controlling public expenditure;
 - l. control dividend policy;
 - m. set pay rates;
 - n. (for non-regulatory reasons) approve acquisitions.
15. The email went on to say that the presence of any of these can be enough to make a body part of the public sector, unless the power is considered to be a reserve power only. ONS’s view was that the powers of the Welsh Ministers over borrowing satisfied conditions h. and k., and their powers to interfere with governance arrangements, and to merge and close bodies met conditions d. and g.. In any case, MGDD also provides specific guidance on schools (which, as FE Corporations are similar to schools, applies by analogy). Paragraph 1.2.3 of MGDD is then quoted.

c. ONS’s classification of FEIs

(1) October 2010

16. On 13 October 2010, ONS issued a paper called “Classification of Sixth Form and Further Education Institutions” (“the 2010 paper”). This exercise was prompted by the creation of sixth form college corporations by the Apprenticeships, Skills, Children and Learning Act 2009. It led to a review of the classification of FEIs in England and Wales. The executive summary reports that ONS used MGDD, which provides guidance on classification. ONS decided that FEIs should be re-classified from NPISH to central government. The key factor in this decision was “public sector powers over the various institutions. Most importantly [FEIs] require public sector approval for borrowing....” ONS relied on the passage in the MGDD, quoted in paragraph 12, above.

17. In section 2 of the 2010 paper, ONS explained that it had, from 1993, classified FEIs as NPISHs. This decision pre-dated the issue of MGDD. Before that, it had classified them in the local authority sector. In section 3 of the 2010 paper, ONS says that it has considered the legislative basis of FEIs, and that a key factor has been the MGDD, which is said to imply that an institution should be classified to the sector which controls its borrowing. Section 19 of the Further and Higher Education Act 1993 made borrowing by FEIs subject to the consent of “the appropriate council”: and those bodies were classified by ONS as Central Government.

(2) May 2012

18. On 31 May 2012, ONS issued a further paper (“the 2012 paper”), announcing its decision to re-classify FEIs in England from the General Government to the NPISH sector. This was prompted by the passage of the Education Act 2011 (“the 2011 Act”). The executive summary describes the 2010 decision as being based on “the discovery of public sector controls” over [FEIs], sufficient to result in ONS concluding that the public sector had control over these bodies’ general corporate policy”. ONS’s assessment of the changes made by the 2011 Act was that they were “sufficient to remove public sector control”. On page 4 of the 2012 paper, ONS explains that the reclassification in 2010 reflected “public sector controls held by the public sector over [FEIs’] general corporate policy.....A number of different controls were identified, but one of the most important related to borrowing.....Other public sector controls included controls over things like the governance arrangements and the public sector also had the ability to close or to merge [FEIs]”.

charitable incorporated organisation, unless the Welsh Ministers decide otherwise, nor can they be exercised for the purpose of providing education if the provision is secured wholly or partly by funds provided by the National Assembly for Wales, unless it decides otherwise. The power listed at paragraph 21.c may not be exercised by a FEI in Wales unless the Welsh Ministers consent.

23. The statutory provisions about instruments and articles of government are different in England and Wales. Instruments of government in England must comply with Part 2 of Schedule 4 to the 1992 Act, and apart from that, may make “such other provision as may be necessary or desirable”. In Wales, they must comply with Part 3 of Schedule 4, and subject to that, may make any provision which is authorised by Part 3, and such other provision as may be necessary or desirable.
24. In England, an instrument must specify basic things, such as how many members a corporation has, eligibility for membership, that the staff and students must be included (though it is not specified how), and how members are to be appointed. It must make provisions about procedures, and, in particular, must specify how the FEI may resolve for its dissolution and the transfer of its property, rights and liabilities. An instrument must also provide for there to be a chief executive, and a clerk, and for their responsibilities. It must require the FEI to publish its arrangements for consulting staff and students. It must also permit the FEI to change its name, with the consent of the Secretary of State, and must specify how the FEI may change or replace the instrument and articles of government. The instrument must prevent the FEI from making changes which would result in its ceasing to be a charity.
25. The provisions which apply in Wales are more detailed and prescriptive. By paragraph 14, an instrument must take into account the power of the Welsh Ministers, in section 39 of the Learning and Skills Act 2000 (“the 2000 Act”), to appoint up to two people to be a governor of a FEI. An instrument may provide for a person to be nominated as governor by some other body, including a body nominated by the Welsh Ministers. There is no provision for an instrument to provide for the dissolution of the FEI.
26. By section 21, on the date when it is established, the instrument and articles of government of an FEI must be such as is prescribed in regulations. Section 22 of the 1992 Act applies

19. The 2012 paper then describes the provisions of the 2011 Act. It removed the requirement for consent to borrow (“One of the main changes”). It also removed the Secretary of State’s power to modify, revoke or replace instruments and articles of FEIs in England, and transferred it to the FEIs. The Secretary of State no longer has a right to dissolve FEIs, or to appoint up to two additional members of a governing body. Some controls remain, but they are limited to situations where an institution is being mismanaged, or performing badly. In such circumstances the Secretary of State can replace the governing body, or give directions to the governors. ONS sees these powers as reserve, or ‘step-in’ powers. They do not provide the public sector with control over the general corporate policy of FEIs in England. If the powers were exercised, then that would result in the public sector taking control of an FEI.

d. the relevant legislative provisions

20. The 2011 Act amended the Further and Higher Education Act 1992 (“the 1992 Act”), which is the enactment which applies to FEIs in England and in Wales. Several of the provisions differ as between England and Wales, and it can be deduced from ONS’s current classification of FEIs in England and Wales that those differences account for the different classifications.
21. Section 19 is entitled ‘Supplementary powers of further education corporations’⁹. Section 19(4) confers powers on FEIs to
- a. form, participate in forming or invest in a company,
 - b. to form, participate in forming or otherwise become a member of a charitable incorporated organisation,
 - c. to borrow money, to grant a mortgage, charge or security,
 - d. to invest surpluses,
 - e. to accept gifts and
 - f. to do things which are incidental to the carrying on of an educational institution.
22. The powers listed in paragraphs 21 a. and b. are limited as respects FEIs in Wales. They cannot be exercised for the purposes of conducting an educational institution, or investing in a company which conducts an educational institution, or becoming a member of a

⁹In this part of this Opinion, when I use the acronym ‘FEI’, it refers to further a education corporation.

in England. Section 22 gives an FEI in England a power to modify or replace its instrument of government. But in Wales, by section 22ZA, any draft replacement or modification of an instrument of government produced by an FEI has to be approved by the Welsh Ministers. The Welsh Ministers also have power, of their own motion, to modify, revoke or replace an instrument of government. The Welsh Ministers may also direct FEIs in Wales to modify, replace or revoke their articles of government, or to secure that any bye-laws made under the instrument of government are modified, replaced or revoked.

27. By section 22A, a further education corporation must be a charity.
28. In England, if a FEI proposes to dissolve itself, it must publish details of its proposal, and consult on it (section 27). If having consulted and taken account of consultees' views, a FEI in England decides to dissolve itself, it must notify the Secretary of State, and it is dissolved on the dissolution date (section 27A). The FEI may transfer its property, rights and liabilities to such body as may be prescribed. If the transferee is not a charity established for exclusively educational purposes, any property transferred must be transferred for use for exclusively educational charitable purposes (section 27B).
29. In Wales, the Welsh Ministers may by order provide for the dissolution of a FEI, and for the transfer of its property, rights and liabilities to any person appearing to the Welsh Ministers to be wholly or mainly engaged in the provision of educational facilities or services, or any body corporate established for purposes which include the provision of such facilities or services. The Welsh Ministers may transfer such property rights and liabilities to the higher education funding council. If the recipient is not a charity, the transfer must be on trust (as in section 27B).
30. Sections 51 and 52 enable a local authority in England, and the Welsh Ministers in Wales, to require the governing body of a FEI to provide education to a named person or persons. The accounts of a FEI are open to inspection by the Comptroller and Auditor General (section 53). Governing bodies must provide information as specified in section 54.
31. In England, the Secretary of State may intervene if the governing body of a FEI is mismanaging its affairs, has failed to discharge any legislative duty, have acted or are

proposing to act unreasonably in the exercise of any legislative power or duty, or if the FEI is performing significantly less well than it might be expected to, or is failing, or likely to fail, to give an acceptable standard of education or training (section 56A)(1). The Secretary of State may remove some or all of the members of the governing body, or appoint new members, or give directions (section 56A(6)). Those include a direction to the governing body make a resolution to dissolve itself. The Secretary of State may not direct a governing body to dismiss a member of staff.

32. In Wales, by section 57, the Welsh Ministers are given powers to intervene in similar circumstances. They must intervene by order, but their powers of intervention are similar to those of the Secretary of State, except that they cannot direct a governing body to dissolve itself. Although the Welsh Ministers may not direct a governing body to dismiss a member of staff, they may direct a governing body to “secure that the procedures applicable to the consideration of the case for dismissal of a member of staff are given effect to”. The Welsh Ministers must publish their policy about the exercise of their intervention powers (section 57A). They must have regard to it when exercising, or considering whether to exercise, their powers of intervention.
33. Section 35 of the 2000 Act enables the Welsh Ministers to impose conditions on the provision of money which include access to a body’s accounts, documents, “computers and associated apparatus and material”, a requirement to provide information, to charge fees by reference to specified criteria, to make awards by reference to specified criteria, to recover amounts from learners or employers, to make the provision specified in a report of an assessment made under section 140 (assessments relating to learning difficulties).

e. funding arrangements

34. It seems that there are two relevant documents, the Financial Memorandum between the Welsh Assembly Government¹⁰, Further Education Institutions and Higher Education Institutions providing further education in Wales (“the FM”), and “Further Education Institutions’ (FEIs) Conditions of Funding -2012/13” (“the conditions”). The first is quite old, but the second relates to the current year. Paragraph 1 of the conditions refers to the FM. Paragraph 7 of the conditions provides a link to the FM. Paragraph 1 of the

¹⁰As it then was.

conditions makes clear that there are other terms and conditions in the FM¹¹ which apply to FEIs. Paragraph 2 says that the Welsh Government may also publish “guides, circulars, codes of practice, policies, procedures, bulletins, manuals, directions and the like” which will apply to institutions.

(1) the financial memorandum

35. The FM was issued by the Welsh Assembly Government (as it then was) in the exercise of its powers under section 35 of the 2000 Act. It is a very detailed document. There are sections on financial accountability, allocation of funds, use of funds, payment of funds, repayment of funds, financial management, estate and equipment management, borrowing and financial commitments, financial statements, contracts and other services, severance payments to senior staff, guarantees and indemnities, compliance with the AM, and revision. The conditions in the FM are a way of exerting influence over FEIs, as any funding which has been provisionally allocated may be adjusted if a FEI does not comply with the conditions of funding (FM, paragraph 6.c).
36. Paragraph 15 imposes a duty on the Principal of a FEI to inform the Welsh Assembly Government in writing of any decision or policy of the governing body which he believes is incompatible with the terms and conditions of the FM. If the Welsh Assembly Government has serious concerns about the FEI’s financial affairs, it can intervene (paragraph 16). The FEI must use earmarked funds for the purposes for which they have been provided (paragraph 21). Misuse must be reported as soon as the FEI becomes aware of it (paragraph 23).
37. The governing body is required to keep the FEI solvent (paragraph 31). There are requirements to report financial matters to the Welsh Assembly Government. The FEI must manage and develop its estate having regard to guidance issued from time to time by the Welsh Assembly Government (paragraph 38). Certain proposed transactions must be reported to the Welsh Assembly Government (paragraph 43). Where money provided by the Welsh Assembly Government has been used in respect of an interest in land, the prior written consent of the Welsh Assembly Government is required for any transaction involving that land, and if land is disposed of, all or part of the proceeds must be paid to

¹¹They are referred to as “general conditions” in paragraph 4 of the FM.

the Welsh Assembly Government (paragraph 45).

38. Paragraphs 47-52 deal with borrowing. Borrowing must meet specific requirements, whether or not consent is needed for it (paragraph 47). Consent is needed for borrowig over a certain limit (paragraph 49). FEIs must have the consent of the Welsh Assembly Government before leasing property or land, and the transaction must satisfy the conditions in paragraph 50 (paragraph 52). All financial statements must comply with the requirements in paragraphs 53-55. The FEI's records and books must be made available to inspection by the Welsh Assembly Government's audit service and the Wales Audit Office (paragraphs 58 and 59). The FEI must provide the Welsh Assembly Government with such information as it may require from time to time (paragraph 60).
39. Paragraph 61 states that the Welsh Assembly Government may from time to time issue guidance about the matters which the FEI is required to report to it, and it is a requirement of the FM that the FEI comply with such guidance. It is also a requirement that the FEI comply with any guidance issued by the Welsh Assembly Government about severance payments to senior staff (paragraph 64). Paragraph 65 prevents the FEI from giving indemnities and similar undertakings otherwise than in the normal course of business. All members of the governing body must be provided with copies of the FM and be trained about it, and the FEI must provide an annual report on the FEI's compliance wiht the FM (paragraph 66). Annex A to the FM lists the matters for which the consent of the Welsh Assembly Government is required, and Annex B the matters which must be notified to the Welsh Assembly Government. Finally, Annexe C sets out the circumstances in which the FEI may retain proceeds, of sale, rent, or other consideration, or part of it.

(2) the funding conditions

40. The conditions are detailed. They contain 86 paragraphs. The conditions and the FM are not the only documents to which FEIs are subject. Both the conditions and the FM refer to many other documents produced by the Welsh Government or by the Welsh Ministers, such as guidance and plans, which FEIs are either obliged to follow, or to take into account.
41. They state that recurrent funding is subject to the general conditions in the FM (paragraph 5). Paragraph 5 refers to the targets, set out in Annex A, which are set by the Welsh

Government. The funding provided is provisional and Annex B sets out “the planned deployment” of the funded units (paragraph 6). Funding and targets may be adjusted in the light, among other things, of non-compliance with funding conditions (paragraph 7, third bullet). Capital funding is subject to such separate conditions as the Welsh Ministers may determine (paragraph 4). Funding must be spent mostly on providing education, and the FEI’s provision of education must be consistent with the Minister’s further education planning priorities and with the Welsh Government’s FEI planning guidance (paragraph 10).

42. The FEI must ensure that it does not use money provided by the Welsh Government to undermine provision, current or planned, by other FEIs or schools in its area. Where provision duplicates the provision at another FEI, the Welsh Government may require evidence of collaboration between institutions (paragraph 11). Services funded by the Welsh Government must be provided in a non-discriminatory way, and users’ satisfaction rates must be monitored. The FEI must promote equality of opportunity for all (paragraph 13). The FEI must comply with the Welsh Government’s code of practice about health and safety (paragraph 14). The Welsh Government’s consent is required for any arrangement by which another entity provides services on the FEI’s behalf using money provided by the Welsh Government (paragraph 16).
43. The FEI must assess learners properly before they are recruited (paragraph 19). Paragraphs 20-22 deal with the quality of the education to be provided by the FEI. The FEI must submit an annual self-assessments and a quality development plan complying with guidance produced by the Welsh Government. Progress must be reviewed at least three times a year, and all documents made available to the Welsh Government on request (paragraph 22). Paragraphs 23-35 deal with basic skills. Paragraphs 28-48 deal with specific funding allocations.
44. Paragraphs 49-58 are “Further conditions of funding”. These include a requirement to “honour the National Pay Agreement to ensure that the pay parity achieved is maintained. Non-compliance with the National Pay Agreement will result in the reclaim of 1.5% of the total provisional allocation.” (paragraph 49). The FEI must comply with requirements about the appointment of its clerk (paragraph 50).

45. It must produce an “Individualised Student Learning Agreement” for students (paragraph 51) and must comply with the the Equality Act 2010 (paragraph 52). It must publish, and comply with, its disability statement (paragraph 53). It must not charge a tuition fee to specified students (paragraphs 54 and 55). It must take account of HM Government’s principles on public sector pay, and disclose salaries of senior staff (paragraph 56). It must comply with the Nolan principles, and compile a publicly available register of interests (paragraph 57). Paragraphs 59-62 make detailed provision about European Programmes.
46. By paragraph 65, the FEI must obtain the prior written consent of the Welsh Ministers if it wishes to transfer any of its provision during the funding period. Paragraphs 66 and 67 impose obligations to keep information and to make it available to the Welsh Ministers. Funding can be withheld if information is not provided. Paragraphs 68-72 deal with auditing arrangements, and 73-85 with the monitoring of performance, and funding adjustments. Paragraph 86 is an interesting clause in which the FEI “acknowledges” that nothing in the conditions is to “prejudice, fetter, or affect” the functions of the Welsh Ministers.

f. the White Paper

47. The Welsh Government is concerned about the consequences of ONS’s decision to re-classify FEIs in October 2010, which still applies in Wales, because there has been no legislation in Wales which addresses that decision. It is keen to reverse that decision¹². The White Paper identifies “four key areas” as “indicative of public control”. These are the extent to which
- a. an FEI
 - i. can change its instrument and articles of government,
 - ii. dissolve itself, and
 - iii. borrow independently, and
 - b. the Welsh Government can intervene in its affairs¹³.
48. The “process of making changes to.... Instrument and Articles will cease to be the responsibility of the Welsh Government”. So FEIs will be given greater freedom to decide

¹²The White Paper, page 2, penultimate paragraph, *ibid*, pages 5-6.

¹³The White Paper, section 3.3, page 6.

what is in their constitutional documents, but the Welsh Government will be able to require “elements of governance that will enable colleges to properly constitute and conduct themselves”¹⁴. The Welsh Government will continue to insist that there must be places on governing bodies for “learners and staff”. There will be other compulsory provisions. The White Paper observes that “For most colleges this change will make no difference”.

49. But colleges must ensure that their constitutions contain a provision enabling colleges to dissolve themselves. This new power will be subject to ‘safeguards’. The new legislation will give power to the Welsh Ministers to make regulations prescribing how colleges may be dissolved and to which bodies FEIs can transfer their assets. The Welsh Ministers will have a power to direct FEIs to dissolve themselves (but only in the exercise of their default powers: see paragraph 52, below).
50. FEIs will also be required to ensure that they do not make any changes which would lead to their losing their charitable status. The Welsh Government will devise a Code of Governance “to assist colleges”. The contents of the initial instrument and articles of government will still be prescribed in regulations.
51. The current requirement that an FEI obtains the consent of the Welsh Government before borrowing any money will be removed¹⁵.
52. The Welsh Ministers will retain powers to intervene in the affairs of FEIs to “tackle failure”. These will be exercisable if a governing body is mis-managing the FEI, if a governing body failed to discharge, or has acted, or is proposing to act, unreasonably in the discharge of, any duty imposed by legislation, or the FEI’s performance is significantly poor. In such circumstances, the Welsh Ministers will have power to remove members of the governing body, appoint new members of the governing body if there are vacancies, require a governing body to make ‘collaboration arrangements’ and/or direct a governing body to dissolve itself¹⁶. The existing power of the Welsh Ministers to appoint two members to a governing body will be removed, as will the prohibition preventing FEIs

¹⁴Ibid, first paragraph, page 7.

