

Bethan Davies, Clerk
Finance Committee
National Assembly for Wales
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31 July 2014

Dear Bethan

HE (Wales) Bill

Please could you pass our comments on to the Finance Committee relating to the above Bill, in the hope that they are of use in identifying the key outstanding issues relating to the financial implications of the Bill in so far as we can assess them at this stage. We would like to thank the Committee in seeking further information and clarity over the costings provided. At this stage the issues which the Committee may wish to consider further, or seek clarification on, are as follows:

- *Regular and recurrent costs of implementation.* The Welsh Government identifies recurring costs of around £1.6m p.a. for regular tasks of which £363k is identified as additional cost. The Explanatory Memorandum appears to confirm that there was no consultation with the sector on these costings and the cost estimates for institutions rely on the 'sense-checking' by Welsh Government officials only (Explanatory Memo, Annex A paras 333-35). The further information provided by the Welsh Government to the Finance Committee is helpful in understanding the how the cited figures were reached, but lacks detail on the salary assumptions used or where the additional costs have been assumed at this level. HEFCW, in its submission, estimated costs at one additional relatively senior member of staff per university which appears to be a significantly higher estimate of the additional costs for universities than estimated by the Welsh Government. We would welcome further comment on the difference in these estimates.
- *Exceptional costs.* The Explanatory Memorandum provides estimates of exceptional costs relating to sanctions which would only be incurred when compliance activity is triggered (paras 245-5), and models two potential scenarios on this basis. It does not appear that the costs of litigation have been adequately included, however. The further information provided by the Welsh Government in their letter to the Finance Committee clarifies that the costings

assume a number of days of specialist staff time (costed at an institutional rate) relating to sanction/compliance costs for institutions (18 by our count), of which only some would be additional (it is not clear how many). From this it appears that the exceptional costs do not include the costs of commissioning legal advice and/or litigation costs, or these cost estimates are significantly lower than we may have expected. On the face of it this looks like a serious omission in the costings and we would welcome further clarification on this.

- *Other compliance costs.* HEW has also drawn attention to the fact that the Bill, as it stands, enables the Welsh Government and/or HEFCW to impose financial requirements or requirements with a financial impact which do not relate either to grant funding or fee grant payments. Under current legislation, the Welsh Government/HEFCW may not set terms and conditions which relate to income/grant which does not come from the Funding Council. The Bill could mean that the Welsh Government/HEFCW set requirements that universities have to fund from other sources and is effectively an additional cost for universities: there is a risk that in future policy requirements have financial consequences for universities without the corresponding public funding to support it. This heading of potential costs is not dealt with by the Bill and we would welcome clarity on how the Welsh Government intends to ensure that there will be no additional costs for universities under this heading in future if that is the Welsh Government's assumption.
- *Major contingent costs.* In addition, it is noted that the Bill does not deal with the financial implications in the event that the Bill compromises charitable status/duties or universities classification for purposes of national accounting, or the damage to the business and financial interests of universities arising from the actual or apparent erosion of financial autonomy, as outlined in our submission to the Children Young People & Education Committee (see the appended extract). Para 227 of the Explanatory Memorandum states that the Welsh Government discounted some of the benefits in the light of risks identified in the consultation responses relating in particular to the 'breach of institutional and academic autonomy with unintended consequences and that direct funding and control would risk HEIs in Wales being reclassified as part of the public sector'. The paragraph states that benefits are discounted in Option 3 (see paras 272-282) – but they are not mentioned there, and the benefits are not quantified in any way. We would welcome any figures relating to discounting of benefits under this heading. These potential major costs appear not to have been included in the costings presented.
- *The cost of providers other than existing universities becoming regulated institutions.* The Welsh Government's costings are based on the assumption that the existing universities in

Wales will become regulated institutions only. They do not include costs relating to other potential regulated institutions. The Explanatory Memorandum (EM, para 240) also assumes no additional costs in tuition fee grants and loans arising from the Bill. Are these realistic assumptions? If providers other than universities become regulated institutions their courses would automatically qualify for student support and this could have a significant impact on the student support budget. It could also, as current arrangements stand, have a significant financial implication for existing universities since fee grant payments are paid from HEFCW's budget. We would welcome further scrutiny of these assumptions.

