

Cyflwynwyd yr ymateb hwn i ymchwiliad y [Pwyllgor Plant, Pobl Ifanc ac Addysg](#) i egwyddorion cyffredinol y [Bil Addysg Drydyddol ac Ymchwil \(Cymru\)](#)

This response was submitted to the [Children, Young People and Education Committee](#) inquiry into the general principles of the [Tertiary Education and Research \(Wales\) Bill](#)

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Ymateb gan: Colegau Cymru

Response from: Colleges Wales



Senedd Children, Young People and Education Committee
consultation: Tertiary Education and Research (Wales) Bill

17 December 2021

ColegauCymru is a post-compulsory education charity; we promote the public benefit of post-compulsory education and learning. We also convene the further education (FE) Principals' Forum, which represents Further Education colleges and FE institutions (FEIs) in Wales. ColegauCymru also undertakes research, policy development and provides practical support to FE colleges in Wales, including on work-based learning (WBL) which is a key part of FE college activity.

ColegauCymru welcomes the opportunity to submit evidence to the Senedd's Children, Young People and Education Committee on the Tertiary Education and Research (Wales) Bill.

We were also pleased to give oral evidence to the Committee on 2 December 2021.

Introduction

ColegauCymru is in broad support of the proposed Bill. In submitting our response to the Committee, we are seeking to strengthen the provisions within the draft and ensure that by full and proper scrutiny, post compulsory education in Wales is well-governed, resilient and able to meet the challenges that lie ahead.

The introduction of the concept of post compulsory education is novel in as much as it does not have a clear comparator within the UK or indeed further afield. Although there are some similarities, it is important to note that the Further Education sector is materially different to both schools and universities. Also, the functions of providers regulated by the proposed Bill already cross over and complement each other as they seek to serve the citizens of Wales.

The proposed Tertiary Education and Research (Wales) Bill must be set in the context of the Further and Higher Education (Governance and Information) (Wales) Act 2014 which enhanced the autonomy and decision-making abilities of further education institutions (FEIs) in Wales. It removed and modified existing legislative controls on further education corporations, giving them greater control over their own governance and dissolution arrangements, recognising that the sector is best placed to determine how the needs of their learners and local communities should be met. The principle, that the FE sector knows, engages and responds to the needs of its communities, must be preserved in any changes to the post-16 sector and their status as charitable bodies respected and protected.

Likewise, ColegauCymru notes that universities whether established by statute or via the Privy Council are independent institutions. Schools, including sixth forms as well as FE and HE bodies, and each part of the post compulsory education sector is distinct from government whilst founded and funded to service the public or contracted to deliver services on its behalf. Without the acknowledgement of this vital separation, there is a risk that education becomes politicised.

ColegauCymru is of the view that this important separation should be remembered and respected by the Committee and subsequently by the Senedd in its deliberations.

Our initial response, submitted on 17 November 2021 and included at Annex A (below), contains the main issues we wish to raise in relation to the Bill as currently drafted. We remain concerned about the timetable for both passing this legislation and establishing the Commission. To create the change envisaged for post-16 education under the draft Bill, a holistic staffing structure, which brings together the historical silos of different areas of post appears very ambitious. The expectation that the Commission will be fully operational by 2023-24 is a very challenging one.

ColegauCymru would also like to make the following additional points:

1. Collaboration and funding – more detail is needed on the circumstances in which consent is needed from the Commission in order for providers to fund collaboration with external partners. It is unreasonable and inefficient to require Commission approval for any and all funding transfers, especially when providers seek to respond to fast-changing circumstances. The example of HGV training was noted by Grwp Llandrillo Menai in the CYPE evidence session on 2 December 2021. While financial accountability is important, any processes for agreeing funding for collaboration must be simple, quick and effective.

2. Arm's length body – the Bill still leaves a significant amount of control with Welsh ministers, for example the option of approving the Commission's strategic plan with modifications. Welsh Ministers are obliged to consult the Commission before they modify its plan but there is no compulsion for both sides to agree. In order for the Commission to be credible, it needs to be independent and trusted.

