

National Assembly for Wales
Children and Young People Committee

**Further and Higher Education
(Governance and Information)
(Wales) Bill**

Stage 1 Committee Report

July 2013



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

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Children and Young People Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Tel: 029 2089 8242
Fax: 029 2089 8021
Email: CYPCommittee@wales.gov.uk

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Children and Young People Committee

The Committee was established on 22 June 2011 with a remit to examine legislation and hold the Welsh Government to account by scrutinising expenditure, administration and policy matters encompassing: the education, health and wellbeing of the children and young people of Wales, including their social care.

Current Committee membership



Ann Jones (Chair)
Welsh Labour
Vale of Clwyd



Angela Burns
Welsh Conservatives
Carmarthen West and South
Pembrokeshire



Keith Davies
Welsh Labour
Llanelli



Suzy Davies
Welsh Conservatives
South Wales West



Rebecca Evans
Welsh Labour
Mid and West Wales



Bethan Jenkins
Plaid Cymru
South Wales West



Lynne Neagle
Welsh Labour
Torfaen



David Rees
Welsh Labour
Aberavon



Aled Roberts
Welsh Liberal Democrats
North Wales



Simon Thomas
Plaid Cymru
Mid and West Wales

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Summary of Main Conclusions

This report outlines the findings of the Children and Young People Committee's Stage 1 consideration of the Further and Higher Education (Governance and Information) (Wales) Bill.

We undertook detailed scrutiny of the Bill, which we believe should be improved through a number of specific amendments about governance arrangements for FEIs. These issues, along with relevant recommendations, are set out later in this report.

General principles

We have, as is required under Standing Order 26.10, also considered the general principles underlying the Bill:

- that legislative controls over Further Education Institutions (FEIs) should be relaxed; and
- that Her Majesty's Revenue and Customs (HMRC) should be able to share data on student grants and loans with the Welsh Ministers so that the process for applying for student grants and loans is simplified and made more efficient.

We are content with the second principle but have considerable misgivings about the justification on which the legislation is based.

Greater Autonomy for Colleges

In 2010 the ONS decided to classify FEIs as part of central government for the purposes of the national accounts. Further Education bodies in other parts of the UK were similarly reclassified. Among the factors that led to the ONS decision were the various statutory controls that the Welsh Ministers can exercise over FEIs. These include restrictions on borrowing, the power to modify governance arrangements and restrictions on operating through subsidiaries.

The impact of the ONS reclassification has yet to be felt but the Welsh Government believes it will have a negative impact on Welsh Government budgets, particularly capital budgets, and could de-incentivise FEIs from managing their resources effectively. The changes proposed in the Bill will allow the ONS to restore the previous

classification, which will mitigate these impacts and allow financial management arrangements for the sector to continue along current lines.

However, the greater autonomy the Bill will give FEIs could also be used in ways that might lead to a greater fragmentation of the sector, particularly in relation to staff pay and conditions, and a more competitive approach to the delivery of educational provision, including greater use of the private sector. There is also the issue of whether the Welsh Government will be able to continue to exercise effective financial controls over the funding that it provides to FEIs.

The previous Minister made it clear to us that the approach he took in bringing forward this Bill would not have been taken except for the ONS classification. Policy is, therefore, being driven primarily by what are essentially accounting rules.

Alternative Approaches

The option of relaxing Government controls to restore the previous ONS classification is not the only policy option available. The Scottish Government has decided to pursue a different path, which keeps FEIs directly accountable to Government.

However, this approach also has its difficulties including the need to make changes to FEIs accounting arrangements and get HM Treasury approval to relax some government budgeting rules. To date, the Treasury has not agreed to the Scottish Government's approach. However, the Scottish Government believes that a joint approach to the Treasury by the devolved administrations would have a greater chance of success and would welcome the development of a joint approach. The Welsh Government has decided against this approach in the belief that Treasury approval is unlikely to be forthcoming.

HM Treasury's Position?

The Welsh Government's assessment is that the Treasury is unlikely to respond positively to any approach. We are concerned that the Welsh Government's policy direction appears to be predicated on an assumption about a Treasury response that has not been tested. The Welsh Government has not written to the Treasury to clarify their views

or attempted to engage with them in dialogue. We would have expected that policy would be based on formally establishing the Treasury position.

We did not take evidence on whether the FE sector could benefit from greater autonomy or whether there are sufficient safeguards to ensure that autonomy is exercised responsibly. We are uncomfortable agreeing to that extra autonomy when the option of retaining direct accountability has not been fully explored with the Treasury.

The Committee's Recommendations

The Committee's recommendations to the Welsh Government are listed below, in the order that they appear in this Report. Please refer to the relevant pages of the report to see the supporting evidence and conclusions:

Recommendation 1. We recommend a revised Explanatory Memorandum is produced setting out in more detail and with greater clarity the risks involved in the approach the Bill takes to mitigating the effects of the ONS classification. (Page 30)

Recommendation 2. We recommend the Welsh Government keeps under close review the effects of the Bill in practice and whether these effects have any repercussions for other parts of its legislative programme or on wider matters such as provision for the Welsh language and Additional Learning Needs. (Page 30)

Recommendation 3. We recommend, before the debate on general principles is held, the Welsh Government should explore fully with HM Treasury the scope for modifying Government accounting rules to help mitigate the effects of the ONS classification. (Page 34)

Recommendation 4. We recommend Schedule 1 of the Bill should be amended to specify that at least two members of a college's governing body should be student representatives. (Page 41)

Recommendation 5. We recommend Schedule 1 of the Bill should be amended to specify that student representatives on a college's governing body should be elected by the student body. (Page 41)

Recommendation 6. We recommend Schedule 1 of the Bill should be amended to specify that there should be two representatives on a college's governing body who should be elected representatives of the staff of the institution. (Page 41)

Recommendation 7. We recommend Schedule 1 of the Bill should be amended to specify that governing bodies should include representatives of local employers or businesses. (Page 42)

Recommendation 8. We recommend Schedule 1 of the Bill should be amended to place a broad duty on governing bodies to consult

regularly with local employers, learners and communities about the educational provision at the institution concerned and how it impacts on local curriculum planning. (Page 44)

Recommendation 9. We recommend the Minister reconsiders the repeal, proposed in section 7 of the Bill, of section 139 of the Education Act 2002. (Page 49)

Recommendation 10. We recommend the Welsh Government considers with the Student Loan Company how best to retain, at a local level, appropriate support in person for those applying for student loans. (Page 52)

Recommendation 11. We recommend the Welsh Government considers carefully the impact of the Bill on provision for learners with Additional Learning Needs. (Page 54)

1. Introduction and the Committee's approach to scrutiny

1. At its meeting on 16 April 2013, the National Assembly's Business Committee referred the Further and Higher Education (Governance and Information) (Wales) Bill¹ ('the Bill') to the Children and Young People ('the Committee'), for consideration of the general principles (Stage 1), in accordance with Standing Order 26.9. The Business Committee agreed that the Committee should report to the Assembly by 19 July 2013.
2. The Bill and accompanying Explanatory Memorandum² was introduced into the Assembly on 29 April 2013 by the then Minister for Education and Skills Leighton Andrews AM. This was followed by a Legislative Statement in the Assembly by Leighton Andrews on 30 April 2013.³
3. Under Standing Order 24.5 Leighton Andrews ceased to be the Member in charge of the Bill upon his resignation from the Government on 25 June 2013. Huw Lewis AM, the new Minister for Education and Skills has taken his place as the Member in charge.

Terms of scrutiny

4. At the Committee's meeting on 1 May 2013 it agreed the following framework within which to scrutinise the general principles of the Bill:

To consider:

- i) Whether there is a need for the Bill;
- ii) the key provisions set out in the Bill and whether they are appropriate to deliver its stated purposes;
- iii) the financial implications arising from the Bill;

¹ Further and Higher Education (Governance and Information) (Wales) Bill available at: <http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&id=245734&ds=4/2013>

² Explanatory Memorandum available at: <http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&id=245735&ds=4/2013>

³ Record of Proceedings 30 April 2013: http://www.assemblywales.org/docs/rop_xml/130430_plenary_bilingual.xml#80084

- iv) potential barriers to the implementation of the key provisions and whether the Bill takes account of them;
- v) whether there are any unintended consequences arising from the Bill;
- vi) the views of stakeholders; and
- vii) the level of detail on the face of the Bill compared to any powers contained in subordinate legislation.

The Committee's approach

5. The Committee issued a consultation⁴ and invited key stakeholders to submit written evidence to inform the Committee's work. A list of the consultation responses is attached at Annex A.
6. The Committee took oral evidence from a number of witnesses on the Bill. The schedule of oral evidence sessions is attached at Annex B. Full transcripts of these sessions are available on the Assembly's website at: <http://www.assemblywales.org/>
7. The Committee would like to thank all those who contributed.

