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Llywodraeth Cymru  
Welsh Government

# **FURTHER AND HIGHER EDUCATION (GOVERNANCE AND INFORMATION) (WALES) BILL**

Explanatory Memorandum  
incorporating the Regulatory Impact  
Assessment and Explanatory Notes

April 2013

## **Explanatory Memorandum to the Further and Higher Education (Governance and Information) (Wales) Bill**

This Explanatory Memorandum has been prepared by the Department for Education and Skills of the Welsh Government and is laid before the National Assembly for Wales.

### **Member's Declaration**

In my view the provisions of the Further and Higher Education (Governance and Information) (Wales) Bill, introduced by me on the 29 April 2013 would be within the legislative competence of the National Assembly for Wales.

**Leighton Andrews AM**

Minister for Education and Skills  
Assembly Member in charge of the Bill

29 April 2013

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## **ANNEX 1 – Explanatory Notes**

## 1. Description

1. The Further and Higher Education (Governance and Information) (Wales) Bill seeks to enhance the autonomy and decision making abilities of Further Education Institutions by removing and modifying existing legislative controls on them.
2. The Bill also gives effect to the Welsh Government policy to allow data relevant to student grants and loans to be shared by Her Majesty's Revenue & Customs (HMRC) with the Welsh Ministers and anyone to whom the Welsh Ministers delegate or transfer functions. The data sharing gateway is an integral part of a project to modernise the Student Finance Wales delivery service to simplify and create efficiencies in that service.
3. The Minister for Education and Skills has made the following statement:

*“In my view development of the provisions of the Further and Higher Education (Governance and Information) (Wales) Bill has been undertaken with due regard to the United Nations Convention on the Rights of the Child, in accordance with the Rights of Children and Young Persons (Wales) Measure 2011”.*

## 2. Legislative background

4. The National Assembly for Wales has the legislative competence to make provision in the Further and Higher Education (Governance and Information) (Wales) Bill under Part 4 of the Government of Wales Act 2006 (GOWA 2006). The relevant provisions of GOWA 2006 are set out in section 108 and Schedule 7. Paragraph 5 of Part 1 of Schedule 7 sets out the following subjects on which the Assembly may legislate under the heading “Education and Training is reproduced below:

***Education and training***

*5. Education, vocational, social and physical training and the careers service. Promotion of advancement and application of knowledge.*

*Exception—*

*Research Council.*

5. None of the provisions of the Further and Higher Education (Governance and Information) (Wales) Bill fall within any of the exceptions specified in Part 1 of Schedule 7 to GOWA 2006 or applies otherwise in relation to Wales or confers, imposes, modifies or removes (or gives power to confer, impose, modify or remove) functions exercisable other than in relation to Wales; or breaches any restrictions in Part 2 of Schedule 7 having regard to any exception in Part 3 of that Schedule from those Restrictions.

### 3. Purpose and intended effect of the legislation

6. The Further and Higher Education (Governance and Information) (Wales) Bill ('the Bill') seeks to enhance the autonomy and decision making abilities of Further Education Institutions and allow data relevant to student grants and loans to be shared by Her Majesty's Revenue & Customs (HMRC) with the Welsh Ministers.

#### Further Education Institutions

7. The Bill seeks to make changes to the existing statutory framework to remove controls exercised by the Welsh Ministers over Further Education Institutions (FEIs). The Welsh Government recognises the maturity of the Further Education sector in Wales and has concluded that the sector is best placed to determine how the needs of their learners and local communities should be met.
8. FEIs were established in 1993 and classified for the purposes of national accounts as "Non-profit Institutions Serving Households" (NPISH). In national accounts terms, NPISH forms part of the private sector and this classification does not require college accounts to be consolidated with those of government. In October 2010, the Office of National Statistics (ONS) announced that it would reclassify colleges as part of central government for the purpose of national accounts.
9. The ONS, in determining the classification of bodies for the purposes of national accounts, looks at various indicators of control that include:
  - the ability to close a body;
  - the ability to exert financial control;
  - the ability to change the constitution of the body or veto changes to it;
  - the ability to decide what sort of financial transactions that the body can undertake, or limit them.
10. The decision by the ONS to reclassify FEIs in Wales as part of central government for the purpose of national accounts was the result of various statutory controls that the Welsh Ministers exercise over FEIs in Wales. Some of the existing controls relevant to the ONS decision include:
  - the restriction on FEIs borrowing money without the approval of the Welsh Ministers;
  - the power to modify or replace the instrument and articles of government of a FEI;
  - restricting a FEI from operating through a subsidiary.
11. The decision to reclassify FEIs was applied retrospectively to the date that FEIs were established.

12. The effect of the reclassification of FEIs as central government public sector bodies has negative impacts for the FE sector in Wales that will lead to changes to the way financial information from colleges is collected and monitored and impact on how FEIs manage their internal affairs. The changes have significant implications for FEIs including:

any surpluses generated by colleges would be accounted for as Welsh Government funds;

FEIs would be unable to retain a surplus in order to build reserves for future projects; and

additional financial and accounting requirements.

13. The Bill seeks to enhance the autonomy and decision making abilities of Further Education Institutions by removing and modifying the existing legislative controls on them.

#### *HMRC – Data Sharing Link for the verification of household income*

14. The Bill seeks to enable the Welsh Ministers to annually delegate the functions for student finance Wales (SFW) customers to the Student Loan Company (SLC) under section 24 of the Teaching and Higher Education Act (THEA 1998).
15. The intention is from February 2014 the system for determining eligibility for the receipt of financial support, qualifying conditions for loans for living costs, grant calculations, and extra support for disabled students and those students from low income families or with child-care responsibilities will be transferred from local authorities to the Student Loans Company (SLC) on behalf of the Welsh Government.
16. Section 24 of the THEA 1998 currently provides that HMRC may only provide data in relation to operation of the student loan scheme to the Secretary of State or those to whom the Secretary of State has delegated or transferred certain functions. Neither the Welsh Ministers nor the SLC in relation to Wales falls within those categories. Amending section 24 of THEA 1998 will allow HMRC to supply information to the Welsh Ministers for the purpose of enabling or assisting the Welsh Ministers to exercise any functions in connection with Regulations made under section 22 of THEA 1998.

#### *Who is affected by the Bill?*

##### *Further Education Corporations (FECs) and Designated Institutions in Wales*

17. The Further and Higher Education Act 1992 (FHEA 1992) created Further Education Corporations, each with a governing body that determines the educational character and mission of the college and ensures its overall well-being and financial solvency. The FHEA 1992 also created designated institutions.

18. In Wales there are currently 14 further education corporations<sup>1</sup> and four designated institutions<sup>2</sup>. Collectively these are known as FEIs.
19. SFW customers applying for means tested student finance will have their household income checked against HMRC income information for the sponsors (generally the parents) of the applicants. This is an automated process and, SFW customers will no longer be required to present paper evidence of household income.