To help stakeholders better understand the purpose of the powers retained by Welsh Government, it would be beneficial if the Minister, in either future scrutiny or via plenary, could set out the distinction between the role of the Welsh Ministers and that of the Commission and importantly how any differences of opinion may be resolved. ColegauCymru does not object in principle to the retention of power. Rather we believe that this aspect of the relationship requires greater clarity and scrutiny.

3. Data-sharing – provisions around data sharing in the Bill should be re-examined and principles of good information governance taken into account to ensure that only data that needs to be requested and held is included. Issues of potential commercial confidentiality and sensitivity

around apprenticeship provision and private training providers, for instance, should be clearly thought through.

4. Charity law – while there does not seem to be an issue for Further Education colleges in this area, there may be potential consequences, possibly more complicated for those Colegau Cymru members who are FE colleges and part of Higher Education groups. The Welsh Government should investigate this more closely, highlighting any potential problems or conflicts, including those raised by other Committee witnesses in order for FE colleges to respond appropriately.

5. Equality and composition of the Commission – it is vital that the Commission’s chair, deputy chair and members reflect a range of backgrounds and protected characteristics as far as possible. Credibility and trust will come not only from the professional experience and knowledge of members but also the balance of personal perspectives.

6. Adult learning and accredited/non-accredited learning - greater clarity on the Bill’s intentions with regard to accredited and non-accredited learning and progression pathways in the adult learning sector is needed.

Annex A – Initial response

Key issues

Colegau Cymru is concerned about the short timescale allocated to consultation on the general principles of the Bill and considers a little over six weeks to be extremely short given the lengthy and complex nature of the Bill, explanatory notes and associated documents.

However, we would like to make the initial six points below.

1. Nine strategic duties must be integrated throughout the Bill

1.1 Government, in seeking to exercise its democratic mandate, must have due regard to the fact that all powers claimed, retained or devolved to an arms-length body, must be reasonable and proportionate and related to its stated aims. The aims are articulated in the draft Bill by virtue of Commission's strategic duties as outlined in sections two through ten. However, the Committee should consider the extent to which the powers set out in the Bill meet the strategic duties placed on the organisation and the extent to which the intention of Welsh Ministers to secure and retain certain powers is reasonable and proportionate.

1.2 The inclusion of the nine strategic duties is a welcome amendment to the original draft but it is essential to ensure that this change is taken into account throughout the entirety of the Bill. For instance, the first (if not primary) duty of the Commission is to promote life-long learning and a variety of levels, types and modes of study. The Committee should consider if the Bill as drafted provides sufficient assurance that this variety can be achieved and whether (or not) it will confirm the existing level, types and modes of study.

1.3 The strategic duty on equality is critical in terms of developing a fairer and more equal Wales and needs to build on recent Welsh Government work on anti-racism and LGBTQ+.

1.4 If there are powers conferred on the Commission or upon Welsh Ministers within the Bill that do not clearly relate back to one of the nine specific strategic duties, their relevance to what the Commission and the government is trying to achieve should be questioned.

2. Parity between expectations and requirements placed on post-16 sector institutions, in particular sixth forms and further education / further education and higher education

2.1 Any relevant requirements placed on Further Education must equally apply to school sixth forms and higher education as appropriate.

2.2 For example, expectations on planning and links or direction from Regional Skills Partnerships should not be more onerous to the Further Education sector than they are for the Higher Education sector.

2.3 We have seen some shift towards greater parity in the second iteration of the Bill: the inclusion of school sixth forms in obligations under the Learner Engagement Code is welcome. However, it is unreasonable to exempt school sixth forms from the requirement of developing Learner Protection Plans. Points 16.6 and 16.7 of the Explanatory Memorandum make clear the inadequacy of such an approach – noting the focus on data, that “[c]urrently, these arrangements do not cover transfers between schools and other types of learning provider” and that while headteachers must transfer the pupil’s educational record to the responsible person should they request this, this does not include the results of any assessment of the pupil’s achievements.

2.4 There is a stark contrast between the Welsh Government approach to the transition between primary and secondary schools recently consulted on as part of the arrangements for the new Curriculum for Wales. There we see a focus beyond data that takes in continuity of learning and continued appropriate and supported progression but also a new emphasis on good health and well-being. Relevant elements of this approach could be reflected in Learner Protection Plans.