¹⁵The White Paper, page 8.

¹⁶Ibid, pages 8-9.

from using a subsidiary, such as a limited company, to discharge functions.

53. The White Paper says that these proposals “capture key powers that need to be reformed to help enable colleges to be categorised as NPISH releasing them from unnecessary burdens”. It says that the Welsh Government will consider whether there are other restrictions which “are no longer considered necessary, do not add value, and/or act as a barrier to the NPISH classification being re-applied to colleges.” The White Paper goes on to say, “Where appropriate the Welsh Government will develop regulations to assist colleges to navigate their increased freedoms in the most effective way....¹⁷”.
54. The White Paper is silent about existing funding arrangements, and the extent to which it is proposed either, to modify these in line with the legislative changes which are proposed, or to continue to use these to exert control over FEIs. Nor does the White Paper suggest that the Welsh Government intends to end the control of the Welsh Ministers over FEIs’ use of companies and charitable incorporated organisations (see paragraph 22, above).

g. the response of the UCU

55. The UCU considers that the consequences of the proposals by the Welsh Ministers have not been thought through. It believes that the “further education sector belongs in the public sector”. The proposals are contrary to Welsh Labour’s 2011 election manifesto, which said that Welsh Labour sees FEIs as “public assets which belong to their local communities and its community of staff and learners”. The UCU refers to powers in the Government of Wales Act 1998. UCU thinks that if the FE sector becomes NPISH, the Welsh Government might not be able to exert its current level of financial control over the sector, and maintain nationally agreed pay rates, and the national contract (once that has been agreed). The UCU points out that the condition in the funding letter (clause 28) is the means by which the Welsh Ministers currently impose a requirement to comply with national agreement.
56. The UCU questions whether the Welsh Government needs to de-regulate FEIs in a way which could threaten national agreements. The UCU goes on to say that if that control is lost, then Welsh Labour are reneging on manifesto commitment to “ensure parity of esteem

¹⁷Ibid, page 9.

between school teachers and college lecturers by maintaining the current link between their pay and conditions”. The UCU also refers to a commitment to introduce an “all-Wales contract for FE lecturers”. The UCU’s view is that if more autonomy is to be granted, then safeguards in the legislation are needed to ensure that national agreements are adhered to.

h. discussion

57. In order to answer the question in my instructions, I will consider whether, if ONS were to apply its approach to classification to FEIs in Wales after the legislation which is sketched out in the White Paper is enacted, it would be likely to re-classify FEIs in Wales. It is not possible to give a categoric answer to that question, however, for three reasons.
- a. In the absence of a draft Bill, and drafts of the secondary legislation and any guidance to be made under it, the precise details of the proposed legislation are unclear.
 - b. Nor is it clear to what extent the Welsh Ministers will continue to impose conditions on funding which are similar to those in the FM and in the conditions.
 - c. In any event, it is clear from ONS’s September 2012 email that the classification of an institution is an assessment which involves many factors, so that, in some cases, there may well not be one right, or wrong way, to classify an institution.
58. However, some of the proposals in the White Paper resemble provisions in the legislation which now applies in England. Unless ONS changes its mind about the classification of FEIs in England, these will not prevent, and may well promote, a decision to re-classify FEIs in Wales. I will consider these in turn. I will then consider, to the extent that I am able, how ONS might then approach the overall picture.

(1) analysis of the proposals

59. The White Paper proposes that FEIs will have greater freedom to decide the contents of their instrument of government. If that freedom is as great as the freedom given to FEIs in England by the 1992 Act, then that will not prevent, and may contribute to, reclassification. However, much depends on the scope of the requirements which will still be specified in legislation. The requirement that there continue to be places on governing bodies for “learners and staff”, if it is similar to the requirement which applies in England, will not prevent re-classification. It is clear that there will be other compulsory provisions, and how these affect re-classification will depend on what those are. The White Paper

says that the contents of the initial instrument and articles of government will still be prescribed in regulations. Again, much will depend on what is prescribed, and on the extent to which FEIs are able to change what is prescribed. If the proposals in the White Paper are taken at face value, the initial prescription in regulations should not prevent re-classification, so long as FEIs are able, as the White Paper suggests they will be, to change provisions as prescribed .

60. The proposal that FEIs must have a provision in their instrument of government which enables them to dissolve themselves will align FEIs in Wales with FEIs in England, and will promote a decision to re-classify. However, the White Paper says that this power will be subject to ‘safeguards’. It is clear that Welsh Ministers will have power to make regulations prescribing how colleges may be dissolved and to which bodies FEIs can transfer their assets, and a power to direct an FEI to dissolve itself. Whether this change will promote re-classification depends on what those safeguards are, and on the extent to which they prevent FEIs in Wales from ending their relationship with the Welsh Government, for example by dissolving themselves and transferring their assets to a private sector body. With the qualification that a transferee body must be a charity, or, if not, that any assets are transferred on trust, FEIs in England now have that freedom. Moreover, the White Paper does not suggest that the Welsh Ministers intend to relax their give up their existing statutory control over the use by FEIs of companies and charitable incorporated organisations.
61. The proposal that FEIs will be required not to make any changes which would lead to their losing their charitable status will not prevent re-classification. This is similar to the legislation which applies in England. However, the proposal that the Welsh Government will produce a Code of Governance “to assist colleges” may be problematic, depending on the extent to which it seeks to dictate corporate policy and on the sanctions, if any, for non-compliance.
62. The current requirement that an FEI obtains the consent of the Welsh Government before borrowing any money will be removed. This will put FEIs in Wales in a similar position to FEIs in England, and will promote re-classification. The Welsh Ministers’ proposed powers of intervention seem to be similar to those of the Secretary of State in England, so will not prevent re-classification. The proposal to remove the existing power of the Welsh

Ministers to appoint two members to a governing body will promote re-classification, as will the removal of provision which prevents FEIs from using a subsidiary, such as a limited company, to discharge their functions.

(2) how will ONS approach the overall picture?

63. The White Paper identifies the main statutory obstacles to re-classification, and proposes to reverse them. If legislation is enacted in the terms proposed, and ONS adopts the same approach to re-classification as it did in its 2012 paper, it is likely to re-classify FEIs in Wales as NPISHs. However, there are some aspects of the proposed legislation (and, to a greater extent, of its associated secondary legislation and guidance) which are, as yet, unclear. If those go against the grain of the proposed primary legislation, and ONS is aware of them, then ONS may decide not to re-classify FEIs in Wales.
64. As I have already mentioned, the White Paper does not mention funding arrangements. The provisions in the funding arrangements which I have seen are both extensive and intrusive¹⁸. ONS does not refer to these in either of its papers, and it is possible that it is not aware of them. I consider that if similar controls persist in funding arrangements once the proposed legislation has been enacted, it is at least possible that ONS would see these as tipping the balance against re-classification. It is clear from the email of September 2012 that ONS takes a pragmatic approach to classification, in which it considers a range of factors. The picture disclosed by legislation is an important part of ONS's assessment, but the 14 factors show that ONS also takes into account controls other than legislative controls, including controls exerted by means of contractual provisions. This factual approach to control is supported by MGDD (see fifth bullet, paragraph 12, above, which refers to "a more operational definition of control").
65. It is notable that ONS says in that email that the presence of one of the fourteen factors can be enough to make a body part of the public sector (unless that factor is part of "reserve or step-in power". One of those factors is the ability of the public sector to "set pay rates".
66. It is not clear how, in the light of the proposals in the White Paper, the Welsh Government

¹⁸Their extent seems to be growing. The 2008/09 conditions were 57 paragraphs long, and the current conditions are 86 paragraphs long.

intends (if it still does) to meet its manifesto commitment to influence the salaries paid to lecturers in FEIs in Wales, and/or the terms on which FEIs will employ lecturers. There is nothing in the legislative proposals which would permit the Welsh Ministers to do this. This implies, either, that the commitment has been abandoned, or that, if it has not been, the Welsh Ministers intend to continue to influence pay rates and contract terms by means of funding conditions. If that is their intention, then that alone could imperil re-classification of Welsh FEIs as NPISHs. If the funding conditions interfere with corporate policy in other ways, those other controls may make re-classification less likely.

67. It is, of course, right to say that ONS has not, so far, considered factual, as opposed to legislative, controls in its decisions to classify FEIs. The most likely reason for this is that, so far, ONS has concentrated on the legislative position only, and has felt able to reach a clear view on the basis of that alone. It may also be the case that ONS is not aware of the terms of the arrangements by which FEIs are funded. But it cannot be assumed that, if ONS did become aware of those, it would ignore them. The 14 factors listed in the September 2012 email strongly suggest otherwise. It cannot be guaranteed, of course, that if ONS did base its assessment both on the legislative position and on the factual position, it would not re-classify FEIs in Wales, as the controls exercised by way of funding conditions are not the only factor in the assessment. But it cannot be guaranteed, either, that if such controls continue to exist, and ONS took them into account, that it would decide to re-classify FEIs in Wales.

conclusions

68. For these reasons, my view is that
- a. If the legislation described in the White Paper is passed, and if its details, and associated secondary legislation and guidance, do not cut across the aims described in the White Paper, then, if ONS bases its assessment solely on that legislation, it is likely to re-classify FEIs in Wales as NPISHs.
 - b. If such legislation is passed, it is not clear how, if at all, the Welsh Ministers would be able to influence the pay, or contract terms, of lecturers in FEIs in Wales.
 - c. If, once such legislation is enacted, the Welsh Ministers intend to continue to apply funding conditions substantially similar to those to which I have referred in this Opinion (and in particular, conditions which oblige FEIs to pay certain rates to staff and to engage them on particular terms), then there is a risk that ONS will not re-

classify FEIs as NPISH. That risk will increase, depending on the scale and intensity of other controls in funding conditions.

**IN THE MATTER OF THE WELSH
GOVERNMENT'S WHITE PAPER
ON THE FURTHER AND HIGHER
EDUCATION (WALES) BILL**

OPINION

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Appendix 2

College reclassification and de-regulation in England and Wales

Reclassification of FE colleges into the private sector – driving de-regulation to “shrink the debt”:

1. The Further and Higher Education (Governance and Information) (Wales) Bill states that the rationale for reclassification of Further Education colleges as private sector (NPISH) is as follows:
2. “12. The effect of the reclassification of FEIs as central government public sector bodies has negative impacts for the FE sector in Wales that will lead to changes to the way financial information from colleges is collected and monitored and impact on how FEIs manage their internal affairs. The changes have significant implications for FEIs including:
 - any surpluses generated by colleges would be accounted for as Welsh Government funds;
 - FEIs would be unable to retain a surplus in order to build reserves for future projects; and
 - additional financial and accounting requirements.
3. “13. The Bill seeks to enhance the autonomy and decision making abilities of Further Education Institutions by removing and modifying the existing legislative controls on them.”¹
4. **UCU’s concern is that the Welsh Government’s bill s being driven less by any problem with the ability to run surpluses or borrow money but by pressures from the Treasury.**
5. This is because the discussion around the bill closely mirrors the debate in England in 2012. In 2012, English FE colleges were reclassified into the private sector, having been classified as central government by ONS in 2010. The government was anxious to reverse this decision. However, when Minister John Hayes was asked what the impact would be on college borrowing and finances, he replied:
“The reclassification will mean that colleges are treated differently for National Accounts purposes. This change is not expected to make any difference to the financial

¹ Further and Higher Education (Governance and Information) (Wales) Bill, Explanatory Memorandum, April 2013, p. 6.

arrangements of further education colleges for the remainder of this financial year (2010-11). We are in discussion with HM Treasury to agree how the changes will work in future years but it does not automatically follow that further education colleges should adopt the same control systems as central Government. *The reclassification does not in itself limit their ability to borrow money.*²

6. This was confirmed by the ONS, responding to a letter from Martin Doel at the AoC, which made it clear that “the classification decision [to place colleges in the public sector] is for statistical purposes only. It introduces no new controls over borrowing by the FE sector, but merely reflects the powers that already exist.”³
7. Similarly, schools, which are and remain within the public sector, are able to run surpluses with the agreement of the Local Authority. There would seem to be no insurmountable technical problem with the ability to run surpluses or borrow money.
8. In fact, it seems clear that the real threat actually came from the UK Treasury. When colleges were classified as central government, their borrowing was consolidated into the UK national debt, which given the government’s stated austerity policies, was an extremely sensitive issue. AoC documents seem to indicate that colleges feared, and appear to have been encouraged to fear, that if they remained within central government, they might face action from the Treasury to control their borrowing.
9. The ONS’s decision also sat badly with the government’s stated preference for encouraging de-regulation, the entry of more private providers and greater use of new streams of finance in the college sector.
10. The government’s desire to get colleges reclassified appears to have been one of the main drivers of the Education Act 2011, which included actions to de-regulate colleges. As Minister John Hayes put it in a letter to UCU,

“the powers held by the Secretary of State in relation to colleges are seen as evidence of continuing government control which is incompatible with private sector classification. This required reconsideration of the legislative changes being made and development of solutions that would give colleges more independence in these areas, consistent with our overall approach of reducing regulation in the FE sector.”⁴

The Education Act’s measures were explicitly designed to remove this evidence of public control.

² John Hayes, Parliamentary Answer, 19 October 2010

(<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101019/text/101019w0004.htm>)

³ Stephen Penneck, Director General, ONS, letter to Martin Doel, dated 7 July 2011.

⁴ Letter to UCU, dated 26 October 2011.

The Education Act 2011:

11. The Education Act 2011 removed the power of the Chief Executive of the Skills Funding Agency to appoint governors and gave colleges the power to amend their instruments and articles and dissolve themselves without having to seek the approval either of the Secretary of State or the Skills Funding Agency. It also removed certain constraints on colleges borrowing and setting up new companies.
12. In summary, in England it appears to be the case that the decision to pursue reclassification was motivated not by any technical problem with colleges borrowing or retaining their surpluses but by the government's political desire to move colleges' borrowing out of the national debt. Consequently, colleges appear to have been given the message that unless reclassification was successful, they might see their borrowing restrained. The Education Act 2011 and the consequent reclassification of FE into the private sector, were driven by this, coupled with the conviction that de-regulation would bring 'greater efficiency'.
13. The political character of this decision was enhanced by the allegation made by leading economists that the Prime Minister David Cameron was using the transfer of Further Education employees into the private sector to boost the figures for employment in the private sector.
14. **UCU's concern is that the Welsh Government's bill is being driven less by any problem with the ability to run surpluses or borrow money but by similar pressures from the Treasury.**

De-regulation in England – dangerous experiments and weakened governance

15. UCU is also concerned that the de-regulatory agenda that is being driven as a consequence of this pressure will drive colleges to a greater dependence on private sector solutions and private finance, while at the same time eroding the checks and balances that have historically existed within college governance. The combination of these tendencies creates a dangerous dynamic in which colleges are encouraged to take risks with publicly accumulated assets and public funding streams in order to diversify their income streams and reduce their dependence on central government, while at the same time, the mechanisms of public control and the influence of other stakeholders which could hold them to account, are seriously weakened.
16. In our new report, *Lost in Translation*, UCU has documented a series of recent examples in the English context which illustrate the dangers of this dynamic.⁵

⁵ *Lost in Translation: the internal privatisation of our colleges and universities and the threat to the public interest* (UCU, May 2013).

For-profit subsidiaries:

17. Newcastle College 'Group', under the well-remunerated leadership of Dame Jackie Fisher, moved from being a regionally based FE college to positioning itself as a national provider. When private equity funded training provider Carter & Carter collapsed in 2007, Newcastle took over a large part of the former company, using funding from the Learning and Skills Council and renamed it InTraining. InTraining was constituted as a for-profit subsidiary of the college until 2011 when the college was restructured as a 'Group'. Intraining's 2012 accounts show that the company has short-term liabilities of £14 million and owed £7 million to Newcastle College Group. As the accounts put it, Intraining is 'dependent on continuing financial support being available from its immediate and ultimate parent undertaking (ultimately both are Newcastle College Group)'. Newcastle College Group has also begun to transfer some staff from the college to Intraining.

Subsidiary companies and attacks on staff:

18. Lincoln College recently set up new subsidiary companies to provide support services back to the college and employ all new support staff. Future employees would have been employed on inferior terms and would have had an inferior pension scheme. The aim, according to the college leadership, was to 'reduce over time the college salary overhead and in particular eliminate Final Salary Pension Contributions of 20% on new starters' (under the Local Government Pension Scheme). Following campaigning by UCU and UNISON, terms for future employees have been significantly improved.

Outsourcing and Offshoring:

19. City College Norwich, which recently reconstituted itself within a federated 'group', ran into problems when it outsourced processing of student application forms to a private company named QuScient on the back of a Skills Funding Agency grant through the Efficiency and Innovation Fund. A college source told the Times Educational Supplement: 'We understand that the project hasn't gone well at all...The college has actually had to send out a member of staff to Chennai (in Tamil Nadu, India) in recent days to try and sort it out.'

The return of subcontracting:

20. The Department of Business, Innovation and Skills is encouraging FE colleges to subcontract training and placing no limits on the amount of their budgets that they can use for this. The government has also told the Skills Funding Agency that it must cut its own administrative costs, leading it to concentrate its funding into fewer, bigger contracts and forcing many smaller training providers to become subcontractors to continue with their businesses. This is in spite of the recent historical experience of the 1990s franchising scandals. As Nick Linford, editor of FE Week, has written: 'Colleges subcontracted out the teaching, training and assessment of students, claimed the public funding and passed on a portion to the subcontractors. The arrangement filled colleges'

offers with much-needed funds and was justified as a means of widening participation. It all ended in tears when the Serious Fraud Office was called in to investigate a number of colleges when allegations of misuse of millions of pounds of public money surfaced. The misuse consisted of phantom students, phantom training providers, courses that never ran or were never fundable, and more...in some cases, colleges were subcontracting more than half of their entire budget and as a result, they were sued for millions. Some colleges rebranded, others merged and some collapsed.'

21. In spite of this, experience Sparsholt College ran into problems in 2011 after it subcontracted its delivery of sports apprenticeships to a private training company Luis Michael Training. LMT was accused by angry parents and the college of failing to deliver quality training and other irregularities, triggering a Serious Fraud Office investigation. The company is now defunct.

