

Tertiary Education and Research (Wales) Bill

Committee Stage 1 Report

March 2022



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Tertiary Education and Research (Wales) Bill

Committee Stage 1 Report

March 2022



About the Committee

The Committee was established on 23 June 2021. Its remit can be found at:
www.senedd.wales/SeneddChildren

Current Committee membership:



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Welsh Labour



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Chair's foreword

The Tertiary Education and Research (Wales) Bill is the first Welsh Government Bill to be introduced in this Senedd. As well as getting to grips with the detail of the Bill, it has helped us broaden our understanding of some of the challenges and opportunities facing the post compulsory education sector. We will continue to consider some of these broader issues over this Senedd term.

Through our evidence gathering we have been reminded of the important role this sector plays. The learning, training and research undertaken changes lives, and drives a healthy and more equal economy. It is hoped that this Bill will help bring greater coherence and a clearer strategic vision to the sector. This in turn will make the sector more responsive and able to face the multiple complex challenges, such as climate change, and post pandemic recovery, all sections of society in Wales are grappling with.

We support the general principles of the Bill, and are recommending these are agreed by the Senedd. The report sets out a number of amendments we would like to see made to the Bill, which we believe will strengthen and improve it. We look forward to the Minister's response to these recommendations.

Our scrutiny of the Bill could not have happened without the time and expertise of all those who provided written and oral evidence. Bill scrutiny rarely gives stakeholders much time to provide their views. This was a particular challenge on a Bill of this size and high degree of technicality. I would like to thank all those who shared their views and have helped shaped our scrutiny on this important Bill.

Jayne Bryant MS

Chair

Recommendations

Recommendation 1. That the Senedd agrees the general principles of the Tertiary Education and Research (Wales) Bill.....Page 30

Recommendation 2. That the Explanatory Memorandum is updated to list the policy objectives for the Bill and how the Bill's provisions seeks to meet them.....Page 30

Recommendation 3. That the Welsh Government sets out clearly to the Committee, the Commission and the wider sector how they define parity of esteem, what delivering on parity of esteem would look like, and how they expect the post 16 sector to achieve this.....Page 31

Recommendation 4. That the Welsh Government publish a revised Equality Impact Assessment which takes account of the issues raised by the EHRC before Stage 2 proceedings.Page 31

Recommendation 5. That the Minister provides more information to the Committee and Universities Wales on why they believe the Internal Market Act does not have any implication for this Bill.....Page 32

Recommendation 6. That the Minister brings forward amendments to Schedule 1 at Stage 2 to place a requirement on Welsh Ministers that they must have regard to the need to ensure that the Board (as a whole) reflects the breadth of education provision and research, and the diversity of Wales. This should encompass the appointment of all members to the Commission including associate members.Page 55

Recommendation 7. That the Minister brings forward amendments at Stage 2 to increase the worker and learner representation on the Commission, and to make explicit in the Explanatory Memorandum the Government's expectation that the Commission should be seeking to go beyond the minimum set out in the legislation.....Page 56

Recommendation 8. That the Minister brings forward amendments at Stage 2 to give the learner and worker associate members voting rights on the Commission.....Page 56

Recommendation 9. That the Welsh Government ensures that the appointment process for the Chair of the Research and Innovation Committee includes a pre-appointment process by the relevant Senedd committee.....Page 56

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Recommendation 15. That the Minister brings forward amendments at Stage 2 to strengthen the duty on the Commission to promote Welsh medium tertiary education to reflect the ambition of Cymraeg 2050 and the Commission’s important role in helping to deliver on one million Welsh speakers. The duty on the Commission must be stronger and go further than “meeting reasonable demand.”. Page 58

Recommendation 16. That the Minister brings forward amendments at Stage 2 so that the strategic duty to promote tertiary education through the medium of Welsh is broadened to include the promotion of research through the Welsh medium. Page 58

