

Children, Young People and Education Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date:

Thursday, 19 June 2014

Meeting time:

09.15

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda

Private Pre-Meeting – 09.15 – 09.30

1 Introductions, apologies and substitutions

2 Higher Education (Wales) Bill – Evidence session 3 (09.30 – 10.00)

(Pages 1 – 24)

ColegauCymru

CYPE(4)-17-14 – Paper 1

Mark Jones – Chair, ColegauCymru & Principal, Gower College Swansea

Dr Greg Walker – Deputy Chief Executive, ColegauCymru

3 Higher Education (Wales) Bill – Evidence session 4 (10.00 – 10.30)

(Pages 25 – 29)

Open University

CYPE(4)-17-14 – Paper 2

Rob Humphreys, Director

Michelle Matheron, Policy and Public Affairs Manager

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

Item 5

**5 Pre-Legislative scrutiny of the Qualifications (Wales) Bill –
Consideration of draft report (10.30 – 11.30) (Pages 30 – 55)**

CYPE(4)-17-14 – Private paper 3

Agenda Item 2

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The Higher Education (Wales) Bill

A written submission to the Children, Young People and Education Committee

June 2014

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Introduction

1. ColegauCymru welcomes the opportunity to respond to the Children and Young People's Committee's consultation on the Higher Education (Wales) Bill. ColegauCymru represents the 15¹ 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 are major providers of general education provision in Wales, helping to produce some of the best learner outcomes. Colleges are the predominant providers of funded vocational and technical education in Wales at level 3 and below, providing about 85% of the total provision.
2. ColegauCymru is pleased to be invited to give oral evidence on the Higher Education (Wales) Bill as colleges are key providers in the provision of higher level qualifications in Wales (from level 4 to level 7), with around 7,000 students studying HE courses in colleges. Around 80% of higher education (HE) students at colleges are part-time learners. In this submission to the committee we will give some background to the funding and quality assurance systems relating to college-based higher education in Wales followed by responses to the questions posed by the committee on the Bill.
3. The principles of the Higher Education (Wales) Bill have clearly been informed by the government's *Policy Statement on Higher Education* (June 2013). In line with this policy, ColegauCymru agrees that the allocation of funding and student numbers should follow a 'whole system approach' and not be based on market competition or on favouring particular types of HE providers. Funding and policy should instead be focussed on the delivery of the **most relevant and beneficial higher education programmes for learners in Wales**. We endorse the role of proper planning from the Welsh Government and HEFCW to ensure that national and regional learner needs are delivered through a coherent higher education system.

¹ The 15 include 10 FE corporations including St David's Catholic College; the two FE institutions - WEA Cymru and YMCA Community College; and The College Merthyr Tydfil, Coleg Sir Gâr and Coleg Ceredigion which are part of university groupings.

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. We also support the *Policy Statement* and its central emphasis on **widening access to higher learning**. This should remain at the heart of HE policy in Wales and it is an aim that should underpin all aspects of higher education provision in Wales. We believe that widening access to HE in Wales is not only a social justice imperative, but is also critical for Wales' economic success in relation to addressing key skills gaps and in meeting employer demand at a local and regional level.
5. Crucial to both the skills and social justice agendas **is the maintenance of part-time credit funding for HE courses**. While the Explanatory Memorandum of the Bill states that such funding will be maintained for the "foreseeable future" (s.112) it needs to be reiterated that without the maintenance of the current level of credit funding, it is likely that there would be a massive drop-off in the uptake of part-time higher education in Wales – as there has been in England since a loans-based system was introduced in 2012. This would have profoundly negative consequences for those wishing to re-skill following a career change, a change of personal circumstances or redundancy and would set back the widening access agenda for adult learners considerably.