## Objectives

20. The Welsh Government's policy objective is for FEIs to have the flexibility and freedom to make decisions about the delivery of learning to meet the needs of learners and their local communities. To achieve this objective FEIs must be free from the requirements that classification as a central government public body brings. The Welsh Ministers intend to seek the reclassification of FEIs in Wales as NPISH again for the purposes of national accounts.
21. To enable the Welsh Government to seek the reversal of the ONS classification, the Bill seeks to make changes to legislation that currently allows the Welsh Ministers to impose controls over FEIs or restrict their activities. 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.
22. The legal status of FEIs and principal powers of FEIs to provide further, higher and (within some limits) secondary education, will however, remain the same.
23. The Welsh Government recognises the need to balance the technical changes proposed in the Bill with the need for public funds, the public interest and learners to be safeguarded. For example, the Bill provides for an enhanced intervention power for the Welsh Ministers where, a governing body of a FEI is mismanaging its affairs, fail to discharge a statutory duty, act unreasonably, are performing significantly less well or give an unacceptable standard of education or training. FEIs will continue to be accountable for the use of public funds.
24. The changes made by the Bill include:

*Instrument and articles of government of a FEC:* A FEC will be able to modify or replace its instrument and articles of government but the instrument and articles of government must contain minimum requirements.

*Dissolution of corporations:* A FEC will be given power to resolve to dissolve itself, and the power to transfer its property, rights and liabilities to another body before dissolution takes effect. To safeguard the property and rights of a FEC on dissolution the Bill makes provision for Regulations to prescribe

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<sup>1</sup> This does not include Merthyr Tydfil College, University of Glamorgan, which ceased to exist as a further education corporation in 2006

<sup>2</sup> Coleg Harlech WEA North, YMCA Community College, WEA South and St David's Catholic College



the publication of information, consultation requirements and the bodies to which property and rights can be transferred.

*Borrowing:* A FEC will be able to borrow without the prior consent of the Welsh Ministers.

*Power to appoint up to two members of a governing body of a FEI:* The Welsh Ministers existing power to appoint up to two members of a governing body will be removed.

*Subsidiary Arrangements:* A FEC will be able to conduct itself through a subsidiary arrangement (such as a limited company or charitable incorporated organisation), without the consent of the Welsh Ministers.

*Enhanced intervention powers:* In addition to the existing intervention powers, the Bill provides the Welsh Ministers with power to direct the governing body to resolve to dissolve itself.

25. The Bill will also make other changes relating to powers of the Welsh Ministers to give directions to FEIs: repeal of the requirement for the Welsh Ministers to have an intervention policy; repeal of the duty on FEIs to consult with learners and employers; and remove the power for the Welsh Ministers by Regulation to restrict the provision of higher education in FEIs.
26. The new modernised service will make the following key changes to ensure that SFW is sustainable and efficient:

move to a primarily on-line system;

automate the process by the introduction of data sharing with links to HMRC;

consistent information, advice and guidance to its customers;

standardisation of administration, application and assessment processes, improve deadlines and timescales and enhance productivity; and

increase accuracy and reduce potential for fraud.

### **Risk/hazards if the legislation is not made**

27. If the legislation is not made the Welsh Government will not be successful in obtaining from the ONS a reversal of the reclassification of FE colleges as public sector bodies for the purpose of national accounts. The consequence of FEIs not being reclassified would include a negative impact on the Welsh Government's Department for Education and Skills budget and could de-incentivise the sector to increase income streams outside of government funding and manage the colleges as efficiently as they do now.

28. Changes to the way financial information is collected and monitored is likely to involve additional costs for FEIs and the for Welsh Government (see out in paragraphs 61 – 65). In terms of additional burdens for FEIs and the Welsh Government these would include:

FEIs would need to complete a consolidation pack, known as a 'C-pack'. A comprehensive form that captures the financial information of an organisation for the year to 31 March and enables any transactions between bodies in the consolidation to be identified and eliminated. The C-packs would be submitted to the Welsh Government and would need to be audited;

their financial years would need to be aligned with the public sector's i.e. from 1 April to 31 March;

accounts would need to be prepared under International Financial Reporting Standards as well as UK Generally Accepted Accounting Principles (accounting standards), if consolidation occurs before 2015/16; and

there would be additional impacts for the Welsh Government in terms of assessing the budgetary impacts in-year (in addition to the C-packs mentioned above).

29. These changes would have significant implications for FEIs including:

any surpluses generated by FEIs would become Welsh Government funds;

FEIs would be unable to retain the surplus in order to build reserves to pay for projects in the future for example capital or restructuring.

30. If the legislation is not made then the household income checks to verify student grant and loan applications, will have to be made by SLC using paper documents from students and parents. Using this manual process, there is an increased likelihood that fraudulent cases will not be identified, and students will receive more funding from the Welsh Government than they are eligible.

### **How the legislation will enable sectors to operate more efficiently**

31. The legislation will enhance the autonomy and decision making abilities of FEIs enabling them to determine how the needs of their learners and local communities should be met. The legislation will also be instrumental in achieving a reclassification of FEIs, which in turn will avoid the risks to FEIs of not being reclassified (outlined above).

32. In relation to the changes for data sharing, the ability to utilise the existing HMRC Verification of Household Income (VHI) process will allow the SLC to implement a more effective and efficient assessment service and will mean that the system will be less labour intensive, more effective at detecting and preventing fraud and will generally speed up the application process for the student.
33. It is difficult to quantify the levels of fraud currently detected under the Student Finance England (SFE) system. However analysis of the effectiveness of tolerance levels under the SFE process is currently being undertaken. The report is still in draft and the proposals have not been agreed with the Department for Business, Innovation and Skills at this time. However, from that analysis we estimate that in England the results of the VHI process initial automated check suggest that approximately 24% of sponsors' income does not match up exactly suggesting that income may be under/over declared. These discrepancies are investigated through an exceptions process which starts with SLC obtaining paper evidence of the household income figures on the application.
34. If the same proportion of sponsors appeared on exception reports in Wales, this could identify a considerable level of variances. It is not possible to identify the potential number of fraudulent applications from these variances without substantial, detailed analysis, but for example if we identify fraudulent applications that saved 1% of the expenditure on the means tested Welsh Government Learning Grant that would mean a saving of £1.2m for the Welsh Government.

### **Territorial extent**

35. The Bill applies in relation to Wales.

### **Delivery plan and timescale**

36. The main elements of the legislation are on the face of the Bill. However the Bill does enable the Welsh Ministers to make Regulations. Those regulation-making powers are summarised in Chapter 5 of this Explanatory Memorandum. The Welsh Ministers intend to consult on the policy of the Regulations in 2014.
37. Current anticipated milestones are as follows:
  - Introduction of the Bill – 29 April 2014;
  - Bill passed, subject to will of the Assembly – early December 2013;
  - Subordinate legislation finalised – summer 2014; and
  - Changes for FEIs introduced – September 2014.
38. The decision on a UK wide student finance launch date has still to be made but the launch date could be as early as November 2013. Wales would like to launch at the same time as the other UK Governments. It is proposed these provisions of the Bill commence on Royal Assent (early January) to allow SFW

to accept and process applications from students at the same time as students from other parts of the UK.

