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Llywodraeth Cymru
Welsh Government

Jayne Bryant MS
Chair
Children, Young People and Education Committee
Senedd Cymru
Ty Hywel
Cardiff Bay
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14 December 2021

Dear Jayne

Tertiary Education and Research (Wales) Bill

Thank you for your letter of 24 November following my attendance at Committee to give evidence on the Tertiary Education and Research (Wales) Bill ('the Bill'). Your letter raised a number of questions to which I have responded in the Annex to this letter.

In establishing a single body with responsibility across the tertiary education sector, the Bill will enable the Commission to develop more effective and meaningful relationships across the sector. In your letter you queried how the relationship between employers, awarding bodies, the Commission and Qualifications Wales could improve through the Bill.

Whilst the statutory role and functions of Qualifications Wales won't change as a direct result of the introduction of the Bill and the establishment of the Commission, the Bill does enable the sharing of information between both bodies for the purposes of each being able to exercise their statutory functions effectively. Qualifications Wales will continue to regulate qualifications awarded in Wales by recognised awarding bodies below degree level. Qualifications Wales regulate apprenticeship qualification in Wales and therefore have an important role to play in improving the quality of the apprenticeship programme, ensuring that qualifications contained in apprenticeships meet employer and apprentice needs.

It is my intention that the Commission will work closely with employers, awarding bodies and Qualification Wales in the development and review of apprenticeship frameworks to ensure those frameworks remain relevant to employer needs, sector standards and changing technology.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I anticipate that the Wales Apprenticeship Advisory Board will also continue to play a significant role. As an independent enterprise-led Board, with representatives from business, trade unions, further education bodies, this Board serves to provide advice and recommendations on matters relating to the content of apprenticeship frameworks and priorities in relation to their development in Wales. Informed by input from Regional Skills Partnerships, it contributes to improvements in the scope and impact of the apprenticeship offer in Wales.

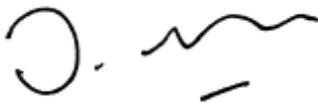
In the meantime, stakeholders from across the sector are represented on the PCET Strategy and Implementation Board, and I will continue working with all parts of the sector collegially to bring about the changes we want to see.

Turning to implementation, as I mentioned during Committee, there is a significant programme of work to be completed in order to successfully establish a Commission that is fit for purpose and commands the confidence of the tertiary education sector. It remains my intention to establish the Commission in 2023, with a phased approach to implementation continuing across 2024 and into 2025, and I am considering how best to approach this so as to ensure continuity of provision during the transition to the Commission.

In respect of when an implementation plan may be available for the Committee's consideration, my officials continue to scope and develop this work. I wish to ensure that we provide key stakeholders with appropriate opportunity to inform this work so anticipate that it will probably be February when I am in a position to provide this to the Committee.

This letter has been copied to the Legislation, Justice and Constitution Committee and the Finance Committee.

I look forward to attending on 13 January to give further evidence.

A handwritten signature in black ink, consisting of a large 'J' followed by a series of wavy lines and a short horizontal stroke at the end.

Jeremy Miles AS/MS
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Minister for Education and Welsh Language

1. What is Welsh Government's evidence base for believing the Bill will realise Welsh Government's intent?

Your cost-benefit analysis by Alma Economics identified gaps in the evidence-base and appears to have had some misunderstandings about the nature of the proposed reforms.

For example it indicates that the Commission will bring together the sector under one regulatory umbrella, and cites that this will eliminate confusion around overlapping roles of a number of organisations, it then lists a number of organisations which are outside devolved competence, such as the UK Government Department for Education and Skills; and the QAA

- 1.1 In 2015, Professor Ellen Hazelkorn undertook a review of the oversight of post-compulsory education and training in Wales. The review examined the effectiveness of the current arrangements, in particular in relation to funding, governance, quality assurance, standards and the management of risk.
- 1.2 Professor Hazelkorn's report was published on 10 March 2016 and made two primary recommendations. The first, that the Welsh Government should develop an overarching vision for the PCET system, with stronger links between education/training policy, providers and social and economic goals. The second was that a new, arm's length body should be established to be the sole regulatory, coordinating and oversight authority for the post-compulsory system.
- 1.3 Subsequently the Welsh Government undertook a White Paper consultation and a technical consultation and engaged extensively with stakeholders to develop the necessary legislative provision so as to deliver on the recommendations made by Professor Hazelkorn.
- 1.4 The cost-benefit analysis by Alma Economic highlighted difficulties in identifying the causal link between policy changes and the potential savings for the future (in relation to education reforms generally rather than this set of reforms in particular), however it also identified potential benefits and opportunities that these changes could bring.
- 1.5 We know that our tertiary education sector has a number of barriers created by the institutional and sector divide. Removing these barriers, utilising resources collectively and making the learner the focus has clear potential to enable a more appropriate allocation of resources to learners needs, including the flexibility to address both gaps and duplication of provision. It also provides the opportunity to bring the learner voice into shaping provision for the future, ensuring that career pathways are more clearly articulated and accessible, and parity of esteem is progressed.