Dissolution:

22. Barnfield College announced earlier this year that it was considering dissolving itself and becoming a company limited by guarantee. This would enable it to create a for-profit subsidiary company, which would assume control of its assets and hopefully attract a private equity fund as an investor. The aim appears to have been to fund the expansion of Barnfield's portfolio into HE. The plans appear to have been put on hold in recent months following a difficult Ofsted inspection. UCU has made clear its opposition to these proposals. Other colleges are known to be considering this option.

Summary:

23. These examples predate the Education Act 2011. In UCU's view the Act's de-regulatory measures only serve to increase the risks that examples like this will become far more common. By enabling college corporations to amend their instruments and articles or dissolve themselves without reference to the Secretary of State or the Skills Funding Agency, the government has actively encouraged and given the legal powers to enable senior managers to arrogate huge powers to themselves. College managements are being encouraged to cut their costs, aggressively build up surpluses and diversify their income streams. This is leading to numerous examples in England of attacks on the pay and terms and conditions of college staff. The examples of Newcastle College and Barnfield also raise serious questions about the use of public funds and assets and their exploitation by for-profit enterprises.

What should be done:

24. UCU opposes the option of legislation. We consider that the costs associated with setting up the Welsh Funding Council for FE are more than offset by the savings that will be made to the public purse by avoiding the kind of de-regulation that has been pursued

**IN THE MATTER OF
THE FURTHER AND HIGHER EDUCATION
(GOVERNANCE AND INFORMATION) (WALES) BILL**

FURTHER OPINION

introduction

1. I have already advised the University and College Union (“UCU”) on the Welsh Government’s proposal, set out in its White Paper, ‘Further and Higher Education Wales Bill’, to de-regulate further education institutions (“FEIs”) in Wales. I am now asked to advise on three questions which arise from the terms of the Further and Higher Education (Governance and Information) Bill 2013 (“the Bill”). The Bill has now reached its first stage of consideration, by the Children and Young People Committee of the Welsh Assembly (“the Committee”). In a letter dated 2 May 2013, Ann Jones AM, the chair of the Committee, asked for “evidence on the general principles of the Bill”. Consultees were asked, in particular, to give their views on the questions set out in the Annex to the letter.

2. The questions on which I am asked to advise are:
 - a. whether the process for enacting the Bill is appropriate;
 - b. what is the basis for a statement made to the UCU by the Minister’s spokesperson that if the Welsh Government generates a surplus of more than 2 per cent in its budget in a year, any excess has to be returned to the Government in Westminster¹; and

¹I am told that this statement has been recently clarified, as follows; “Under current arrangements, as the Public Sector ONS classification has yet to be implemented by the Treasury, colleges are free to retain surpluses (or of course suffer deficits).

If the Public Sector classification was implemented (which the Bill is there to avoid), my understanding is that college surpluses or deficits would be treated by the Treasury as part of the Welsh Government’s budget (there is also the capital impact). Should that happen, the Welsh Government would need to set a limit on the amount that a college could retain. I do not know if the Treasury sets an upper limit for this (I could probably find out if you need to know), but in the sponsored bodies I have worked for in the past, the limit has been set at 2% of grant in aid,

- c. whether the objectives for the Bill as set out in the Explanatory Memorandum to the Bill (“the EM”) are achieved by the Bill, and, if not, what amendments to it might be necessary.

(a) the process for enacting the Bill

3. I am asked about section 5 of the EM (page 15). My instructions state that the Bill “will be processed by the “negative resolution procedure”. I am told that UCU considers that such a procedure would be unsatisfactory, as it would prevent the important principle which the Bill seeks to establish from being debated in the Assembly. I think that this may be a misunderstanding.
4. Section 5 of the EM deals with powers which will be conferred by clause 3 of the Bill (if it is enacted). Clause 3 substitutes new sections 27-27B for sections 27-27C of the Further and Higher Education Act 1992 (“the 1992 Act”). The new sections 27(3), and (4), and 27B(1) and (3) confer powers on the Welsh Ministers to make regulations about the procedure for abolishing FEIs and to prescribe the types of body to which the assets of a FEI may be transferred on dissolution. The Table in Section 5 of the EM explains why it is considered appropriate that regulations made under the new sections 27 and 27B should be made by the negative resolution procedure: essentially, because they concern matters of detail, not substance.
5. The Welsh Government has published Guidelines on Subordinate Legislation (dated 25 January 2012) which set out the factors to be taken into account when a choice is being made between the negative and affirmative resolution procedure. It seems to me, certainly at first glance, that the use of the negative procedure for regulations made under these powers would not contravene these Guidelines.

but it could be less.

It is also worth noting that any such retention is not normally cumulative. In other words, one cannot save up for something over a period of time. If the Bill becomes law, the colleges would remain free to retain surpluses.”

It seems from this clarification that there may be no legal basis for the two per cent figure, and that the statement relates, not primarily to the obligations of the Welsh Government vis à vis Westminster, but to a stipulation which it is anticipated the Welsh Government will place on FEIs.

6. Section 5 of the EM is not concerned with the procedure for enacting the Bill. The Bill is primary, not delegated legislation, and so will be subject to all the stages to which Bills in the Assembly are subject: see the National Assembly for Wales Guidance on Bills in the Assembly (2011), available on the Assembly website.

(b) the financial implications for the Welsh Government

7. Paragraph 12 of the EM notes that “any surpluses generated by colleges would be accounted for as Welsh Government funds”. This point is also made at paragraph 29. Paragraph 96 summarises the financial advantages for the Welsh Government. They are:
 - a. additional FEI income would not count as the Welsh Government’s income. This is about 20 per cent of FEIs’ total income on average (paragraph 69 of the EM).
 - b. surpluses generated by FEIs would not form part of the Welsh Government’s funds. Paragraph 70 of the EM gives the figures for the last few years. The picture is a mixed one, but generally, the sector has produced a surplus, of varying amounts.
 - c. FEIs could retain their surpluses to build up reserves to pay for capital projects.
 - d. FEIs’ total capital spend would not count against the capital budget of the Department for Education and Skills (“the DfES”). The figures are given in paragraphs 73-75. One effect is that the Welsh Government’s 50% capital grants to FEIs are scored as the total amount of the spending (ie, the amount of the grant x 2).
 - e. Depreciation of FEIs’ assets (some £22m per annum: EM, paragraph 77) would not count against the Welsh Government’s budget.
 - f. “Any movement” (presumably, increased deficit) in the local government pension scheme would not count against the Welsh Government’s annually managed expenditure budgets.
 - g. The Welsh Government and FEIs will not have to spend more money on producing and auditing annual returns. This cost is estimated as about £4700 per annum for the Welsh Government and a little over £4000 per year for each FEI (paragraphs 61-65 of the EM).
8. There are provisions governing the financial relationship between the Westminster Government and the Welsh Government in the Government of Wales Act 2006 (“GOWA”). Part 5 of GOWA is entitled “Finance”. Section 117 of GOWA establishes

a Welsh Consolidated Fund. By section 118 funds may be paid into it by the Secretary of State. In addition, any Minister of the Crown, and any government department may make payments to the Welsh Ministers, to the First Minister, or to the Counsel General.

9. The only provision which I have been able to find in Part 5 of GOWA which deals with the payment of money from the Welsh Consolidated Fund to the Secretary of State is section 120(4). Section 120(3) enables the Treasury, after consultation with the Welsh Ministers, to designate by order any sums received by or on behalf of various Government bodies in Wales. Section 120(4) obliges the Welsh Ministers to make payments to the Secretary of State of any description of sum designated in an order made under section 120(3). The Government of Wales Act 2006 (Designation of Receipts) Order 2007 (2007 SI No 848) was made under section 120(3). Article 2 of that Order designates certain receipts (mostly interest payments). It does not refer more generally to surpluses generated by the Welsh Government.
10. I have also considered the terms of four other documents:
 - a. HM Treasury's October 2010 document 'Funding the Scottish Parliament, the National Assembly for Wales and the Northern Irish Assembly; Statement of Funding Policy' ("the policy"),
 - b. Devolution: memorandum of understanding and supplementary agreements (Cabinet Office, 1 March 2010), and
 - c. the Concordat between HM Treasury and the Welsh Assembly Government dated February 2005 (that is, before GOWA was enacted); and
 - d. 'Empowerment and Responsibility: Financial Powers to Strengthen Wales, the report of the Commission on Devolution in Wales, published in November 2012².
11. The policy explains the financial relationship between the devolved Governments and the UK Government in relatively general terms.
12. Paragraph 1.2 states of the policy states that, "The United Kingdom Parliament votes the necessary provision to the Secretaries of State; they make payments to the devolved

²Sometimes referred to as the "Silk Commission Report". Chapter 2 deals with existing funding arrangements. It makes clear that few of these are set out in legislation.

administrations”. Some spending is funded locally (see paragraph 1.3). Paragraph 2.7 says, “Responsibility for United Kingdom fiscal policy, macroeconomic policy and public expenditure allocation across the United Kingdom remains with the Treasury. As a result, the devolved administrations’ budgets continue to be determined within the framework of public expenditure control and budgeting guidance in the United Kingdom. However, once overall public expenditure budgets have been determined, the devolved administrations have freedom to make their own spending decisions on devolved programmes within the overall totals and they ensure their plans meet the fiscal rules.”

13. The “Key principles of allocating public expenditure within the United Kingdom” are stated in Chapter 3. Principle 7 is “if levels of self-financed expenditure generated by a devolved administration grow significantly more rapidly than comparable expenditure in England over a period and in such a way as to threaten targets set for public expenditure as part of the management of the United Kingdom economy, it will be open to the United Kingdom Government to take the excess into account in considering the level of grant to the devolved administrations.” (see also Chapter 6). There is a reference to the surrender of excess provision to the United Kingdom Consolidated Fund in paragraph 5.3.
14. Receipts and charges are dealt with in Chapter 8. The general rule (paragraph 8.1) is that “Responsibility for setting charges for devolved public services will rest with the devolved administrations. They can decide whether they wish to follow United Kingdom Government policy on fees and charges in specific cases. The general principle that applies is if a devolved administration chooses to charge more, the additional negative public expenditure receipts will accrue to its budget and if it chooses to charge less it will need to meet the costs from within its budget.”
15. Paragraph 8.7 deals with trading receipts. It provides, “Where a devolved administration receives significant trading surpluses from the commercial exploitation of publicly funded assets, these may be taken into account by the United Kingdom Government when setting grants to the devolved administration or by the devolved administration surrendering these to the United Kingdom Consolidated Fund. The United Kingdom Government would not expect to take surpluses into account where they are generated by a body which - over a period - is expected to break even or where they are de minimis

in public expenditure terms. The Treasury will consult the devolved administration before trading surpluses are taken into account.”

16. Paragraph 11.5 deals with the management of the consolidated fund. Devolved administrations are required to reflect balances held at the year’s end in the calculation of the following year’s budget requirement, and are required transparently to report the state of consolidated fund and end-of-year balances.
17. On the basis of the policy, it seems to me that it is conceivable that if FEIs did generate significant surpluses those surpluses might affect the amount of grant which the Secretary of State would pay to the Welsh Government in any year. But it also seems to me that, given the size of the sums involved (both the likely size of any surplus and that of the overall budget for the Welsh Government) that any such effect is likely to be small. I have found no reference in the policy (or elsewhere in any public document that I have been able to find) to a requirement that the Welsh Government return any budget surplus greater than 2 per cent to Westminster.

(c) does the Bill achieve the objectives described in the EM?

18. As I indicated in my First Opinion, whether ONS will re-classify FEIs in Wales will depend on an overall judgment about the legal and de facto control exercised by the Welsh Government over FEIs. The Bill addresses the legal position, by removing a number of the current controls over FEIs in legislation.
19. The main proposed changes are:
 - (1) FEIs in Wales will no longer be prevented from forming, participating in forming, or investing in, a company to conduct an educational institution, or from investing in a company conducting an educational institution.
 - (2) FEIs in Wales will no longer be prevented from forming, participating in forming, or otherwise being members of, a charitable incorporated organisation, in order to conduct, or become a member of a charitable incorporated organisation conducting, an educational institution.
 - (3) The Welsh Ministers will no longer have power to permit the

- exercise of the powers referred to in paragraphs (1) and (2).
- (4) FEIs in Wales will no longer be prevented from exercising these powers for the purposes of education if the provision is secured wholly or partly by financial resources provided wholly or partly by the National Assembly for Wales in discharge of its functions under Part 2 of the Learning and Skills Act 2000.
 - (5) The Welsh Ministers will no longer have the power to permit the exercise of those powers when the restriction in paragraph (4) applies.
 - (6) FEIs in Wales will no longer require the consent of the Welsh Ministers for borrowing³.
 - (7) Instruments and articles of government will be required to comply with the requirements of Schedule 4 to the 1992 Act, and subject to that, may make such other provision as may be necessary or desirable.
 - (8) FEIs will have power to modify or replace these documents⁴.
 - (9) Detailed provision about the dissolution of FEIs is made in clause 3, which substitutes new sections 27, 27A and 27B in the 1992 Act. There is limited provision for intervention by the appropriate authority⁵ in this process: regulations may be made about the publication of, and consultation on, proposals for dissolution⁶ FEIs must notify the appropriate authority of any resolution to dissolve itself, and of the date of dissolution⁷.
 - (10) FEIs may, before dissolution, transfer their property, rights and

³These changes will all be achieved by clause 1, which amends section 19 of the 1992 Act.

⁴These changes will be achieved by clause 2 of the Bill. Schedule 1 to the Bill replaces the existing Schedule 4 to the 1992 Act. By paragraph 4(2) of Schedule 1 to the Bill, an instrument must specify how the FEI may resolve to dissolve itself, and transfer its property, rights and liabilities. By paragraph 7, an instrument must permit a FEI to change its name, with, in England, the consent of the Secretary of State, and in Wales, that of the Welsh Ministers. By paragraph 8, it must specify how a body may modify or replace the instrument. An instrument may not permit changes to be made which would mean that the FEI ceases to be a charity (paragraph 9).

⁵The Secretary of State for a FEI in England, and the Welsh Ministers for an FEI in Wales (new section 27(5) of the 1992 Act).

⁶New section 27(3) and (4).

⁷New section 27(3).

liabilities to such persons as may be prescribed in regulations made by the appropriate authority. If the transferee is not a charity established for charitable purposes which are wholly educational, the transfer must be on trust to be used for charitable purposes which are wholly educational.⁸

- (11) Clause 4 makes provision for the instrument and articles of government of institutions designated under section 28 of the 1992 Act which is similar to that made for FEIs which are not designated.
- (12) Clause 5 amends section 57 of the 1992 Act, which deals with intervention by the Welsh Ministers in failing FEIs, so as to align it more closely with section 56, which applies to FEIs in England. It repeals section 57A, which obliged the Welsh Ministers to have an intervention policy.
- (13) Clause 6 removes the requirements (now in sections 33J(3)(b), in 33L(3) of the Learning and Skills Act 2000 (“the 2000 Act”) and in section 116I of the Education Act 2002 (“the 2002 Act”)) that FEIs comply with directions of the Welsh Ministers in carrying out their duties (a) to assist the Welsh Ministers in planning local curricula, (b) to work jointly in delivering local curriculum entitlements; and (c) to assist a local authority in planning local curricula, though they will still be required to have regard to guidance issued by the Welsh Ministers in those respects. The duty to comply with directions in complying with the duty imposed by section 116J of the 2002 Act will also be abolished.
- (14) Clause 7 will abolish the power in section 139 of the Education Act 2002 to make regulations preventing FEIs from providing courses without the approval of the Welsh Ministers, and determining the numbers of people who may attend such courses.
- (15) The power of the Welsh Ministers to appoint governors to FEIs in Wales in section 39 of the 2000 Act will be removed (clause 8, and paragraph 2(a), of Schedule 2 to the Bill). Schedule 2 makes

⁸New section 27B(4) and (5).

a number of other, less significant, amendments to the legislation which applies to FEIs in Wales.

20. Overall, the effect of the amendments proposed by the Bill is to remove a number of the principal current differences between the legislation which applies to FEIs in England and Wales. The amendments deal with the main legislative features which have been referred to by ONS in its classification decisions, as justifying the initial re-classification of FEIs from the NPISH sector to the General Government sector. My view is that, if ONS focusses simply on the picture disclosed by this proposed legislation, it is very likely to take a similar view to the view it has taken about the reclassification of FEIs in England, as there will, if the Bill is enacted, then be little significant difference between the key legislative provisions as they will apply to FEIs in England and Wales. I do not consider that any amendment to the Bill is necessary to achieve this objective.
21. The issue now concerns the practical controls, if any, which the Welsh Ministers may still seek to exercise over FEIs in Wales; controls which do not come from legislation, but which are exerted via the terms on which the Welsh Ministers provides funding to FEIs. It is unlikely, from the terms of the classification decisions which I have seen, that ONS is aware of the current practical controls which are exerciseable as a result of the terms on which funding is provided. It does not follow that if ONS were aware of these, it would necessarily reach a different decision from the decision it has reached about FEIs in England, but these are certainly relevant to any classification decision, and there may be scope for UCU to bring these to the attention of ONS. There may also be scope for UCU to ask, in the process of scrutiny and debate on the Bill, whether the Welsh Ministers have made ONS aware of these controls, and, if not, whether they propose to do so.
22. In this context, it may be of some interest that, in the public documents about the Bill, the Welsh Ministers have expressed varying degrees of confidence about the likelihood that the Bill's provisions will, if enacted, lead to the reclassification of FEIs. Paragraph 21 of the EM says that "The changes made by the Bill focus on those elements of control that fall within the indicators of control that the ONS refer to in determining the classification of bodies for national accounts purposes". Paragraph 27 of the EM assumes that if the Bill is passed, it will mean that FEIs are reclassified by ONS. Paragraph 31 makes the

same assumption. It asserts that if FEIs are not re-classified, this will have a negative impact on the budget of the Welsh Government's Department for Education and Skills (this impact is not explained further). It also makes the point that if FEIs are not re-classified, they will have no incentive to be efficient, and to increase their income. Paragraph 92 of the EM states that passing the Bill would place FEIs "on a similar footing to charities operating within the independent/private sector",

23. Paragraph 96 is slightly less positive: it says, "The legislation could result in the reversal of the public sector classification for public accounts purposes....". The impact assessment attached to the EM identifies as a risk that the legislation does not satisfy the ONS Committee (paragraph 97 of the EM). Opposition from the Unions is also seen as a risk (paragraph 98 of the EM). But paragraph 99 of the impact assessment states that "the Bill captures the key powers that need to be reformed to satisfy the ONS....".
24. The Bill Summary dated May 2013 by the Research Service records, in section 6, statements that indicate that the Welsh Government cannot guarantee that the Bill will achieve re-classification, but that officials from the Welsh Government are having discussions with ONS and that "...it is clear to ONS that we are sending out a signal that shows the direction of travel that we are moving in. We can also provide guidance about governance. My officials have done what they can to ensure that the ONS is clear about our objectives , and we will continue to maintain a dialogue with it".
25. It also emerges from this document that "... - it is no secret - that this was not my preferred route....However the ONS is making its views clearand I need to safeguard Welsh Government budgets...." The topics of a national agreement and of working conditions in FEIs were raised in the Assembly on 30 April 2013. The Minister's view was that these "are slightly separate issues". They could be debated further during the passage of the Bill. He also acknowledged that "There are issues as to how we set our expectations, which we can explore in the passage of the Bill".

conclusions

26. For these reasons, my view is as follows.
 - a. The Bill will not be enacted by a negative resolution procedure, but after full debate in the National Assembly for Wales, as is the case for all primary

legislation.

