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Llywodraeth Cymru
Welsh Government

Peredur Owen Griffiths MS
Chair of the Finance Committee
Senedd Cymru

29 March 2022

Dear Peredur,

I would like to thank the Finance Committee for their scrutiny of the Tertiary Education and Research (Wales) Bill (“the Bill”) during Stage 1 and for the report which was published on 04 March 2022.

I welcome the conclusion that the Committee is broadly content with the financial implications of the Bill. I note that the Committee feels unable to draw a conclusion on whether the resources are adequate and reasonable to deliver the legislation due to the Regulatory Impact Assessment not being able to quantify costs to other bodies.

It is anticipated that if additional costs are placed on other bodies then this would be as a result of subordinate legislation. I wanted to assure the Committee that in line with standard practice, any subordinate legislation made as a consequence of this Bill would, where relevant, be accompanied by a Regulatory Impact Assessment. This would provide a comprehensive analysis of the costs, including costs to other bodies.

I have set out responses to the Committee’s recommendations in Annex A and while it has not been possible for me to accept all of the Committee’s recommendations in full, I hope you will find this useful.

I will also be writing to the Chairs of the Children, Young People and Education Committee and the Legislation, Justice and Constitution Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

I look forward to continuing to work with Members as the Bill progresses through the Senedd process.

Yours sincerely,

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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.

Annex

Recommendation 1. Throughout this report, the Committee has identified that further financial information is required. Should there be significant changes to the Regulatory Impact Assessment, the Committee recommends the Minister appears before the Committee to consider those changes in more detail.

I note this recommendation. The Regulatory Impact Assessment will be updated in line with standard procedure after Stage 2. It will be updated with the latest information and in light of the Committee's recommendations. Cost estimates will also be reviewed to ensure they represent the most up-to-date figures. At this stage, I do not envisage this will result in significant changes to the overall figures in the Regulatory Impact Assessment because the anticipated staff numbers of the Commission, the major driver of overall cost, have not altered since November. I recognise the Committee's desire to explore the updated Regulatory Impact Assessment so will share a copy with the Committee as soon as possible after Stage 2 to give the Committee an opportunity to consider the latest information and ask any follow up questions before Stage 3.

Recommendation 2. The Committee recommends the Welsh Government undertakes further work analysing and estimating the cost benefits of the Bill. The Regulatory Impact Assessment should be updated to include further information on these benefits, how they will be analysed and when they are anticipated to be delivered.

I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation. A range of non-quantified benefits are set out in the Regulatory Impact Assessment. The benefits that will flow from the reforms will have outcomes with real-world impact, ultimately better educational outcomes for a wider range of learners and more broadly, a higher skilled workforce delivering more productivity in the economy.

The benefits of any education reform are challenging to quantify and many costs, particularly those that may be incurred by other bodies, are unknown at this stage. This means that it is not possible to set out detailed cost benefits in quantified form in the Regulatory Impact Assessment. The benefits will be tracked and analysed post-implementation and the Commission will be assessed on its contribution to these goals and the national milestones.

Recommendation 3. The Committee recommends that the Welsh Government provides as much clarity as possible about the likelihood of the risk that the Office of National Statistics could reclassify further and higher education institutions as a result of the proposals contained in the Bill, the severity of its financial impact if realised and the practical implications of reclassification on the Welsh Government and the new Commission.

I accept this recommendation. The Welsh Government believes that the risk of reclassification is low as the changes proposed in the Bill do not alter the extent of 'control' over individual tertiary education providers who will, as at present, remain autonomous bodies responsible for determining their own general policy. The Bill is concerned with the proportionate regulation of registered providers rather than control of institutions.

The Bill seeks to establish a new body, the Commission for Tertiary Education and Research, which will be responsible for the funding and regulatory oversight of tertiary

education providers in Wales. There are two main changes which will impact tertiary education providers in connection with Welsh public funding:

A change in the regulatory framework – the Bill proposes the introduction of registration system. This is similar to changes made in England following establishment of the Office for Students, this body has already been classified to the central government sector by the ONS, and will allow the Commission to ensure regulatory oversight of tertiary education providers in Wales who benefit from the automatic designation of their higher education courses for Welsh Government student support.