⁴ Consultation documents:
<http://www.senedd.assemblywales.org/documents/s17062/Consultation%20letter.pdf>

2. Policy Background

The White Paper consultation

8. The Welsh Government published a White Paper consultation document on a Further and Higher Education (Wales) Bill on 2 July 2012. The public consultation ended on 24 September 2012.

Further Education

9. The main areas of the proposals in the White Paper relevant to further education remain the same as in the Bill now introduced.

Higher Education

10. The proposals for the higher education sector in the White Paper were, however, significantly different to those in the Bill. The White Paper included proposals to address the need to reshape the framework of accountability and control which operates through the Higher Education Funding Council for Wales (HEFCW) to take account of the new tuition fee and funding regime which was introduced from September 2012.

11. On 6 March 2013, the then Minister for Education and Skills issued a written statement with the publication of the White Paper summary responses which said:

“With regard to higher education I have asked my officials to undertake further analysis and development of the White Paper proposals. I will bring forward provisions relating to higher education reform through legislation later in this Assembly term. (...)The Further Education provisions and HMRC Data Sharing will go forward as legislation to be introduced in the spring of 2013.”⁵

12. The White Paper did not consult on the proposals for data sharing for student loans and grants set out in section 9 of the Bill. The Welsh Government says that this is because these proposals were considered to be minor technical changes, which will ensure that the Welsh

⁵ Welsh Government Summary of Responses to the White Paper – Further and Higher Education (Wales) Bill 2013 (paragraph 3): <http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-written-ministerial-statements.htm?act=dis&id=243827&ds=3/2013>

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.

The Further Education Sector in Wales

13. Further Education (FE) includes education and training provision mainly for people aged 16 and over,⁶ from basic skills and work-based training to foundation level degrees. FE programmes are mainly taught in FE colleges and work-based and adult community learning environments.

14. Further Education Institutions (FEIs) in Wales consist of Further Education Corporations (FECs), established under the Further and Higher Education Act 1992 (FHEA 1992), and institutions which are designated by order under the same Act.

15. Following a series of college mergers, there are now 18 FEIs in total in Wales. These are made up of 14 FE corporations:

- Bridgend College;
- Cardiff and Vale College;
- Coleg Ceredigion;
- Coleg Gwent;
- Coleg Morgannwg;
- Coleg Powys;
- Coleg Sir Gâr;
- Deeside College;
- Gower College Swansea;
- Grŵp Llandrillo Menai;
- Neath Port Talbot College;
- Pembrokeshire College;
- Yale College;
- Ystrad Mynach College;

⁶ National Assembly for Wales Research Paper, [Further Education Structure in Wales](#), page 1, April 2013

There are also four designated FE institutions (Coleg Harlech WEA North; St. David's Catholic College, Cardiff; WEA South; and YMCA Community College).⁷

16. In July 2012, the Minister for Education and Skills, Leighton Andrews AM said that a further three college mergers are expected by August 2013.⁸ The following mergers have been announced subsequently:

- Yale College and Deeside College will merge on 1 August 2013 to form Coleg Cambria;
- Ystrad Mynach College and Coleg Morgannwg will merge in August 2013 to form Coleg y Cymoedd, or College of the Valleys;
- Coleg Powys and Neath Port Talbot College will merge on 1 August 2013.

17. Coleg Sir Gâr⁹ and Coleg Ceredigion¹⁰ have both asked the Welsh Government for funding to support their merger business cases with the University of Wales, Trinity Saint David. Pembrokeshire College is also keen to engage in discussions around a dual sector (FE and HE) university to form a regional South West Wales alliance.^{11 12}

Key Statistics

18. A total of 195,900 learners were studying at Welsh FEIs in 2010-11, a fall of 22 per cent since 2006-07. Just over two thirds of these are aged over 20, while just under a third are aged 16-19. Most

⁷Ibid, page 3

⁸ Deeside College, [Coleg Cambria – the new college for North East Wales](#), 3 December 2013; Coleg Morgannwg, College News, [New name reflects landscape of college](#), 21 February 2013; Neath Port Talbot College, News/ Events, [Coleg Powys and Neath Port Talbot College announce merger plans](#), 25 September 2012

⁹ Welsh Government, Decision report, Funding to support the merger of Coleg Sir Gar and the University of Wales, Trinity Saint David, 5 November 2012 [accessed 5 March 2013]

¹⁰ Welsh Government, Decision report, Funding to support the merger of Coleg Ceredigion with the University of Wales Trinity Saint David, 7 February 2013 [accessed 5 March 2013]

¹¹ Welsh Government, [Programme for Government – 2012 Annex – Education](#), May 2012

¹² University of Wales Trinity Saint David, [Transforming Education... Transforming Lives](#), 2012

learners (67.8 per cent in 2010-11) study on a part time basis. FEIs employed 8,810 (FTE) staff in Wales in 2010-11.¹³

Funding for the Further Education (FE) Sector in Wales

19. In 2012/13, FEIs in Wales received £311.9 million in funding from the Welsh Government (excluding work-based learning). This represents a rise of £8.7 million or 2.9 per cent in funding from 2011-12 to 2012-13.¹⁴

20. Welsh colleges are also able to generate their own income through the charging of fees, running full-cost courses, consultancy services, overseas students, childcare and other services. In 2008 (most recent available statistics), Welsh colleges had a total annual income of £89 million from non-government sources.¹⁵

Previous reviews of governance in further education

21. Governance of FE corporations has been the subject of a number of reviews. These include:

- The Webb Review¹⁶ - 2006-07
- Stakeholder Review of FE Governance Arrangements¹⁷ - May 2010
- The Humphreys Report¹⁸ - March 2011

¹³ Research Service calculations from [StatsWales Full-time equivalent staff numbers at Further Education Institutions by institution](#)

¹⁴ National Assembly for Wales Research Paper, [Further Education Structure in Wales](#), pages 18 and 19, April 2013

¹⁵ Welsh Government, [The structure of education services in Wales - Independent Task and Finish Group Report](#), March 2011, page 53

¹⁶ The Report of the Independent Review of the Mission and Purpose of Further Education in Wales "The Webb Review", [Promise and Performance](#), December 2007

¹⁷ Welsh [Assembly] Government, [Responsibility and Responsiveness - stakeholder Review of FE Governance Arrangements](#), May 2010

¹⁸ The Humphreys Review Report [Independent Review of Governance Arrangements for Further Education Institutions in Wales](#), March 2011

3. Purpose and effect of the Bill

Further Education Institutions

22. The Explanatory Memorandum says the Bill seeks to enhance the autonomy and decision making abilities of Further Education Institutions (FEIs) by removing and modifying existing legislative controls on them through:

- greater autonomy for further education institutions to make changes to their Instrument and Articles of Government;
- allowing further education corporations to dissolve themselves;
- allowing greater freedoms for further education corporations to borrow funds;
- allowing greater freedom for further education corporations to conduct themselves through subsidiary arrangements (such as a limited company or charitable incorporated organisation), without the consent of the Welsh Ministers;
- providing for the Welsh Ministers to direct the governing body of a further education corporation to resolve to dissolve itself;
- removing the power for the Welsh Ministers to appoint up to two members of a governing body of a further education institution;
- changing the powers of the Welsh Ministers to give directions to further education institutions;
- removing the requirement for the Welsh Ministers to prepare an intervention policy;
- removing the duty on further education institutions to consult with learners and employers;
- removing the power for the Welsh Ministers, by regulations, to restrict the provision of higher education in further education institutions.

23. These provisions are set out in Sections 1 to 8 of the Bill and in Schedule 1 (Instrument and Articles of Association).

ONS Classification of Further Education Institutions

24. The Explanatory Memorandum says that the provisions in respect of Further Education are to enable the Welsh Government to seek the

reversal of the ONS classification of Further Education Institutions (FEIs) as part of Central Government for the purpose of the National Accounts and so that they are again categorised as “Non-profit Institutions Serving Households” (NPISH).

25. In October 2010, ONS announced that it had reclassified Further Education Corporations in England and Wales, Sixth Form College Corporations (which only exist in England), Colleges of Further Education in Scotland and Institutions of Further Education in Northern Ireland to the General Government sector, from the Non-Profit Institutions Serving Households sector, where the ONS said that, they had been incorrectly classified since the early 1990s.

26. The ONS says¹⁹ that these reclassifications arose from the discovery of public sector controls over these institutions, sufficient to result in ONS concluding that the public sector had control of these bodies’ general corporate policy.

27. A number of different public sector controls were identified, but one of the most important related to borrowing by Further Education Colleges. In all cases, government consent was required for any Further Education College to borrow funds. Other public sector controls included controls over matters like governance arrangements and the ability to close or merge Further Education Colleges.