- In particular, we understand that the Bill is designed to allow further education institutions (among others) to become regulated institutions. We would welcome the Committee seeking to clarify the Welsh Government's assumptions on this. How far could this lead to an increase of students eligible to receive student support? What mechanisms would be in place to control student numbers if necessary (there are none included in the Bill). If there is a potential increase in student support and fee grant costs, how will this increased cost be met?
- *Costs relating to HEFCW's regulation of providers who are not 'regulated institutions' with an approved plan.* Under the Bill only regulated institutions would be covered by HEFCW's statutory duty to assess the quality of education. However, the Explanatory Memorandum suggests (although we have queried this) that HEFCW could maintain quality assessment arrangements for part-time only providers through terms and conditions of funding 'because HEFCW will continue to pay some recurrent funding to institutions for part-time courses for the foreseeable future' (EM, para. 112). What are the Welsh Government's assumptions about HEFCW's available budget for the foreseeable future, the sums required to meet this commitment, and how will the Welsh Government ensure that this commitment can be met in the light of the above points?
- Will a similar commitment be needed to enable HEFCW to make quality assurance arrangements for postgraduate only providers in future? It is noted that although part-time only providers may potentially be brought within the new regulatory framework in future, postgraduate provision cannot be included in the list of qualifying courses covered by the fee and access plans i.e. postgraduate only providers cannot be later included.
- *Costs arising from revisions to HEFCW's quality assurance duty.* An issue raised with the Welsh Government is that the new duty to assess the quality of education appears to extend to all education provided by a regulated institution, not just higher education. It is not yet

clear whether this is intentional or not. In the case of further education colleges or other providers with significant provision at levels lower than HE, this duty could be significant (and conflict with the statutory duties of other bodies). We would welcome greater clarity on the cost implications of this.

- *Impact on HEFCW budget available for grant funding.* More generally we would welcome clarification on how the Welsh Government intend to ensure that there is enough funding in HEFCW's budget for research or other strategic priorities (including support for expensive and strategic subjects) as a result of the regulatory changes in light of the above. Would HEFCW be expected to make fee grant payments in relation to students on courses designated on a case-by-case basis? If so, how could it control its budget? How would the costs fall between the Welsh Government, HEFCW and universities?
- *Financial implications for regulated institutions compared to unregulated institutions.* The Explanatory Memorandum states that the Welsh Government assumes that all existing universities would wish to become regulated institutions under the Bill proposals – and this has been our assumption so far too. However, the key benefit identified for institutions in return for accepting greater regulation is that their students would be eligible to receive the grant element in addition to the loan element of student support. The grant element, however, is paid from the budget that HEFCW has available for making grants to higher education. Does this not mean that there is no net financial advantage for universities becoming regulated institutions, compared to seeking designation of all courses on a case-by-case basis? Clarity is needed over how this would operate in order to assess the costs and impact of the proposals.

Finally we note that, in so far as we were aware, there was no consultation with the sector on these costings, and the costings for institutions rely on the 'sense-checking' by Welsh Government officials only (Explanatory Memo, paras 333-35). We query whether the Welsh Government has been able to set out its best estimates as required by standing orders without any consultation with the sector, and hope that these issues can be clarified.

Yours sincerely

Ben Arnold
Policy Adviser

Extract from HEW's submission to the Children Young People & Education Committee:

37. The costs for the sector may largely depend on the further regulations and exercise of the HEFCW's powers. There will undoubtedly be an additional administrative cost for both HEFCW and universities anticipated as result of this Bill. Since the new regulatory framework would rely on enforcement through legal action we would also expect there to be significant costs for the Council and sector arising from increased litigation.
38. The Bill includes several new powers to allow the Welsh Government and/or HEFCW to determine and enforce spending requirements. These are not limited to income derived from the Funding Council, or additional income received from regulated fees. Where powers are used to direct university spending which does not relate to the use of grant or regulated fee income, this would represent additional cost to the sector which must be met from other sources. There is a clear danger that the Bill could be used to enforce policy on universities, at the expense of other activities, without proper financial support.
39. The new powers to direct income could also seriously damage the business and financial interests of universities. Investors, contractors and bankers need to be confident in universities ability to determine their own financial and corporate affairs. There is evidence in Wales to suggest that any questions regarding this could significantly damage universities ability to compete for business and research contracts and research council income, to enter partnerships and agreements, to obtain banking covenants or to attract investment more generally.
40. As it stands our advice is that the Bill and its subsequent regulations could lead to the breach of the charity duties of university governors, leading to their personal financial liability should their institution apply to become a regulated institution. The wider financial and reputational impact on universities would be critical to their continuation.
41. In the case of reclassification of universities to central government for purpose of national accounting we would expect there to be significant consequences for the DfES budget, which in turn would have serious implications for the sector – in particular surpluses and losses would become Welsh Government funds and would have to be managed within their overall budget. If universities lost NPISH status and became part of the public sector then it would also be necessary for the universities affected to conduct a comprehensive review of all their contracts and legal agreements with third parties. Particular areas of concern include: employment arrangements and collective employment agreements; banking covenants to ensure there is no

breach of covenant; and representations and warranties as to a university's legal status in commercial agreements, and joint ventures.

42. It is not clear whether these have been identified or included in the costs set out in the Explanatory Memorandum. In general, we note that we do not understand the costs presented in the Explanatory Memorandum. We are not aware of any engagement with universities in their preparation. We are uncertain whether HEFCW has been appropriately involved but would regard HEFCW as the most appropriate body to comment on the costs as shown. We would welcome the Finance Committee scrutinizing these further to clarify what these costs refer to and how they were calculated in producing a Stage 1 report.