39. Following Royal Assent, the SLC will launch the SFW service for academic year 2014/15. This will include launching the data sharing link for SFW on behalf of Welsh Ministers.

## 4. Consultation

40. The First Minister in his legislative statement of July 2011 made a commitment to consult appropriately and engage meaningfully with our partners when developing legislation. In keeping with this statement, on 2 July 2012, the Department for Education and Skills issued a White Paper on the proposals for the Further and Higher Education (Wales) Bill. The White Paper invited comments on the proposals for the Bill and was published on the Welsh Government website.
41. Having due regard to Article 12 of the United Nations Convention on the Rights of the Child (UNCRC), the department issued a youth-friendly version of the White Paper which included a short survey to collect the views of children and young people affected by the proposed Bill.
42. The proposals for data sharing were considered to be minor technical changes; therefore they were not included in the White Paper consultation. The proposed amendment will ensure that the Welsh Ministers have the same functions as the Secretary of State for Business Innovation and Skills in England and the Department of Education in Northern Ireland and will allow access to household income information to prove eligibility for student finance funding from the Welsh Government.
43. Informal consultation to the proposed changes to section 24 of THEA 1998 with the Modernisation of Student Finance Wales Project Boards and the overarching Higher Education/ Further Education Project Board have been undertaken. The project boards consisting of members from Welsh Local Government Association, Higher Education Institutions, Local Authorities, and Further Education Institutions were in full agreement of the HMRC data sharing.
44. The White Paper is available on the Welsh Government website at:  
<http://wales.gov.uk/consultations/education/feandhebill/;jsessionid=1DBD32FFE8EDBD32C2AD5D30E1B18FC7?status=closed&lang=en>
45. The period of consultation ran for twelve weeks and concluded on 24 September 2012. The White Paper contained details of the proposed legislation for the Further and Higher Education (Governance and Information) (Wales) Bill and sought views on proposals which will require primary legislation, before implementation. In relation to FE, the White Paper set out proposals namely in the areas of:

Greater autonomy for FECs to make changes to their Instrument and Articles of Government;

The ability of a college to dissolve itself;

Greater freedom for FECs to borrow funds;

Greater freedom for FECs to establish a subsidiary arrangement to conduct themselves; and

Intervention powers of the Welsh Government.

46. Other proposals included the removal of the Welsh Ministers' powers to appoint up to two members of a governing body. The paper also advised that the proposals capture the key powers that need to be reformed to help enable FECs to be categorised once again as NPISH and that the Welsh Government will consider other powers and requirements as necessary.
47. In total we received 52 responses to the provisions relating to further education: 35 responses from organisations, and 17 responses from learners and young people:

<b>Sector</b>	<b>Responses</b>
Careers	1
Further Education	8
Higher Education	6
Other	8
Schools	1
Unions	11
Children and Young People	17
<b>Total</b>	<b>52</b>

48. All of the learners and young persons that responded agreed with the Welsh Government's intention to use the Bill to make sure FECs in Wales have greater freedom to continue to focus on meeting learners' needs. Eighty two percent agreed with our intention to use the Bill to make sure FECs in Wales have greater freedom to determine their own governance arrangements.
49. A summary of the consultation can be found at:  
<http://wales.gov.uk/consultations/education/feandhebill/?jsessionid=72C8226784D57F23326191918089BEC3?status=closed&lang=en>

## **5. Power to make subordinate legislation**

50. The Bill contains provisions to make subordinate legislation. Table 1 overleaf sets out in relation to each provision:

the person upon whom, or the body upon which, the power is conferred;  
the form in which the power is to be exercised;  
the appropriateness of the delegated power; and  
the applied procedure (affirmative, negative, no procedure), if any, together with the reasons why it is considered appropriate.

**Table 1: Summary of powers to make subordinate legislation**

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
3	Welsh Ministers	Regulations	<p>The power for a further education corporation to resolve to dissolve itself is set out on the face of the Bill.</p> <p>Regulations under this power will only set out matters of detail which a further education corporation must follow before making a resolution to dissolve itself and to prescribe the persons or bodies to which a further education corporation may transfer its property, rights and liabilities on dissolution.</p> <p>It is considered that Regulations are appropriate as the instrument will be one by which the power to make substantive law is exercised.</p>	Negative	<p>In considering the appropriate procedure there has been recognition of the balance to be struck between scrutiny by the Assembly; consumption of Assembly (or committee) time; the significance of the provisions in the Regulations; and making legislation in the most efficacious manner.</p> <p>The powers do not enable provision that substantially affect provisions of primary legislation; confer significant powers on the Welsh Ministers; increase or impose taxation or other significant financial burdens on the public; or create or confer unusual powers.</p> <p>The Regulations prescribe matters of relatively minor detail, which may require change on a regular basis and the Welsh Ministers discretion over the content of the provisions is limited.</p> <p>Accordingly, It is considered that the negative procedure is appropriate for these Regulations.</p>



## **6. Regulatory Impact Assessment (RIA)**

51. A Regulatory Impact Assessment has been completed in accordance with Standing Order 26.6(vi) for the Bill and follows at Chapter 7. A cost benefit assessment is included at Chapter 8. There are no specific provisions in the Bill which charge expenditure on the Welsh Consolidated Fund.
52. The Regulatory Impact Assessment has been split into two-parts looking at i) the classification of Further Education Institutions and ii) the method used by the SLC to verify household income.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **7. Options**

#### ***Classification of Further Education Institutions***

##### **Option 1: Do nothing and maintain the current system**

53. There would be a number of potentially significant implications for Welsh Government budgets as a result of the reclassification changes (as detailed in Chapter 8 below). The most important of these is the negative impact on Welsh Government capital budgets and the change to the ability of Further Education Corporations (FECs) to carry forward surpluses.

##### **Option 2: Introduce a Funding Council**

54. Re-establish a funding council for Further Education (similar to the Higher Education Funding Council), to attempt to reverse the public sector categorisation of Further Education Institutions (FEIs) for the purpose of National Accounts. Assurances and evidence must be submitted to the Classification Committee to demonstrate that key steps have taken place to increase the autonomy of FEIs whilst maintaining the ability to exercise at arms length some control over their activities.

##### **Option 3: Introduce an Assembly Bill**

55. This will comprise the provisions necessary to remove many of the controls Welsh Ministers have over further education institutions.

#### ***HMRC -SLC verification of household income***

56. From February 2014 the system for determining eligibility for the receipt of financial support, qualifying conditions for loans for living costs, grant calculations, and extra support for disabled and those students from low income families or with child-care responsibilities will be transferred from local authorities to the Student Loans Company (SLC). The SLC will need to establish a process for verifying household income. As such, there is no 'Do Nothing' option.