28. The ONS decided that this decision should be applied retrospectively to cover the period for which they should have been classified within the general government sector, from April 1993 in England, Scotland and Wales and 1989 in Northern Ireland.

29. The decision by ONS did not affect the legal status of colleges.

The effect of the ONS Classification on National Accounts

30. The classification decision was made in the context of the National Accounts. The National Accounts provide a framework for describing what is happening in national economies. All institutional units operating within an economy are classified to an institutional sector. It is a legal requirement for European Union countries to

¹⁹ Office for National Statistics: Classification of Sixth Form and Further Education Institutions 13 October 2010. [<http://www.ons.gov.uk/ons/guide-method/classifications/na-classifications/classification-articles/class/classification-of-sixth-form-and-further-education-institutions---october-2010.pdf>]

compile specified statistical returns on the basis of European System of Accounts 1995 (ESA95).²⁰ The United Kingdom National Accounts are produced by the Office for National Statistics (ONS) on this basis.

31. Other than independent or private schools, the majority of pre-16 education institutions in the UK are classified in the general government sector.

32. Universities are, in general, classified outside of the public sector, as Non-Profit Institutions Serving Households. Although Universities receive considerable public funding, they have other sources of funding and have a high degree of autonomy, such that the ONS judges, that they are not controlled by Government.

33. The NPISH sector includes a number of bodies like universities, charities, trade unions or civic society bodies that could be regarded as being part of the "Third Sector" (i.e. not in the private sector or in the public sector) but in National Accounts terms NPISH is part of the private sector.

Changes relevant to ONS Classification

34. The key changes proposed by the Bill that are particularly relevant to the ONS classification decision include:

Borrowing

35. Currently colleges require the Welsh Minister's authority before entering into any borrowing arrangement. The ONS consider public sector controls on borrowing as one of the most important factors in their classification criteria.

Further Education Governance - Instrument and Articles of Government

36. The Bill proposes that a Further Education College will be able to modify or replace its instrument and articles of government but they must contain minimum requirements. Other than these essential elements, colleges will have the freedom to make changes to their governing body, composition and ways of working.

²⁰ European System of Accounts 1995:
<http://circa.europa.eu/irc/dsis/nfaccount/info/data/esa95/en/titelen.htm>

37. The Bill also proposes the removal of the Welsh Ministers' existing power to appoint up to two members of a governing body.

Dissolution

38. At present, Welsh Ministers have the power to dissolve a college. In place of this power, the Bill gives colleges the ability to dissolve themselves and for their property, rights and liabilities to be transferred to another body. There is also a power for the Welsh Ministers to direct a college to dissolve itself.

39. The Bill includes provision for the Welsh Ministers to make Regulations setting out the process before dissolution can take effect and to which bodies a college can transfer its property, rights and liabilities to on dissolution.

Effect on Welsh Government and FEI budgets

40. The Explanatory Memorandum explains that if the decision to classify FEIs as central government is not overturned this would have an impact on Welsh Government capital budgets and inhibit FEIs carrying forward budget surpluses.

“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 implication will fall on the DfES MEG.”²¹

41. The Explanatory Memorandum also says:

“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:

²¹ Explanatory Memorandum, paragraph 68

- 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.”²²

Higher education

42. Section 9 of the Bill gives effect to the Welsh Government policy to allow a data sharing link between Her Majesty’s Revenue & Customs (HMRC) and Welsh Ministers, and anyone to whom the Welsh Ministers delegate or transfer functions, so that the process for applying for student grants and loans is simplified and made more efficient.

Sharing data on student grants and loans

43. Under the current system, a parent or partner has to send evidence of household income to the relevant local authority, usually by sending original documents which are then returned to them.

44. From February 2014, the Welsh Government’s intention is that 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)/Student Finance Wales (SFW). Student Finance Wales will therefore need to establish a process for verifying household income.

45. The Explanatory Memorandum says that the new system:

- will allow the Student Loans Company to verify household income figures electronically creating a more efficient application process which will help reduce fraudulent claims; and

²²Explanatory Memorandum, paragraph 12

- 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.²³

46. As a result, Student Finance Wales 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 will become an automated process and applicants and sponsors will no longer be required to present paper evidence of household income.

Other provisions

47. Section 10 sets out commencement arrangements, Section 11 cites the Bill's short title and Schedule 2 contains minor and consequential amendments to other legislation.

²³ Explanatory Memorandum, paragraph 2,

4. General principles and the need for legislation

The National Assembly's legislative competence to make the Bill

48. The Explanatory Memorandum²⁴ says that the National Assembly for Wales has the legislative competence to make the provisions in the Bill by virtue of paragraph 5 (Education and training) of Part 1 of Schedule 7, of the Government of Wales Act 2006.²⁵

49. The Presiding Officer has decided that, in her view, the Bill is within the legislative competence of the National Assembly for Wales and issued a statement to this effect on 29 April 2013.²⁶

Our view

50. *We have received no evidence suggesting that the Bill is not within the Assembly's legislative competence and have no reason to doubt that it is.*

General principles

51. The Bill seeks to change the law for two main reasons:

- To give greater autonomy to Further Education bodies to allow them to be reclassified by the Office for National Statistics (ONS) as "Non-profit Institutions Serving Households" (NPISH); and
- To allow Her Majesty's Revenue and Customs (HMRC) to share data relevant to student grants and loans with the Welsh Ministers so that the process for applying for student grants and loans is simplified and made more efficient.

52. The second of these principles is covered in more detail later in this report. However, it is relatively uncontroversial and we are generally content with the proposals in the Bill.

53. The first principle is, however, more contentious and has divided opinion among those from whom we have received evidence. Most of the evidence we have received has been broadly or strongly supportive

²⁴ Explanatory Memorandum, paragraph 4.

²⁵ Government of Wales Act 2006 c.32

²⁶ Presiding Officer's Statement on Legislative Competence: The Further and Higher Education (Governance and Information) (Wales) Bill:
<http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&id=245736&ds=4/2013>

of the need for legislation. However, there is strong opposition from Trade Unions representing staff working in the FE sector with one response suggesting that the implementation of the Bill will lead to ‘Trade Union dissent and possible industrial action’.²⁷

The Reason for Change

54. In relation to Further Education Institutions (FEIs), the Explanatory Memorandum says:

“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.”

55. However, it is clear that greater autonomy for the sector is not the sole or even the main reason for the legislation. This was confirmed by the then Minister for Education and Skills on a number of occasions and unequivocally in giving evidence to the Committee on 19 June.

“**David Rees:** ... You originally told us that the emphasis, purpose and the main driver of this Bill was the reclassification by the Office for National Statistics. May I clarify whether you would have undertaken these changes without that driver being in place?

Leighton Andrews: No.”²⁸

56. Other responses in favour of the Bill are also clear that, whatever the virtues of greater autonomy for the sector, the need to reverse the ONS classification is a very significant reason for their support for the Bill. For instance:

“ColegauCymru welcomes the provisions in the Bill that would remove certain unnecessary restrictions and controls on colleges in such a way as to enable the Office for National Statistics (ONS) to restore to colleges their status as ‘not for

²⁷ University and College Union (UCU Wales) written evidence (FEHE 4) – response to consultation question 5:

<http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?Ild=6772>

²⁸ Children and Young People Committee (CYP) Transcript 19 June, paras 7 and 8

profit institutions serving households' (NPISH). This was the status that existed prior to the ONS announcement in October 2010 that FE colleges in the UK should be classified as part of central government.”²⁹

57. And in oral evidence they told us:

“**Mr Graystone:** ... When the Minister spoke to you, he said that he did not really want to do this, but the ONS, in a sense, has forced his hand. We would take a more positive view that you are doing it because you trust us and believe that we will deliver, but, equally, we know that the real reason is about the ONS classification. ...”³⁰

58. Opponents of the Bill recognised that the one of the main reasons for it was to reverse the ONS classification but questioned whether this was desirable and whether it would achieve what it set out to do:

“UCU question the need for the Bill, if the main objectives of the Bill are to remove and modify existing legislative controls in order to reverse the ONS classification from Central Government to NPISH.

“UCU have concerns that removing and modifying existing legislative controls, will not be in the best interest of the learners or the wider community.