Recommendation 17. That the Minister brings forward amendments at Stage 2 to set out how the Commission will work collaboratively and strategically with Coleg Cymraeg on the planning and delivery of Welsh medium provision, to avoid the potential for duplication.
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Recommendation 18. That the Minister brings forward amendments at Stage 2 to add a strategic duty for the Commission to promote the learner voice. Page 59

Recommendation 19. That the Minister brings forward amendments at Stage 2 to add a social partnership strategic duty for the Commission..... Page 60

- Recommendation 20.** That the Minister brings forward amendments at Stage 2 to amend section 13 of the Bill to ensure that the Commission’s strategic plan cannot be changed without the agreement of the Commission. Page 60
- Recommendation 21.** That the Minister brings forward amendments at Stage 2 to amend section 19 of the Bill to ensure that any general directions issued by Welsh Ministers are made by Order subject to the negative procedure..... Page 61
- Recommendation 22.** That the Minister bring forward amendments at Stage 2 to provide a more consistent and wide ranging approach to the equal opportunity and widening access duties for all parts of the post 16 sector, and not just those providers who have to register. Page 83
- Recommendation 23.** That the Minister outline either in the Stage 1 debate or in writing ahead of the Stage 1 debate how the Welsh Government would manage any changes to the role and function of Estyn in relation to this Bill’s provisions. Page 83
- Recommendation 24.** That the Minister provides absolute clarity as to whether a national body for adult community learning will be established. Page 107
- Recommendation 25.** That the Minister tables amendments at Stage 2 to put a balanced funding duty on the face of the Bill. Page 108
- Recommendation 26.** That the Minister tables amendments at Stage 2 to place duties on the Commission to publish the details of at least its funding allocations, funding methodologies, funding formulas, and financial outturns, as well as a duty to be transparent in its funding decisions..... Page 108
- Recommendation 27.** That amendments are tabled at Stage 2 to enable the Commission to provide research and innovation fund to a limited range of non-registered bodies. Page 109
- Recommendation 28.** That the Minister brings forward amendments at Stage 2 to make a clear distinction between Welsh Ministers powers to directly fund tertiary education providers to deliver employability provision and the Commission’s broader funding powers. Page 109
- Recommendation 29.** That the Minister brings forward amendments at Stage 2 to provide additional safeguards to ensure that any plans brought forward by the Commission for changes to sixth form provision does not have a detrimental impact on Welsh medium provision or provision within a religious school setting. Page 110

Recommendation 30. That the Minister brings forward amendments at Stage 2 to delete section 105 and sets out a different approach to managing due diligence when funding is passed onto third parties. Page 110

Recommendation 31. That the Welsh Government commissions a review of apprenticeship framework development which considers the wider context beyond the Commission. Page 114

Recommendation 32. That the Minister brings forward amendments at Stage 2 to ensure that learner protection plans must take account of student / learner welfare and ensuring students can continue to study through the medium of Welsh. Page 124

Recommendation 33. That the Minister brings forward amendments at Stage 2 to section 126 so that Welsh Ministers can only request information from the Commission when it directly relates to Welsh Ministers' functions. Page 127

Recommendation 34. That the Minister brings forward amendments at Stage 2 to explicitly require the consent of, or to act on the request of a governing body of a higher education corporation to being dissolved. Page 134

Recommendation 35. That the Minister brings forward an amendment at Stage 2 to broaden the definition to include adult community learning, in line with the definition in the Explanatory Notes. Page 135

Recommendation 36. That the Welsh Government publish draft regulations on:

- Categories of registration (section 23(2))
- Conditions of registration (sections 25(3); 31(1); 32)
- Designation of other providers of tertiary education (section 81(4))
- Securing and funding tertiary education (section 91(3); 91(7)(b))
- Apprenticeships (section 107(4))
- Open University (section 140(1))

before the Stage 2 proceedings. Page 136

Recommendation 37. That the Minister provides greater clarity either as part of the Stage 1 debate or in writing before Stage 2 commences on how the Bill will align with the 2018 Act and will support appropriate provision and support for learners/students with additional learning needs..... Page 140

1. Introduction

The Bill was introduced in November 2021. We have gathered both written and oral evidence to inform our scrutiny. Other Senedd Committees have also conducted scrutiny on the financial and constitutional aspects of the Bill.