##### **Option 1: Introduce a manual system**

57. The SLC would have to manually verify household income using documents provided by the sponsor.

##### **Option 2: Introduce an Assembly Bill**

58. This will allow the SLC to introduce an automated verification process via a link with HMRC.

## 8. Costs & benefits

59. This Chapter contains the cost benefit analysis of the options detailed in Chapter 7.

### *Classification of Further Education Institutions*

#### **Option 1: Do nothing - maintain the current system**

60. As a result of being reclassified as part of Central Government for the purpose of the National Accounts, FEIs will have to complete consolidation packs for the Whole of Government accounts exercise (which need to be audited) and there may be a need for the sector to change its financial year end from 31 July to 31 March.

61. If the reclassification remains, there will be an impact in terms of Welsh Government Department for Education and Skills (DfES) staff time on collecting and collating the additional annual returns required from FEIs and assessing the budgetary implications in-year:

5 days of 2 grade Es time to look at the consolidation packs.	$2 \times 5 \times 4,276/31$	£1,379
5 days of 2 grade Es time to assess the budgetary implications in-year	$2 \times 5 \times 4,276/31$	£1,379
10 days of a grade F to sort out the changes	$10 \times 5,934/31$	£1,914

62. The total cost to the Welsh Government is therefore estimated to be almost £4,700 per annum.

63. The cost of completing and auditing the consolidation would also impact on FEIs. This additional cost would depend on whether the year end was changed and returns were audited as part of the year end audit. Assuming that the year end remained in line with planning as 31 July, the estimated cost per FEI would be over £4,000 per annum. This is calculated as follows:

4 days of the finance director to complete the C pack	$4 \times (70,000 \times 1.4)/365$	£1,074
1 week of the finance manager for auditing	$1 \times (40,000 \times 1.4)/52$	£1,077
1 week of the finance director for auditing	$1 \times (70,000 \times 1.4)/52$	£1,885

NB This includes on costs of 40%

64. For the 18 institutions in the further education sector, this equates to a cost of £72,648 per annum.

65. Combining Welsh Government and FEI costs, the total cost of this option is approximately £77,348 per annum.

## ***Benefits***

66. Welsh Ministers would retain their current controls over FEIs in Wales. Currently under the Further and Higher Education Act 1992 (FHEA 1992):

the instrument and articles of government are prescribed by Regulations made by Welsh Ministers and approval is required to make any changes;

Welsh Ministers have the power to dissolve a FEC by order and provide for the transfer of property, rights and liabilities to another body with similar objectives subject to consultation with the corporation to be dissolved and the consent of the body to which assets and liabilities are to be transferred;

FECs require Welsh Ministers' authority before entering into certain borrowing arrangements;

existing provisions prevent a FEC being conducted through a subsidiary arrangement, (such as a limited company or charitable incorporated organisation) without the consent of the Welsh Ministers;

section 57 of the FHEA 1992 which covers the Welsh Ministers' intervention powers in relation to FEIs is to be amended to reflect the requirements below.

67. In addition, under section 39 of the Learning and Skills Act 2000, the Welsh Ministers currently have the power to appoint up to two additional members of a corporation if it is felt to be appropriate.

## ***Risks***

68. In summary, reclassification of FEIs as public sector bodies would have a negative impact on the DfES budget and would de-incentivise the sector to increase income streams outside of government funding and manage the FEIs as efficiently as they do now. The detail of how the budgets are scored will need to be considered with Treasury. Any financial implications will fall on the DfES MEG.

## ***Near cash***

69. On average, 20% of FEI income comes from sources other than the Welsh Government, including for example, student fees, ESF and commercial enterprises such as nurseries and training restaurants. When taken into the Welsh Government accounts, the income would be included as Welsh Government income. Conversely, the total expenditure of an institution would need to be included. This means:

- a. Any surpluses generated by FEIs would become Welsh Government funds and would need to be managed in the overall MEG position as per any other budget line.
- b. FEIs would be unable to retain the surplus in order to build reserves to pay for capital projects in the future.
- c. Any deficits generated by FEIs would reduce DfES budgets in the year they were made.

70. The sector has made surpluses/deficits in recent years as follows<sup>3</sup>:

Year	09/10	08/09	07/08	06/07	05/06	04/05
	£'000	£'000	£'000	£'000	£'000	£'000
Surplus / (Deficit)	8,992	(1,090)	1,602	3,750	6,928	1,400

71. The financial forecasts received from the sector in 2011 showed surpluses in 2011/12 and 2012/13 of circa £1.9m followed by a predicted loss of £1.3m in 2013/14. Forecasts have in the past been based on worst case scenario assumptions.

72. To retain surpluses in the sector for reinvestment purposes the following options could be pursued, but have their downsides:

- a. Ensure that the sector breaks even each year, for example by using any surplus to reduce defined benefit pension liabilities. However this might not necessarily be the best use of funds.
- b. Estimate the surplus or loss in year and apply for a 'revenue to capital' transfer of budget. This would need to rely on FEI forecasts for future years in order to plan DfES funding for capital programmes. However, this would create more uncertainty over available funding.
- c. Use the surplus on other expenditure within the DfES, but this would de-incentivise the sector from good financial management.
- d. Use the different year ends between the Welsh Government and the FEIs to adjust for any small changes – again this would de-incentivise the sector from good financial management as we would require them to budget for a breakeven position.

### *Capital*

73. The total capital spend by a FEI in any year (net of any borrowing repayments and grants from other places) would count against DfES' capital budget, not just the capital grant that we give them. This creates the following issues:

- a. In effect the budgeting treatment is the same as DfES giving a 100% grant.

<sup>3</sup> 2010/11 statutory accounts have been received from the sector, however the detailed Finance Records are delayed as the FE Finance Directors network are currently reviewing the format in order to use the return for benchmarking purposes.

- b. The capital budget available for grants to schools and FEIs would be reduced.

74. The table below shows the capital spend by the sector over the last few years:

Year	09/10	08/09	07/08	06/07	05/06	04/05
	£'000	£'000	£'000	£'000	£'000	£'000
Loan	3,484	1,504	3,335	1,352	1,535	572
Repayment	(2,892)	(2,897)	(2,804)	(6,500)	(2,785)	(2,230)
Cash reserves	13,783	12,665	16,747	10,603	12,365	7,281
Net impact	14,375	11,272	17,278	5,455	11,115	5,623

75. FEIs have recently submitted future capital plans and the following have been approved in principle based on DfES contributing a 50% grant. If 100% of the capital cost had to count against the capital budget then only half of the projects could be funded:

Year	14-15	15-16	16-17
	£'000	£'000	£'000
Welsh Government grant funding	13,147	12,231	4,024
Total scored against capital budget under ONS re-classification	26,294	24,462	8,048

76. The following options could be pursued to negate the impact of including 100% of capital spend against the capital budget:

Agree with the Treasury an uplift to the Capital DEL for the Welsh Government to the level of planned spend by FEIs. From discussion with officials in the Welsh Government Budgetary Control and Reporting team we assess there is a 50% chance of this being successful in the short term due to the technical nature of the reclassification, but there is only a 10% chance of this being a successful long term option.