“The legislation could result in the reversal, but there is a risk that it will not give the ONS Classification Committee the assurances needed to do so. Therefore it is questionable that there is a need for the Bill, if it is not guaranteed that it will achieve what it proposes to do.”³¹

59. In oral evidence, in which they also referred to advice the Union had received from Counsel,³² they told us:

“**Ms Phelan:** Can it be done in another way? The evidence, or the argument—we cannot evidence it, as we do not have a crystal ball—that we want to put forward firmly and strongly is

²⁹ ColegauCymru written evidence to the Committee (FEHE 1), paragraph 8, page 3:

³⁰ CYP Transcript 23 May 2013, para 51

³¹ UCU written evidence (FEHE 4) – response to consultation question 1:

³² Ibid - Appendix 1:

that there is no need for this legislation. That is our view. If you read the counsel's opinion carefully, you will see that it is saying the same thing. The reality, in her view, is that, if you look at all the various regulations that currently exist and if you look at the current legal status of the institutions, you will see that they can do what they need to do within the current legal framework. You do not need to change it. The idea that you need to change it because of the ONS decision to reclassify as public sector in 2010 is something that she questions. ..."³³

60. However, since this evidence was given, the Office for National Statistics has been able to confirm to the Welsh Government that the Bill, as introduced, is sufficient to remove the legislative controls over FECs. Therefore, as long as any other non-legislative public sector controls are also removed, and the essentials of the Bill remain unchanged, FECs will be reclassified into the private sector as Non-Profit Institutions Serving Households.

Our View

61. *It is clear that the main policy driver for the changes proposed in the Bill is the perceived need to reverse the ONS classification of the FE sector in Wales as part of central government. Allowing the sector greater autonomy may be desirable in its own right but the greater autonomy allowed by the Bill, is primarily the means of securing the reversal of the ONS classification.*

62. *Whatever the merits of doing so, we are satisfied that the Bill, as currently drafted, will allow the ONS to reclassify the FE sector in Wales as Non-profit Institutions Serving Households.*

The consequences of the ONS classification

63. The ONS classification does not in itself make any changes to the Governance and accounting arrangements of FE institutions. However, their classification as part of central government has a number of consequences, particularly that the funding of FE bodies will be subject to UK Government budgeting rules and fiscal statistics.

³³ Committee Transcript 5 June 2013 – para 24

Accounting Rules

64. A Welsh Government briefing note for the Assembly's Finance Committee explained this as follows:

“Accountancy rules

2. The UK National Accounts are produced under internationally agreed guidance and rules set out principally in the European System of Accounts 1995 (ESA 95), and the accompanying Manual on Government Deficit and Debt (MGDD).

3. These rules apply to all countries in the European Union, and the UK is legally required to produce the National Accounts on an ESA '95 basis.

4. In the UK the Office for National Statistics (ONS) is responsible for the application and interpretation of these rules.

5. The UK Government has chosen to base its departmental budgeting rules and fiscal statistics on National Accounts principles. As a consequence, ONS decisions on how organisations are treated in the National Accounts for budgeting purposes also inform the public sector boundary used in the production of Whole of Government Accounts (WGA).

6. Classification decisions also feed into a wide range of ONS economic statistics - the National Accounts themselves, public sector employment, etc.

7. If an organisation is classified as being part of the National Accounts then all of its transactions are included in the relevant Government department [or the Welsh Government's] budgets.”³⁴

³⁴ Finance Committee: 12 June 2013, paper FIN(4)-10-13 Paper 3 - Welsh Government Response - Further and Higher Education Skills:
<http://www.senedd.assemblywales.org/ieListDocuments.aspx?CId=229&MId=1692&Ver=4>

Implications for Welsh Government budgets

65. The implications of this for Welsh Government and FEI budgeting arrangements are set out in detail in the same briefing note³⁵ and similar information is set out in the regulatory impact assessment that is part of the Explanatory Memorandum. The main negative impacts on the Welsh Government's budgets can be summarised as follows:

- Capital budgets - Capital grants from the Welsh Government to FECs are usually at a rate of 50%. However, the whole capital cost of projects would in future count against the Welsh Government's capital budget at 100% of the costs involved. The Welsh Government estimates that, on average this would mean a reduction of £20m available in the DfES capital budget each year;
- Non cash budgets - Depreciation of FE sector assets would count against Welsh Government non cash budgets, which is around £22m per year;
- Annually managed expenditure (AME) budgets - Year on year movement in pension scheme deficits would count against AME budgets and would need to be met in the first instance from within the DfES budget. The amount would vary but has ranged between £3.6m and £8.0m in recent years;
- Near cash budgets - On average, 21% of FEI income, such as student fees and commercial enterprises, comes from sources other than the Welsh Government. The implications of this are that surpluses generated by FEIs would lead to under spends in the DfES budget and deficits generated by FEIs would lead to over spends in the DfES budget. In turn this would lead to difficulties in building and managing surpluses to build reserves.

Implications for FEI budgets

66. For the FE sector, the main effect would be the loss of around £20m in capital spending as a result of the full cost of capital spending being counted against Welsh Government budgets.

³⁵ Ibid

67. Currently, the sector generates around 21% of its income from sources other than Welsh Government funding. Although they would continue to be able to generate this income, flexibility around how it is used would be lost. In particular, surpluses would have to be spent in the year they are made, which could mean that funds are not used in the most effective way.

68. There would also be an impact for staffing costs in both the Welsh Government and FEIs to prepare and move to new accounting arrangements.

Other Consequences

69. Opponents of the Bill have argued that the Bill could have a number of other consequences that have not been fully thought through. In particular, there is concern that it is in effect a ‘privatisation’ of the FE sector.

70. The UCU told us in written evidence:

“12. UCU Wales are fundamentally opposed to the proposal to enhance the autonomy and decision making abilities of Further Education Institutions (FEIs) in Wales and believe that the consequences of this bill have not been fully considered by the Welsh Government, nor will it be if the procedure chosen to introduce the legislation remains the same. In our opinion, should the proposal become legislation, we will see the slow privatisation of post 16 educational provision in Wales. It will not produce wholesale change overnight, but it will allow Principals to ‘privatise’ any part of the service. The consequences of which are likely to lead to a profit driven/target lead culture, focussed on ‘value for money’, which is not conducive to fostering quality education that puts the needs of students and the community at its heart, which from our perspective, is the key mission of Further Education.”³⁶

71. This argument was rejected by ColegauCymru in their written evidence:

“36. Several responses to the White Paper expressed concern that the FE colleges with their newly acquired freedoms would

³⁶ UCU written evidence (FEHE 4), page 3, paragraph 12:

disregard the policies for further education set by the Welsh Government; ignore national agreements on pay; sell off public assets; or even choose to privatise themselves as was apparently the case in England, and focus on profit rather than learners and their communities. ColegauCymru can give clear assurances that none of these will happen.

37. ColegauCymru will further develop its relationship with the Welsh Government. We recognise that an elected government expects its educational policies to be carried out. The Welsh Government will continue to set down conditions attached to its funding of colleges and there will be a revised financial memorandum.”

72. The then Minister told us:

“**Leighton Andrews:** They [FEIs] already have the power to create private companies, and have done so. In respect of the controls on borrowing, any lender to a further education institution, as with any lender to any other institution, will have clear conditions for the terms on which that capital is borrowed. They will have to operate within that. We have seen the further education sector mature over time and develop, and we have seen the focus that it has given. Clearly, the mission of further education institutions is to provide learning for students. Any move away from that would give rise to concerns that would be expressed to us. I do not think that we anticipate this causing any major problems.”³⁷

73. In respect of safeguards for the use of public money, he went on to explain:

“The issue is whether or not we have safeguards for public finance. Clearly, we have safeguards for public finance, which are built in through the conditions of grant. I think that you need to bear in mind, of course, that there will continue to be financial monitoring of institutions. They will have to satisfy audit requirements, and they will have to publish annual reports and so on. I do not think, frankly, that there is anything

³⁷ CYP Transcript 15 May, para 25

here that creates conditions that gives rise to concerns for us.”³⁸

Our View

74. We accept, that unless mitigating steps are taken, the financial consequences for Welsh Government and FE sector budgets is broadly as described by the Welsh Government. We accept that these consequences are significant and undesirable, that mitigating action should be taken and that the Bill as introduced is one way of providing this mitigation, although we would have liked to see more information on the risks of this approach in the Explanatory Memorandum.

Recommendation 1: We recommend a revised Explanatory Memorandum is produced setting out in more detail and with greater clarity the risks involved in the approach the Bill takes to mitigating the effects of the ONS classification.

Recommendation 2: We recommend the Welsh Government keeps under close review the effects of the Bill in practice and whether these effects have any repercussions for other parts of its legislative programme or on wider matters such as provision for the Welsh language and Additional Learning Needs.

75. We also accept that the Bill broadly maintains the current position (before the ONS’s reclassification takes effect) in respect of budgeting arrangements and does not change in any fundamental way the freedom that FE bodies have always had to borrow, to create subsidiary bodies, to generate income from other sources and to enter freely into collective agreements with their staff.

76. However, we do not believe the Bill is the only approach that could have been taken. Neither are we convinced that alternative approaches have been fully or even minimally explored. We consider an alternative approach below.