1. On 1 November 2021, Jeremy Miles MS, Minister for Education and Welsh Language (“the Minister”) introduced the **Tertiary Education and Research (Wales) Bill** (“the Bill”) and accompanying **Explanatory Memorandum**. The **Statement of Policy intent** for secondary legislation, direction making powers and guidance was published on 2 November 2021.

2. On 2 November 2021, the Minister made an oral statement in Plenary, outlining that the Bill will establish a commission for tertiary education and research, whilst dissolving the Higher Education Funding Council for Wales (“HEFCW”). In doing this, the Minister said that:

“For the first time in Welsh legislation, we will bring the following sectors together in one place: Wales's higher and further education, school sixth forms maintained by local authorities, apprenticeships, adult community learning, as well as responsibility for research and innovation. In the Bill, we set out nine strategic duties for the commission. Together, they provide the long-term strategic planning framework for what this valuable and varied sector needs to deliver, as we recover, renew and reform.”¹

3. At its meeting on 5 October 2021, the Business Committee agreed, in accordance with Standing Order 26.9, to refer the Bill to our Committee to consider and report on the general principles. On 12 October 2021, the Business Committee agreed that we should report to the Senedd by 4 March 2022.²

¹ Plenary, Record of Proceedings, 2 November 2020, paragraph 146

² Business Committee, Timetable for consideration: the Tertiary Education and Research (Wales) Bill, 2 November 2021

The Committee's approach

4. We considered our approach to Stage 1 scrutiny on 4 November 2021. We agreed the following terms of reference for this work.

To consider:

- The general principles of the Tertiary Education and Research (Wales) Bill and the need for legislation to deliver the stated policy intention.
- In coming to a view on this you may wish to consider addressing the individual Parts of the Bill:
 - i. Part 1: Strategic framework for tertiary education and research
 - ii. Part 2: Registration and regulation of tertiary education providers
 - iii. Part 3: Securing and funding tertiary education and research
 - iv. Part 4: Apprenticeships
 - v. Part 5: Learner protection, complaints procedures and learner engagement
 - vi. Part 6: Information, advice and guidance
 - vii. Part 7: Miscellaneous and general
- Any potential barriers to the implementation of the Bill's provisions and whether the Bill takes account of them (including commencement and the United Kingdom Internal Market Act)
- The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum);
- Whether there are any unintended consequences arising from the Bill; and
- The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum).

5. We held an **open written consultation** between 5 November 2021 to December 17 2021. We received 46 written responses. (See details in Annex 1.) We held 11 oral evidence sessions between 18 November 2021 and 13 January 2021. (See details in Annex 2.) We also received a technical briefing from Welsh Government officials on 4 November 2021.

6. We would like to thank everybody who took time to respond to the consultation either in writing or by giving oral evidence. We appreciate there was a tight timeframe available to provide detailed responses on a broad and lengthy Bill, but the evidence we have received has been invaluable in our scrutiny.

7. As aspects of the Bill cut across committee remits, we wrote to the Economy, Trade and Rural Affairs (“ETRA”) Committee asking if they wanted to be involved in any aspects of our Stage 1 scrutiny.³ A member of the ETRA Committee attended the technical briefing, and the Committee asked to be kept updated with progress on our scrutiny.⁴

Other Committee’s consideration of the Bill

8. The Finance Committee took oral evidence from the Minister on 24 November 2021. Following this session, the Finance Committee **wrote** requesting further information from the Minister. The Minister **responded** on 22 December. The Finance Committee published their report on 4 March 2022.

