

Children and Young People Committee

Meeting Venue:
Committee Room 1 – Senedd

Meeting date:
13 June 2013

Meeting time:
09:30

For further information please contact:

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Cynulliad
Cenedlaethol
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National
Assembly for
Wales



Agenda

1 Introductions, apologies and substitutions

**2 Further and Higher Education (Governance and Information)
(Wales) Bill: Stage 1 – Evidence Session 6** (Pages 1 – 3)
Witness: Construction Skills Wales

Witnesses:

– Gareth Williams, CITB Cymru/Wales Careers and Qualifications Manager

Supporting documents:

CYP(4)–18–13(p1) – Construction Skills Wales

**3 Further and Higher Education (Governance and Information)
(Wales) Bill: Stage 1 – Evidence Session 7** (Pages 4 – 7)

Witness: Higher Education Wales (HEW)

– Professor April McMahon, Vice-Chancellor, Aberystwyth University

– Professor Medwin Hughes, Vice-Chancellor, University of Wales Trinity Saint David,

and Swansea Metropolitan University of Wales Trinity Saint David, and University of Wales

– Mr Ben Arnold, Policy Adviser, Higher Education Wales

Supporting documents:

CYP(4)-18-13(p2) HEW

4 Papers to note (Pages 8 – 24)

Supporting documents:

CYP(4)-18-13 (p3) – Responses to the consultation

<http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?Ild=6772>

CYP(4)-18-13 (p4) – Colleges: Reclassification (additional information – UCU)

CYP(4)-18-13 (p5) – Further opinion (additional information – UCU)

CYP(4)-18-13 (p6) – Letter from the Minister for Education and Skills, Welsh Government

5 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business

Motion under Standing Orders 17.42(ix) and (viii) respectively to resolve to exclude the public from the meeting for the following business:

Item 6 of the current agenda and Item 1 of the agenda of the meeting on 19 June 2013

6 Further and Higher Education (Governance and Information) (Wales) Bill: Consideration of today's evidence

Item 6

Private session



**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 devolvement 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.

Agenda Item 3



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

**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 the 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



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