The Scottish Approach to the ONS classification

77. The situation faced by FE bodies in Wales is not unique. The ONS has made similar classification decisions in respect of the FE sectors in Northern Ireland, England and Scotland.

³⁸ Ibid, para 30

78. We understand that the Government in Northern Ireland has yet to finalise its response to the classification.³⁹

79. In England, the UK Government has already taken much the same approach as is proposed in this Bill. The Education Act 2011⁴⁰ made virtually identical changes to the governance of FE bodies in England that are now being proposed in Wales.

80. The Scottish Government has taken a markedly different approach. It has decided that it will not seek ONS reclassification but will instead seek to mitigate the effects of the classification in other ways. This includes approaching HM Treasury to try to negotiate the relaxation of some government budgeting rules so that there is no need for the sort of legislative changes set out in the Bill.

81. This approach was explained in an exchange of correspondence⁴¹ between the Committee Chair and the Scottish Government's Cabinet Secretary for Education and Lifelong Learning, Michael Russell MSP. In his letter of 26 June⁴² Mr Russell outlined the approach being taken in Scotland:

"We cannot support any suggestion that accounting rules, such as those proposed through ONS' decision, should determine our policy, or that democratic accountability should be sacrificed as a result of that decision.

"Since 2010, the Scottish Government has been engaged in an extensive period of negotiation with HM Treasury on the basis for ONS' decision, the timing of implementation and the scope for mitigating the implications. While we continue to believe it is within power of HM Treasury to mitigate this decision, it has regrettably chosen not to do so. We continue to disagree with the HMT position. Indeed, we now believe there could be an inconsistency in the treatment of Scottish colleges and continue to press this point with HMT.

³⁹ See Committee transcript of 15 May (para 110), 23 May (para 87) and 5 June (para 248)

⁴⁰ Education Act 2011 c.11

⁴¹ CYP(4)-20-13(p.2) - 20 June 2013:

<http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?IId=7266>

⁴² CYP(4)-20-13(p.3) - 26 June 2013:

“In taking its position, HM Treasury has sought to use the distinctive nature of our response as a means to avoid fully reflecting the budgetary impact of ONS' decision in Scotland. I would therefore welcome the development of a joint approach with other devolved administrations to HM Treasury in pursuit of fairness, parity and increased flexibility. I believe there is much to be gained and learned from a shared approach on this issue.”

The Treasury's Position

82. When we asked the then Minister for Education and Skills, Leighton Andrews, whether he had approached the Treasury, or had considered a joint approach with Scotland, he told us:

“Leighton Andrews: I am always open to having a chat with Mike Russell in Scotland, but we are very clear as to what the answer from the Treasury would be; the rules are very clear. We discussed this in the Finance Committee last week, as you will recall, Chair. I do not think that anything is going to be changed by a conversation with Treasury. We are very clear about that. I do not think that it is any surprise to this committee if I say that Scotland is funded in such a way that it has slightly more flexibility in these matters than we do.”⁴³

83. When asked to clarify whether he had contacted the Treasury, he told us:

“I have not and I have no intention of doing so.”⁴⁴

84. Pressed on whether the Treasury would be prepared to allow greater carry-over of reserves by FECs to allow them to build up reserves for future investment, he said:

“I think that we know what the answer from the Treasury would be. I think that Scotland probably knows what the answer would be as well.”⁴⁵

85. We also wrote⁴⁶ to the new Minister for Education and Skills, Huw Lewis to ask him whether the offer of a joint approach to the Treasury

⁴³ Transcript 19 June – para 60

⁴⁴ Ibid – para 62

⁴⁵ Ibid – para 64

⁴⁶ CYP(4)-20-13(p.4) - 27 June 2013

with his Scottish counterpart was one he would consider. In his reply⁴⁷ he told us:

“...To my mind, the content of the letter supports my predecessor’s views on Treasury rules. In particular, Scotland have been engaged in an ‘extensive period of negotiation with HM Treasury on the basis of ONS’ decision’, but that Treasury has chosen not to ‘mitigate’ its decision to not give extra budget cover to FEIs.

...

“In terms of a joint approach with other devolved administrations to HM Treasury, I do not consider this to be a viable option for two reasons. First, we have carefully considered the relevant Treasury guidance but note that the circumstances of re-classification by the ONS would not trigger a right to compensation for the Welsh Government. This is because the reclassification has arisen from a re-assessment of the existing position rather than any change of circumstances. In effect, the ONS position is that FEIs should always have been classed as General Government and therefore as part of the public sector.

...

“Second, a joint approach from the devolved administrations would be an extensive exercise with no guarantee of a successful outcome.”

Our View

86. *It is clear from Mr Russell’s letter that the accounting changes required as a result of the ONS classification apply equally to the Scottish Government and to FE bodies in Scotland, and that many of the effects are similar.*

87. *We have not had sufficient time to examine whether the approach taken in Scotland is the most appropriate one for Wales’ circumstances. The Welsh Government is also well advanced along a different policy path, as set out in the Bill. If the Scottish approach is*

⁴⁷ CYP(4)-20-13(p.5) - 2 July 2013

appropriate to Wales, it may be too late to pursue it successfully within the time now available.

88. The Welsh Government's assessment is that the Treasury is unlikely to respond positively to any approach. We are concerned that the Welsh Government's policy direction appears to be predicated on an assumption about a Treasury response that has not been tested.. The Welsh Government has not written to the Treasury to clarify their position or attempted to engage with them in a dialogue. We would have expected that policy would be based on formally establishing the Treasury position.

89. The previous Minister made it clear to us that the approach he took in bringing forward this Bill would not have been taken were it not for the ONS classification. Policy is, therefore, being driven primarily by what are essentially accounting rules. This is not say that the FE sector in Wales could not benefit from greater autonomy or that they are incapable of exercising that autonomy responsibly.

90. We are uncomfortable agreeing to that extra autonomy when the option of retaining direct accountability has not been fully explored with the Treasury.

Recommendation 3: We recommend, before the debate on general principles is held, the Welsh Government should explore fully with HM Treasury the scope for modifying Government accounting rules to help mitigate the effects of the ONS classification.

5. The Welsh Government's powers of intervention and direction

91. The loosening of the Welsh Government's legislative powers of intervention and direction is a key feature of the Bill. However in the Explanatory Memorandum, the Welsh Government recognises the need to balance the changes proposed in the Bill with the need for public funds, the public interest and learners to be safeguarded. In their response to the White Paper Consultation, Estyn had said:

“The changes proposed in the White Paper may give colleges more freedom to pursue these agendas, but it is important that the FE sector is held to account for its delivery of the education and training, economic and social priorities of the Welsh Government.”⁴⁸

92. Leighton Andrews told the Committee that he was confident that he would be able to exert influence over more autonomous FEIs through non-legislative means for example through conditions of funding as part of the new post-16 funding regime, “naming and shaming”; through the Quality Effectiveness Framework; audit and accounting requirements and through Estyn inspections.

Changes to the Financial Memorandum and grant funding conditions

93. We received a private technical briefing from ONS officials about the background to their classification and the factors that would be of importance to them in reaching a decision to reclassify FE bodies as NPISH. As part of this briefing the ONS were able to confirm that the Bill, as it stands, is sufficient to remove the legislative controls over FECs, **and therefore, as long as any other non-legislative public sector controls are also removed**, FECs will be reclassified into the private sector as Non-Profit Institutions Serving Households.

94. In response to a Member's question, Leighton Andrews, then Minister for Education and Skills and one of his officials, Mr Andrew Clarke, said:

⁴⁸ Welsh Government, Consultation Responses Part 1: Further and Higher Education (Wales) Bill, 2012, p189 [accessed 30 May 2013]

“Leighton Andrews: We are clear that there are changes that we would need to institute in terms of the financial memorandum. We discussed this with the Finance Committee last week, if I remember rightly. Andrew, have we specifically talked through the controls with the ONS?”

“Mr Clark: We have shared our existing controls with the ONS, and there are one or two places where it has indicated that they would need to be changed.”⁴⁹

95. The Minister then agreed to share details of these changes with the Committee Members.

Re-establishing a funding council?

96. Option 2 of the Regulatory Impact Assessment proposes the re-establishment of a funding council in Wales. The University and College Union are in favour of this option. However Leighton Andrews was very definite in his oral evidence to the Committee that he was not considering this:

“Leighton Andrews: I do not think our view was that we needed a funding council. To our mind, there has been considerable consolidation within the further education sector over recent years. We have a small number of FE colleges now and our officials have established strong working relationships with those institutions. They know the people and there are direct lines of contact. It seems unnecessary to us to establish a new bureaucratic layer between further education institutions and the department.”⁵⁰

97. And later:

“I just do not think that there is a need for it. In 2004 to 2006, we went down the route of significantly reducing the number of quangos in Wales and it is not my policy objective to bring back more quangos.”⁵¹

⁴⁹ CYP Transcript 19 June, paras 10 and 11

⁵⁰ CYP Transcript 15 May, para 13

⁵¹ Ibid, para 18

Our View

98. Based on the assumption that the Bill is needed to loosen the legislative controls over the FEIs in order to achieve a reclassification by ONS, we are reasonably satisfied that the Minister is retaining an appropriate level of non-legislative controls that are balanced with the need not to jeopardise the ONS reclassification.