College-based higher education in Wales

6. Five colleges are directly funded by the Higher Education Funding Council for Wales (HEFCW) for higher education provision in the current academic year. These are Grŵp Llandrillo Menai, Coleg Sir Gâr, Gower College Swansea, Bridgend College, and NPTC Group. The clear majority of higher education provision at colleges in Wales is, however, not directly funded through HEFCW but is arranged via franchise agreements with higher education institutions (HEIs) with degree awarding powers. Three colleges - Coleg Ceredigion, Coleg Sir Gâr, and The College Merthyr Tydfil - are part of university groups. The type and range of franchise arrangements vary quite widely within Wales - there is no set template for such arrangements. Depending on the course provision offered by each institution, a college may have franchise arrangements with multiple universities.
7. Increasingly colleges are, however, also involved in providing high-level qualifications within apprenticeship and professional frameworks as part of their successful work-based learning operations. This is a new development since 2012, when Higher Apprenticeships were launched in Wales. Many of these qualifications, which are awarded under the National Qualifications Framework (NQF) or the Qualifications and Credit Framework (QCF), do not show up in the official statistics collected for 'traditional' higher education qualifications (which are awarded under the Quality Assurance Agency (QAA) for higher education's

Framework for Higher Education). Qualifications included in these apprenticeship frameworks include high level professional and technical qualifications relating to, for instance, the training of legal executives, or qualifications for engineering trades or other occupational areas. These courses make an important contribution to raising higher skills levels in Wales.

8. These professional qualifications are not generally funded by HEFCW but rather by the Welsh Government's Department of Education and Skills (DfES) directly, through work-based learning contracts and other grant arrangements. The responsibility for assuring the quality of these programmes in Wales falls to the provider, the awarding organisation and Estyn - as an inspectorate, rather than to provider and the QAA.
9. Despite colleges' growing role in the provision of high level skills programmes it should be clear that colleges do not wish to become 'mini-HEIs' within a market-driven HE sector. Duplicate provision and nugatory competition in HE courses is not in the interest of students or taxpayers. Instead, as the independent *Review of Higher Education in Wales* stated:

“focus [for providers] should be on collaborative building of strength and capacity and on enabling all partners to build on and exploit their appropriate strengths and specialisms while at the same time avoiding costly and needless competition. This should...[avoid] the risk of mission drift among all partners.”⁴
10. This is a vision of high level learning that ColegauCymru would wish to endorse.

Answers to questions posed by the Committee

Is there a need for the Bill?

11. ColegauCymru concurs with the principles of the HE (Wales) Bill as set out in the Explanatory Memorandum of the Bill. The Bill meets a clear need to create a level playing field in the regulatory system applying across different types of HE providers in Wales. This is something that is lacking as, for full-time students, the means of supporting higher education provision shifts from direct grant-in-aid to institutions towards student loan support (which is financially supported by the Welsh Government and supplied by the Student Loans Company on their behalf).

⁴ See the *Report of the Independent Review of Higher Education in Wales* (2008) Welsh Government, para.90, p.37.

Under the provisions of the Bill, were it to become an Act, providers wishing for their students to qualify for student support from the Welsh Government must opt in to either 'automatic designation' status or for case-by-case designation for their programmes.

12. This regulatory clarification and consistency is clearly to be welcomed. ColegauCymru welcomes, in particular, the provisions of the Bill that **limit designation for student support purposes to those HE providers that have charitable status**. This provision of the Bill will ensure that the increasingly constrained public resources in relation to education funding are not channelled to providers that may top-slice a portion of that public resource as a profit margin.
13. There are clear indications that opening up student support provision to for-profit private organisations in England has caused significant problems and has been an expensive drain on the public purse.⁵

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

14. ColegauCymru is of the view that the provisions of the Bill generally meet the objectives outlined in the Bill. The Welsh Government has acted promptly in attempting to regulate higher education provision in Wales within the new regime of funding HE. The need to regulate higher education consistently has been widely recognised in England, as well as in Wales. That the Welsh Government is taking action in a timely manner is to be welcomed.