A change in the funding relationship – the Bill proposes the introduction of Outcome Agreements. These will be the means by which the Commission negotiates with funded providers the activities they will undertake in pursuit of the Commission's objectives in its approved Strategic Plan.

The Bill is intended to strike an appropriate balance between maintaining further and higher education institutions' independence while safeguarding the significant amount of public money invested in the tertiary education sector.

Regarding the impact of reclassification. If the arrangements between the Commission and these institutions changed to the extent that the ONS could determine that 'control' fell within the public sector i.e. the public sector had the ability to determine the general purpose or programme of these institutions, they would be reclassified to the public sector and at least some element of their transactions and balances would hit the Welsh Government Consolidated Balance Sheet. The extent would depend on whether they were classed as market bodies, i.e. fund 50% or more of their operational costs from 'sales' or not:

If the institutions do not meet the criteria to be market bodies, all of the assets & liabilities of these institutions would be "on" the WG's consolidated balance sheet, budgets for the institutions would have to be planned, managed & reported on a net resource basis and funding would only score against budget when the institutions incur the expenditure not on payment.

If the institutions did meet the criteria to be market bodies, they will be Public Non-Financial Corporations and the budget will be reported on an 'external finance basis' i.e. the budget show all transactions with the institutions on payment and, should they undertake any borrowing, the financing raised will be reported in the budget.

If the institutions were not market bodies, they would fall within the central government sector and be treated no differently to the WG itself for budgeting and accounting purposes. The institutions would need to be aligned, designated in the GOWA 2006 (budget Motions & Designated Bodies) Order, i.e. the full resources of these institutions would be included in the ambits to the budget motions and voted by the Senedd and consolidated within the WG Consolidated Accounts if they met the annual materiality threshold.

If the institutions were market bodies, they would be classified as Non-Financial Public Corporations. They would not be aligned, i.e. not designated, although they would need to provide some financial information for the WG Consolidated Accounts.

The ONS will classify the Commission once it is established. We will engage with ONS to advise them of when that will be so that ONS can include the Commission in its forward plan, which will inform us of the timescales for formal classification

Recommendation 4. The Committee recommends that the Welsh Government undertakes further work on the cost associated with the Bill and updates the Regulatory Impact Assessment to demonstrate, for clarity, to which costs the +/- 30 per cent variance applies.

I accept this recommendation and will look to include this information when the Regulatory Impact Assessment is revised following Stage 2. The revised Regulatory Impact Assessment will set out which costs are subject to up to 30% variance and why. Further work will also be undertaken on whether this percentage for the potential variance remains the most appropriate to use and if not, what percentage should be used.

Recommendation 5. The Committee recommends that detailed information is provided on the membership, work plan and intended outcomes of the strategy and implementation group. Including where the work of this group will lead to amendments to the Regulatory Impact Assessment and what the scope of those amendments might be.

I accept this recommendation. I established The Post Compulsory Education and Training (PCET) Strategy and Implementation Board to work collectively with me, the Programme's Senior Responsible Officer and Welsh Government officials to provide strategic oversight and expert advice to support the delivery of the PCET reforms and associated policy development, implementation arrangements and the establishment of the Commission. The Board also operates as a platform to raise awareness of tertiary education and research policy developments planned elsewhere in the UK and internationally and considers the potential for it to impact on post 16 learning in Wales.

All Board members are drawn from external stakeholders impacted by the planned legislative and cultural changes and all have a vested interest in the successful delivery of the reforms. Members are required to take a proactive and participatory role providing advice, guidance and constructive challenge on the proposed work required to deliver on the reforms and support the smooth transition to the Commission. This includes communicating our vision for change, advising on the long term strategic duties and objectives, highlighting potential risks to the successful introduction of the Commission and to the wider post 16 sector during implementation.

To date the group has worked collegiately to consider areas related to the strategic duties in the Bill including the high level quality principles, scope for greater collaboration and partnership working, and a duty to support Lifelong Learning. The forward work plan remains fluid and is prioritised according to need. Future discussions will include the Employability Plan, learner engagement principles, delivery and development of Welsh language provision and planned Stage 2 Bill amendments in due course. A list of the PCET Strategy and Implementation Board's external membership is attached at Annex B.

Recommendation 6. The Committee recommends that the Welsh Government provides information regarding the strategy and implementation group's consideration of the location of the Commission and staffing numbers, including details of any financial impacts arising from the group's work.