- b. I have not, in the time available, been able to find a source for the suggestion that the Welsh Government is, or may be, obliged to return any particular amount of budget surplus to the United Kingdom Government. The overall picture disclosed by the policy is a complex one.
- c. If the Bill is enacted, and if ONS focusses only on the proposed legislation, it is likely to decide to re-classify FEIs in Wales, consistently with its decision about FEIs in England. However, it is far from clear that ONS is aware of the practical control which the Welsh Government can exercise over FEIs in Wales by means of the conditions in practice attached to funding, nor whether, if it were aware of those controls, it would reach the same conclusion. As I note in paragraph 25, above, the Minister does anticipate that there will be some mechanism by which the Welsh Ministers will continue to “set... expectations”.

**IN THE MATTER OF
THE FURTHER AND HIGHER
EDUCATION
(GOVERNANCE AND
INFORMATION) (WALES) BILL**

FURTHER OPINION

UCU Legal Services
University and College Union
Carlow Street
London
NW1 7LH
Ref: 130122-000004/MKS

Michael Scott

Colleges: Reclassification

Organisation: Learning and Justice

Source: Scottish Parliament - Scotland Written Answers

Date: 02.06.13

Liam McArthur (Orkney Islands) (Scottish Liberal Democrats): To ask the Scottish Government what the implications are for (a) borrowing by the college sector, (b) learners, (c) planned capital programmes in the college sector, (d) procurement in the college sector, (e) charitable status in the college sector, (f) college governance, (g) access to the European Social Fund, (h) capital funding and investment, (i) commercial income, (j) UK-wide activity, (k) international activity, (l) cash reserves and (m) colleges that are not incorporated as a result of the decision of the Office for National Statistics to reclassify colleges as part of central government in Scotland.

(S4W-14991)

Michael Russell: The implications of the decision of the Office for National Statistics to reclassify colleges as part of central government in Scotland are as follows;

(a) Borrowing - Consolidated Budgeting Guidance, available at:

http://www.hm-treasury.gov.uk/d/consolidated_budgeting_guidance_201314.pdf

sets out the treatment of borrowing for central government sponsored bodies at chapter 9. Scottish Ministers are committed to working with colleges to minimise the impact on Scottish budgets from this change whilst maintaining any planned investment funded from borrowing.

(b) Learners - none. We set out our ambitions for improving the Post 16 education system for our learners in 2011 through Putting Learners at the Centre. Those ambitions remain following reclassification.

(c) Planned Capital Programmes in the college sector - Ministers are committed to working with colleges to maintain their current capital investment plans. Ministers have already taken steps to mitigate any risks to the affordability of the three college NPD projects, by ensuring the continued use of accumulated reserves for the purpose defined within their business cases.

(d) Procurement - none. We do not expect reclassification to have an impact on procurement. Colleges are already subject to EU Procurement Directives and would continue to be so when reclassified as central government bodies.

(e) Charitable status - none. Reclassification will have no impact on the charitable status of the affected colleges.

(f) College governance - none. Existing arrangements and our plans set out in the Post-16 Education (Scotland) Bill currently before the Scottish Parliament are unaffected by reclassification.

(g) Access to European Structural Funds (ESF) - none. We do not expect reclassification to have an impact on colleges' ability to access ESF.

(h) Capital funding and investment - none. Ministers will maintain previously announced levels of capital funding and investment to colleges.

(i) Commercial income - none. Reclassification does not impact on colleges' ability to secure commercial income.

(j) UK wide activity - none. We do not expect reclassification to have an impact on UK wide activity undertaken by the affected colleges.

(k) International activity - none. We do not expect reclassification to have an impact on international activity undertaken by the affected colleges.

(l) Reserves - Consolidated Budgeting Guidance sets out the treatment of reserves for central government sponsored bodies at chapter 9. Ministers are committed to working with colleges to find ways of mitigating the impact of the change on deployment of reserves.

(m) Unincorporated colleges - none. The Office for National Statistics classification decision relates only to incorporated colleges.

02 June 2013

Further and Higher Education (Governance and Information) (Wales) Bill

Estyn Response – May 2013

The Explanatory Memorandum prepared by the Welsh Government describes the Bill's main purposes in the following terms:

The Bill seeks to enhance the autonomy and decision making abilities of Further Education Institutions by removing and modifying existing legislative controls on them.

The Bill also gives effect to the Welsh Government policy data relevant to students grants and loans to be shared by Her Majesty's Revenue and Customs (HMRC) with the Welsh Ministers and anyone to whom the Welsh Ministers delegate or transfer functions. The data sharing gateway is an integral part to modernise the Student Finance Wales delivery to simplify and create efficiencies in that service.

General

Do you think the Bill, as drafted, delivers the stated objectives as set-out in the Explanatory Memorandum?

Yes, we agree there is a need for a Bill for the stated purposes. In order to avoid the complications proposed by the ONS, Wales needs to have its own clear and robust procedures for governing FECs. Inspection evidence demonstrates that since incorporation, and particularly since transformation, most colleges have robust procedures in place to manage their own finances and improve quality and standards. The introduction of this Bill strengthens the ability of FECs to manage their own provision and deliver high quality education and training to meet the needs of learners, employers and communities in Wales.

Are the sections of the Bill, as drafted appropriate to bring about the purposes described above? If not, what changes need to be made to the Bill.

Yes, we think the Bill as drafted delivers the stated objectives. The Bill makes clear the position of Welsh Government Ministers and the roles and responsibilities of FECs in terms of governance and regulation. The Bill is clear about the need to include a lighter touch on the Government framework, that colleges can develop their own instruments and articles of Government, dissolve themselves and merge with other organisations or borrow money without Ministerial approval. However, without the Bill there might be a serious disincentive for the sector to provide good financial management if colleges were not allowed to keep their annual surpluses. Currently, FECs make good use of surpluses to build reserves to fund projects or restructuring. Without the Bill, colleges would be reluctant to seek alternative income streams outside of Government funding or even continue to manage their finances as efficiently as they do now. Estyn welcomes the new enhanced intervention power for Ministers which can be used where a governing body is mismanaging its affairs or giving an unacceptable standard of education and training. This will provide a check on colleges that may 'overreach' themselves in terms of acquisitions that lead them

away from their core purposes. Examples would include acquiring wholly owned subsidiaries in other parts of the UK or beyond, or diversifying to develop other business that are not core to the delivery of education and training. The Bill ensures that FECs will be accountable for the use of public funds.

How will the Bill change what organisations do currently and what impact will such changes have, if any?

We do not think that the Bill will change what FECs do currently although there is the risk of too much diversification as highlighted in the previous answer. However, the Bill will enable FECs to have more independence in determining their future direction with less Ministerial intervention. This will enable them to respond quickly and appropriately to the needs of learners, employers and the local community. We do not think the proposed Bill will have any detrimental effect on quality and standards. Estyn is pleased that the Bill will not have a negative impact on the Welsh language. However, Estyn has a concern that the Bill will repeal the duty on FECs to consult with learners and employers. We support the aim of reducing the power of Ministers to restrict the provision of HE in FE as this is a fertile area for growth and cooperation between the sectors, each bringing their own specific strengths to the delivery of higher level courses to learners with a variety of needs.

What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?

We do not see any significant barriers to implementing the Bill.

Do you have any views on the way in which the Bill falls within the legislative competence of the National Assembly for Wales?

We are unable to comment on the legislative competence on the National Assembly for Wales.

Powers to make subordinate legislation

What are your views on powers of the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?

We are unable to make a comment on the powers for Welsh Ministers.

Financial Implications

What are your views on the financial implications of the Bill?

We agree that the 'do nothing' option would have significantly negative impact on WG budgets and the ability for FECs to carry forward surpluses to enable them to carry-out capital projects as they have successfully undertaken in the past. Introducing a funding council will significantly increase costs and will not address the issues. The cost of introducing a funding council will have to be met by diverting money from the FE budget and is highly unlikely to satisfy the ONS requirements to reverse the reclassification of FE colleges. Whilst it would increase the autonomy of FECs, while maintaining the ability to exercise arm's length control by Ministers, it will not remove many of the controls Ministers have over FECs. Hence our preferred option is option 3, to introduce an Assembly Bill. This will enable the Welsh Government to repeal a wide range of restrictions and controls on colleges and

enable them to develop their own Instruments and Articles of Government, dissolve themselves, merge with other organisations and borrow money without Ministerial approval.

Other comments

Are there any other comments you wish to make about specific sections of the Bill?

No



UCU Crosskeys Branch

Children and Young People Committee: Consultation on the Further and Higher Education (Governance and Information) (Wales) Bill

1. In the autumn the University College Union (UCU) Crosskeys Branch launched a campaign to “Keep Further Education in the Public Sector”. The petition was signed by 246 signatories and was first considered by the National Assembly’s Petitions Committee on 19th February 2013¹. In our petition we call upon the National Assembly for Wales to urge the Welsh Government to ensure:
 - i. Further education, along with publicly funded assets, is retained within the public sector.
 - ii. Colleges continue to be bound by the national agreements in FE, such as the national pay scales.
 - iii. The introduction of an all-Wales contract for FE lecturers.
 - iv. Welsh Ministers do not dissolve colleges and give colleges the ability to transfer the property, rights and liabilities to another body.
2. Whilst UCU has responded centrally on behalf of the Union, Crosskeys Branch thought it would be appropriate to contribute to this consultation given our petition and on-going campaign.
3. The Further and Higher Education (Governance and Information) (Wales) Bill seeks to enhance the autonomy and decision making abilities of Further Education Institutions by removing and modifying existing legislative controls on them. We recognise that in October 2010, the Office of National Statistics (ONS) announced that it would reclassify colleges as part of central government for the purpose of national accounts, and this Bill has partly arisen in response to this reclassification. We also accept that the change in ONS classification will have significant implications for Further Education Institutions (FEIs) including any surpluses generated by colleges would be accounted for as Welsh Government funds and FEIs would be unable to retain a surplus in order to build reserves for future projects.
4. However, this Bill risks alienating and demoralising teachers and lecturers since the increase in college freedoms may allow colleges to remove themselves from nationally agreed pay scales and current negotiations to

¹ <http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?lId=5790&Opt=0>

establish national terms and conditions; and dissolve themselves and transfer their assets and liabilities to another body.

5. In a letter dated 8th May 2013 to the Petitions Committee from the Minister for Education, he states there are no plans for Academies and privately-run institutions in Wales. If governing bodies are given the power to dissolve the corporation and transfer a corporation's rights and assets to a person or bodies, to whom could these responsibilities and assets be transferred to if the Minister has already ruled out privately-run institutions in this letter? The Minister confirms that transferred assets would have to be solely used for charitable purposes. Could charitable and third sector organisations end up running our FEIs? The Minister has also not explained why it might be necessary for a FEI to dissolve itself and transfer its property, rights and liabilities to another body. It is these unanswered questions and uncertainties which are of grave concerns to teachers and lecturers.
6. UCU's preferred option is the introduction of a Wales Funding Council. Running costs for the HEFCW are currently £2.9 million per annum². If a Funding Council was set up for the further education sector then some functions currently undertaken by the Welsh Government would transfer to the new body and there would be a reduction in Welsh Government direct running costs totalling £1.06m³. Therefore we have calculated that the net cost of introducing a Funding Council would be £1.84m.
7. The Welsh Government's regulatory impact assessment for introducing an Assembly Bill makes a naïve assumption that the introduction of a Bill would not cost a penny extra to the public purse. It is suggested the policy and legislative process for achieving the proposed powers will be managed by officials within the DfES. Thus there will be no costs to the Welsh Government creating the new provisions⁴. Also, it is claimed by the Welsh Government that the implementation of the policies following creation of the necessary provisions will not result in additional costs for the FEIs in Wales⁵. However, it is suggested that doing nothing and maintaining the current system (Option 1) would cost the Welsh Government and FEIs £77,348 per annum⁶.
8. In exercising its persuasion we believe the Welsh Government's regulatory impact assessment is biased towards Option 3 and the facts have been presented to make this option appear as a credible solution to the problem when outstanding questions remain.

² Further and Higher Education (Governance and Information) (Wales) Bill – Explanatory Memorandum: Paragraph 83, Page 22

³ Further and Higher Education (Governance and Information) (Wales) Bill – Explanatory Memorandum: Paragraph 85, Page 23

⁴ Further and Higher Education (Governance and Information) (Wales) Bill – Explanatory Memorandum: Paragraph 94, Page 24

⁵ Further and Higher Education (Governance and Information) (Wales) Bill – Explanatory Memorandum: Paragraph 95, Page 25

⁶ Further and Higher Education (Governance and Information) (Wales) Bill – Explanatory Memorandum: Paragraph 65, Page 18

9. One of the risks for Option 3 suggests that an Assembly Bill not may resolve the ONS accounting issue as it may arise that the legislation does not give the ONS Classification Committee the assurances needed that key steps have taken place to increase the autonomy of FE colleges and the reversal of the public sector categorisation for national account purposes fails⁷. It is possible the Minister could be pressing ahead with this Bill that would not resolve the ONS classification issue some 18 months down the line, which, in our opinion, is not prudent governance on the part of the Welsh Government.
10. In conclusion, UCU Crosskeys Branch is concerned about the impact of this Bill upon the teaching profession. Our members are loyal and passionate educators who believe in putting the learner at the heart of our education system. We believe the result of this Bill will alienate and demoralise teachers and lecturers since the increase in college freedoms may allow colleges to remove themselves from nationally agreed pay scales and current negotiations to establish national terms and conditions; and dissolve themselves and transfer their assets and liabilities to another body.
11. UCU Crosskeys Branch members are angry since the 2011 Welsh Labour National Assembly for Wales election manifesto declared “FE colleges as public assets which belong to their local communities and its community of staff and learners”. One commitment in the manifesto was to “ensure the parity of esteem for teachers and lecturers by maintaining the current link between their pay and conditions” as well as “introduce an all-Wales contract for FE lecturers”. If this Bill is passed it could undoubtedly result in industrial action; teachers and lecturers will feel betrayed by the Welsh Labour Government for introducing the break-up of FE in the public sector. We hope that AMs will vote according to their conscience and values and “Keep Further Education in the Public Sector.”

UCU Crosskeys Branch

⁷ Further and Higher Education (Governance and Information) (Wales) Bill – Explanatory Memorandum: Paragraph 97, Page 24

Children and Young People Committee
Further Education and Higher Education (Governance and Information
(Wales) Bill
FEHE 7 – UNISON Cymru

Consultation on the Further and Higher (Governance and Information) (Wales) Bill

Name	Simon Dunn
Organisation	UNISON Cymru/Wales
Address	UNISON House, Custom House Street, Cardiff, CF10 1AP

Consultation Questions
General

1. *The Explanatory Memorandum prepared by the Welsh Government*
Describes the Bill's main purposes in the following terms:

“The ... Bill seeks to enhance the autonomy and decision making abilities of Further Education Institutions by removing and modifying existing legislative controls on them.”

The Bill also gives effect to the Welsh Government policy to allow data relevant to student grants and loans to be shared by Her Majesty's Revenue & Customs (HMRC) with the Welsh Ministers and anyone to whom the Welsh Ministers delegate or transfer functions. The data sharing gateway is an integral part of a project to modernise the Student Finance Wales delivery service to simplify and create efficiencies in that service.”

Is there a need for a Bill for these purposes? Please explain your answer.

UNISON Cymru/Wales has concerns with respect to the greater autonomy proposed in the Bill. We do not believe it is necessary to remove and modify existing legislative controls on Further Education Institutions (FEIs) in Wales, in order to enhance their autonomy and decision making abilities. Instead we have concerns as to how removing legislative controls on FEIs will affect the further education sector in Wales.

We believe the greater autonomy provided for in the Bill for Further Education Corporations (FECs) undermines the Welsh Government's wider policy agenda. We are particularly concerned that with greater autonomy, FECs could seek legal status, (becoming limited by guarantee through dissolution), that could in effect introduce privatisation to the provision of further education in Wales. UNISON Cymru/Wales does not believe the profit motive has any place in the provision of education, and we believe this runs contrary to Welsh Labour policy.

Private companies' priorities will be to maximise profit. The delivery of appropriate skills for local communities will not be a foremost priority.

We acknowledge but do not agree with the Welsh Government's view that colleges, rather than the Government, are best placed to determine how the needs of learners and communities are met. There is a clear trade-off between decentralisation and local decision making on the one hand, and the universality of standards, equality and democratic accountability on the other. We are therefore extremely cautious of the provisions in the Bill which aim to remove and modify the existing legislative controls on FECs.

We also have concerns that, under the Bill, FECs could move away from national agreements that are central to the sector. The Bill will undermine the ability of the Welsh Government to set national standards and educational priorities within the wider policy context.

The Bill would allow colleges to establish a subsidiary that could be a limited company and enter into public/private partnerships. This could result in the private sector controlling the skills agenda in Wales. The Bill does not stipulate that the Welsh Government must be able to intervene to ensure that no FEC in Wales can transfer any assets, rights or liabilities to any other body, apart from those which are publicly funded educational institutions in Wales.

UNISON Cymru/Wales does not believe the case has been made that classifying colleges as public sector has clear detrimental implications. We believe there is a case for Welsh Government to be involved in managing the accrued reserves, for the benefit of the whole sector.

However, in the alternative instead of a reclassification of FECs to NPISH's, in an attempt to reverse the public sector categorisation of Further Education Institutions (FEIs) for the purpose of National Accounts, UNISON Cymru/Wales would like to see the re-establishment of a funding council for Further Education (similar to the Higher Education Funding Council (HEFCW)).

Assurances and evidence would need to be submitted to a Classification Committee to demonstrate that key steps have taken place to increase the autonomy of FEIs whilst maintaining the ability to exercise at arms length some control over their activities, ensuring that FEIs would not be able to remove themselves from nationally agreed pay scales and current negotiations to establish national terms and conditions; or dissolve themselves and transfer their assets and liabilities to another body.