2.5 Given the emphasis on discretion and proportionality in relation to Learner Protection Plans in the Explanatory Memorandum, it is absolutely right that school sixth forms and Further Education providers should be treated equitably rather than entrenching an inadequate two tier system that disadvantages learners seeking to transfer from schools to other institutions and places additional burdens on the Further Education sector but exempts schools. Point 16.40 notes the potential unknown costs of developing Learner Protection Plans and it is inequitable to expect FE to shoulder these if schools are exempt.

2.6 The focus on parity across post-16 institutions must include properly addressing the issue of nugatory competition for learners (both between school sixth forms and FE, and FE and HE in terms of “Year zero” courses) which often still leads to inefficiency, not providing the best opportunities for learners and not obtaining best value for the public purse.

3. A stronger duty to consult and demonstrate consultation

3.1 Many parts of the Bill refer to consultations by the Commission or Welsh Ministers on codes, plans or further regulations, often referring to ‘appropriate persons’. Institutions are currently participating in the scrutiny of a bill where much of the detail of any potential impact will be determined by statutory instruments under negative procedure. Colegau Cymru would like to see

greater emphasis on meaningful consultation and a requirement to demonstrate that genuine efforts have been made to consult ‘appropriate persons’ both on the draft Bill and also on the initial instruments that will define its impact.

3.2 In the exercise of its powers, or that of Ministers, while the appropriate consultees may differ depending on the specific focus, consultation cannot be merely the publication of documents in the public domain with a deadline for response. The duty to consult needs to be enhanced, spelt out and be clear. Positive representation from the relevant parts of the post-16 sector and beyond, where necessary, is essential and consideration should be given to ensuring this in both the legislation and via the relevant statutory instruments.

3.3 This issue of consultation and representation will extend to the constitution and make up of the Commission itself and its associated committees where representation from the Further Education sector must be equal to that of other sectors, including Higher Education, to ensure that the essential voice of the FE sector is not marginalised or lost.

4. Inspection and Quality Assurance arrangements

The Bill as currently drafted has a fairly stark separation between quality assurance and inspection arrangements between Higher and Further Education. Given the overlap between these areas and the likely evolution in provision to provide the ‘variety of levels, types and modes of study’, Colegau Cymru would like to see greater consideration of this area and clarity on responsibilities. For example, where does adult learning, including adult community learning, fit within the Bill’s quality assurance plans, given this takes place in a variety of settings and at different levels. Likewise, there is the issue of “Year zero” or “foundation” Level 3 provision offered by some universities: this takes place in a HE setting but is a level of provision usually, equivalent to A Level which is inspected by Estyn.

5. Provision of Level 4 and Level 5 technical and vocational qualifications

Despite the duty to promote ‘variety of levels, types and modes of study’ the Bill does not address the issue of developing and awarding qualifications. Feedback from the Further Education sector and an increasing body of research shows demand for technical and vocational qualifications at Levels 4 and 5. As part of the duty of “Contributing to a sustainable and innovative economy”, it is vital that the Commission is able to address the issue of provision of technical and vocational qualifications and enables the FE sector to deliver more efficiently and effectively in this sphere. This may be further developed via additional regulations but needs to be addressed within the context of the scrutiny of the Bill.

6. Education and training for “eligible persons over 19”

While allowing for the possibility of prioritising providing education and training for ‘eligible persons over 19’ as a separate category of over-19s, more information is needed about the practical change Welsh Government envisages. This means a better idea of plans, what such regulations determining eligibility will look like, and some indications of preferred or likely timescales. ColegauCymru understands that the Wales Centre for Public Policy is undertaking work on this area and looks forward to both the publication of this research and the Welsh Government’s response.

Conclusion

ColegauCymru welcomes the introduction of the Bill and is keen to support its passage. Our support is based on the need for adequate and effective scrutiny, the preservation of the separation between government and education establishments and securing the means by which the Commission may discharge its strategic duties. We are grateful for the opportunity to contribute to the hearings held by the Committee.

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