6. The implications for learners, communities and FE staff

Introduction

99. As we have made clear, we are not comfortable agreeing to extra autonomy for FE bodies when the option of keeping direct accountability does not appear to have been properly explored. However, we accept that the financial consequences of the ONS classification are significant and undesirable.

100. If it can be shown that the Treasury will not agree steps to mitigate these consequences, it is difficult to justify keeping the current legislative framework and accepting the negative financial impact that goes with it. In these circumstances, legislating, along the lines set out in the Bill, may be the only way of avoiding the financial consequences that stem from the ONS decision.

101. This presents something of a problem. We are satisfied, following the private technical briefing that we received from ONS officials, that the Bill as presented will allow the ONS to reclassify FE bodies in Wales as Non-profit Institutions Serving Households. However, it is also clear that if the Bill is amended in a way that reintroduces key controls over the sector this could put reclassification at risk.

102. However, a number of specific suggestions have been put to us in considering the Bill that do not appear to put at risk the ONS reclassification.

Instruments and articles of government

103. FE corporations will be able to vary their instruments and articles of government but Schedule 1 of the Bill sets out certain requirements that must always be complied with.

104. These requirements include:

- that the members of the governing body must include staff and students at the institution⁵²; and
- publication of arrangements for obtaining the views of staff and students.⁵³

⁵² Paragraph 3 of Schedule 1 to the Bill

Staff and Learner Representatives

105. Concern has been expressed that the staff members of governing bodies may not be sufficiently representative of staff interests. In oral evidence, the UCU told us

“Ms Phelan: If you look at paragraph 3 of Schedule 1, which talks about the eligibility of persons for membership, you will see that it is six sentences long. It says that regulations must make sure that staff and students at an institution are a part of its governance. It does not say how the staff and students will be put on the board of governors. It does not say that they will be elected. It does not say how many. There are circumstances where we have found that the chief executive has chosen the staff member to sit on the board, which is totally inappropriate, because the purpose of the board of governors is to scrutinise, and when you do not have appropriate scrutiny, that is when you have problems. One of the things that we will be looking at is persuading some of our colleagues to table amendments to that part of the Bill, because it is not tight enough. If we have to have it, we have to do some work on it.”⁵⁴

106. ColegauCymru were also in favour in principle of staff representatives being elected, although they were concerned that such a requirement might affect ONS reclassification:

“Mr Graystone: Over 20 years, we have become used to having elected staff and elected students and we agree with that entirely. We are not sure about whether the Office for National Statistics would see the word ‘elected’ as affecting the relationship between the Government and colleges. We will give a commitment that staff and students will be elected, but you would need to get advice from the ONS to see whether that relationship would be affected. That is the way that we work and we do not think that hand-picking staff or students is the way forward...”⁵⁵

⁵³ Paragraph 6 of Schedule 1 to the Bill

⁵⁴ CYP Transcript 5 June, para 74

⁵⁵ CYP Transcript 23 May, para 108

107. The National Union of Students told us in their written response:

“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 and the Learner Voice Survey, to not secure student representation on the body would be a retrograde step.”⁵⁶

108. They expanded upon this in oral evidence and explained that they would also like student representatives to be elected:

“**Mr Rees:** ...In terms of the word ‘elected’, we would like to see it mentioned in the Schedule that the student places should be elected. Currently, this is the case through the instruments and articles, but of course if FEIs have the ability to modify the instruments and articles, this could be altered.

“Normally, it will be the students’ union president who sits on the governing body, but it is worth bearing in mind that, currently, not all further education institutions have a students’ union president. We consider that good practice, and the reason that we advocate the two governing places is that you have that role, but you also have another role to perhaps complement the skills and expertise that the president brings.”⁵⁷

109. The then Minister indicated that he would be prepared to support amendments that specified that at least two members of a governing body should be students:

“**Leighton Andrews:** That is what we have demonstrated that we support. I am willing to consider any amendments that do not undermine the purpose of the Bill in respect of the ONS reclassification.”⁵⁸

⁵⁶ National Union of Students (FEHE 10), written response to question 3, page 3

⁵⁷ CYP Transcript 5 June, paras 184 and 185

⁵⁸ CYP Transcript 19 June, para 72

110. He also indicated that he would be prepared to accept amendments to ensure that both student and staff representatives should be elected.⁵⁹

Recommendation 4: We recommend Schedule 1 of the Bill should be amended to specify that at least two members of a college's governing body should be student representatives.

Recommendation 5: We recommend Schedule 1 of the Bill should be amended to specify that student representatives on a college's governing body should be elected by the student body.

Recommendation 6: We recommend Schedule 1 of the Bill should be amended to specify that there should be two representatives on a college's governing body who should be elected representatives of the staff of the institution.

Employer and Business Representatives

111. The Construction Industry Training Board (CITB) argued for the construction industry to be represented on governing bodies:

“4.1 The Further Education Sector in Wales has traditionally been an important provider of Higher Level Education, mainly at levels 4 and 5 HNC/NHD provision for the Construction Sector. The sector generally has credibility and support amongst employers and has shown a willingness to innovate with the development of Foundation Degrees, Sustainability and Green Skills provision and part time courses.

“4.2 In the light of the above comments it must be stated that Construction provision is expensive and that independent control of College Finances could either be a positive or negative factor in the maintenance of current provision or development of additional new provision depending on the interests of Senior Managers and Governors. The need for well informed and influential representation from the Construction Industry on the new revised Governing Bodies of Colleges

⁵⁹ Transcript 19 June paras 73 and 74

would be crucial to this success of reform and to ensure that ‘expensive’ specialist provision continues and thrives.”⁶⁰

112. However, in oral evidence there was an acceptance that this was not always practical and that a more general business representation was a more realistic approach:

“[26] **Mr Williams:** I agree with you. It would be impractical to have everybody around the table in agreement, but a mechanism needs to be set up. It is important to have business representation, which could be from any sector. If you have business representation, I suppose that it gives different points of view on some of the decisions that have to be made. With any business or sector, if the correct person is there, I would say that it is going to be beneficial. In addition to that, you have to have sector input, so that the decisions that are made, curriculum-wise and provision-wise, are the right ones.”

113. ColegauCymru also recognised the importance of business involvement:

“**Mr Graystone:** ... I do not think that any college has consulted employers because it has been told to do so by the Welsh Government; we just do it as part of our core business. You cannot run colleges if you do not consult with your learners and employers, if you do not have employers on boards, if advisory committees are not set up, and if meetings are not held for employers. It is core business for us. I think that most of us did not realise that we were required to do so; we just do it. It runs in the blood.”⁶¹

Recommendation 7: We recommend Schedule 1 of the Bill should be amended to specify that governing bodies should include representatives of local employers or businesses.

Duty to consult with local learners and employers

114. The Bill repeals the current duty on FEIs to consult with learners and employers As ColegauCymru point out above (without accepting that there is a need for a duty to consult) consultation with local

⁶⁰ CITB written response to (FEHE 18)

⁶¹ CYP Transcript 23 May, para 106

employers and businesses is seen as a core part of colleges' engagement with the community.

115. Some witnesses expressed concern at the removal of the duty. The CITB told us:

“Mr Williams: We would definitely be concerned about removing the duty. As I say, providing some traditional things is easier than looking ahead to what the world and young people will need in terms of employment. Some will be open to doing that and some will be sufficiently forward-thinking...”⁶²

116. The NUS also expressed concern:

“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.”⁶³

117. In oral evidence they expanded on this to question how FEIs would be encouraged to engage in local curriculum planning when there was not a duty to consult:

“Mr Rees: We do not represent 14 to 16-year-old learners. Our membership is 16-plus. That said, one area where we have concerns is around the removal of the duty for FE institutions to participate in local curriculum planning. We advocate flexibility in the education system and that you should be able to access the qualifications and training that you require to pursue your career or vocation. The 14-19 networks and the local curriculum plan have been really beneficial. There are some accepted difficulties with local curriculum planning, but generally it has been beneficial in opening up opportunities for

⁶² CYP Transcript 13 June, para 36

⁶³ National Union of Students (FEHE 10), written response to question 4, page 4

young people. We would want to know how FEIs would still be incentivised to engage in this collaboration.”⁶⁴

118. Estyn also expressed concern that the Bill will repeal the duty on FECs to consult with learners and employers.⁶⁵

119. The then Minister in his initial oral evidence indicated that the reason for removing the duty was primarily to satisfy the ONS, but he did not appear to have any objection in principle to the inclusion of a duty:

“**Leighton Andrews:** This goes back to the core reason for the Bill, which is the need to produce an outcome that satisfies the ONS. That does not mean that we do not regard consulting with learners and other stakeholders as being good practice; we would encourage that.”⁶⁶

120. In later evidence he indicated that he would accept amendments to ensure that governing bodies should include a representative of local employers and should also be under a duty to consult local learners and businesses.