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

15. As noted above, ColegauCymru generally welcomes the content of the Bill. We would, however, strongly favour two specific changes to the face of the Bill. These changes are:
- ❶ **A power to enable the Welsh Government itself to directly fund HE providers in Wales (including colleges and universities):** (Currently, only HEFCW can directly fund universities or colleges for mainstream HE courses under the Framework for Higher Education.) A direct funding power was initially set out by the Welsh Government in its first statement on the content

⁵ See reports of the massive overspend on government loan support for private education organisations in England following recent policy changes there:
<http://www.theguardian.com/education/2014/may/21/london-college-funding-students-cannot-learn>

of a future Higher Education (Wales) Bill and this was welcomed by the college sector. It was dropped in the Government's later Technical Consultation on the Bill issued in 2013, but no clear justification was offered as to why this useful proposal had been withdrawn. A direct funding power, used judiciously, would enable the Welsh Government to more effectively co-ordinate the provision of higher level learning where various funding mechanisms for higher level qualifications overlap - as in the case of Higher Apprenticeship programmes. The details of how the direct funding power would operate in relation to HEFCW's funding role could be set out in regulations in due course.

One issue that may be resolved by such a funding power for the Welsh Government is the lack of availability of funding for Foundation Degrees and some other HE qualifications within Higher Apprenticeship frameworks. This has been identified by HE managers in colleges as a significant issue which has no apparent resolution. Legal complexities have been cited by officials as one reason why these HE qualifications cannot be funded as part of Higher Apprenticeship programmes in colleges and other work-based learning providers. A direct funding power for the Welsh Government could solve this issue in one stroke.

We would therefore request an amendment to the Bill to enable the Welsh Government to directly fund HE provision where this is expedient.

- **An amendment to the Bill to make it clear that the Financial Code issued by HEFCW may be substantively varied by type of HE provider.** Although it is acknowledged by HEFCW and the Welsh Government that different types of providers may have different arrangements for financial assurance, it would be helpful for this to be made more explicit on the face of the Bill. DfES currently operates a rigorous financial assurance regime for FE colleges that involves many of the types of monitoring and information provision that HEFCW conducts with universities (financial forecasts, annual monitoring returns, etc.). This is currently recognised by HEFCW as fulfilling the requirements of its financial assurance regime for those colleges directly in receipt of HEFCW funding for HE courses. It would clearly be duplicative and highly bureaucratic for HEFCW to run a parallel financial assurance regime for colleges who seek automatic designation for their HE provision. Given that it is expected that most, if not all, colleges in Wales will seek automatic rather than case-by-case designation for their HE provision, this is an important consideration that could be more clearly written into the Bill prior to enactment.

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

16. If the Bill is passed, colleges will have to decide whether to opt in to either automatic designation status or to go for case-by-case designation. Most, if not all, colleges who provide HE courses will likely opt for automatic designation. In some respects the higher education quality assurance arrangements for colleges in relation to their higher education provision will not be greatly affected as the QAA's Higher Education Review process has been set for the next cycle. Colleges who subscribe to the QAA and who are directly funded by HEFCW will likely be subject to a QAA Higher Education Review during this cycle.

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

17. Barriers to the full implementation of the Bill may include the capacity of HEFCW to discharge its quality assurance duties given its constrained staff and financial resource. Other barriers may include the constraints that may be imposed by EU law on equitable access to student support arrangements and fair competition between providers.

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

18. ColegauCymru notes the declaration of the Presiding Officer of the Assembly on 19 May 2014 that the Bill is within the legislative competence of the National Assembly for Wales.

What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments etc.)?

19. This is a matter of constitutional principle and ColegauCymru notes the differing views of individuals and organisations on this matter. We would expect these arguments to be thoroughly probed and explored by Assembly Members during the passage of the Bill.

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

20. We note HEFCW's view in its written evidence to the committee that additional resources will be required for it to fulfil its new quality assurance duties.