Alternatively we believe the Welsh Assembly could look more in detail at the Scottish model which has a joint FE and HE funding organisation, known as the Scottish Funding Council, which could save on money and bureaucracy of having two organisations.

UNISON Cymru/Wales does agree with the provisions in the Bill to allow data relevant to student grants and loans to be shared by Her Majesty's Revenue & Customs (HMRC) with the Welsh Ministers and anyone to whom the Welsh Ministers delegate or transfer functions. We understand and welcome the proposals within the Bill which aim to modernise the Student Finance Wales delivery service, allowing for a more effective and efficient assessment service.

We understand the need to modernise the Student Finance Wales delivery service but do not welcome the manner in which this is being pursued in the Bill's proposals. The Student Finance Wales delivery service is in effect being outsourced to the Student Loan Company (which has had a chequered history in its workings in England) with the intention of centralising what is currently a local and responsive service. The danger in the current proposals is that the service will be diminished and that students will suffer in particular those who wish to apply through the medium of Welsh and those with special needs.

2. Do you think the Bill, as drafted, delivers the stated objectives as set out in the Explanatory Memorandum? Please explain your answer.

UNISON Cymru/Wales believes that the Welsh Government must retain powers over how FECs can transfer their properties, assets, rights and liabilities. One of the indicators used by the Office of National Statistics (ONS) to determine whether an institution remains in the public sector or not, is whether they have a final say in the sale/acquisition of fixed assets.

There is a clear risk that reclassification will not take place.

There is a clear risk that the Bill will enable a significant role for the private sector in the provision of education in Wales, which is not a stated objective of the Bill.

3. Are the sections of the Bill as drafted appropriate to bring about the purposes described above? If not, what changes need to be made to the Bill?

See the answer for question 2

4. How will the Bill change what organisations do currently and what impact will such changes have, if any?

UNISON Cymru/Wales welcomes certain sections of the proposed Bill. Particularly, the proposed intention to strengthen the student and staff voice. Staff play a central role in the attainment and experience of students. A strong student and staff voice must feature if colleges are to be in the best position to determine the needs of learners and communities.

Often it is the staff of the colleges who are best placed to bring about the type of change which supports student attainment and ambitions. Therefore an open workforce, with an effective voice is the best way to bring about improved student attainment and, ultimately, results. This must walk hand in hand with appropriate mechanisms for voicing workplace issues, if staff are to be given the strong voice they need. We therefore, strongly welcome the intention to strengthen the student and staff voice, and see it as essential in improving further education more widely.

However, the Bill as written does not specify the number of staff representatives, and could be interpreted as being only one. We do not believe one person can appropriately

reflect the diverse workforce within a college, and should be amended to at least two staff representatives.

UNISON Cymru/Wales is particularly concerned that with greater autonomy, FECs could seek legal status, (becoming limited by guarantee through dissolution), that could in effect introduce privatisation to the provision of further education in Wales. UNISON Cymru/Wales does not believe the profit motive has any place in the provision of education, and we believe this runs contrary to Welsh Labour policy. If such a move happened, it could result in private companies looking to maximise profit from colleges, without care or consent for the delivery of appropriate skills for local communities.

We are concerned that the potential involvement of the private sector could result in a reduced focus on the importance of training in any new further education structure. All the evidence suggests that better qualified staff deliver better outcomes. We are also concerned that the sector in Wales could follow the English sector where we have seen the transfer of staff to new organisations followed by attempts to significantly reduce the terms and conditions. The reduction of rewards for FE staff will do nothing to enhance the student experience or their attainment.

FECs could move away from national agreements that are central to the education sector. The Bill will undermine the ability of the Welsh Government to set national standards and educational priorities within the wider policy context

5. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?

No comment

6. Do you have any views on the way in which the Bill falls within the legislative competence of the National Assembly for Wales?

No comment

Powers to make subordinate legislation

7. What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?

In answering this question, you may wish to consider Section 5 of the Explanatory Memorandum, which contains a table summarising the powers delegated to Welsh Ministers in the Bill to make orders and regulations, etc.

As UNISON Cymru/Wales have concerns with the Bill over its provision to allow FECs to have the powers to dissolve themselves we are against the subordinate legislation required to achieve this and would prefer not to see this in the Bill. Alternatively, we would like the regulations needed to achieve the subordinate legislation to stipulate that the Welsh Government must be able to intervene to ensure that no FEC in Wales can

transfer any assets, rights or liabilities on dissolution to any other body, apart from those which are publicly funded educational institutions in Wales.

Financial Implications

8. What are your views on the financial implications of the Bill?

In answering this question you may wish to consider Part 2 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the Bill.

UNISON Cymru/Wales understands that the Bill's aims to reverse the public sector categorisation for National Accounts purposes will mean the Welsh Government will not have to bear any adverse budgetary consequence and FECs would be able to retain surpluses to build reserves and help pay for future capital projects. We do not believe there is an evidence base to support the stated potential adverse consequences.

UNISON Cymru/Wales is concerned that the provisions in the Bill will result in a similar transfer of public monies to the private sector, as has happened in England.

UNISON Cymru/Wales does not believe the profit motive has any place in the provision of education, and we believe this runs contrary to Welsh Labour policy. If such a move happened, it could result in private companies looking to maximise profit from colleges, rather than looking to deliver appropriate skills for local communities.

Other comments

9. Are there any other comments you wish to make about specific sections of the Bill

FEC properties, rights and assets in Wales have been funded by the Welsh taxpayer, and therefore have been funded for an educational purpose, belonging to Welsh communities. The Welsh Government has a duty to maintain the education infrastructure in Wales, and UNISON Cymru/Wales expects a Welsh Labour Government to uphold this.

Children and Young People Committee
Further Education and Higher Education (Governance and Information (Wales)
Bill
FEHE 8 – The Learned Society of Wales

FAO Ann Jones AM
Chair, Children and Young People Committee
The National Assembly for Wales

Dear Ms Jones

I write on behalf of the President and the Council of the Learned Society of Wales to thank you for your letter of 2 May (a copy of which is attached for ease of reference), in which you invite comments on the Further and Higher Education (Governance and Information) (Wales) Bill. Although it has no particular comments to make on the present Bill, the Society welcomes its inclusion on the list of bodies that is consulted on such matters and looks forward to submitting comments on future legislative instruments, where appropriate.

Yours sincerely

Lynn Williams

Dr Lynn Williams

**Chief Executive and Secretary
Prif Weithredwr ac Ysgrifennydd**

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www.learnedsocietywales.ac.uk

Y Pwyllgor Plant a Phobl Ifanc

Bil Addysg Bellach ac Uwch (Llywodraethu a Gwybodaeth) (Cymru)

FEHE 9 - Undeb Cenedlaethol Athrawon Cymru (UCAC)



Ymgynghoriad: Bil Addysg Bellach ac Uwch (Llywodraethu a Gwybodaeth) (Cymru)

Mai 2013

UCAC | yr undeb sy'n diogelu athrawon a darlithwyr Cymru

Bil Addysg Bellach ac Uwch (Llywodraethu a Gwybodaeth) (Cymru)

Croesawa Undeb Cenedlaethol Athrawon Cymru (UCAC) y cyfle hwn i ymateb i gais y Pwyllgor Plant a Phobl Ifanc am dystiolaeth ar egwyddorion cyffredinol y Bil Addysg Bellach ac Uwch (Llywodraethu a Gwybodaeth) (Cymru).

Mae UCAC yn undeb llafur sy'n cynrychioli 5,000 o athrawon, arweinwyr ysgol a darlithwyr addysg bellach ac addysg uwch ym mhob rhan o Gymru.

1. Mae'r Memorandwm Esboniadol, a baratowyd gan Lywodraeth Cymru, yn disgrifio prif ddibenion y Bil. A oes angen Bil ar gyfer y dibenion hyn? Esboniwch eich ateb.

Gan mai newidiadau i Ddeddfau sydd eu hangen er mwyn gwireddu amcanion y Bil, mae'n siŵr bod angen Bil i wneud hynny.

Fodd bynnag, gwrthwyneba UCAC i raddau helaeth y darpariaethau yn y Bil sy'n ymwneud ag Addysg Bellach am y rhesymau a amlinellir isod.

2. A ydych yn credu bod y Bil, fel y'i drafftiwyd, yn cyflawni'r amcanion a nodwyd yn y Memorandwm Esboniadol? Esboniwch eich ateb.

3. A yw adrannau'r Bil, fel y'u drafftiwyd, yn briodol i gyflawni'r amcanion a ddisgrifir uchod? Os nad ydynt, pa newidiadau y mae angen eu gwneud i'r Bil?

Nid ydym wedi ein darbwylllo bod y darpariaethau a wneir yn y Bil yn mynd i lwyr bodloni'r ONS, gan fod nifer o elfennau o reolaeth, er yn wan, yn parhau i fod yn nwylo Llywodraeth Cymru e.e. yr hawl i gyfarwyddo Colegau i ddiddymu eu hunain. Caiff hyn ei gydnabod yn y Memorandwm Esboniadol, paragraff 97.

Mae cwestiwn pwysig iawn yn codi ynghylch i ba raddau y bydd modd defnyddio amodau ariannu (*conditions of funding*) i osod amodau ar sefydliadau Addysg Bellach yn y dyfodol, os daw'r Bil hwn i rym. Yn y gorffennol, mae hynny wedi bod yn fecanwaith pwysig i sicrhau rheolaeth Lywodraethol dros y sector, ac atebolrwydd am arian cyhoeddus. A chaiff hynny ei ganiatáu dan amodau'r ONS am sefydliadau NPISH?

Pryderwn y bydd Llywodraeth Cymru'n llacio rheolaeth dros y sector i raddau annoeth mewn ymgais i sicrhau dychwelyd i'r categori NPISH, ond y gallai hynny hyd yn oed fod yn annigonol at y diben. Os ddigwydd hynny, mi fyddai niwed wedi'i wneud o ran colli rheolaeth, heb enillion digonol i'w gyfiawnhau. Mae'r risg yn uchel.

Rydym o'r farn bod y llacio rheolaeth dros y sector a ymgorfforir yn y Bil eisoes yn mynd yn rhy bell, ac yn golygu bod y Llywodraeth (a phob rhanddeiliad arall, gan gynnwys dysgwyr, cymunedau a staff) yn llawer rhy ddibynnol ar ymrwymadau gwirfoddol gan y Colegau/Sefydliadau unigol, neu gan Golegau Cymru fel corff. Ni fyddem ar unrhyw gyfrif am weld y cynigion yn mynd ymhellach fyth er mwyn ceisio lleihau'r risg o beidio bodloni gofynion yr ONS ar gyfer ail-gategoreiddio.

4. Sut y bydd y Bil yn newid yr hyn y mae sefydliadau yn ei wneud ar hyn o bryd, a pha effaith y bydd newidiadau o'r fath yn ei chael, os o gwbl?

Dadreoleiddio: Yr hyn sydd dan sylw yn y Papur Gwyn yw dadreoleiddio'r sector AB. Ni welwn unrhyw fantais o ran safonau addysgol, o ran atebolrwydd am gyllid cyhoeddus nac o ran ymgysylltiad â chymunedau i ddadreoleiddio i'r fath raddau.

Gan mai cronfeydd cyhoeddus sy'n ariannu'r sector, mae'n bwysig sicrhau bod sefydliadau'n uniongyrchol atebol i'r ffynonellau ariannu hynny, a'u bod nhw yn eu tro yn atebol i'r etholwyr y mae eu trethi yn talu am y gwasanaethau. Mae hyn yn fater o atebolrwydd democrataidd sylfaenol. Mae'r cynigion yn y Bil yn gwanhau'r llinellau atebolrwydd hyn yn sylweddol iawn, ac mae hynny'n destun pryder i UCAC.

Os ildia'r Llywodraeth reolaeth, a fydd yn gallu hybu ei nodau polisi e.e. osgoi dyblygu ac annog cydweithio (ymrwymadau maniffesto), sicrhau ansawdd, a datblygu rhagor o gyrsiau cyfrwng Cymraeg? Sylwn, er enghraifft, fod y Llywodraeth yn ildio'r grym, ymhlith pethau eraill:

- i lunio, cyhoeddi ac adolygu datganiad polisi mewn perthynas ag arfer pwerau ymyrryd pan fydd problemau â pherfformiad coleg (gweler 'Lleihau grymoedd ymyrraeth' isod)
- i orfodi sefydliadau AB i ymgynghori â dysgwyr a chyflogwyr
- i roi cyfarwyddiadau mewn perthynas â chynllunio cwricwla lleol a chydweithio â sefydliadau addysgol eraill i'w darparu; mae hyn yn syndod o'r mwyaf gan fod y cwricwla lleol wedi bod yn gonglfaen i'r 'Agenda Trawsnewid' a'r Llwybrau Dysgu 14-19 ers 2009
- i ddylanwadu ar faint o gyrsiau AU sy'n cael eu darparu, ac i bwy, mewn colegau AB

Rhaid bod yn gwbl glir na fyddai dychwelyd i gategori NPISH dan delerau'r Bil yr un fath â dychwelyd i'r sefyllfa NPISH gwreiddiol (cyn 2010). Dan y telerau NPISH gwreiddiol, bu'r sector AB yn gweithredu fel 'trydydd sector' *ond dan reolaeth gweddol dynn Llywodraeth Cymru*.

O dan ddarpariaethau'r Bil, byddai gennym y gwaethaf o'r ddau fyd, sef sector AB yn gweithredu fel 'trydydd sector' a heb prin dim reolaeth gan Lywodraeth Cymru – a hynny er mwyn bodloni'r ONS, yn hytrach nag ar sail unrhyw ystyriaeth yn ymwneud â safonau addysgol, ehangder darpariaeth neu fuddiannau myfyrwyr.

Mae Llywodraeth Cymru wedi sefyll yn gadarn yn erbyn creu ysgolion rhydd/stiwdio, academiâu a UTCs, ac mae hynny wedi bod yn safbwynt cymeradwy. Pryderwn yn fawr fod y lefelau o ryddid y bwriedir eu caniatáu i'r sector AB o dan ddarpariaethau'r Bil, ynghyd â'r diffyg rheolaeth a fydd gan y Llywodraeth (a fydd yn parhau i ariannu'r sector), yn agos at fod yn gyfystyr â chreu sefydliadau o'r fath yng Nghymru.

Lleihau grymoedd ymyrraeth: Ar gyfnod pan mae'r Llywodraeth wedi gwneud codi safonau addysgol yn flaenoriaeth, mae'n anodd deall pam y byddai'n fodlon ildio grym ymyrryd i'r fath raddau yn y sector AB; mae'r sector yn addysgu, i ryw raddau, disgyblion 14-16 mlwydd oed, ac i raddau helaethach, disgyblion 16-19. Os oes gan Weinidogion Cymru'r hawl i ymyrryd yn sylweddol iawn yn eu haddysg nhw os ydynt yn mynychu ysgol, pam na fyddai am gadw'r hawl i ymyrryd yn yr un modd mewn sefydliad addysg bellach?

Nid ydym yn gweld paragraff 23 o'r Memorandwm Esboniadol yn gydnaws o gwbl â darpariaethau'r Bil, h.y. ni welwn ym mha fodd y mae'r Bil "yn rhoi rhagor o bŵer i Weinidogion ymyrryd os yw corff llywodraethu Sefydliad Addysg Bellach yn camreoli ei faterion ei hun, yn methu cyflawni dyletswydd statudol, neu'n gweithredu mewn modd afresymol, yn perfformio cryn dipyn yn is neu'n rhoi safon annerbyniol o addysg neu hyfforddiant". Yr unig gynnydd yn y pwerau, hyd y gwelwn ni, yw'r pŵer i gyfarwyddo corfforaeth i ddiddymu ei hun.

Mae'r gwahaniaeth o ran agwedd at y gwahanol sectorau'n drawiadol iawn, ac yn un nad ydym o'r farn ei fod yn synhwyrol, yn rhesymegol nac yn gyfrifol.

Ymgysylltiad Cymunedol: Mae'r Llywodraeth yn pwysleisio pwysigrwydd atebolrwydd colegau AB i'w cymunedau (ymrwymiad maniffesto). Serch hynny, mae'r cynigion hyn yn golygu mai ar sail wirfoddol y gweithredir argymhellion yr [Adolygiad Humphreys](#)¹ (Mawrth 2011) o ran ymgysylltiad cymunedol, ac nid ar sail statudol.

Asedau cyhoeddus yn trosglwyddo i'r sector preifat: Pryderwn yn fawr am y bwriad i roi'r hawl i golegau drosglwyddo eiddo, hawliau a dyledion i gorff arall. Croesawn y bwriad i lunio rheoliadau a fydd yn "rhagnodi'r personau neu'r cyrff y caiff y gorfforaeth addysg bellach drosglwyddo ei eiddo, ei hawliau neu ei rhwymedigaethau iddynt pan fydd yn cael ei ddiddymu." Deallwn y bydd ymgynghoriad ar y Rheoliadau pan ddaw'r amser. Serch hynny, o ran tawelu pryderon, mi fyddai wedi bod yn ddefnyddiol cael syniad yn y Memorandwm Esboniadol o'r mathau o bersonau neu gyrff allai fod dan sylw.

¹ <http://new.wales.gov.uk/topics/educationandskills/publications/wagreviews/fegovreview/?lang=cy>

Tâl ac amodau gwaith staff: Mae Llywodraeth Cymru wedi chwarae rôl bwysig mewn sicrhau tâl ac amodau gwaith teg i staff AB. Oherwydd hynny, mae graddfeydd cyflog yn eu lle ar gyfer darlithwyr; ac er mwyn gweithio tuag at gydraddoldeb rhwng darlithwyr AB ac athrawon ysgol mae codiadau cyflog darlithwyr yn seiliedig ar godiadau cyflog athrawon (ymrwymiad maniffesto). Yn ychwanegol at hyn, mae'r undebau a Cholegau Cymru'n agos at lunio cytundeb cenedlaethol ar gyfer holl staff AB (ymrwymiad maniffesto).

Mae'n bryder o'r mwyaf y gallai'r trefniadau gwerthfawr hyn oll fynd yn wastraff, am na fyddai gan Lywodraeth Cymru, dan gynigion y Papur Gwyn, y grym i fynnu bod colegau'n mabwysiadu'r cyfraddau tâl na'r cytundeb cenedlaethol.

Petai hynny'n digwydd, mi fyddai'n gwyrddroi ymrwymiad maniffesto, ac yn ogystal, yn gwneud unrhyw uniadau pellach rhwng colegau llawer fawr iawn yn anoddach am na fyddai telerau cyffredin rhwng staff.