“**Leighton Andrews:** Again, it would depend on the formulation of any amendment. As I said, I would be willing to consider amendments that did not change the basic aim of the Bill in terms of the ONS reclassification...”⁶⁷

Recommendation 8: We recommend Schedule 1 of the Bill should be amended to place a broad duty on governing bodies to consult regularly with local employers, learners and communities about the educational provision at the institution concerned and how it impacts on local curriculum planning.

The ONS View

121. We received a very helpful and informative private technical briefing from ONS officials about the background to their classification and the factors that would be of importance to them in reaching a decision to reclassify FE bodies as NPISH. This was a private briefing

⁶⁴ CYP Transcript 5 June, para 260

⁶⁵ Estyn written response (FEHE 5); page 2

⁶⁶ CYP Transcript 15 May, para 133

⁶⁷ CYP Transcript 19 June, para 74

and it is important to note that the ONS were unable to give unqualified answers to hypothetical questions. Nevertheless, our improved understanding of the factors that they will take into account leads us to conclude that if the Bill is amended as suggested above it is unlikely to materially affect the outcome of their decision to reclassify.

Our View

122. We are satisfied that the amendments we have recommended above represent a proportionate and reasonable approach that will:

- Strengthen learner and staff involvement;*
- Ensure that the needs of businesses and employers are heard on governing bodies;*
- Ensure that learner and staff members of governing bodies are genuinely representative;*
- Strengthen engagement with learners, businesses and the local community.*

123. We are also satisfied that in principle none of the amendments that have been suggested to us, either separately or together, will put at risk reclassification by the ONS.

7. Provisions relating to the higher education sector

Introduction

124. Section 7 and section 9 of the Bill deal specifically with issues relating to Higher Education.

125. Section 7 repeals the Welsh Minister's power to make regulations prohibiting the provision of higher education courses by FEIs without Ministers' approval and regulating the numbers and categories of students on such courses.

126. Section 9 provides a legal basis for Her Majesty's Revenue and Customs (HMRC) to supply information to the Welsh Ministers on household income in relation to the operation of the student loan scheme. This puts the Welsh Ministers on a par with their counterparts in the UK Government and in Northern Ireland (somewhat different arrangements apply in Scotland).

Power to Regulate Higher Education Courses in Further Education

127. Some concern was expressed about the removal of this power. NASUWT Cymru the Teachers' Union, said in their written submission:

"The NASUWT notes the provisions to remove the power of Welsh Ministers to restrict the provision of higher education (HE) courses within the FE sector.

"The NASUWT finds no merit in this proposal as the current power of Welsh Ministers provides an important safeguard to militate against competition and the adverse influence of market forces developing within the FE and HE sectors.

"The NASUWT does not oppose the provision of HE courses within the FE sector as long as those charged with the responsibility for delivering the courses enjoy the same pay and conditions of service as their counterparts in HE.

The NASUWT urges the CYPC to be alert to the fact that this proposal could lead to FE providers attempting to provide HE courses ‘on the cheap’.⁶⁸

128. HEFCW’s written submission said:

“We are currently responsible for the provision of tuition fee grant in respect of Welsh domiciled full-time undergraduate students. We have arrangements in place to manage the cost to our resources, and therefore to the Welsh public purse, arising from this responsibility. The proposed removal of controls as identified in the paragraph above could increase our financial exposure and we will wish to work with our colleagues in the Welsh government to explore any implications which arise.”⁶⁹

129. Higher Education Wales (HEW) did not express any concern about the removal of this power but pointed out that there would in practice continue to be a range of non-legislative controls in place:

“In future we would expect there to continue to be effective controls in place for all providers of HE (including HEIs, FEIs, and alternative providers) to ensure that Welsh Government budget can be suitably managed and that public funding is used appropriately. We continue to support the current policy that any future expansion of HE in FE would be best achieved through franchise partnerships, for the reasons identified by HEFCW (see above 3.3 [earlier paragraph of HEW written evidence]). In removing the Welsh Government’s powers under the Education Act 2002, we recognise that there is in practice a range of controls on future expansion of HE in FE. As part of the consultation on HE (Wales) Bill consultation, it will be necessary to ensure that appropriate future arrangements for all providers continue to remain in place.”⁷⁰

130. In his initial oral evidence the then Minister explained why he was proposing the repeal of the power:

⁶⁸ NASUWT written evidence (FEHE 14), para 21

⁶⁹ HEFCW written evidence (FEHE 16), page 2

⁷⁰ HEW written evidence (FEHE 13), para 3.5

“Leighton Andrews: The power has never been used and we do not anticipate it needing to be used.”⁷¹

131. He expanded on this by saying:

“Leighton Andrews: ...These are policy issues rather than legislative issues. I do not think that the power is needed. There are other ways in which the validation of higher education, and the quality of higher education is safeguarded. Obviously, the Higher Education Funding Council for Wales and the Quality Assurance Agency for Higher Education will have a role in this. As I said, the power has never been used. In the context of future discussions on emerging higher education policies, we will want to look at the way in which there is collaboration between further and higher education institutions. However, I do not see the need for this power explicitly.”⁷²

132. However, in later evidence it was put to the Minister that giving up the power is not necessary for ONS reclassification and that, although it had never been used, it might be worth retaining to deal with future eventualities. In response, he agreed to reflect further on the position before stage 2.

“Leighton Andrews: ... You raise an interesting question here about the commonality of regulation of higher education across different institutions. I would rather think about that, in principle, in the general context of our future legislation, because there are other issues that are starting to arise, for example, through the provision of mass online open courses, and other matters that we might want to consider at that point.”⁷³

And:

“Leighton Andrews: Let me go away and reflect on this, because it is an interesting discussion and we can return to it at Stage 2. I will go away and discuss this with officials.”⁷⁴

⁷¹ CYP transcript 15 May, para 203

⁷² Ibid, para 209

⁷³ CYP Transcript 19 June, para 105

⁷⁴ Ibid, para 107

Our view

133. *We do not believe that it is good practice for Ministers to keep powers that are effectively redundant simply because of the possibility that they might be needed at some indeterminate point in the future. We do, therefore appreciate the stance taken by Ministers on this occasion.*

134. *However, given the possible changes in the sector in future and that there is likely to be a Higher Education Bill in the reasonably near future we believe it is sensible to reassess whether now is the most appropriate time to repeal this power.*

135. *We are pleased that the previous Minister agreed to reflect on this issue further before Stage 2 and we hope that his successor will also do so.*

Recommendation 9: We recommend the Minister reconsiders the repeal, proposed in section 7 of the Bill, of section 139 of the Education Act 2002.

Supply of Information in respect of student grants and loans

136. We have not received any strong views or compelling evidence in opposition to this proposal, indeed most evidence was in support. There was also widespread agreement that this was a technical matter needed to make improvements to the application process for student loans that would have few other effects. This was explained as follows by a Welsh Government official:

“Ms Martins: ... It is an entirely technical provision; it is kind of a lacuna, although it was policy at the time in the Higher Education Act 2004. There is a mechanism for automatic transfer from the tax office to the Student Loans Company, just for the verification of the information that students supply when they make applications for support. That allows the tax office to transfer automatically the information to the Student Loans Company in relation to students in Northern Ireland and England.

“We were left out, so all of our applications had to be done on paper. The students had to provide everything on paper, and then, if we had any doubts—local authorities used to process

the applications—they would have to go to the tax office, and the tax office would have to verify that separately. It made the process a lot longer. That is all that this does; this does not ask for any additional information to be provided—

“Simon Thomas: It is only the manner of the sharing, not the actual information that is being changed.