National Assembly for Wales

Children, Young People and Education Committee

Higher Education (Wales) Bill

CYPE(4)-17-14 – Paper 2

Response from : The Open University

About The Open University in Wales

1. The Open University was established in 1969, with its first students enrolling in 1971. It is a world-leader in providing innovative and flexible distance learning opportunities at higher education (HE) level. It is open to people, places, methods and ideas. It promotes educational opportunity and social justice by providing high-quality university education to all who wish to realise their ambitions and fulfil their potential.
2. Nearly nine thousand students from virtually every community in Wales are currently studying with The Open University, enrolled on over eleven thousand modules. We are the nation's leading provider of part-time higher education. More than three out of four Open University students are in employment while they study and with an open admissions policy, no qualifications are necessary to study at degree level - over a third of our undergraduate students in Wales join us without standard university entry level qualifications
3. In 2013, for the ninth successive year, The Open University was top in Wales for 'overall student satisfaction' in the National Student Survey. As a world leader in education technology, our vast 'open content' portfolio includes free study units on OpenLearn (including many Wales-related materials), substantial content on YouTube and on iTunesU, the latter having recorded nearly 60 million downloads.

Introduction

4. The Open University is a pan-UK provider of higher education and so is subject to regulation in all the UK nations. In order to remove the possibility of duplicate regulation, The Open University is subject to a financial memorandum with the Higher Education Funding Council in England (HEFCE) and related agreements with the Higher Education Funding Council in Wales, the Scottish Funding Council and the Department of Employment and Learning in Northern Ireland. These agreements require HEFCE to undertake the monitoring and assurance in respect of financial and governance matters.

5. The Open University is the largest provider of part-time higher education in Wales. Although the draft Bill and accompanying documents make it clear that the proposals set out within the legislation do not currently apply to part-time it nevertheless anticipates that part-time may come under the scope of the legislation in the future. With that in mind the OU in Wales responded to the technical consultation on the Bill to highlight any concerns, unintended consequences, and issues for consideration that may arise as and when part-time higher education comes under the remit of this legislation. We have since held useful discussions with Welsh Government officials about the unique nature of The Open University with regard to the Bill both in terms of the OU's role as a provider of part-time education only and the fact that the OU is the only University to operate across all four nations of the UK.
6. We welcome the particular provisions that have been made for The Open University within the Bill in respect of the financial memorandum and the mechanism by which the OU will be subject to Quality monitoring via the QAA, insofar as we are able to understand them based on the detail on the face of the Bill and information provided to us by officials. Below we set out our response to the Committee's questions focussing on the areas of the Bill most relevant to us.

Consultation Questions

Is there a need for a Bill for the purposes set out in the Explanatory Memorandum prepared by the Welsh Government?

7. In light of the changes to the public funding of Higher Education (HE) in Wales in 2012/13 which no longer allow the Welsh Government to regulate the activity of HEIs in Wales entirely through their funding mechanisms we understand the Welsh Government's desire to bring forward legislation in this area.

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

8. It is important to note that The Open University in Wales only offers part-time courses and as such would not come under the auspices of the Bill when it is first introduced. We understand that there is an intention to apply the legislation to part-time in due course and we are keen to ensure that appropriate scrutiny of the Bill takes place before its introduction in respect of both full and part-time.
9. Based on the information on the face of the Bill and on details we have received from Welsh Government officials about the OU in Wales' position with regard to the Bill if and when it is applied to part-time study, we are in most regards content with the Bill as drafted.