Anghysondeb â sectorau addysg eraill: Deallwn mai dosbarthiad NPISH sydd gan sefydliadau Addysg Uwch (AU). Serch hynny, mae llinellau atebolrwydd cryf rhwng sefydliadau AU a Llywodraeth Cymru, drwy gyfrwng Cyngor Cyllido Addysg Uwch Cymru.

Rhaid cadw mewn cof nad yw'r ffiniau rhwng y sectorau mor gadarn ac y buont, gyda chynnydd sylweddol yn lefel y ddarpariaeth AU sy'n cael ei chyflwyno mewn sefydliadau AB, yn ogystal â'r posibilrwydd o uniadau rhwng colegau AB a phrifysgolion ôl-92. Mi allai sefydlu cyfundrefnau mor wrthygyferbyniol ar gyfer y ddau sector greu anawsterau ymarferol.

Y gymhariaeth naturiol arall yw'r sector ysgolion. Rydym ym mhumed flwyddyn yr agenda Trawsnewid, sydd wedi pwysleisio a hyrwyddo cydweithio rhwng ysgolion a cholegau AB. Ni fydd y newidiadau hyn yn hwyluso'r broses.

Teimla darpariaethau'r Bil mewn perthynas â'r sector AB yn anghydnaws â'r tirlun a'r cyfeiriad polisi addysg ehangach yng Nghymru.

Cofrestru'r Gweithlu: A yw'r Llywodraeth wedi ystyried beth fydd goblygiadau'r Bil ar gyfer y drefn arfaethedig newydd o ran cofrestru'r gweithlu addysg? A fydd darlithwyr addysg bellach yn parhau i fod yn gymwys i ddod dan ddarpariaethau'r corff a fydd yn dod yn lle'r Cyngor Addysgu Cyffredinol? A fydd modd deddfu/rheoleiddio i'r graddau y bydd angen i wneud hynny'n bosib, gan gadw o fewn cyffiniau rheolau categori NPISH?

Polisiâu Iaith: Petai'r colegau addysg bellach yn cael eu trosglwyddo i gategori NPISH, a fyddent yn ddarostyngedig i'r Safonau Iaith arfaethedig? I bwy fyddent yn atebol o ran gwireddu ymrwymadau eu Polisiâu Iaith Gymraeg?

Datrysiad amgen: Rydym yn gryf o'r safbwynt bod angen dod o hyd i ddatrysiad arall i'r problemau a amlinellir ynghylch y cyfalaf, y benthyg a'r gwargedion. Pa drafodaethau a gafwyd gyda'r ONS i geisio dod o hyd i ddatrysiad amgen? Pa drafodaethau a gafwyd gyda'r Trysorlys?

Mae Sefydliadau AB Yr Alban a Gogledd Iwerddon wedi cael eu hail-gategoreiddio, o NPISH i'r sector cyhoeddus yn yr un modd ag yng Nghymru, ac nid oes bwriad gan y Llywodraethau yno i herio nac i geisio osgoi'r categori newydd. Mae hynny'n awgrymu nad yw'r ail-gategoreiddio wedi bod mor drychinebus ag y mae'r Papur Gwyn yn awgrymu y gallai fod yng Nghymru. Mae hynny'n esgor ar y cwestiwn - a oes modd inni dderbyn y categori newydd heb sgil-effeithiau rhy niweidiol?

Os penderfynir, yn wir, bod yn rhaid osgoi goblygiadau'r ailddosbarthiad, a cheisio dychwelyd i gategori NPISH, teimlwn yn sicr bod modd gwneud hynny heb gymryd camau mor eithafol o ran ildio rheolaeth gyhoeddus dros y sector cyfan. Er bod y Memorandwm Esboniadol yn gwrthod y model o gyngor cyllido (yn ddisymwth, braidd), rhaid cofio yn yr Alban bod *un cyngor cyllido* ar gyfer AB ac AU. A fyddai hynny'n fodel posib i Gymru?

5. **Beth yw'r rhwystrau posibl i roi darpariaethau'r Bil ar waith (os ydynt yn bodoli), ac a yw'r Bil yn rhoi ystyriaeth ddigonol iddynt?**
6. **A oes gennych farn ynghylch y modd y daw'r Bil o fewn cymhwysedd deddfwriaethol Cynulliad Cenedlaethol Cymru?**

Nac oes.
7. **Beth yw eich barn am y pwerau yn y Bil i Weinidogion Cymru wneud is-ddeddfwriaeth (hynny yw, offerynnau statudol, gan gynnwys rheoliadau, gorchmynion a chyfarwyddiadau)?**

Prin iawn yw'r darpariaethau ar gyfer is-ddeddfwriaeth – un set o Reoliadau'n unig y bwriedir eu llunio. Mae hyn yn anorfod gan fod pwyslais y Bil ar leihau i'r graddau fwyaf posib ar ddylanwad y Llywodraeth dros y sector AB.

Fel y nodwyd uchod, mae UCAC yn gwrthwynebu'n gryf dadreoleiddio unrhyw ran o'r system addysg gyhoeddus yn y fath fodd.
8. **Beth yw eich barn am oblygiadau ariannol y Bil?**
9. **A oes unrhyw sylwadau eraill yr hoffech eu gwneud am rannau penodol o'r Bil?**



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Children and Young People Committee
Further Education and Higher Education (Governance and Information
(Wales) Bill
FEHE 10 – National Union of Students

Overview

The National Union of Students (NUS) Wales welcomes the opportunity to provide evidence to the Children and Young People Committee on the Further and Higher Education (Governance and Information) (Wales) Bill. **NUS Wales is a confederation of students' unions** representing more than half a million students in the nation. As the only representative voice for students in Wales, NUS Wales **represents students from all affiliated students' unions in both HE and FE sectors**, this includes 10 HE institutions and all Welsh FE Colleges.

NUS Wales exists to promote, defend and extend the rights of **students and develop and champion strong students' unions**. We fight barriers to education; empower students to shape both a quality learning experience and the world around them; as well as supporting influential, democratic and well-**resourced students' unions**.

As well as campaigning on behalf of our members, NUS Wales **provides a range of training to students' unions including training for full-time offices, part-time officers and staff**. We provide support **to students' unions to ensure they are able to engage positively** with the latest policy developments that affect them.

We provide resources and staff support to students' unions to help strengthen them and enable them to become ever-more effective in their operation. We work with partners across Wales including DfES, HEFCW, HEA and QAA to develop efficient and productive representation structures for students.

In Further Education, NUS Wales has engaged and trained student governors in every single Welsh FE College and trained class representatives from the majority of FE Colleges. Furthermore, we are developing a National Society of Apprentices to provide representation for those who study in this setting; this endeavour has the backing of the Deputy Minister for Skills, Jeff Cuthbert.

The core values of NUS Wales are democracy, equality and collectivism. We believe that student organisations should be student-led and that education is a benefit to the individual and to society.

Consultation Questions

General

1. The Explanatory Memorandum prepared by the Welsh Government describes the Bill's main purposes in the following terms:

"The ... Bill seeks to enhance the autonomy and decision making abilities of Further Education Institutions by removing and modifying existing legislative controls on them.

The Bill also gives effect to the Welsh Government policy to allow data relevant to student grants and loans to be shared by Her Majesty's Revenue & Customs (HMRC) with the Welsh Ministers and anyone to whom the Welsh Ministers delegate or transfer functions. The data sharing gateway is an integral part of a project to modernise the Student Finance Wales delivery service to simplify and create efficiencies in that service."

Is there a need for a Bill for these purposes? Please explain your answer.

We do feel that some action was necessary regarding the ONS reclassification of FE colleges in Wales in 2010, and as such that there is a need for a Bill to enhance the autonomy and decision making abilities of FE institutions. We recognise the risks associated with having FEIs in Wales remain part of central government, including the impact that this would have upon capital spend, FEIs budgets/surpluses and accounting practices.

It is worth recognising that this reclassification back to NPISH has already taken place in England following similar legislation through the Education Act 2011. Scotland, however, has opted to continue to have their FE colleges considered part of central government. At this point, it is difficult to identify what impact this decision will have in the long-term, especially given the distinct nature of FE funding in Scotland where further education is funded through a funding council rather than directly from government.

We also feel that there is need for a Bill to allow data relevant to student grants and loans to be shared with Welsh Ministers and anyone to whom these functions are delegated. We believe the modernisation project of student finance in Wales will have a range of benefits for Welsh students and bring Student Finance Wales in line with Student Finance England. That said, we want to see the modernisation project in Wales avoid the very damaging issues encountered by SFE when they went through the same process, particularly in respect to vulnerable groups.

In a centralised modern service, to require paper evidence would be cumbersome and potentially risky. In essence, if we are to have a modernised service, it follows to enable the SLC to use HMRC-provided data to determine eligibility for student finance.

2. Do you think the Bill, as drafted, delivers the stated objectives as set out in the Explanatory Memorandum? Please explain your answer.

We do feel that the Bill, as drafted, delivers the stated objectives as set out in the Explanatory Memorandum. Specifically:

- i) to enhance the autonomy and decision making abilities in further education institutions by removing and modifying the existing legislative controls on them and.
- ii) to enable Welsh Ministers to annually delegate the functions for student finance Wales (SFW) customers to the Student Loan Company (SLC)

The first objective is delivered in the Bill through the amendments to the borrowing and investing powers of FE corporations, changes to the way the instruments and articles are prescribed, the way FE corporations can be dissolved and the interventional powers of Welsh Ministers. When similar legislation was introduced in England, an ONS report on the reclassification of English FE colleges back to NPISH stated that:

Having carefully considered the changes in the Act, ONS has concluded that the changes are sufficient to remove the public sector control of general corporate policy of FECs and SFCCs in England, resulting in their reclassification outside of the public sector¹.

In particular, the report emphasised that the most important public sector control that indicated FE colleges were central government, rather than NPISH, was the inability to borrow without consent. The first section of the bill clearly tackles the problem of borrowing and investment.

The second objective of enabling Welsh Ministers to delegate functions to SLC is also delivered through the Bill. The additions outlined in section 9 of the Bill appear to meet this objective clearly and in a succinct fashion.

3. Are the sections of the Bill as drafted appropriate to bring about the purposes described above? If not, what changes need to be made to the Bill?

Yes, we consider the bill as drafted appropriate to bring about the purposes described above including the increased autonomy of FEIs and the sharing of HMRC data. We particularly welcome that Schedule 1 of the Bill, part 3C states **that the body members should include 'staff and students at the institution', p. 7.** However, it would be helpful to have further clarity in regards to a minimum number of reserved places for staff and students.

We feel very strongly that, as students are perhaps the single most important stakeholder in our FEIs, there should be at least two reserved places for students. This would avoid a possible repetition of situations in England where, following the Education Act 2011, some FE colleges did not maintain two student governor places. Considering the great emphasis that has been placed on learner voice in Wales recently, including the **NUS Wales' Welsh Government-funded FE Project**

¹ http://www.ons.gov.uk/ons/dcp171766_266962.pdf

and the Learner Voice Survey, to not secure student representation on the body would be a retrograde step.

4. How will the Bill change what organisations do currently and what impact will such changes have, if any?

We have some concerns about the impact of the increased autonomy of FEIs on areas such as their instruments and articles and the ability to operate through subsidiaries that may be profit-making. There have already been suggestions from colleges that they may move to have only one student place on their body **despite the Minister for Education and Skills' statement** in response to the Humphries Review (2011) that there should be two reserved places for students on the body².

As well as being concerned about the possibility of FE colleges operating profit-making subsidiaries – and we are aware that in some instances this is already the case – we are also concerned that FEIs will gain the ability to transfer their assets. That said, we welcome subsection 5, in section 3 under point 27B, that **states that any property transferred 'must be transferred on trust to be used for charitable purposes which are educational purposes'**. However, we worry about to what extent the use of the phrase 'on trust' is enforceable, and for what period of time.

We envision that **ColegauCymru's role will** becoming increasingly important following the Bill, as it will likely assume a key role in ensuring consistency across the FE sector in Wales including developing a **'Code of Governance' as touched** upon in the Further and Higher Education (Wales) White Paper (2012). Similarly, **ColegauCymru's role in developing the common contract will** likely become more pronounced.

In terms of the impact upon NUS Wales, we will be working closely with ColegauCymru and FEIs to ensure that learners continue to be consulted, represented and included on governing bodies/corporations, especially vital when **the explanatory memorandum outlines in paragraph 25 that the Bill will 'repeal...**

the duty on FEIs to consult with learners and employers', p. 8, which is, understandably, of great concern to us.

We also have some concerns regarding the role of colleges in local curricula planning, as outlined in Section 6. We consider local planning and collaboration as key in developing education and skills in Wales, and that the flexibility of collaborative courses for 14-19 is beneficial for learners. While we accept that it is likely that FEIs will continue to engage in these local partnerships, we believe that in the longer term this may impact how FEIs behave and that consideration must be given to how FEIs are incentivised to continue to engage in local curricula planning.

The part of the Bill related to HMRC data sharing will also have an impact on how organisations work. The movement of student finance from local authorities in **Wales to a centralised system will bring with it a 'public information'** duty for those who advise students, including ourselves. The ability to simplify the application process, which is what we hope the data sharing would enable, would positively benefit students.

² <http://www.walesonline.co.uk/news/local-news/unions-anger-staff-governors-lose-1797606>

That said, it is vital that organisations, including SLC, consider those situations where an income check of HMRC data is not appropriate. For many vulnerable students, family breakdown means an income check would lead to inadequate support being provided to the student. Processes must be in place to support these students.

5. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?

We do not consider there to be any significant barriers in **implementing** the provisions of the Bill.

6. Do you have any views on the way in which the Bill falls within the legislative competence of the National Assembly for Wales?

-

7. What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?

In answering this question, you may wish to consider Section 5 of the Explanatory Memorandum, which contains a table summarising the powers delegated to Welsh Ministers in the Bill to make orders and regulations, etc. Financial Implications

In regards to Section 3 of the Bill and the associated regulations that a FEI would need to follow to dissolve itself, we consider negative procedure to be appropriate. As described in the Bill, and viewed in the context of Welsh Government Guidelines on Subordinate Legislation³, the Regulations prescribe 'matters of relatively minor detail' and do not appear to cover any of the factors deemed as requiring the draft affirmation procedure.

8. What are your views on the financial implications of the Bill? In answering this question you may wish to consider Part 2 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the Bill.

We consider the financial implications to be accurately reflected in the Explanatory Memorandum. The running costs estimated for SFW's part of the data sharing gateway seem accurate and are based on a sound planning assumption of 23,500 income checks per annum. That is, provided it is predominantly first year students who require income checks as on average there is approximately 22,000 new Welsh entrants to university each year⁴. If a large number of returning students needed income checks, this would presumably inflate the cost.

³ <http://www.senedd.assemblywales.org/documents/s5897/CLA4-03-12%20p4%20Annex.pdf>

⁴

http://www.ucas.ac.uk/about_us/media_enquiries/media_releases/2013/apr13applicantfigures

The financial implications of the FE portion of the Bill seem to be minimal and more affordable than the other options presented including setting up a funding council or 'doing nothing'. We did feel that the financial cost of the 'doing nothing' option could have been better illustrated in the explanatory memorandum with the £77,348 per annum figure not taking into account, for example, the predicted hit on capital spending or the potential impact on other areas of Welsh Government funding.

Other comments

9. Are there any other comments you wish to make about specific sections of the Bill?

-

Consultation on the Further and Higher Education (Governance and Information) (Wales) Bill

NDCS Cymru, May 2013



About Us

The National Deaf Children's Society (NDCS) is the leading charity dedicated to creating a world without barriers for deaf children and young people.

We represent the interests and campaign for the rights of deaf children and their families.

NDCS represents children with all levels of hearing loss.

Response

NDCS Cymru welcomes the opportunity to respond to the Children and Young People's Committee consultation on the draft *Further and Higher Education (Governance and Information) (Wales) Bill*. While it would not be appropriate for NDCS Cymru to comment on all aspects of this Bill, we would like to take this opportunity to highlight the impact of this Bill alongside concurrent plans to devolve funding currently held centrally under the LLDD Supplementary Fund to FEIs.

The LLDD Supplementary Fund is used to provide FEIs with extra funding to help support learners with Additional Learning Needs (ALN) attending mainstream post-16 provision. In the case of deaf students, such funding can be used to provide vital support such as a BSL interpreter or a note taker. NDCS Cymru acknowledges that the current funding mechanism for this support is not without problems. However, we are keen to ensure that in devolving funding to FEIs for supporting learners with ALN, appropriate monitoring mechanisms are in place. To this end, we would welcome assurances on the following points:

- *The Further and Higher Education (Governance and Information) (Wales) Bill* provides Welsh Ministers with an ability to request data, but the Explanatory Memorandum emphasises data in relation to the delivery of student loans . We would welcome assurances that data and information will also be sought on how FEIs are responding to the support needs of learners with ALN. As identified on page 7 of the Explanatory Memorandum, it is important that “the Welsh Government recognises the need to balance the technical changes proposed in the Bill with the need for public funds, the public interest and

learners to be safeguarded.” NDCS Cymru considers appropriate data collation to be an integral part of holding FEIs to account in relation to the devolution of funding to support learners with ALN.

- NDCS Cymru notes the powers within the Bill for Welsh Ministers to make subordinate legislation (including regulations, directions and statutory instruments). We would urge that, in light of the devolution of the LLDD Supplementary Fund, such powers should be utilised to provide direction around the responsibilities of FEIs to provide support for ALN learners and how such support should be arranged in conjunction with the learner.

We would also suggest that Welsh Ministers should be able to intervene if it is considered that FEIs are not appropriately supporting learners with ALN.

- NDCS Cymru would welcome further information about how this Bill will operate in conjunction with the planned ALN reforms. NDCS Cymru is aware that proposals to reform support plans and Statements of Educational Needs include the extension of such plans to a post-16 context. In light of this, it will be important that there are duties and requirements placed upon FEIs to work with local authorities on support plans.
- The Bill enables FEIs to take control of the dissolution process, but also provides for the development of Regulations for this process. NDCS Cymru would highlight the importance of considering any specialist ALN provision within such processes and would urge that this should form part of statutory regulations.