“Ms Martins: Absolutely. It is the direct sharing of information between HMRC and SLC, which is working for us.”⁷⁵

137. However UNISON Cymru/Wales did express the following reservations:

“We understand the need to modernise the Student Finance Wales delivery service but do not welcome the manner in which this is being pursued in the Bill’s proposals. The Student Finance Wales delivery service is in effect being outsourced to the Student Loan Company (which has had a chequered history in its workings in England) with the intention of centralising what is currently a local and responsive service. The danger in the current proposals is that the service will be diminished and that students will suffer in particular those who wish to apply through the medium of Welsh and those with special needs.”⁷⁶

138. We were also made aware that responsibility for student loan applications was being transferred from local authorities to the Student Loan Company, although this is not dependent on the changes proposed in the Bill. The Student Loan Company told us:

“Mr Wallace: My understanding is absolutely that the decision has already been taken and that significant conversations are already taking place between our organisations as we are building the service in Wales around the Transfer of Undertakings (Protection of Employment) Regulations 1981 opportunities for local authority staff. So, my understanding is that this is approved and authorised to go ahead. This is a technical section within the Bill to allow us to take advantage of some functionality and process efficiencies that we have developed for England and wish to effectively make available to

⁷⁵ CYP transcript 15 May, paras 179-182

⁷⁶ UNISON Cymru/Wales written evidence (FEHE 7), page 3

the Welsh service. However, if this Bill or this particular part of the Bill did not go through, we would still go ahead—

“Mr Wallace: [but] It would be the manual system, so it would have the same costs and inefficiencies that are in the system just now, so we would be denying ourselves the opportunity to take advantage of these benefits.”⁷⁷

139. In terms of the local, in person advice about student loans that students might receive in future we were told:

“Mr Wallace: If they are looking for information around the detailed application process for student funding, that is provided through Student Finance Wales. That will either be online or through a large amount of information, advice and guidance that we are going to be creating and producing. As I mentioned earlier, the role of the local authorities will be more of a signposting service to say to people, ‘If you wish to apply for student finance, this is how you do it’, and to direct them to the websites and the existing materials that we have. I do not see that local authorities would have a continuing role. That is my understanding: they would not have a continuing role in the provision of detailed information and would be more likely to be signposting people to the right places.”⁷⁸

Our View

140. *We are content that this is a technical change that is needed to put the Welsh Ministers on a par with their colleagues elsewhere in the UK and to allow improvements to the system for applying for student loans.*

141. *Although this is not directly related to the proposals in the Bill, we are concerned that the centralisation of responsibility for student loans with the Student Loan Company could lead to a more remote and less responsive service than is currently provided by local authorities. We believe that more thought needs to be given to how appropriate support in person, including in Welsh and for those with additional needs, can continue to be provided at a local level.*

⁷⁷ CYP transcript 23 May, paras 187 and 189

⁷⁸ Ibid, para 199

Recommendation 10: We recommend the Welsh Government considers with the Student Loan Company how best to retain, at a local level, appropriate support in person for those applying for student loans.

8. Effects on particular groups

142. We have received some submissions about the effect of the Bill on certain user groups.

Welsh language

143. We have already mentioned the need to continue to provide a responsive local service in Welsh for those applying for Student Loans. UCAC asked specifically whether FE bodies would continue to be subject to the provisions of the Welsh Language Measure 2011:⁷⁹

“Language policies: If the further education colleges were transferred to the NPISH category, would they be subject to the proposed Welsh Language Standards? To whom would they be accountable in relation to implementing the commitments of their Welsh Language Policies?”⁸⁰

144. However, the then Minister told us:

“**Leighton Andrews:** I do not think anything has changed in that regard at all by this Bill. I have had evidence from the University and College Union, but I have not seen anything—let me be careful here: I do not believe that I have seen anything from it on this point. If it has put it to you, that is interesting. However, I fail to see how this Bill changes the situation with regard to the Welsh language.”⁸¹

Our View

145. *We would be very concerned if any of the provisions in the Bill led to a diminution of support or provision for the Welsh language in FE bodies. However, we are content that the Bill does not make any substantive changes in this regard.*

Support for Learners with Additional Learning Needs

146. We are grateful to the National Deaf Children’s Society (NDCS) for drawing our attention to a number of issues in relation to support for learners with Additional Learning Needs (ALN). Their full submission

⁷⁹ Welsh Language (Wales) Measure 2011 nawm.1

⁸⁰ UCAC written evidence (FEHE 9), page 4

⁸¹ CYP transcript 19 June, para 42

to the Committee⁸² is available on the Committee's web pages. However among the points they raised were:

- That Ministers should be able to continue to collect data about how FEIs are responding to the support needs of learners with ALN;
- That Welsh Ministers should be able to intervene if FEIs are not appropriately supporting learners with ALN;
- That consideration needs to be given to how the Bill will operate in conjunction with planned reforms of ALN support;
- That regulations in respect of dissolution arrangements for FEIs should specifically include provision to ensure that the needs of learner with ALN are considered.

Our View

147. While we are not convinced that the issues raised by the NDCS require changes to the Bill, we agree that they need to be considered carefully by the Welsh Government and appropriate amendments brought forward if necessary.

Recommendation 11: We recommend the Welsh Government considers carefully the impact of the Bill on provision for learners with Additional Learning Needs.

⁸² NCDS written evidence (FEHE 11)

Annexe A - List of written evidence

The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at <http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?Ild=6772>

<i>Organisation</i>	<i>Reference</i>
ColegauCymru	FEHE 1
ColegauCymru	FEHE 1A
ColegauCymru	FEHE 1B
Coleg Gwent	FEHE 2
University and College Union, Coleg Gwent, Newport Branch	FEHE 3
University and College Union (UCU Wales)	FEHE 4 FEHE 4A FEHE 4B
Estyn	FEHE 5
University and College Union, Crosskeys Branch	FEHE 6
UNISON Cymru	FEHE 7
The Learned Society Wales	FEHE 8
Undeb Cenedlaethol Athrawon Cymru (UCAC)	FEHE 9
National Union of Students Wales	FEHE 10
National Deaf Children's Society	FEHE 11
NIACE Dysgu Cymru	FEHE 12
Higher Education Wales	FEHE 13 FEHE 13A
NASUWT, Cymru	FEHE 14
Cardiff University	FEHE 15
Higher Education Funding Council for Wales	FEHE 16
Agored Cymru	FEHE 17
CITB Cymru Wales	FEHE 18
Leighton Andrews AM, Minister for Education and Skills	FEHE 19

Student Loans Company (Student Finance Wales) FEHE 20

The Committee also considered the following correspondence, which can be viewed in full at:

<http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?Ild=7266>

Reference	Date
CYP(4)-18-13 (p7) - Letter from the Minister for Education and Skills Leighton Andrews AM, Welsh Government	4 June 2013
CYP(4)-21-13(p.2) - Letter from the Chair of Petitions Committee	12 June 2013
CYP(4)-20-13(p.1) - Chair to the Minister for Education and Skills Leighton Andrews AM - Follow up from Meeting on 19 June 2013	20 June 2013
CYP(4)-20-13(p.2) - Chair to the Cabinet Secretary for Education and Lifelong Learning (Scottish Government)	20 June 2013
CYP(4)-20-13(p.3) - Response from the Cabinet Secretary for Education and Lifelong Learning (Scottish Government)	26 June 2013
CYP(4)-20-13(p.4) - Chair to the new Minister for Education and Skills, Huw Lewis AM	27 June 2013
CYP(4)-20-13(p.5) - Response from the Education and Skills Minister, Huw Lewis AM	2 July 2013

Annexe B – Witnesses

The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at

<http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?Ild=6429>

<i>Date</i>	<i>Organisation</i>
15 May 2013 148. and	Leighton Andrews AM , Minister for Education and Skills, Welsh Government Andrew Clark , Deputy Director Further Education and Apprenticeship Division, Welsh Government
19 June 2013	Grace Martins , Senior Lawyer, Welsh Government
23 May 2013	John Graystone , Chief Executive, Colegau Cymru David Jones , former Chair, Colegau Cymru, Principal, Deeside College and Principal Designate, Coleg Cambria Mark Jones , Chair, Colegau Cymru; Principal, Bridgend College and Principal Designate, Gower College Swansea
23 May 2013	David Wallace , Deputy CEO & Director of Strategic Development, Student Finance Wales
5 June 2013	Chris Jones , Chair of University and College Union (Wales) Further Education Sector Committee Margaret Phelan , Regional Official, University and College Union (Wales), Lisa Edwards , Temporary Political Liaison Officer, University and College Union (Wales)

- 5 June 2013** **Kieron Rees**, Representation and Policy Officer, National Union of Students Wales
- 13 June 2013** **Gareth Williams**, CITB Cymru/Wales Careers and Qualifications Manager, Construction Skills Wales
- 13 June 2013** **Professor April McMahon**, Vice-Chancellor, Aberystwyth University
Professor Medwin Hughes, Vice-Chancellor, University of Wales Trinity Saint David, and Swansea Metropolitan University of Wales Trinity Saint David, and University of Wales
Ben Arnold, Policy Adviser, Higher Education Wales
- 19 June 2013** Office for National Statistics
(private session)