I note this recommendation, however the PCET Strategy and Implementation Board provide strategic oversight and expert advice, and it is not the intention that the Board will be involved in operational discussions and decisions. As is standard practice, there is a Programme Board to oversee the operational side of establishing the Commission. The

membership of the Programme Board includes representatives of Welsh Government, HEFCW and Trade Union Side (TUS). Operating under the Programme Board are a number of individually focused work streams that are considering the elements for establishing the Commission. These work streams are Legislation, IT, HR, Location and Finance and Governance. As more detail emerges on location and staffing numbers and the resulting financial impact, any updated information will be included when the Regulatory Impact Assessment is revised following Stage 2.

Recommendation 7. The Committee recommends that the Welsh Government undertakes further work on a location strategy, particularly the impact that COVID-19 will have on any costs associated with it, and that this information is included in a revised Regulatory Impact Assessment.

I accept this recommendation. There is ongoing work relating to the location of the new Commission, it is one of the key work streams of the implementation programme. As more detail emerges any updated information will be included when the Regulatory Impact Assessment is revised following Stage 2.

Recommendation 8. The Committee recommends that the Welsh Government provides further information relating to the financial impact of using IT consultants to undertake transferring the Higher Education Funding Council for Wales's systems and data to the new Commission and this should be included in the revised Regulatory Impact Assessment.

I accept this recommendation and will look to include this information when the Regulatory Impact Assessment is revised following Stage 2. As I said at Committee any use of consultants will be kept under review and the programme hasn't ruled out hiring permanent IT staff if that turns out to be a better value for money option. The revised Regulatory Impact Assessment will make clear, as far as possible, the financial impact and rationale of basing forecast costs on using IT consultants.

Recommendation 9. The Committee recommends that the Welsh Government reassesses the costs associated with other bodies as a result of this legislation. The costs and any financial implications should be created in consultation with the stakeholders affected and detailed in a revised Regulatory Impact Assessment.

I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation. It has not been possible to quantify any potential additional costs to other bodies as this will depend upon decisions taken by the Commission once it is established. Any assumptions or estimates made by the Welsh Government at this time would pre-empt these decisions and would not provide for accurate estimations of any potential costs. As I said in my letter to the Committee of 22 December 2021, I acknowledge that there is a potential risk, that the bill could place additional costs on the providers in the sector. This risk is managed by close monitoring and engaging closely with stakeholders, including through but not limited to the Strategy and Implementation Board to ensure any additional costs incurred due to the bill are absolutely necessary and kept to a minimum. It is anticipated that if additional costs are placed on other bodies then this would be as a result of subordinate legislation, which would, where relevant, be accompanied by a Regulatory Impact Assessment which would provide a comprehensive analysis of the costs, including costs to other bodies.

Recommendation 10. The Committee recommends that the Welsh Government continues to include post-implementation review of all Bills before the Senedd as standard practice, including information as to how value for money will be assessed.

I accept this recommendation. Post-implementation reviews play an important role in ensuring that lessons are learnt for future areas of work in both areas of maintaining good practice and where improvements could be made.

Annex B - PCET Strategy and Implementation Board External Membership

| Organisation | Sector Represented |
|---|---|
| Adult Learning Wales | Adult learning |
| Careers Wales | All |
| CBI | Industry |
| Chairs of Universities Wales | HE |
| Colegau Cymru | FE |
| Coleg Cymraeg Cenedlaethol | HE |
| CYDAG | School 6 th Forms |
| Education Workforce Council | Regulator |
| Estyn | Regulator |
| FSB | Industry |
| Higher Education Funding Council Wales | HE |
| IOD | Industry |
| Learning and Work Institute | Work-based Learning |
| National Centre for Learning Welsh | All |
| National Mission Change Board | School 6 th Forms |
| National Training Federation Wales | Work-based Learning |
| National Union of Students | Social Partner |
| Qualifications Wales | Regulator |
| Quality Assurance Agency | Regulator |
| The Association of Directors of Education in Wales (ADEW) | Lifelong Learning School 6 th Forms |
| Universities College Union | Social Partner |
| Universities Wales | HE |
| WLGA | Lifelong Learning School 6 th Forms |