More Information

Thank you for taking the time to consider this response. If you have any queries in relation to the points raised or would like any further information, please do not hesitate to contact NDCS Cymru at Campaigns.Wales@ndcs.org.uk.



promoting adult learning / *hyrwyddo addysg oedolion*

Consultation on the Further and Higher Education (Governance and Information) (Wales) Bill

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Organisation:

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Introduction

1. The National Institute of Adult Continuing Education (NIACE) is the national organisation for advancing adult learning in England and Wales. We are an independent charity and HRH Princess Royal is our patron. We work with our members, partners and a wide range of stakeholders to create more, different and better learning opportunities for adults. NIACE Dysgu Cymru, the Welsh arm of NIACE, conducts work in Wales supported by a Management Group, which is elected by NIACE members in Wales. Further information on our work can be found at www.niace.org.uk.
2. This submission has been prepared by NIACE Dysgu Cymru in response to the call for evidence from the Children and Young People Committee. Our submission focuses on the Further Education (FE) section of the Bill, although it should be noted that we have no objections to the section on the supply of information in connection with student loans and grants. We are happy for this response to be published and would be pleased to give verbal evidence to the Committee or to expand on any of the points raised.
3. NIACE Dysgu Cymru believes that FE colleges have a crucial role to play in supporting the learning aspirations of adults in Wales – 55 percent of learners at FE institutions are aged over 25, and 67 percent of learners are part-time. We have concerns about the falling levels of adult participation in FE in Wales, which we feel relates primarily to Welsh Government policy and

financial constraints. Although potentially outside the scope of the consultation, we offer some comments on current policy in order to provide the context to our support for the proposed Bill.

Question 1: Whether there is a need for the Bill

4. NIACE Dysgu Cymru agrees that there is a need for the Bill. There would appear to be considerable disadvantages if the Office for National Statistics (ONS) classification of FE colleges is not reversed, including increased administrative and financial management costs and a reduced investment in FE capital and estates. As explained in response to the questions below, we feel that some of the potential risks associated with the Bill could be managed through the setting, by the Welsh Government, of appropriate conditions of funding.

Question 2: The key provisions set out in the Bill and whether they are appropriate to deliver its stated purpose

5. NIACE Dysgu Cymru believes that the Bill strikes an appropriate balance which gives colleges greater responsibility to manage themselves, whilst recognising the need to work within the broad policy arena set out by Welsh Government.

Question 3: The financial implications arising from the Bill

6. As mentioned in response to question 1, we feel that there would be additional (and unnecessary) costs if the Bill were not passed. There is also a risk that, without the Bill, the impetus for colleges to generate commercial income to support the delivery of learning would be undermined (approximately £100m of commercial income was secured by the FE sector in Wales in 2011/12).

Question 4: Potential barriers to the implementation of key provisions and whether the Bill takes account of them

7. We are not aware of any barriers to the implementation of the Bill.

Question 5: Whether there are any unintended consequences arising from the Bill

8. NIACE Dysgu Cymru is aware that some concerns have been expressed about the potential for FE colleges to abuse any new powers, disregard the policies of the Welsh Government and to focus on profit rather than learners and their communities. Although we agree on the serious impact of such outcomes, and would be particularly concerned about any diminution of the role of the learner voice, we consider the probability of such risks coming to fruition to be extremely low. Similarly, although there is a risk that the Bill could undermine the implementation of the recommendations set out in the

Humphreys Review of FE governance, the chances of this happening are low given the support for the recommendations within the sector.

9. The Bill would effectively endorse the status colleges have had since 1993 (until the ONS reclassification in 2010); a period during which the FE sector in Wales has thrived – significantly improving participation and the quality of provision. Although we do not anticipate any unintended consequences resulting from the Bill, it is reassuring that the Welsh Government has sufficient powers to steer colleges through the setting of conditions of funding (under Section 35 of the Learning and Skills Act 2000). Furthermore, we understand that the Welsh Government is under no specific obligation to fund individual FE colleges, although of course the FE sector makes a very significant contribution to the Welsh Government's duties to secure proper and reasonable facilities for post-16 education and training in Wales.
10. Our support for the proposed Bill is set against serious concerns about the drop in participation within the FE sector in recent years. We are particularly alarmed at the 29 percent drop in participation in FE from individuals who reside in Communities First areas (see Table 1 below). NIACE Dysgu Cymru feels that this drop in participation is an unintended consequence of Welsh Government policy on post-16 education and training, which has seen more and more resources focussed on the needs of 16 to 18 year olds, at the expense of those aged 19 and above. We feel that FE colleges would be better placed to use their proposed new powers to service the needs of their local communities if this policy was reviewed, and a more appropriate balance of resources, and opportunities for individuals, established across the life course.
11. We understand that the rationale for the current approach relates to the Welsh Government's duties to secure 'proper' facilities for 16-18 year olds and 'reasonable' facilities for those aged 19 and above. Although we feel that, even under existing legislation, there is considerable scope to amend the current balance of resources across the age groups, the Welsh Government should look at these duties, set out in sections 31 and 32 of the Learning and Skills Act 2000, as part of its legislative programme.
12. Despite the policy and legislative context, we do feel that FE colleges have a responsibility to reach out to, and support, their local communities. NIACE published in 2012 the final report of the independent inquiry into the role colleges play in their communities (*Colleges in their Communities: A dynamic nucleus*). Although focussed on the FE sector in England, the inquiry was set within the context of a more flexible regulatory regime and greater responsibilities for FE colleges. Many of the recommendations of the inquiry are also relevant to Wales, and we would recommend that the Welsh Government considers the report alongside the introduction of new powers for FE colleges. A copy of *Colleges in their Communities: A dynamic nucleus* can be downloaded free from NIACE's website (<http://shop.niace.org.uk/dynamic-full.html>). A hard copy of the report has been sent to the Deputy Clerk of the Legislation Office of the National Assembly for Wales.

Table 1: Number of learners at FE institutions by deprivation status and age group

Age Group	Welsh domiciled learners in deprived areas (Community first areas)		Change	
	2005/06	2010/11	Number	%
Under 16	1,825	1,065	-760	-42%
16	4,850	3,910	-940	-19%
17	4,385	3,785	-600	-14%
18	2,920	2,760	-160	-5%
19	1,880	1,750	-130	-7%
20-24	6,750	5,595	-1,155	-17%
25-39	15,565	10,655	-4,910	-32%
40-49	8,020	5,100	-2,920	-36%
50-59	5,170	3,040	-2,130	-41%
60-64	1,750	975	-775	-44%
65+	2,645	1,345	-1,300	-49%
Not Specified	565	115	-450	-80%
Total	56,325	40,095	-16,230	-29%

Sources: Table F3.8 of Further Education, Work-based Learning and Community Learning in Wales Statistics

**National Assembly for Wales, Children and Young People Committee
Consultation on the
Further and Higher Education (Governance and Information) (Wales) Bill
Written Comments from Higher Education Wales (HEW)**

1. Introduction

1.1 Higher Education Wales (HEW) represents the interests of Higher Education Institutions (HEIs) in Wales and is a National Council of Universities UK. HEW's Governing Council consists of the Vice-Chancellors of all the HEIs in Wales and the Director of the Open University in Wales. At the Committee's invitation, HEW will be giving oral evidence to the Children and Young People Committee on 13 June 2013. The following written comments are submitted in support of this.

2. Context

2.1 The Welsh Government published its White Paper on the Further and Higher Education (Wales) Bill in July 2012 setting out proposals for legislative reform relating to both the Further Education (FE) and Higher Education (HE) sectors in Wales. The outcome of the consultation was two-fold: (a) the Further and Higher Education (Governance and Information) (Wales) Bill, which was laid before the National Assembly for Wales on 29 April 2013, and (b) the Higher Education (Wales) Bill consultation document, which was published on 20 May 2013. The main proposals in relation to higher education were set out in the latter, which is currently under consultation until 29 July 2013. The Further & Higher Education (Governance and Information) (Wales) Bill primarily set out proposals in relation to Further Education. Two provisions in particular, however, were of relevance to higher education: Section 7 (deregulation of student numbers) and Section 9 (information supply). HEW's comments accordingly focus on these two provisions and the more general implications for higher education arising from these proposals.

3. Deregulation of HE student numbers in FEIs

3.1 Section 7 removes the Welsh Government's power to prohibit the provision of higher education courses and regulate HE student numbers in the FE sector.

3.2 Four Further Education Institutions (FEIs) currently receive direct funding from the Higher Education Funding Council for Wales (HEFCW). This is mostly for part-time undergraduate provision, equivalent to around 180 full-time students in total (21,647 funded credits for 2013/14). One FEI provides a very small amount of directly funded part-time postgraduate taught provision, approximating to 2 full-time equivalent students

(270 credits).¹ Full-time undergraduate provision in FEIs accounts for less than 1% of total full-time undergraduate provision in Wales, based on the maximum fee grant allocations.² Arrangements for direct funding appear to be largely historical, with two Colleges directly funded since before HEFCW's establishment in 1992, or stemming from two phases of an initiative in 1997 and 1999 for a small expansion in directly funded provision at FEIs.³ Under direct funding, the students concerned are enrolled as students of the FEI. The FEI receives funded credits and associated funding directly from HEFCW and returns funding and enrolment data directly to HEFCW.

3.3 The majority of HE provision in FE, however, is currently delivered through part-time franchise arrangements: in 2013/14 universities franchised out 168,808 credits, approximating to 1,407 full-time equivalent students.⁴ Under these arrangements, the student enrolments remain the responsibility of the university (the 'franchisor') and are regarded as such by HEFCW for purposes of funding arrangements and controls. The KPMG report on higher education provision in further education colleges in Wales commissioned by HEFCW in 2003/04 recommended that future expansion of HE in FE should be undertaken through franchising from HEIs because of the level of support which the HEI could provide to the FEC and the benefits to the student in terms of access to the facilities of the HEI and potential progression arrangements. HEFCW consequently confirmed that any future development of HE in FE provision would take place through the franchise route, rather than any expansion of directly-funded provision (Circular W04/61HE).⁵

3.4 In practice, we recognise that the expansion of HE student numbers in FEIs are subject to a number of constraints in addition to the Welsh Government's powers under s.139 of the Education Act 2002:

- Funding/maximum fee grant allocations. HEIs and directly funded FEIs are both currently subject to HEFCW's restrictions on full-time recruitment/maximum fee grant.⁶ Part-time undergraduate enrolments in Wales are not currently subject to a cap, and continue to be supported by direct grant from HEFCW. These currently rely on implementation primarily through HEFCW's conditions of grant.

¹ HEFCW Circular W13/09HE HEFCW's Funding Allocations 2013/14, Table B2.

² HEFCW Circular W13/09HE HEFCW's Funding Allocations 2013/14, Table 9.

³ HEFCW 'Guidance on partnership arrangements between higher and further education institutions', April 2006, para. 1.5.

⁴ HEFCW Circular W13/09HE HEFCW's Funding Allocations 2013/14.

⁵ HEFCW 'Guidance on partnership arrangements between higher and further education institutions', April 2006, para. 1.6.

⁶ See HEFCW Circular W12/38HE Maximum fee grant arrangements 2013/14 and W13/09HE HEFCW's Funding Allocations 2013/14.

- Fee plan arrangements. FEIs and HEIs are subject to fee planning legislation, which means that they must have an approved fee plan in place in order to set higher fee levels⁷.
- Degree Awarding Powers. Currently no FEI in Wales has its own degree awarding powers.
- Designation of courses for statutory student support. At present, publicly funded institutions (including both HEIs and FEIs) are automatically designated whereas courses from alternative providers are approved on case by case basis.⁸
- Partnership arrangements. As part of the HEFCW's HE in FE initiative in the 1990s referred to in 3.2 above, the FEIs receiving funding were expected to establish a compact arrangement with an HEI for each course to cover the quality assurance arrangements and other support services which the HEI would provide.⁹
- Quality assurance arrangements. Within the Quality Assurance Agency's (QAA's) Institutional Review process, which is part of the Quality Assurance and Standards Framework for Wales, the Council's expectation is that academic standards and quality assurance for all directly-funded provision will be covered by a partnership with an HEI.¹⁰ The awarding function and associated quality assurance arrangements would normally be provided by the HEI, as a service for which the FEI pays.¹¹

3.5 In future we would expect there to continue to be effective controls in place for all providers of HE (including HEIs, FEIs, and alternative providers) to ensure that Welsh Government budget can be suitably managed and that public funding is used appropriately. We continue to support the current policy that any future expansion of HE in FE would be best achieved through franchise partnerships, for the reasons identified by HEFCW (see above 3.3). In removing the Welsh Government's powers under the Education Act 2002, we recognise that there is in practice a range of controls on future expansion of HE in FE. As part of the consultation on HE (Wales) Bill consultation, it will be necessary to ensure that appropriate future arrangements for all providers continue to remain in place.

⁷ HEFCW Circular W13/09HE HEFCW's Funding Allocations 2013/14.

⁸ Welsh Government Consultation Document 'Higher Education (Wales) Bill', para

⁹ HEFCW 'Guidance on partnership arrangements between higher and further education institutions', April 2006, para. 1.7

¹⁰ HEFCW 'Guidance on partnership arrangements between higher and further education institutions', April 2006, para. 1.7.

¹¹ HEFCW 'Guidance on partnership arrangements between higher and further education institutions', April 2006, para. 13.1

4. Supply of information in connection with student loans and grants

4.1 Section 9 of the Bill, which relates to both FE and HE, allows data relevant to student grants and loans to be shared by Her Majesty's Revenue & Customs (HMRC), with the Welsh Ministers and anyone they delegate or to whom they transfer their functions. Our members have raised no concerns with this provision.

5. General

5.1 HEW recognises and supports the main driving principle behind the proposals for deregulation of Further Education institutions to allow greater autonomy in the sector and ensure that, for purposes of public accounting, they are not regarded as central government. Our members have not raised any concerns with us regarding the general principles which drive the current proposals in relation to Further Education.

Higher Education Wales

May 2013

**Children and Young People Committee
The Further and Higher Education (Governance and
Information) (Wales) Bill
31 May 2013**

1. The NASUWT welcomes the opportunity to submit written evidence to the Children and Young People Committee (CYPC) on the Further and Higher Education (Governance and Information) (Wales) Bill (the Bill).
2. The NASUWT is the largest teachers' union in Wales and the UK representing teachers and school leaders.

GENERAL COMMENTS

3. The NASUWT's opposition to enhancing the autonomy and decision-making abilities of further education institutions (FEIs) is well-documented and was reiterated in the response to the Further and Higher Education (Wales) Bill (the White Paper). A copy of the response is attached at annex A.
4. It is with regret, therefore, that the NASUWT notes that one of the main purposes of the Bill is to increase autonomy in the further and higher education sector by removing and modifying existing legislative controls on FEIs.
5. As regrettable as this situation is, it pales against the reason why the Welsh Government is pursuing this course of action, as it appears that

this is an attempt to ensure that FEIs are not categorised as public sector organisations.

6. The NASUWT maintains that this approach cannot be reconciled with the 2010 Welsh Labour Party manifesto statement that noted that FEIs are public assets that belong to their local communities, staff and learners, and would fly in the face of the commitment given by the First Minister, to the Wales TUC Conference 2013, that there would be no place for further privatisation of the public sector in Wales.
7. As the NASUWT understands the situation, in constructing national accounts, the Office for National Statistics (ONS) can categorise FEIs as either private or public sector bodies, on the basis of the relationship between government and public-funded bodies
8. After the incorporation in 1993, the ONS categorised FEIs as private sector organisations. However, in 2010, the ONS reviewed its approach to categorisation and determined that FEIs would be more accurately described as public sector organisations. Factors that influenced the ONS decision included the fact that FEIs must get the approval of Welsh Ministers to borrow money from the private sector; that Welsh Ministers have the power to amend and replace the instruments and articles of governance of FEIs; and that FEIs require permission from the Welsh Government to operate through a subsidiary, such as a charity.
9. The NASUWT considers that it is reasonable to suppose that, ultimately, the Welsh Government is able to make whatever decisions it sees fit in relation to the running of the further education (FE) sector in Wales – particularly in respect of ministerial powers over individual institutions – regardless of whether the ONS has categorised FEIs as public or private sector bodies.
10. Of course, the ONS could change its categorisation of FEIs following a change in FE-related legislation but the Union does not believe that any

change in categorisation should of itself constrain or influence Welsh Ministers' decisions about the way in which the FE sector should be run.

11. However, it appears that the Welsh Government believes that the categorisation of FEIs as public sector organisations by the ONS has negative effects for the sector. The NASUWT questions this view and notes that the Welsh Government has not provided an evidence base to support this contention.
12. The NASUWT suggests, therefore, that the question the CYPC needs to consider is whether or not the categorisation of FEIs by the ONS as either public or private sector bodies makes a material difference to the way in which FE policy is developed and implemented in Wales. The NASUWT believes that this question is fundamental to the deliberations of the CYPC as the rationale for the Bill seems to be predicated on the basis that it does. Although, as stated earlier, the explanation of why this conclusion has been reached is sadly lacking.
13. The NASUWT is gravely concerned that, at best, the purpose of the Bill could be misconceived but, at worst, it could present a veiled attempt to justify increasing the autonomy of FEIs.

SPECIFIC COMMENTS

14. Given that the NASUWT stands opposed to increasing the autonomy of FEIs, rather than answer the questions posed by the CYPC, the Union offers the following analysis of, and comments on, some of the changes proposed in the Bill.
15. The NASUWT notes the provisions that would allow an FE institution to change or replace its instrument and articles of government, whilst still maintaining that requiring minimum requirements be met.

The Union maintains that this proposal highlights the confusion inherent in the principles underpinning the changes set out in the Bill. It appears

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that the intention is to allow FEIs to change their instrument and articles of governance without any need to make reference to the Welsh Government, so that the FE sector is seen to be sufficiently independent of the Welsh Ministers to allow the ONS to re-categorise the FEIs as private sector bodies.

However, this raises a question about what would happen if an FE institution changed its instrument and articles of governance in a way that failed to meet the governance requirements of the Welsh Government. Notwithstanding the fact that these governance requirements are not yet specified, the NASUWT believes that it would appear reasonable to suggest that, in such circumstances, Welsh Ministers would have little choice but to intervene in the governance of the institution concerned. However, the ONS could then continue to hold that the Welsh Government had significant powers of intervention that would make the categorisation of FEIs as public rather than private sector bodies more appropriate.

The NASUWT reminds the CYPC that the instrument and articles of governance of FEIs can currently be changed, subject to ministerial approval. The provisions in the Bill would effectively allow an FE institution to change or replace its instrument and articles of government without any effective scrutiny or oversight. The Union questions seriously the prudence of the approach.

16. The NASUWT notes the provisions to allow FEIs to dissolve themselves and to transfer properties, rights and liabilities to another body before dissolution takes effect (subject to regulations made by the Welsh Ministers).

The NASUWT maintains that this proposal is reckless and repeats the comment made in the response to the White Paper that allowing FEIs to take decisions on the wholesale transfer of assets is thwart with danger and could open the door for privateers and marketeers to take over the delivery of FE provision in Wales.

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The Union urges the CYPC to reject this proposal, not least since the regulations relating to the implied ministerial powers are not yet known.

17. The NASUWT notes the provisions in the Bill that would allow FE institutions to borrow money without the permission of Welsh Ministers.