This would be based on the argument that we should reset our baselines in respect of any effects of reclassification, with the most significant issue being borrowing. The chance of negotiating a permanent uplift in capital is low, due to the current Treasury attitude towards borrowing.

Discuss the possibilities of Welsh Government borrowing limits with the Welsh Government Strategic Capital Investment team. This is a long term option and is dependent on the outcome of ongoing negotiations with the UK Government on funding and borrowing powers.

#### *Non cash*

77. Any depreciation of assets of FE sector assets would count against Welsh Government non cash budgets; this is circa £22m per year. In-year forecasts are provided to Treasury and it is likely that the non cash budget could be increased to cover this amount.

## *Annually Managed Expenditure*

78. Any movement in the Local Government Pension Scheme (non teaching staff) deficits year on year would count against Annually Managed Expenditure Budgets. Again, in-year forecasts are submitted to Treasury during the year and it is likely that an increased budget would be given if required. However, movements in pension scheme deficits are extremely difficult to forecast as they are calculated by actuaries at the end of each year, based on assumptions including life expectancy, inflation and market conditions.

### **Option 2: Introduce a Funding Council**

79. As part of the consultation process, Unions have suggested that the Welsh Government should consider re-establishing a funding council for further education institutions in Wales (similar to the Higher Education Funding Council); to attempt to reverse the public sector categorisation of FEIs for the purpose of National Accounts.

80. This would be a reversal of Welsh Government Policy to reduce the number of Assembly Sponsored Public Bodies (ASPB). In 2006, ELWa (the ASPB responsible for planning, funding and promoting post-16 learning in Wales) was disbanded and its functions transferred to DfES.

81. The Higher Education Funding Council for Wales (HEFCW) is responsible for funding higher education (HE) in Wales. They distribute funds for education, research and related activities at eleven higher education institutions, including the teaching activities of the Open University in Wales and fund higher education courses at FEIs. Currently there are approximately 55 members of staff working for HEFCW's Executive, which is governed by a Council of up to 12 members, including a Chairman, and Chief Executive.

82. The Scottish Further and Higher Education Funding Council (SFC) is a Non-Departmental Public Body (NDPB) of the Scottish Government responsible for funding teaching and learning provision, in Scotland's 37 colleges.

### *Costs*

83. Running costs for the HEFCW are currently £2.9 million per annum.

84. The accounts of the SFC for 2011-12 show that running costs expenditure was £8.277 million.

85. However, these costs are not all additional costs. If a funding council was set up for the further education sector then some functions currently undertaken by the Welsh Government would transfer to the new body and there would be a reduction in Welsh Government direct running costs as follows:

Quality team (50% of current team)	£145k
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Funding team (25% of current team)	£208k
Policy team (50% of current team)	£338k
Financial health monitoring (0.5 FTE)	£28k
Capital (50% of current team)	£212k
Data team (50% of current team)	£132k
<b>Total</b>	<b>£1.06m</b>

86. No audit function has been included in these figures, as the funding council would have to employ a person to cover an internal audit function as well as the audit of the FEIs.
87. The funding council would also need their own corporate services function to include finance, HR, marketing and procurement. The Welsh Government does not have designated staff in these areas, so there would be no transfer of budget.
88. Therefore in net terms, the costs of running a funding council (based on the HEFCW figures as it is more comparable in size) would equate to £1.84m per annum.

#### *Benefits*

89. Setting up an ASPB to oversee the funding of FEIs in Wales is considered to have nil benefits in relation to the objective of this Bill. For instance, FEIs in Scotland which are overseen by an equivalent ASPB have also been reclassified by the ONS as public sector for the purpose of national accounts.

#### *Risks*

90. It is highly unlikely that the re-establishment of a funding council would in itself satisfy the ONS requirements to reverse the reclassification of FE colleges as public sector bodies. Scotland has a funding council but the ONS reclassification does include the further education colleges in Scotland.
91. The failure to reverse the ONS reclassification would have a negative impact on the DfES budget and would de-incentivise the sector to increase income streams outside of government funding and manage the colleges as efficiently as they do now.

#### Option 3: Introduce an Assembly Bill

92. The Further and Higher Education (Governance and Information) (Wales) Bill would be used to repeal a wide range of restrictions and controls on FECs, putting them on a similar footing to charities operating within the independent/private sector. This would be similar to the provisions that the UK government included in the Education Act 2011.



93. The changes needed would include a lighter touch on the governance framework, colleges could develop their own Instruments and Articles of Government, dissolve themselves and merge with other organisations delivering education without the need for Ministerial approval, or borrow money without Ministerial approval.

#### *Costs*

94. The policy and legislative process for achieving the proposed powers will be managed by officials within the DfES. Thus there will be no costs to the Welsh Government creating the new provisions.
95. Implementation of the policies following creation of the necessary provisions will not result in additional costs for the FEIs in Wales.

#### *Benefits*

96. The legislation could result in the reversal of the public sector categorisation for National Accounts purposes which will mean that the Welsh Government will not have to bear any adverse budgetary consequences:

*Near cash* - any additional college income would not be included as part of the Welsh Government income and any surpluses generated by colleges would not form part of Welsh Government funds;

*Capital* - colleges would be able to retain their surpluses to build reserves to pay for future capital projects and the total capital spend by a college in any year would not count against DfES' capital budget;

*Non cash* - the depreciation FE sector assets would not count against Welsh Government non cash budgets;

*Annually Managed Expenditure* - any movement in the Local Government Pension Scheme (non teaching staff) deficits would not count against Annually Managed Expenditure Budgets; and

*Audit Requirements* - there will be no impact on Welsh Government staff time to deal with the additional returns required from colleges and there would be no increase in the cost of auditing for colleges.

#### *Risks*

97. That the legislation does not give the ONS Classification Committee the assurances needed that key steps have taken place to increase the autonomy of FE colleges and the reversal of the public sector categorisation for national account purposes fails.
98. The reduction of control over FEIs in Wales which will lead to increased resistance from Unions who believe that the increase in college freedoms will allow colleges to:

remove themselves from nationally agreed pay scales and current negotiations to establish national terms and conditions; and

dissolve itself and transfer its assets and liabilities to another body.

### **Preferred option**

99. The preferred option is option 3 to introduce primary legislation. The Bill captures the key powers that need to be reformed to satisfy the ONS Classification Committee to enable colleges to be categorised once again NPISH.

### **HMRC - SLC Verification of Household Income**

#### **Option 1: Introduce a manual system**

100. In this option, the Student Loan Company (SLC) would have to adopt a manual method of checking household income using documents supplied by the sponsor. Local Authorities who currently process applications have a manual system for verifying household income. Currently, costs to the local authorities are paid via the revenue support grant and are unhypothecated. It has not been possible to estimate costs spent by local authorities on the current service for verifying household income.

#### *Costs*

101. It is estimated that the implementation of a manual system of verification of income would mean that the SLC would need to employ additional processing and Contact Centre staff and would incur increased correspondence costs.

102. SLC have proposed some high level estimates of the cost of increased resources required for a manual system to verify household income based on the following assumptions and based on their experience of running the Student Finance England (SFE) service:

17,500 Means tested students in AY 14/15.

23,500 sponsors to have income checks performed.

Increase in financial information needs - 52%

Increase in primary and secondary checks to be performed.

2 pages of financial information required per customer

Additional paper information which needs to be returned - 50%

Increase in paper PFF forms - 21%

Increase in missing financial evidence.

Correspondence to customers – 2 pages

Second class postage used by SLC.

#### *SLC Processing Headcount*

103. The customer would be required to provide the paper evidence of household income up front at the time of the application and the resulting manual processing of this evidence would change and increase SLC's busier period from May to July, to August to November. This would impact on the processing headcount profile and would result in an increase of 4.3 Full Time Equivalent (this equates to a cost of £72,704 per annum).

*Increased Correspondence Costs*

104. The use of a manual system for verifying household income is expected to result in higher correspondence costs as documentation will need to be returned to households and in some cases additional information will be required. The estimated cost for this is £7,726, calculated as follows:

105. Paper, envelopes and postage for 11,750 letters returning incorrect correspondence to sponsors - £7,375.

106. Paper, envelopes and postage for 1,200 letters requesting missing financial evidence – £351.

*Contact Centre*

107. There would be an increase in customer contact given the longer processing time and evidence being sent in to SLC and returned. This would impact on the Contact headcount required from the Outsource partners across the year. The call volumes would vary each month but there would be an overall increase in calls with a resulting increase of 0.2 FTE (this is equivalent to a cost of £5,939 pa / Year 1).

108. The total cost to the Student Loans Company associated with this option is therefore estimated to be £86,369 per annum. All costs associated with the delivery of Student Finance Wales are met by the Welsh Government.

*Benefits*

109. There are no benefits identified in maintaining a manual system of checking household income. The running costs of the service would increase and the accuracy of a manual service against an automated service would probably mean that less fraud was detected.

*Risks*

110. The risks associated with a manual SLC verification system are the same as at present under manual systems used by local authorities to verify household income.

111. The automated Verification of Household Income (VHI) process is one of the key objectives in the Modernisation of SFW project, and without the reform of existing powers, it is likely the main outcome of the modernised service will not be achieved.

## **Option 2: Introduce an Assembly Bill (Reform existing provisions)**

112. Reforming the existing provisions will enable the Welsh Ministers to use a data sharing gateway, for the supply of information for the operation of the student loans and grants regulations from HMRC. This will allow the SLC to introduce an automated VHI check to the assessment process.

113. The VHI process is already in place and is operational in England by SFE. This amendment will enable Welsh Ministers to have the legal gateway to use the VHI process and will mean that the SLC will be able to utilise existing practices and systems for Wales.

### *Costs*

114. The SLC will utilise systems and processes that are already in operation in England, as such, there will be no development or implementation costs associated with these reforms.

115. Once implemented, HMRC have estimated that annual running costs of the SFW part of the process to be £30,000 based on the planning assumption of handling 23,500 income checks of sponsors per annum.

### *Benefits*

116. We would be adopting an established delivery model which has proven to be successful over the last four years by SFE, and the SLC are confident that they can deliver this system for Student Finance Wales (SFW).

117. SFW customers will not have to post or deliver tax documents to the service for manual checks. The process will be completed automatically for the majority of students (approximately 76% of cases), unless the customer has to go through the exceptions process because their household income does not match HMRC records. In this case manual documents would have to be provided. Therefore this process automates the process for the majority of applicants, reducing the amount of time that households spend corresponding with the SLC.

118. In addition, the introduction of an automated process is expected to reduce the risk of fraudulent activity. Whilst we are unable to quantify the exact costs, under the existing system we can assume that a fraud rate of 1% could potentially have cost the Welsh Government in the region of £7m per annum (based on the average cost of student support to the Welsh Government).

### *Risks*

119. The launch for SFW in 2014 is delayed. It is imperative that the SLC are able to utilise the data sharing link with the HMRC by the start of February 2014. This will allow SFW to accept applications from students at the same time as students from other parts of the UK.

120. There is a risk that if Royal Assent for this Bill is not received on time then the launch of the SFW service will need to be delayed.

### **Other Options for Data Sharing**

121. There are no alternative options for data sharing with the HMRC. No other information-sharing gateways exist in taxation legislation which could be used to allow the supply of this information to the Welsh Ministers.

### **Preferred Option**

122. The preferred option is to utilise the HMRC (VHI) system, which is already operating for SFE and which automates the process. This is the most cost effective option costing approximately £30,000 annually. This option will also decrease the likelihood of fraud in the service. The alternative option of manual verifying household income documents would cost approximately £86,000 per annum.

123. Therefore the preferred option is to amend section 24 of the Teaching and Higher Education Act 1998 to enable data sharing.

## **SPECIFIC IMPACT ASSESSMENTS**

124. A series of impact assessments on the Bill were completed as part of this RIA. These impact assessments were reviewed following the consultation on the White Paper. An overview of the consultation responses on the policy impacts is contained within the White Paper summary report. There were no differential impacts identified from the review of impact assessments or consultation responses.

### **Impact on small business**

125. As part of the policy impact screening for the Bill, consideration has been given to the impact on small business.

### **Impact on voluntary sector**

126. As part of the policy impact screening for the Bill, consideration has been given to the impact on the voluntary sector. There will be little or no other impact on the voluntary sector from the draft Bill.

### **Sustainable development impact**

127. As part of the policy impact screening for the Bill, consideration has been given to the five areas in the Welsh Government's Sustainable Development Scheme<sup>4</sup>:

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<sup>4</sup> <http://wales.gov.uk/docs/desh/publications/090521susdev1wales1planeten.pdf>

Sustainable resource use;  
Sustainable society;  
Sustainable economy;  
Sustainable environment; and  
Wellbeing of Wales.

### **Strategic Environmental Assessment**

128. The Bill does not have any implications either for future land-use planning decisions or other development consents. Therefore a Strategic Environmental Assessment (SEA) is not required.

### **Equality impact assessment**

129. The duties and responsibilities of the Welsh Ministers are contained within the Bill. The Welsh Government encourage equality impact assessments and/or reviews as part of their duties and responsibilities. There is no evidence to indicate a differential impact for gender and gender reassignment, religion and belief and non-belief, sexual orientation, pregnancy and maternity or civil partnerships.

130. FEIs are required to have equality and diversity policies and to demonstrate, through self-assessment and supporting evidence, that they are implementing the policies, monitoring participation by and support for minority groups, and evaluating their own responsiveness.

131. Data on learners' date of birth, ethnic origin, disability and gender is collected via the Lifelong Learning Wales Record. It is based on self-reporting by learners and is not, therefore, validated against any other learner records.

132. The Human Rights Act 1998 has been considered as part of the screening equality assessment. The Bill is compatible with Convention Rights.

133. The supply of information to the Welsh Ministers for the VHI data sharing link will automate an existing process already being carried out, and therefore there is no evidence to indicate a differential impact for any particular equality strand.

### **Impact on Welsh Language**

134. The policy objectives of the Bill comply with the Welsh Government's Welsh Language Scheme. There is no risk that the Bill will have a negative impact on the Welsh Language as it relates to the governance framework of FEIs in Wales. Each FEI in Wales is required to have a Welsh Language Policy and this will not change under the Bill.

135. The supply of information for data sharing with the HMRC and the Welsh Ministers has no impact on the Welsh Language because we are seeking to automate an existing process undertaken by the Welsh local authorities.

### **United Nations Convention on the Rights of the Child (UNCRC)**

136. The assessment tool has been completed to consider how the UNCRC applies to the Bill. Welsh Ministers have considered the impact for the proposals in taking forward the UNCRC. The proposals either respect or give greater effect to those Articles of the Convention that are relevant.

137. The supply of information for data sharing with the HMRC and Welsh Ministers has no impact on the UNCRC because we are seeking to automate an existing process undertaken by the Welsh local authorities.

### **Health Impact Assessment**

138. The Bill will not have a significant positive or negative impact on human health, therefore a full health impact assessment is not needed.

### **Poverty**

139. The three strategic objectives for tackling child poverty are to:

- a. reduce the number of families living in workless households;
- b. improve the skills of parents and young people living in low income households so they can secure well-paid employment; and
- c. reduce inequalities that exist in health, education and economic outcomes of children and families by improving the outcomes of the poorest.

140. The UNCRC assessment tool has been completed to consider how the convention applies to the Bill. This includes articles relating to child poverty, none of which relate to the proposals in the Bill.

### **State Aid**

141. The Bill does not include the allocation of public funds. Therefore State Aid rules do not apply.

### **Rural proofing checklist**

142. The Bill is not likely to have a different impact in rural areas. Therefore a full impact assessment is not required.

### **Privacy Impact Assessment**

143. Advice has been sought from the Data Protection Officer for the Welsh Government regarding provisions in the Bill. The Data Protection Officer has advised that as the Welsh Minister's are not considered Data Controllers for the

HMRC data sharing link and the FE provision does not involve the processing of information that could be used to identify individuals. Therefore a full impact assessment is not required for the Bill and no Data Protection Act compliance advice is needed.



## **9. Competition Assessment**

144. The competition filter test has been applied and has shown that there are no competition concerns.

## **10. Post implementation review**

145. The Welsh Government will review the legislation one year on from implementation seeking views of stakeholders on its impact.
146. Officials will continue to engage with a variety of stakeholders in a number of different ways including, meetings, conferences and correspondence. Governance will continue to be included in the Department for Education and Skills dialogue with stakeholders.
147. The service will be managed by monthly performance reports from the Student Loan Company (SLC). Any day to day issues with the service will be discussed with the SLC at Operations Groups meetings which are held either fortnightly or weekly at peak period (May to November). If the issue cannot be resolved to the satisfaction of the Welsh Government, the issue will be escalated to the Higher Education/Student Finance Programme Board or Student Loan Company Main Board as appropriate.

## **FURTHER AND HIGHER EDUCATION (GOVERNANCE AND INFORMATION) (WALES) BILL**

### **EXPLANATORY NOTES**

#### **Introduction**

1. These Explanatory Notes are for the Further and Higher Education (Governance and Information) (Wales) Bill as introduced into the National Assembly for Wales on 29 April 2013. They have been prepared by the Department for Education and Skills of the Welsh Government in order to assist the reader of the Bill. The Explanatory Notes should be read in conjunction with the Bill but are not part of it.
2. They are not and not meant to be a comprehensive description of the Bill. So where a section or part of a section is self explanatory, no further explanation or comment is provided.
3. The powers to make the Bill are contained in Part 4 and paragraph 5 of Part 1 of Schedule 7 to the Government of Wales Act 2006. The National Assembly for Wales has the requisite legislative competence to make provision for and in connection with the Bill by virtue of Schedule 7, paragraph 5 (Education and training).

#### **List of terms and abbreviations used in the Explanatory Notes**

4. The following terms and abbreviations are used in the Explanatory Notes.

**FEC** – further education corporation

**FEI** – further education institution

**HMRC** – Her Majesty's Revenue and Customs

**ONS** – Office for National Statistics

**FHEA 1992** – the Further and Higher Education Act 1992

**THEA 1998** – the Teaching and Higher Education Act 1998

#### **Background**

5. The Bill will reduce the Welsh Ministers' controls over Further Education Institutions (FEIs) in Wales. In October 2010 the Office for National Statistics (ONS) classified FEIs as part of central government for the purposes of national accounts. The Welsh Government's policy is to seek the reversal of the ONS decision so that FEIs are once again classified as part of the private sector for the purposes of national accounts. In considering an institution's classification, the ONS consider various indicators of control. The amendments made by the Bill will reduce the level of control exercised by the Welsh Ministers over FEIs with a view to achieving their reclassification.

6. The Welsh Government is also modernising the delivery of student finance by making it more efficient. The Bill will contribute to this by establishing a legal basis for Her Majesty's Revenue and Customs (HMRC) to supply information to the Welsh Ministers (and others acting on behalf of or exercising functions for the Welsh Ministers) in connection with student loans and grants.
7. A White Paper setting out the Welsh Government's policy was published on 2 July 2012 and a summary of the responses received to the White Paper was published in March 2013.

### Summary of the Bill

8. The Bill amends the Further and Higher Education Act 1992 (FHEA 1992), the Teaching and Higher Education Act 1998 (THEA 1998), the Learning and Skills Act 2000 and the Education Act 2002. It also makes minor and consequential amendments to other legislation.
9. Sections 1 to 8 of the Bill make changes to the existing governance arrangements and regulation of FEIs in Wales. FEIs in Wales consist of Further Education Corporations (FECs), established under section 15 or 16 of the FHEA 1992, and designated institutions which are institutions designated by order under section 28 of the FHEA 1992. The changes made by the Bill include:
  - providing the power for a FEI to modify or replace its instrument and articles of government subject to the instrument and articles of government containing minimum requirements;
  - providing the power for a FEC to resolve to dissolve itself, and the power to transfer its property, rights and liabilities to another body before dissolution takes effect (subject to regulations made by the Welsh Ministers);
  - providing the power for a FEC to borrow without the prior consent of the Welsh Ministers;
  - the removal of the Welsh Ministers' power to appoint up to two members of a governing body;
  - the ability of a FEC to conduct itself through a subsidiary arrangement (such as a limited company or charitable incorporated organisation) without the consent of the Welsh Ministers; and
  - the power for the Welsh Ministers, when exercising their intervention powers, to direct the governing body of a FEC to resolve to dissolve itself.
10. The Bill will also make other changes relating to powers of the Welsh Ministers to give directions to FEIs; repeal the requirement for the Welsh Ministers to have an intervention policy; repeal the duty on FEIs to consult with learners and employers; and remove the power for the Welsh Ministers, by regulations, to restrict the provision of higher education in FEIs.

11. Section 9 of the Bill amends section 24 of THEA 1998 so as to add the Welsh Ministers and those persons who act on behalf of, or exercise functions for, the Welsh Ministers as persons to whom HMRC may supply information in connection with the student support scheme in Wales

## **COMMENTARY ON SECTIONS OF THE BILL**

### **Section 1 – Borrowing and investing by further education corporations**

12. Section 19 of the FHEA 1992 makes provision for FECs to have various supplementary powers. The effect of the amendments made by this section to section 19 is to remove the requirement for FECs in Wales to obtain the consent of the Welsh Ministers before they exercise certain supplementary powers. These are their powers to borrow money, to form or invest in a company or become a member of a charitable incorporated organisation for the purposes of conducting an educational institution.

### **Section 2 – Instrument and articles of government of further education corporations**

13. This section amends section 20 of the FHEA 1992 which requires the instruments and articles of government of FECs to comply with specified requirements. It introduces Schedule 1 (which substitutes Schedule 4 to FHEA 1992) to make new, less prescriptive, provision about the content of instruments and articles of government of FECs in Wales.
14. The section also substitutes a new section for current section 22 of FHEA 1992. The effect of this is to remove the Welsh Ministers' power to modify, revoke or replace the instrument and articles of FECs in Wales and to give FECs in Wales the power to modify or replace their instrument and articles of government.

### **Schedule 1 – Instrument and articles of government**

15. Schedule 1 replaces Schedule 4 to the FHEA 1992. This sets out the essential elements that FEIs are required to include in their instrument and articles of government. These will require FEIs to set out, for example, the roles and responsibilities of key personnel and how a FEI can change its instrument and articles of government. Governing bodies of FEIs will have to include staff and student governors.

### **Section 3 – Dissolution of further education corporations**

16. This section makes provision relating to the dissolution of FECs by substituting sections 27 to 27B for sections 27 to 27C of the FHEA 1992. The effect of this is to remove the Welsh Ministers' power to dissolve FECs and transfer their property, rights and liabilities to another education provider. Instead, FECs will have the power to dissolve themselves, provided they have published proposals and conducted a full consultation and taken account of the views of those

consulted, in accordance with regulations. It also gives FECs the ability to transfer their property, rights or liabilities to another body for educational purposes, and with that body's consent. The type of body will be specified in regulations.

### **Section 4 – Designated institutions: instrument and articles of government**

17. Sections 29B and 29C of the FHEA 1992 make provision about the instruments and articles of designated institutions (except those conducted by a company or that are exempt under the designating order). This section replaces current sections 29B and 29C with a new section 29B. The effect of this is to remove the requirement for the Welsh Ministers' consent before designated institutions can modify or replace their instruments and articles of government and to remove the Welsh Ministers' power to modify and replace articles and instruments of government. Instead designated institutions in Wales will have the power to modify or replace their own instrument and articles of government. The requirements of the new Schedule 4 to the FHEA 1992 (as replaced by Schedule 1 of this Bill) will apply to the instruments and articles of government.
18. This section also amends sections 29A and 31 of the FHEA 1992 so that designated institutions' first post-designation instruments and articles of government no longer have to contain provision about members appointed by the Welsh Ministers.

### **Section 5 – Intervention by Welsh Ministers in respect of institutions within further education sector**

19. This section amends section 57 of the FHEA 1992 which enables the Welsh Ministers to intervene in a FEI (by making changes to the governing body or issuing directions), if they consider that the FEI is being mis-managed or otherwise failing. The amendment means the Welsh Ministers, when using their intervention powers, will be able to direct the governing body of a FEC to use its new powers to dissolve itself. If this happens, the FEC will be treated as if they had followed the publication and consultation procedures set out in section 27 of the FHEA 1992 (as substituted by section 3 of the Bill).
20. This section also repeals section 57A of the FHEA 1992. That section requires the Welsh Ministers to prepare, publish and keep under review a statement of their policy with respect to the exercise of their intervention powers.

### **Section 6 – Abolition of duties of further education institutions to comply with directions**

21. This section amends sections 33J and 33L of the Learning and Skills Act 2000 and sections 116I and 116K of the Education Act 2002. Those provisions are concerned with planning and delivering local curricula in Wales, which are local authority-wide curricula for 14 to 18 year olds established by local authorities or the Welsh Ministers. The effect of the amendments is to remove the requirement for FEIs to comply with directions made by the Welsh Ministers relating to the planning of local curricula and joint working to deliver local curricula. FEIs must

however still have regard to guidance given by Welsh Ministers in respect of planning and delivering local curricula.

### **Section 7 – Abolition of power to regulate higher education courses in further education sector**

22. This section repeals section 139 of the Education Act 2002 so the Welsh Ministers may no longer make regulations that prohibit the provision of higher education courses by FEIs without their approval and that regulate the numbers and categories of students on such courses.

### **Section 8 – Minor and consequential amendments**

23. This section introduces Schedule 2 which makes minor and consequential amendments to various Acts and an Order and a Measure, as a result of other sections in this Bill.

### **Section 9 – Supply of information in connection with student loans and grants**

24. Part 2 of the THEA 1998 makes provision about financial support to students in further and higher education. Section 24 of that Act enables the HMRC to provide information in relation to the operation of the student loan scheme to the Secretary of State and the Department of Education for Northern Ireland (and to those to whom they have transferred or delegated certain functions), but not to the Welsh Ministers.

25. The Welsh Ministers carry out functions in relation to student support in Wales and can delegate those functions under section 23 of the THEA 1998 (e.g. to the Student Loans Company).

26. In the absence of a legal basis for HMRC to supply such information to the Welsh Ministers, applicants for student support must submit documentary evidence of household income when applying for student support. The existing arrangement does not allow for the evidence of household income to be verified with HMRC.

27. This section amends section 24 of THEA 1998 so as to add the Welsh Ministers and those persons or bodies acting on behalf of the Welsh Ministers or exercising student support functions on their behalf, as persons to whom HMRC can supply information. HMRC will supply information under this provision on household income so that those receiving the information will be able to verify figures supplied in applications for means tested financial support without the need for applicants to provide documentary evidence.

28. This section also extends section 24 of THEA 1998 so that HMRC's power to share information relates to grants made by the Welsh Ministers as well as loans.