2. No clear rationale is present in the Explanatory Memorandum on why some options were dropped early on in the process. This makes it very difficult to understanding Welsh Government's decision-making process for this new Bill. Can you explain why there isn't more information on this available to us?

- 2.1 In developing the Bill, a robust and detailed options identification and appraisal process was undertaken. Chapter 7 of the Explanatory Memorandum sets out the

approach taken, and details the long list of six options (plus sub-options) considered, and the scoring and appraisal which resulted in their being discounted.

- 2.2 As set out in the Explanatory Memorandum, the long list options were subject to two options appraisal processes where they were assessed against five high level goals, consistent with the Welsh Government's priorities for tertiary education as articulated in the Welsh Government's Strategic Vision, and eleven high level objectives.
- 2.3 Each option was evaluated and scored in accordance with a set scoring scale and upon completion of the appraisal / scoring process each option was classified as either Discounted, Preferred, or Possible
 - The discounted options were identified due to a variety of factors alone or in combination, including scoring low against the high level objectives or not providing benefits across the whole tertiary education sector or
 - being undeliverable due to insufficient political and/or stakeholder support
- 2.4 The Explanatory Memorandum subsequently sets out the detailed analysis of the preferred option, the possible option (the second highest scoring option) and the do nothing option, this is in line with common practice.

3. How will the regulatory and funding transition be managed considering providers will need to apply for registration and prepare those applications?

- 3.1 Work relating to the implementation of the Bill has been progressing in the background for a while, for example through workshops with stakeholders regarding the identification of the strategic requirements for the Commission, and consideration of the necessary arrangements, both legal and operational, to ensure a smooth transition from the current arrangements to the new arrangements.
- 3.2 My officials are currently scoping the work necessary to further develop a high level implementation plan, supported by a programme of legislation for implementation. Our key focus will be understanding the lead times for the main pillars within the Bill which are the registration system, quality framework and extended FE provision. My officials have started to engage with key stakeholders regarding the development of this plan and this engagement will continue over the coming months.
- 3.3 The full implementation of the Commission's functions, as provided for in the Bill, will span into 2025. This will enable robust engagement with stakeholders during the implementation and ensure that the Commission is able to lead in key areas.

4. What is the rationale for not giving the Commission powers to establish its own coherent funding framework, but to instead set eligibility for funding based on Welsh Minister's regulations?

- 4.1 I believe that the Bill enables the Commission to establish a coherent funding framework. Legislating for a new body requires striking the right balance by ensuring there are clear limits governing that new body's power, whilst ensuring flexibility to ensure such a body can work effectively over the long-term.

- 4.2 Section 85 of the Bill enables the Commission to provide financial support to specified providers in respect of the provision of higher education and the carrying on of other activities. “Specified providers” are those registered in certain categories which are specified in regulations made by the Welsh Ministers. The intention is that providers registered in those categories will be eligible for direct funding from the Commission. Regulations must be made by the Welsh Ministers in order for funding to be provided pursuant to section 85.
- 4.3 The same principles apply in respect of the funding of research and innovation pursuant to section 102 of the Bill which makes provision for the Commission to provide funding to specified providers for the purposes of, or in connection with, research or innovation. The Welsh Ministers also have the option to provide, by way of regulations, that funding in respect of the provision of approved Welsh apprenticeships and further education and training may only be provided by the Commission to registered providers in certain categories (sections 101(3) and 95(2) refer, respectively). Separately, it is intended that higher education courses provided by registered providers will be designated for certain amounts of student support, depending on the category in which the provider is registered. Courses would be designated for student support through regulations made under the Teaching and Higher Education Act 1998.
- 4.4 Taken together, these regulations will ensure the benefits that providers receive are aligned with the regulatory requirements placed on them. Setting out the relevant categories of registration ensures transparency and allows for scrutiny by Senedd members.
- 4.5 The Bill enables the Commission to fund the full range of tertiary education including school sixth form provision, further education, adult community based learning and higher education. The funding powers reflect the different operating environments of local authorities, providers of further education and training and providers of higher education. The Commission will determine funding allocations to eligible providers.

5. The legislation enables Government to fund research around the Commission through retaining powers under the Science and Technology Act 1965 and the Higher Education Act 2004. Can you set out the logic for this?

- 5.1 Welsh Ministers have held powers to fund research and innovation since the beginning of devolution. Welsh Government funds a large number of research and innovation programmes directly across a range of areas including health research, business innovation, and programmes such as Ser Cymru, with many of these programmes having been reliant on EU funding. It is not Welsh Government policy to remove Welsh Ministers’ powers to fund these areas. .
- 5.2 The Commission will inherit HEFCW’s responsibilities for funding research and innovation, including QR research funding, postgraduate research funding, research capital funding, and the higher education innovation funding recently re-introduced.
- 5.3 Registered further education institutions within a specified category (currently expected to be the higher education – core category) will be eligible to receive funding from the Commission for research and innovation. Unregistered FE institutions can also receive research and innovation funding from the Commission via another registered institution with whom they are collaborating.

6. What is the rationale for not expecting all providers to meet the equality of opportunity on-going condition for registration? Which providers will be expected to meet this condition?

- 6.1 Following consideration of responses to the consultation on the Draft Bill, proposals in respect of institutional Access and Opportunity Plans have been removed from the Bill, and replaced by a more general registration condition for registered providers for access to and other aspects of the provision of tertiary education fairer and more just.
- 6.2 Initially, it is intended to provide for two categories of registration (higher education - core and higher education - alternative) and for both of these categories to be subject to the equality of opportunity registration condition. This would therefore include all providers seeking to be designated for Welsh Government student support.
- 6.3 The Commission will also have a clear strategic duty to promote widening participation, improved retention, reduced attainment gaps, and support for students in tertiary education from under-represented groups and disadvantaged demographics.
- 6.4 It will be for the Commission to determine the precise requirements of the equality of opportunity registration condition, as well as any equality of opportunity requirements it might require of funded providers via Outcome Agreements and terms and conditions of funding. We expect that the Commission will develop its policy in this area in consultation with providers, staff and student representatives.
- 6.5 It is worth noting that many tertiary education providers in Wales, such as schools, colleges and universities, are already under a number of duties related to equality under the Equality Act 2010.
- 6.6 I am however giving further consideration to whether to include provision on the face of the Bill, to subject all registered providers to the equality of opportunity on-going condition for registration. This would result in any future categories of registration automatically being subject to the equality of opportunity condition rather than being dependant on the making of regulations. I will keep the Committee informed as this work progresses.

7. To what extent have you addressed HEFCW's concerns regarding the consideration of quality arrangements for transnational education, validation arrangements and degree apprenticeships?

- 7.1 The duty of the Commission to assess the quality of higher education extends to higher education provided:
- by a registered provider;
 - on behalf of each registered provider (whether by another registered provider or by an external provider)
- 7.2 Those providers who are providing higher education on behalf of a registered provider are captured by this duty whether they are in or outside of Wales.

- 7.3 The higher education elements of degree apprenticeships are “higher education” for the purposes of quality assessment provisions of the Bill, and therefore the duty to assess quality in the higher education elements of degree apprenticeships will be held by the Commission, and is due to be conducted by the designated body (or by the Commission itself if the Commission so chooses).
- 7.4 It is understood that HEFCW, QAA and Estyn have been in discussions about the ways in which Estyn’s experience of inspecting apprenticeships could support the assessment of quality in respect of the higher education elements of degree apprenticeships. It will be for the Commission, the designated quality body and Estyn to agree what role Estyn might have here in the future.
- 7.5 In addition, section 55 of the Bill enables the Welsh Ministers to specify, in regulations, education and training that falls within Estyn’s remit, and this could include higher education elements of degree apprenticeships where considered necessary or desirable.
- 8. Post legislative scrutiny of the HE Act found that the quality assurance system for further education providers that delivered higher education meant subjecting institutions to both QAA and Estyn requirements. The Bill appears to continue this situation – can you set out the rationale for this.**
- 8.1 The Bill delineates the responsibilities of Estyn and the designated quality body (or the Commission if it chooses not to designate a body) by type of provision rather than by provider. This is necessary to ensure that there is consistency in how further education provision is assessed across schools and colleges, and how higher education is assessed across colleges and universities.
- 8.2 The Bill requires Estyn to agree its plan of inspections for provision within the Commission’s remit with the Commission, and for the designated quality body to conduct its higher education quality assessments in accordance with any arrangements made with the Commission. This will enable much better coordination and join-up of assessments and inspections in providers which might be subject to both. Additionally, Estyn and the designated body will be expected to align their processes with the Commission’s overall priorities and frameworks for quality, which we hope will create additional coherence and alignment.
- 9. During the session, you agreed to respond in writing to this question: Do main apprenticeship contractors currently need consent from Welsh Government to pass on funding to sub-contractors, and if not, what's the rationale for changing this in the Bill to require consent?**
- 9.1 Current apprenticeship providers are enabled, through the terms and conditions set out in their contracts with the Welsh Government, to appoint sub-contractors without the written consent of the Welsh Ministers. Those terms and conditions also require apprenticeship providers to satisfy themselves, on a continuing basis, as to the financial standing of any sub-contractor they engage and its ability to perform whatever tasks the sub-contractor is retained to perform.

- 9.2 The Bill makes provision for the Commission to provide consent for the passage of funds from directly funded providers to collaborating bodies for or in connection with the provision of an approved Welsh apprenticeship.
- 9.3 In relation to the provision of financial support by the Commission for approved Welsh apprenticeships, collaborating bodies are providers who are:
- providing, or have provided, an approved Welsh apprenticeship on behalf of the directly funded provider or
 - are working, or have worked, in collaboration with the provider for the purpose for which the financial support was provided by the Commission.
- 9.4 As the Commission may not have a direct regulatory or funding relationship with the collaborating body, this framework of controls will allow it to take appropriate action, for example the withholding or withdrawal of consent or the giving of consent subject to conditions. The rationale being to better enable the Commission to take steps to protect the interests of learners, ensure the proper use of public money and protect the reputation of the Welsh tertiary education and research sector.

10. How do you envisage Learner Protection Plans will support students who wish to transfer courses when there are often systemic barriers to doing so, such as recognising advanced standing and credit transfer?

- 10.1 The learner protection plan provisions are intended to support the implementation of consistent arrangements across the tertiary education sector to protect the interests of a learner in the event of a course or campus closure, a provider failure or a learner choosing to transfer to another course or provider. The main focus of the provision is to minimise the impact of these events on the learning of individuals and reduce the risk of that individual dropping out of learning.
- 10.2 Whilst there are pockets of good practice across the tertiary education sector, in respect of protecting the interests of learners if the progress of their learning is disrupted by an event such as a course or campus closure or a provider failure, there is a need for a consistent and comprehensive approach across the sector and providing for statutory arrangements in respect of learner protection plans will help ensure such an approach.
- 10.3 It is anticipated that the plans will build on existing good practice, providing a renewed focus to overcoming barriers standing in the way of learners transferring courses to enable them to continue successfully in their learning. It is intended that this will offer learners greater flexibility in the way they study, and aid progression from one level to the next and between different types of learning, for example between further education and higher education.
- 10.4 The Commission will be required to develop guidance, in consultation with stakeholders, on the detail of how the learner protection plans will be developed, including how students can be supported to transfer from one course to another.

10.5 It is vital that prospective and existing learners and staff working for tertiary education providers are aware of these arrangements. The Commission will be able to issue guidance to providers, under of para 22(1)(a) or (b) of Schedule 1, in respect of matters such as how the plans should be communicated appropriately to prospective, and existing learners and staff.

11. To what extent will there be consistency of expectation across all tertiary education providers regarding the level of commitment and content of their Learner Protection Plan?

11.1 The Commission is under a duty to issue guidance on the preparation and revision of learner protection plans pursuant to section 122(6) of the Bill. It is envisaged that learner protection plans will be underpinned by a common set of principles based on that guidance, to ensure consistency for learners across the PCET sector.

11.2 Draft principles were shared with stakeholders in the Welsh Government's technical consultation "Public Good and a Prosperous Wales – the next steps". These principles included that the plans should be learner centred, be supportive of learners' well-being, be communicated effectively to prospective and existing learners and staff and be underpinned by timely and effective arrangements. It is envisaged that the common set of principles will be finalised by the Commission following consultation with stakeholders as the Commission is under a statutory duty to consult such persons as it considers appropriate before issuing guidance under section 122(6) (as per section 122(7)).

11.3 Subject to notice being given, having a Learner Protection Plan approved by the Commission and to give effect to that plan, will be an ongoing registration condition or funding condition, depending on the relationship of a provider with the Commission. Also the Commission will be required to monitor the effectiveness of learner protection plans and include its findings in its annual report.

11.4 Although learner protection plans should align with these common principles it is recognised that the detail of these arrangements will differ across the PCET sector. It is intended that a proportionate approach is adopted in the development of learner protection plans, which does not result in additional unnecessary burden for providers but meets the needs of its learners.