

## CYPE(6)-01-22 - Paper to note 2

### **Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

### **Legislation, Justice and Constitution Committee**

Jeremy Miles MS  
Minister for Education and Welsh Language

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Dear Jeremy

#### Tertiary Education and Research (Wales) Bill: Further questions

Thank you for joining our meeting on Monday 6 December to give evidence on the Tertiary Education and Research (Wales) Bill.

As mentioned during the session, we have a number of additional questions in relation to the Bill, which are set out in the Annex.

We would be grateful to receive your response by 19 January 2022.

I am copying this letter to Jayne Bryant, Chair of the Children, Young People and Education Committee.

Yours sincerely



Huw Irranca-Davies  
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

# ANNEX

## General

1. Can you confirm what assessments have been undertaken in relation to the human rights impact of the Bill and what the outcome of these assessments has been? In particular, are you satisfied that the rights of entry and inspection provided for in sections 62 and 72 of the Bill are compliant with the *Human Rights Act 1998*?
2. The Statement of Policy Intent for this Bill sets out a list of 20 regulation-making powers largely inherited from existing legislation, referred to as the inherited powers. Are each of the inherited powers subject to the same Senedd scrutiny procedure as they are in the existing legislation? Can you also confirm that where powers in the Bill previously existed in a different form, for example previously a regulation making power but now a power to make directions, the same or a higher procedure is applied? It would be helpful to have a comprehensive list setting out the position in relation to each of the powers.
3. Why isn't the Welsh Ministers' power to issue directions under paragraph 1 of Schedule 15 dealt with in the Statement of Policy Intent?

## Part 1

4. Section 11 of the Bill requires the Welsh Ministers to publish a statement of strategic priorities in relation to tertiary education and research and innovation. Can you clarify why there is no duty on the face of the Bill on the Welsh Ministers to consult any other party when preparing the statement?
5. Section 13(4) of the Bill requires the Commission to publish its approved strategic plan but provides no timescale for doing so. Why is this?
6. Section 22 of the Bill introduces Schedule 2, which provides the Welsh Ministers with the power to make schemes to transfer staff, property, rights and liabilities from HEFCW and the Welsh Ministers to the Commission. There is no provision for the Senedd to scrutinise this scheme. Can you explain why this is the case?

## Part 2

7. Section 23 provides for various regulation-making powers in relation to the registration of providers by the Commission. The Statement of Policy Intent explains that:

*"the funding structure (and hence appropriate regulation) of tertiary education (particularly higher education) across the UK has changed frequently in recent years, with changes in other UK administrations often having an effect on funding policy in Wales. These changes have occurred at a rate faster than is appropriate or practicable for the Welsh Government to respond with primary legislation regarding the details of regulation in each and every instance. The Bill enables details of the regulatory framework to be changed in response to any future changes in the structure or funding of the tertiary sector in Wales."*

Can you provide further information on this and confirm whether discussions are taking place with the other UK administrations to ensure that the law is able to keep pace with the changes?

8. There are several sections in the Bill where "examples" are given for matters that regulations may cover, for example, sections 25(4) and section 59(2). Does the Minister consider that this may lead some readers to think that the regulations in question can only cover the matters listed?
9. Section 30(2)(b) provides for the Welsh Ministers to make regulations to specify what constitutes a "fee limit category". This power is subject to the affirmative procedure, but the three other regulation-making powers in section 30 which also deal with fee limits are subject to the negative procedure. Can you explain why all of the powers in this section are not subject to the affirmative procedure when they deal with the same subject matter?
10. With regard to the intervention powers of the Welsh Ministers under the Bill, section 68 gives the Welsh Ministers the power to give a direction directly to a provider's governing body. The Statement of Policy Intent confirms that this is intended to be used when the Commission has exhausted its intervention functions or when the matter is so serious that urgent action is required. Why are these conditions not reflected on the face of the Bill?
11. In relation to section 77(4) of the Bill, the Statement of Policy Intent indicates that any regulations made under this provision would be "broadly similar" to the current arrangements in the Higher Education (Fee and Access Plans) (Notices and Directions) (Wales) Regulations 2015. Can you confirm what is meant by the phrase "broadly similar"?

### Part 3

12. Section 86(6) of the Bill contains regulation-making powers which the Statement of Policy Intent says are not currently intended to be used. Why are they included in this Bill? Would they not be better addressed in the future if and when the need arises?
13. In relation to section 91, the Statement of Policy Intent says that "The use of secondary legislation to determine the scope of relevant education and eligibility for the purpose of the

funding duty is intended to enable a progressive expansion of the funded adult further education and training offer over time to address evolving patterns of need." Similarly, the Statement of Policy Intent uses wording such as "not current government policy" and "should the need arise" in the context of regulation making powers under sections 95 and 101. Can you expand on this and explain why you consider it to be appropriate to put these powers in place now, rather than when the need actually arises?

14. Part 3 of the Bill deals with the funding of tertiary education and research. Virtually all of the powers in this Part for the Welsh Ministers to make regulations are subject to the affirmative procedure. However, section 106 of the Bill enables the Welsh Ministers to issue directions to the Commission in the event that funds are being mismanaged by a provider and these directions are subject to no procedure other than being laid before the Senedd. These are broadly modelled on the existing section 57 of the *Further and Higher Education Act 1992* relating to HEFCW, where such directions can only be given by order of the Welsh Ministers which is subject to the negative procedure. Can you confirm why such directions are not subject to a scrutiny procedure before the Senedd?

#### Part 4

15. The Statement of Policy Intent notes that a number of the powers in Part 4 "build upon, or re-enact, existing regulation making powers in the *Apprenticeship, Skills, Children and Learning Act 2009*". Can you confirm that, where this is the case, the scrutiny procedure which was applicable under the 2009 Act remains applicable under the Bill?

#### Part 5

16. Section 130(6) imposes a duty on the Welsh Ministers to publish guidance regarding factors they will take into account when deciding whether to approve a body or individual to receive application to acceptance information and to carry out and publish research in relation to such information. There is no requirement for this guidance to be laid before the Senedd. Can you explain why this is the case?

#### Part 7

17. Section 135 preserves a wide-ranging power to dissolve higher education corporations with no justification for the retention of this power other than that it is a "desirable position". Do you consider this to be sufficient justification and can you expand on the reasons for the retention of this power?