10. The Explanatory Memorandum to the Bill states that part-time courses delivered by the OU in Wales will fall outside the scope of the Bill as the fees of part-time courses are currently unregulated. The Memorandum states that HEFCW “will be able to maintain quality assessment arrangements at institutions which they fund through relevant terms and conditions of funding. This is because HEFCW will continue to pay some recurrent funding to institutions for part-time courses for the foreseeable future.” We welcome the inclusion of this statement in the explanatory memorandum but sound a note of caution that there is still a great deal of uncertainty about the medium to long term funding of part-time study in Wales. We would welcome a long term sustainable funding system for part-time and believe that this would be advantageous to working through the issues of regulation as they apply to part-time in the future.
11. We are happy with the inclusion of The Open University in Wales as “an institution in Wales” for the purposes of the Bill. We also, however, welcome the fact that the Bill does not make provision for The Open University to be subject to the financial management code in the same way that applies to HE institutions wholly or mainly located in Wales. The OU is subject to a separate financial memorandum with HEFCE and we believe that the intention for HEFCW to continue to secure assurance from HEFCE about the continued financial management of the OU is appropriate.

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?

12. We believe the Bill to be broadly appropriate in the way in which it is drafted. We do have concerns about the amount of the detail that can be brought forward through regulation as opposed to on the face of the Bill and the resolution procedure used to adopt the regulations, this is set out in more detail in paragraph 17. We also have some concerns that the Bill may compromise the principle of arm’s length funding and regulation of HE, this is set out in more detail in paragraph 15.
13. It is also the case that while the Explanatory Memorandum states that “the revised regulatory framework has been designed to accommodate part-time courses in future, subject to fee regulation being introduced” there has been limited discussion with the part-time sector to date on what fee regulation for part-time courses would look like. We are keen to ensure that this legislation does not result in a diminution of funding for part-time provision and that the important wider discussion about the future of part-time provision in Wales is not limited by this legislation.

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

14. The Open University in Wales raised concerns at the technical consultation stage about how this Bill could potentially impact on the OU given its unique position as a 'four nations' University. We believe that the Bill as drafted along with assurances we have received from officials have allayed our fears with regards to any potential for the OU to be subject to multiple regulation. We are pleased to see that this should not be an issue of concern for us as the Bill is currently drafted and we are confident this will continue to be the case when the legislation is extended to cover part-time study.

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

15. The so-called 'Haldane principle' of arm's length funding and regulation of higher education is well-established and is a key component of the high international performance and reputation of UK higher education. It will be important to ensure that this principle is not breached in implementing the provisions (and any detailed provisions via secondary legislation) of the Bill. It should be borne in mind also that perception plays a part in the securing and maintenance of a high reputation, whether institutionally or at a sector-wide level. It is therefore in the Government's and HE sector's interests to secure clarity that this principle remains in place. There also needs to be further discussion of how far, if at all, the proposed regulatory system should cover those activities of higher education institutions that are not publicly funded neither directly, nor via the publicly supported student loans and grants systems.

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

16. We have no reason to believe that the legislation falls outside the legislative competence of the National Assembly for Wales.

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)?

17. It seems that a fairly substantial amount of important legislative detail is left off the face of the Bill with provision for it to be brought forward in regulations. It appears that there is only one set of regulations listed for approval by the affirmative resolution procedure of the National Assembly for Wales; the rest can be approved by negative resolution. The OU in Wales believes that given the longstanding principle of 'arm's length' funding, and regulation, of higher education and in the interest of accountability and healthy democracy caution should be exercised in making alterations through regulations using the negative resolution procedure that may affect this principle. Where regulations may affect this principle we believe that

they should be subject to the affirmative procedure within the National Assembly for Wales.

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

18. We have no view on the direct financial implications of the Bill. However, we wish to see a funding system for higher education that is built upon equity for full-time and part-time provision and therefore would not wish to see any consequences flowing from the Bill that makes this difficult to achieve.
19. We are aware that some concerns have been raised that the provisions in the Bill may lead to a de-classification of HEIs (or the whole sector) from the Non Profit Institutions Serving Households (NPISH) status for the purposes of national accounting. It is our view that this would be undesirable for both the HE sector and for the Government.

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

20. We have no further comments to make on the Bill at this time. We would be happy to expand on any of our points in the oral evidence session.

MM
09 June 2014

Agenda Item 5

By virtue of paragraph(s) vi of Standing Order 17.42

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