The Union reminds the CYPC that FEIs can already borrow money as long as they have the permission of Welsh Ministers and see no reason why any reasonable request to borrow money would be refused.

Consequently, the NASUWT views the removal of such scrutiny and accountability as a retrograde step, as it risks FE institutions borrowing unwisely and unreasonably. Such practice could, in turn, risk the employment security of the workforce in FEIs.

18. The NASUWT notes the provisions in the Bill to allow FEIs to run subsidiary arrangements, such as charities, with the consent of Welsh Ministers.

Again, the NASUWT reminds the CYPC that FEIs can already run subsidiary arrangements as long as Ministers agree.

The NASUWT maintains that requiring FEIs to obtain permission before making such arrangements is a sensible safeguard that should remain.

19. The NASUWT notes the provision to remove the requirements on Welsh Ministers to have an intervention policy in relation to FEIs.

The NASUWT finds no merit in this proposal as the Union is unaware of any evidence to suggest that the retention of such a policy impedes the effectiveness of the FE sector, or the management and oversight of the sector by the Welsh Government.

The NASUWT maintains that the requirement to have an intervention policy presents a sensible precaution that enables Welsh Ministers to

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take timely and well-planned remedial action when problems arise within the FE sector or in individual FEIs.

The NASUWT suggests that the CYPC should consider carefully whether the removal of this requirement is more focused on the ONS categorisation of FEIs than on the effectiveness of FE provision in Wales.

20. The NASUWT notes the provisions to remove the requirement on FEIs to consult with learners and employers.

Again, the Union is concerned that this proposal relates more to the ONS categorisation tests than to effective accountability and scrutiny within the FE sector, as it appears to remove important safeguards in respect of consultation.

The NASUWT suggests that the CYPC should gauge this proposal against the Committee's position on the rights of children and young people.

21. The NASUWT notes the provisions to remove the power of Welsh Ministers to restrict the provision of higher education (HE) courses within the FE sector.

The NASUWT finds no merit in this proposal as the current power of Welsh Ministers provides an important safeguard to militate against competition and the adverse influence of market forces developing within the FE and HE sectors.

The NASUWT does not oppose the provision of HE courses within the FE sector as long as those charged with the responsibility for delivering the courses enjoy the same pay and conditions of service as their counterparts in HE.

The NASUWT urges the CYPC to be alert to the fact that this proposal could lead to FE providers attempting to provide HE courses 'on the cheap'.

22. The NASUWT remains unconvinced by the need for the Bill and remains gravely concerned that, if enacted, it will present an abnegation of responsibility for the control of the FE sector by Welsh Ministers and subject FEIs to further privatisation and the vagaries of market forces.



Rex Phillips

Wales Organiser

For further information on this written evidence, contact Rex Phillips, Wales Organiser.

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NASUWT

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**Children and Young People Committee
Further Education and Higher Education (Governance and Information) Bill
FEHE 15 - Cardiff University**

President and Vice-Chancellor
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Ref: CR/sf

24 May, 2013

Dear Ms Lewis

Consultation on the Further and Higher Education (Governance and Information) (Wales) Bill

Thank you for the opportunity to comment on the Further and Higher Education (Governance and Information) (Wales) Bill. We have no comment to make on the proposed provisions in relation to Further Education. We would support the provisions in relation to allowing data relevant to student grants and loans to be shared by HMRC with Welsh Ministers as this will assist the work of Student Finance Wales.

Yours sincerely

Professor Colin Riordan
Vice-Chancellor

Cyngor Cyllido Addysg
Uwch Cymru
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hefcw

31 May, 2013

Olga Lewis,
Deputy Clerk
Legislation Office
National Assembly for Wales
Cardiff Bay
CF99 1NA

Dear Ms Lewis,

Consultation on the Further and Higher Education (Governance and Information) (Wales) Bill

Thank you for the invitation to respond to the consultation on the Further and Higher Education (Governance and Information) (Wales) Bill.

HEFCW is a Welsh Government Sponsored Body established in 1992 under the Further and Higher Education Act. It assumed responsibility for funding higher education (HE) in Wales on 1 September 1993. It administers funds made available by the Welsh Government in support of the provision of education and the undertaking of research at higher education institutions (HEIs), and the provision of prescribed HE courses at further education institutions (FEIs). It also accredits providers of initial teacher training for school teachers. We work with HEIs to develop and sustain accessible, internationally excellent higher education in Wales, for the benefit of individuals, society and the economy of Wales.

The greater part of the bill relates to further education and the further education sector and, as such, is not a matter on which we would wish to comment. In terms of higher education, and our role, there are two areas on which we would comment. The first of these relates to section 5, paragraph 7 of the bill:

Mr Roger Thomas
Cadeirydd/Chairman
Ffôn/Tel 029 2068 2280

Dr David Blaney
Prif Weithredwr/Chief Executive
Ffôn/Tel 029 2068 2251



Abolition of power to regulate higher education courses in further education sector

In the Education Act 2002, omit section 139 (power to make regulations prohibiting provision of higher education courses by institutions within further education sector without approval of Welsh Ministers and determining numbers of persons who may take such courses at such institutions).

We are currently responsible for the provision of tuition fee grant in respect of Welsh domiciled full-time undergraduate students. We have arrangements in place to manage the cost to our resources, and therefore to the Welsh public purse, arising from this responsibility. The proposed removal of controls as identified in the paragraph above could increase our financial exposure and we will wish to work with our colleagues in the Welsh government to explore any implications which arise.

The second area which relates to higher education concerns the provisions for the sharing of HMRC data with the Welsh Ministers in order to streamline the processes for Student Finance Wales. We consider that these proposals are likely to achieve their objectives aimed at enhancing the efficiency of the Student Finance Wales arrangements.

I confirm that we are content for this submission to be made available for public scrutiny and that, should the Committee wish, we would be prepared to give oral evidence, although would re-iterate that the bill is only marginally of relevance to our work.

Yours sincerely,



David Blaney
Chief Executive

Children and Young People Committee
Further Education and Higher Education (Governance and Information
(Wales) Bill
FEHE 17 – Agored Cymru

Consultation – Further and Higher Education (Governance and Information) (Wales) Bill.

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Introduction

Agored Cymru is an awarding organisation that works exclusively with stakeholders in Wales to develop qualifications and accredited learning to meet priorities in Wales. Whilst we have a remit to develop qualifications for all age groups, we have a strong focus on the needs of adult learners including those that are the hardest to reach. All the FE colleges in Wales are member organisations of Agored Cymru, as the vast majority of other providers who use our qualifications and units to accredit the learning that they deliver.

We support the continuation of a strong college sector in Wales to meet the needs of individual learners, employers and Higher Education. We welcome the collaborative ethos of FE that has been fostered by Colegau Cymru evident both in the way that colleges work together and in terms of the wider partnerships between colleges and their communities, including with other learning providers. We wish to see that wider collaboration strengthened to support an appropriate diversity of provision for all learners. We believe that a college sector that is free to be more innovative together with a strong policy steer from Welsh Government and an effective use of the mechanism that call the sector to account can provide such diversity.

Question 1: Whether there is a need for the Bill

We accept that there is a need for the Bill. There would appear to be considerable disadvantages if the Office for National Statistics (ONS) classification of FE colleges is not reversed, including increased administrative and financial management costs and a reduced investment in FE capital and estates.

Question 2: The key provisions set out in the Bill and whether they are appropriate to deliver its stated purpose

We agree that it is imperative that the Bill achieves a balance between the technical changes proposed with the need to safeguard public funds, the public interest and the needs of learners. The Bill appears to strike an appropriate balance which gives colleges greater responsibility for self management, whilst recognising the need to work within the policy steer set out by Welsh Government. It will be essential that Welsh Ministers use their powers to ensure that needs of all learners are protected, including adult learners and those for whom specific provision is prescribed.

We support the aim of reducing the restrictions on the provision of HE in FE as we believe this can enhance the availability and accessibility of higher level courses, particularly to meet widening participation priorities.

Question 3: The financial implications arising from the Bill

We agree that there would be additional and unnecessary costs if the Bill were not passed. Without the Bill, there is a risk to the generation of commercial income to support the delivery of learning.

Question 4: Potential barriers to the implementation of key provisions

We have no comment to offer.

Question 5: Whether there are any unintended consequences arising from the Bill

We are aware that some concerns have been expressed about the potential for FE colleges to abuse any new powers, disregard the policies of the Welsh Government and to focus on profit rather than learners and their communities. We accept there are risks but feel that on balance the safeguards are adequate and appropriate.

Question 6: Legislative competence of the National Assembly for Wales

We have no comment to offer.

Question 7: Powers in the Bill for Welsh Ministers to make subordinate legislation.

We have no comments to offer.

Question 8: Financial implications of the Bill?

We have no comment to offer.

**National Assembly for Wales, Children and Young People Committee
Consultation on the
Further and Higher Education (Governance and Information) (Wales) Bill
Written Comments from CITB Cymru Wales (Construction Industry Training
Board**

1. Introduction

1.1

CITB is a social enterprise, devoted to building competitive advantage for the construction industry and the people who work in it ensuring that individuals have the skills to compete for the best jobs and develop fulfilling careers. That companies have a highly skilled workforce that gives them a USP in their sector. The industry has the skills to meet its clients' needs and future challenges. That UK plc has an industry that is world class and can compete with the best on the world stage. CITB Cymru Wales retains its role as a lead partner in ConstructionSkills as an SSC serving Construction. At the Committee's invitation, CITB Cymru Wales will be giving oral evidence to the Children and Young People Committee on 13 June 2013. The following written comments are submitted in support of this.

2. Context

2.1

The Welsh Government published its White Paper on the Further and Higher Education (Wales) Bill in July 2012 setting out proposals for legislative reform relating to both the Further Education (FE) and Higher Education (HE) sectors in Wales. The outcome of the consultation was two-fold: (a) the Further and Higher Education (Governance and Information) (Wales) Bill, which was laid before the National Assembly for Wales on 29 April 2013, and (b) the Higher Education (Wales) Bill consultation document, which was published on 20 May 2013. The main proposals in relation to higher education were set out in the latter, which is currently under consultation until 29 July 2013. The Further & Higher Education (Governance and Information) (Wales) Bill primarily set out proposals in relation to Further Education. Two provisions in particular, however, were of relevance to higher education: Section 7 (deregulation of student numbers) and Section 9 (information supply). HEW's comments accordingly focus on these two provisions and the more general implications for higher education arising from these proposals.

3. Responses to the recommendations.

HE Reform

3.1 The recommendation that the Welsh Government is committed to developing a strategic and forward thinking HE sector in Wales which will form a stronger part of both society and the economy is welcomed as is a recognition that Higher Education has an important part to play in the up skilling of the Construction Industry within a rapidly changing environment and economic climate.

- 3.2 The recommendation that ministers wish to create a system of HE which consists of fewer, stronger HEIs able both to compete internationally in terms of research and student experience and to develop an internationally competitive economy around them needs to be taken in the context of patchy overall provision for the Construction industry across Wales with HEI's offering high quality varied provision in some parts of Wales and in other parts of the country such as North and Mid Wales little or limited provision is and has historically been available with companies looking to North West England or the Midlands for provision.
- 3.3 The recommendation that an efficient, modern and effective system of governance at national and institutional level is central to driving improvement and delivering a dynamic and responsive system of HE in Wales to develop competitiveness the needs of a modern, knowledge-based, globally competitive economy is welcomed. It is essential that this improved governance model includes a significant input from industry on both a regional (local) and national Wales level to ensure that provision meets both identified and perceived local needs and that needless duplication is avoided especially in areas where a high number of providers operate.

4. Proposals for FE

- 4.1 The Further Education Sector in Wales has traditionally been an important provider of Higher Level Education, mainly at levels 4 and 5 HNC/NHD provision for the Construction Sector. The sector generally has credibility and support amongst employers and has shown a willingness to innovate with the development of Foundation Degrees, Sustainability and Green Skills provision and part time courses.
- 4.2 In the light of the above comments it must be stated that Construction provision is expensive and that independent control of College Finances could either be a positive or negative factor in the maintenance of current provision or development of additional new provision depending on the interests of Senior Managers and Governors. The need for well informed and influential representation from the Construction Industry on the new revised Governing Bodies of Colleges would be crucial to this success of reform and to ensure that 'expensive' specialist provision continues and thrives.
- 4.3 Further Education has a key part to play on the development of Higher Apprenticeships. The funding issues which exist with regards to the funding and issue of qualifications at level 4 and above as outlined in SASW (Specifications of Apprenticeship Standards Wales) potentially put the development of Higher Apprenticeships at risk. A solution which may include devolvment of funding directly to FE requires urgent consideration as it is foreseen that skills at these higher levels will be key to driving the industry forward post-recession. It is perceived that Construction related courses HE and FE are 'at risk' across the UK due to the current down turn and cost of provision. This is potentially damaging to the industry's future
- 4.4 The comments that planning and providing professional development for staff including developing specialist vocational courses as well as strengthening quality assurance and management systems exploring the potential for in-company corporate training and the up-skilling workers and technicians are to be welcomed though significant challenges remain for the FE sector is balancing the need for economically viable specialist provision with college budget restraints as such provision though economically important are likely to draw small numbers of participants. Increased autonomy with a lack of central coordination could lead to a situation where a 'post code lottery' of provision will exist across Wales which would not benefit industry.

5 Provision capping and Planning

- 5.1 Accepting the statement *'Thus the Welsh Government is committed to preserving the principle that the state will subsidise HE and maintain opportunities for all. However, in so there is a need to control the total cost of HE to the Government's budget. This will be achieved through arrangements to cap the number of publicly funded student places in Wales'* the effective planning and implementation of this policy will be key to the success of this Bill from the point of view of the industry. A balance will need to be achieved between the provision available and the needs of the industry for highly skilled workers.
- 5.2 The use of local, national and even international LMI data and intelligence should be an important part of the planning and capping process. This process through employer input at the appropriate level in governance can be made more effective and difficult decisions made on the basis of robust information. Employment and employability should play a key part in this decision making.
- 5.3 The Welsh Government will therefore seek a provision in the Bill to enable HE provision to be funded directly by Welsh Ministers in instances where it is strategically appropriate to do so. By way of example, such a power could be used by the Welsh Government to tackle any significant failures to meet identified employer needs and learner demand in identified priorities.

6. General

Subject to the comments above CITB Cymru Wales recognises and supports the main driving principle behind the proposals for deregulation of Further Education institutions to allow greater autonomy in the sector and ensure that, for purposes of public accounting, they are not regarded as central government. Though Restructuring the sector alone will not solve all provision issues with regards to the Construction Industry in Wales as where there are areas of little or no historic provision, credibility within in industry will take time.

CITB Cymru Wales
June 2013

Leighton Andrews AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills



Ein cyf/Our ref: LF/LA/0461/13

Ann Jones AM
Committee Chair
Children and Young People
Committee
Cardiff Bay
Cardiff CF99 1NA

4 June 2013

Dear Ann,

**CHILDREN AND YOUNG PEOPLE COMMITTEE - STAGE 1 SCRUTINY OF THE
FURTHER AND HIGHER EDUCATION (GOVERNANCE AND INFORMATION) (WALES)
BILL**

Following my attendance at the Committee meeting on 15 May 2013 for the scrutiny of the Further and Higher Education (Governance and Information (Wales) Bill, I agreed to provide Members with further details on:

- paragraph 98 of the Explanatory Memorandum regarding the identified risks regarding FE staff conditions,
- whether the data sharing link with the HMRC will make it easier to chase student debts

Members have also asked for a fuller explanation of the reasoning behind why a duty to appoint students and staff to a governing body does not risk the ONS reversing their categorisation but a duty to consult may.

1. Explanatory Memorandum – Transcript paragraphs [146 – 149]

In response to the question raised by Bethan Jenkins AM, I have reviewed paragraph 98 of the Explanatory Memorandum, I have concluded that the provisions are sufficient. The issues to which the member referred are outside the scope of the Bill and I do not therefore need to amend the memorandum.

2. HMRC data sharing link and Student Debt - Transcript paragraphs [175 – 188]

With regard to Simon Thomas AM's question on recovering student debt; the data link will only be used for the designated function of checking the sponsors' income, and this is set out in the Memorandum of Understanding between the Student Loans Company (SLC) and the HMRC. The SLC have existing procedures in place for the recovery of student debt using National Insurance Number verification checks with the Department for Work and Pensions prior to agreeing the funding with the student. The HMRC VHI link has no bearing at all on the ease of repayment.

3. Further explanation on duty to appoint students and staff to the governing body and duty to consult against the ONS criteria.

The proposal to omit section 22 of FETA 2007 is a policy decision and seeks to remove from the statute book a provision that has never been commenced and is not considered to be necessary.

Paragraph 4(c) of Schedule 2 of the Bill omits section 22 of the Further Education and Training Act 2007 (FETA 2007). The effect of section 22 of FETA 2007 is to insert a new section 49A into the Further and Higher Education Act 1992 (FHEA 1992). However, section 22 of FETA 2007 has not been brought into force in Wales and consequently section 49A has not been inserted into the FHEA 1992 and has no effect so far as it relates to Wales.

It is considered that the existing arrangements, to ensure that the interests of business and learners are identified and provided for by the further education sector in Wales, are working without the need for statutory provisions set out in FETA 2007.

It is essential that the Welsh Government continues to promote and to add value to existing mechanisms for employers; and raise the quality and volume of training.

For example, the Sector Priorities Fund Pilot (SPFP) Programme, which commenced in summer 2010, allows sector based projects to be piloted and tested where there is a clear employer need and enabling the Welsh Government to meet specific employer demand, target areas of training and qualifications, and test new forms of delivery. We can thereby provide feedback on the responsiveness of FE to this employer demand. As part of the programme, an 'Advocate Service' aims to ensure the provision of skills/ training is meeting employer need across Wales in a flexible, effective way.

In addition, the Employer Engagement Team within DfES leads on overall employer engagement - meeting regularly with representative organisations such as CBI, FSB etc as well as having strong relationship management arrangements in place with Anchor Companies, Regionally important businesses, etc.

Finally, there are Ministerial meetings with ColegauCymru which provide input on how they have addressed employer need.

On the matter of protecting learner and staff places on governing bodies, I believe these appointments are crucial to reflect the college populations and ensure learner and staff

involvement in the governance of a college. The Education Act 2011 includes this latter provision, which did not prevent FEIs in England from being reclassified as NPISH.

I would also like to confirm that I am content with the draft of the transcript of the Children Young People Committee meeting on 15 May 2013.

I trust that Members will find the clarification helpful and I look forward to providing further evidence to the Committee on 19 June.

A handwritten signature in black ink that reads "Leighton Andrews". The signature is written in a cursive style with a large initial 'L'.

Leighton Andrews AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills