

## **Overview**

The National Union of Students (NUS) Wales welcomes the opportunity to provide evidence to the Children and Young People Committee on the Further and Higher Education (Governance and Information) (Wales) Bill. NUS Wales is a confederation of students' unions representing more than half a million students in the nation. As the only representative voice for students in Wales, NUS Wales represents students from all affiliated students' unions in both HE and FE sectors, this includes 10 HE institutions and all Welsh FE Colleges.

NUS Wales exists to promote, defend and extend the rights of students and develop and champion strong students' unions. We fight barriers to education; empower students to shape both a quality learning experience and the world around them; as well as supporting influential, democratic and well-resourced students' unions.

As well as campaigning on behalf of our members, NUS Wales provides a range of training to students' unions including training for full-time offices, part-time officers and staff. We provide support to students' unions to ensure they are able to engage positively with the latest policy developments that affect them.

We provide resources and staff support to students' unions to help strengthen them and enable them to become ever-more effective in their operation. We work with partners across Wales including DfES, HEFCW, HEA and QAA to develop efficient and productive representation structures for students.

In Further Education, NUS Wales has engaged and trained student governors in every single Welsh FE College and trained class representatives from the majority of FE Colleges. Furthermore, we are developing a National Society of Apprentices to provide representation for those who study in this setting; this endeavour has the backing of the Deputy Minister for Skills, Jeff Cuthbert.

The core values of NUS Wales are democracy, equality and collectivism. We believe that student organisations should be student-led and that education is a benefit to the individual and to society.

## **Consultation Questions**

### **General**

**1. The Explanatory Memorandum prepared by the Welsh Government describes the Bill's main purposes in the following terms:**

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

**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."**

**Is there a need for a Bill for these purposes? Please explain your answer.**

We do feel that some action was necessary regarding the ONS reclassification of FE colleges in Wales in 2010, and as such that there is a need for a Bill to enhance the autonomy and decision making abilities of FE institutions. We recognise the risks associated with having FEIs in Wales remain part of central government, including the impact that this would have upon capital spend, FEIs budgets/surpluses and accounting practices.

It is worth recognising that this reclassification back to NPISH has already taken place in England following similar legislation through the Education Act 2011. Scotland, however, has opted to continue to have their FE colleges considered part of central government. At this point, it is difficult to identify what impact this decision will have in the long-term, especially given the distinct nature of FE funding in Scotland where further education is funded through a funding council rather than directly from government.

We also feel that there is need for a Bill to allow data relevant to student grants and loans to be shared with Welsh Ministers and anyone to whom these functions are delegated. We believe the modernisation project of student finance in Wales will have a range of benefits for Welsh students and bring Student Finance Wales in line with Student Finance England. That said, we want to see the modernisation project in Wales avoid the very damaging issues encountered by SFE when they went through the same process, particularly in respect to vulnerable groups.

In a centralised modern service, to require paper evidence would be cumbersome and potentially risky. In essence, if we are to have a modernised service, it follows to enable the SLC to use HMRC-provided data to determine eligibility for student finance.

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

We do feel that the Bill, as drafted, delivers the stated objectives as set out in the Explanatory Memorandum. Specifically:

- i) to enhance the autonomy and decision making abilities in further education institutions by removing and modifying the existing legislative controls on them and.
- ii) to enable Welsh Ministers to annually delegate the functions for student finance Wales (SFW) customers to the Student Loan Company (SLC)

The first objective is delivered in the Bill through the amendments to the borrowing and investing powers of FE corporations, changes to the way the instruments and articles are prescribed, the way FE corporations can be dissolved and the interventional powers of Welsh Ministers. When similar legislation was introduced in England, an ONS report on the reclassification of English FE colleges back to NPISH stated that:

Having carefully considered the changes in the Act, ONS has concluded that the changes are sufficient to remove the public sector control of general corporate policy of FECs and SFCCs in England, resulting in their reclassification outside of the public sector<sup>1</sup>.

In particular, the report emphasised that the most important public sector control that indicated FE colleges were central government, rather than NPISH, was the inability to borrow without consent. The first section of the bill clearly tackles the problem of borrowing and investment.

The second objective of enabling Welsh Ministers to delegate functions to SLC is also delivered through the Bill. The additions outlined in section 9 of the Bill appear to meet this objective clearly and in a succinct fashion.

**3. Are the sections of the Bill as drafted appropriate to bring about the purposes described above? If not, what changes need to be made to the Bill?**

Yes, we consider the bill as drafted appropriate to bring about the purposes described above including the increased autonomy of FEIs and the sharing of HMRC data. We particularly welcome that Schedule 1 of the Bill, part 3C states that the body members should include 'staff and students at the institution', p. 7. However, it would be helpful to have further clarity in regards to a minimum number of reserved places for staff and students.

We feel very strongly that, as students are perhaps the single most important stakeholder in our FEIs, there should be at least two reserved places for students. This would avoid a possible repetition of situations in England where, following the Education Act 2011, some FE colleges did not maintain two student governor places. Considering the great emphasis that has been placed on learner voice in Wales recently, including the NUS Wales' Welsh Government-funded FE Project

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<sup>1</sup> [http://www.ons.gov.uk/ons/dcp171766\\_266962.pdf](http://www.ons.gov.uk/ons/dcp171766_266962.pdf)

and the Learner Voice Survey, to not secure student representation on the body would be a retrograde step.

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

We have some concerns about the impact of the increased autonomy of FEIs on areas such as their instruments and articles and the ability to operate through subsidiaries that may be profit-making. There have already been suggestions from colleges that they may move to have only one student place on their body despite the Minister for Education and Skills' statement in response to the Humphries Review (2011) that there should be two reserved places for students on the body<sup>2</sup>.

As well as being concerned about the possibility of FE colleges operating profit-making subsidiaries – and we are aware that in some instances this is already the case – we are also concerned that FEIs will gain the ability to transfer their assets. That said, we welcome subsection 5, in section 3 under point 27B, that states that any property transferred 'must be transferred on trust to be used for charitable purposes which are educational purposes'. However, we worry about to what extent the use of the phrase 'on trust' is enforceable, and for what period of time.

We envision that ColegauCymru's role will become increasingly important following the Bill, as it will likely assume a key role in ensuring consistency across the FE sector in Wales including developing a 'Code of Governance' as touched upon in the Further and Higher Education (Wales) White Paper (2012). Similarly, ColegauCymru's role in developing the common contract will likely become more pronounced.

In terms of the impact upon NUS Wales, we will be working closely with ColegauCymru and FEIs to ensure that learners continue to be consulted, represented and included on governing bodies/corporations, especially vital when the explanatory memorandum outlines in paragraph 25 that the Bill will 'repeal...

the duty on FEIs to consult with learners and employers', p. 8, which is, understandably, of great concern to us.

We also have some concerns regarding the role of colleges in local curricula planning, as outlined in Section 6. We consider local planning and collaboration as key in developing education and skills in Wales, and that the flexibility of collaborative courses for 14-19 is beneficial for learners. While we accept that it is likely that FEIs will continue to engage in these local partnerships, we believe that in the longer term this may impact how FEIs behave and that consideration must be given to how FEIs are incentivised to continue to engage in local curricula planning.

The part of the Bill related to HMRC data sharing will also have an impact on how organisations work. The movement of student finance from local authorities in Wales to a centralised system will bring with it a 'public information' duty for those who advise students, including ourselves. The ability to simplify the application process, which is what we hope the data sharing would enable, would positively benefit students.

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<sup>2</sup> <http://www.walesonline.co.uk/news/local-news/unions-anger-staff-governors-lose-1797606>

That said, it is vital that organisations, including SLC, consider those situations where an income check of HMRC data is not appropriate. For many vulnerable students, family breakdown means an income check would lead to inadequate support being provided to the student. Processes must be in place to support these students.

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

We do not consider there to be any significant barriers in **implementing** the provisions of the Bill.

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

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**7. What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?**

**In answering this question, you may wish to consider Section 5 of the Explanatory Memorandum, which contains a table summarising the powers delegated to Welsh Ministers in the Bill to make orders and regulations, etc. Financial Implications**

In regards to Section 3 of the Bill and the associated regulations that a FEI would need to follow to dissolve itself, we consider negative procedure to be appropriate. As described in the Bill, and viewed in the context of Welsh Government Guidelines on Subordinate Legislation<sup>3</sup>, the Regulations prescribe 'matters of relatively minor detail' and do not appear to cover any of the factors deemed as requiring the draft affirmation procedure.

**8. What are your views on the financial implications of the Bill? In answering this question you may wish to consider Part 2 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the Bill.**

We consider the financial implications to be accurately reflected in the Explanatory Memorandum. The running costs estimated for SFW's part of the data sharing gateway seem accurate and are based on a sound planning assumption of 23,500 income checks per annum. That is, provided it is predominantly first year students who require income checks as on average there is approximately 22,000 new Welsh entrants to university each year<sup>4</sup>. If a large number of returning students needed income checks, this would presumably inflate the cost.

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<sup>3</sup> <http://www.senedd.assemblywales.org/documents/s5897/CLA4-03-12%20p4%20Annex.pdf>

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[http://www.ucas.ac.uk/about\\_us/media\\_enquiries/media\\_releases/2013/apr13applicantfigures](http://www.ucas.ac.uk/about_us/media_enquiries/media_releases/2013/apr13applicantfigures)

The financial implications of the FE portion of the Bill seem to be minimal and more affordable than the other options presented including setting up a funding council or 'doing nothing'. We did feel that the financial cost of the 'doing nothing' option could have been better illustrated in the explanatory memorandum with the £77,348 per annum figure not taking into account, for example, the predicted hit on capital spending or the potential impact on other areas of Welsh Government funding.

### **Other comments**

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

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