9. The Legislation, Justice and Constitution Committee took oral evidence from the Minister on 6 December 2021. They subsequently **wrote** to the Minister requesting further information. The Minister **responded** on 18 January 2022. The Legislation, Justice and Constitution Committee published their report on 1 March 2022.

³ Letter from Chair, Children, Young People and Education Committee (CYPE) to Chair, Economy, Trade and Rural Affairs Committee, 19 October 2020

⁴ Letter from Chair, ETRA Committee to Chair, CYPE Committee, 1 December 2020

2. Background to the Bill

The Bill has had a long gestation, starting with the Towards 2030 report in 2016, followed by a number of Welsh Government consultations, including on a draft Bill. The introduction of the Bill was delayed by the pandemic, and the delay led to further changes to the Bill.

Background to the Bill

10. In 2015, the Welsh Government commissioned Professor Ellen Hazelkorn to review the oversight of post-compulsory education in Wales. This review included a ‘special reference’ to the future role and function of HEFCW. In Professor Hazelkorn’s final report “Towards 2030” she stated that new legislation would be “required” and that it should be brought forward “as expeditiously and efficiently as possible to avoid any unnecessary delay, policy impasse, and disruption and distraction” to the sector.⁵

11. The Welsh Government identified two primary recommendations to take forward from this review:

- Develop an overarching vision for the post-compulsory education and training (PCET) sector;
- Establish a new arms-length body responsible for the oversight, strategic direction and leadership of the sector.⁶

12. In June 2017, the Welsh Government set out its high level proposals for reform of the PCET sector, in the **White Paper “Public Good and a Prosperous Wales – Building a reformed PCET system”**. The Explanatory Memorandum to the Bill states that the responses

⁵ Professor Ellen Hazelkorn, *Towards 2030, Chapter 6*, 10 March 2016

⁶ Welsh Government, *Tertiary Education and Research (Wales) Bill Explanatory Memorandum*, Paragraph 4.2, 1 November 2020

from this consultation suggested learning providers, institutions and learners “broadly supported” the reform proposals.⁷

13. In April 2018, the Welsh Government launched a consultation “**Public Good and a Prosperous Wales – the next steps**” with details of how the reform of the PCET system could be done. The Explanatory Memorandum states that there was broad support for the reform principles, but outlines the areas where respondents felt there was a need for further thinking.⁸

The draft Bill

14. The Explanatory Memorandum states that due to the technical nature of the Bill, and its limited public appeal there was not initially going to be a consultation on a draft Bill. However, the postponement to introducing the Bill as a result of the COVID-19 pandemic, provided an opportunity to consult on a draft Bill.⁹

15. Our predecessor Committee in the fifth Senedd, as part of its post legislative scrutiny of the Higher Education (Wales) Act 2015, called for a draft Bill to be published.¹⁰

16. The **draft Bill** was published on 14 July 2020, followed by the publication of the Welsh Government’s vision for the PCET sector in November 2020. As a result of this consultation and because of “ongoing policy development”, a number of changes have been made to the Bill as introduced. Table 4.1 of the Explanatory Memorandum details these changes.¹¹

17. Stakeholders indicated to us, that they were broadly supportive with the changes that had been made to the Bill as a result of the consultation. Details of these are contained in the relevant chapters and sections throughout the report.

⁷ Welsh Government, Tertiary Education and Research (Wales) Bill Explanatory Memorandum, Paragraph 4.8, 1 November 2020

⁸ Welsh Government, Tertiary Education and Research (Wales) Bill Explanatory Memorandum, Paragraphs 4.12–4.13, 1 November 2020

⁹ Welsh Government, Tertiary Education and Research (Wales) Bill Explanatory Memorandum, Paragraphs 4.14, 1 November 2020

¹⁰ Children, Young People and Education Committee, Post legislative scrutiny of the Higher Education (Wales) Act 2015, paragraph 140, December 2019

¹¹ Welsh Government, Tertiary Education and Research (Wales) Bill Explanatory Memorandum, Table 4.1, 1 November 2020

3. General principles and the need for legislation

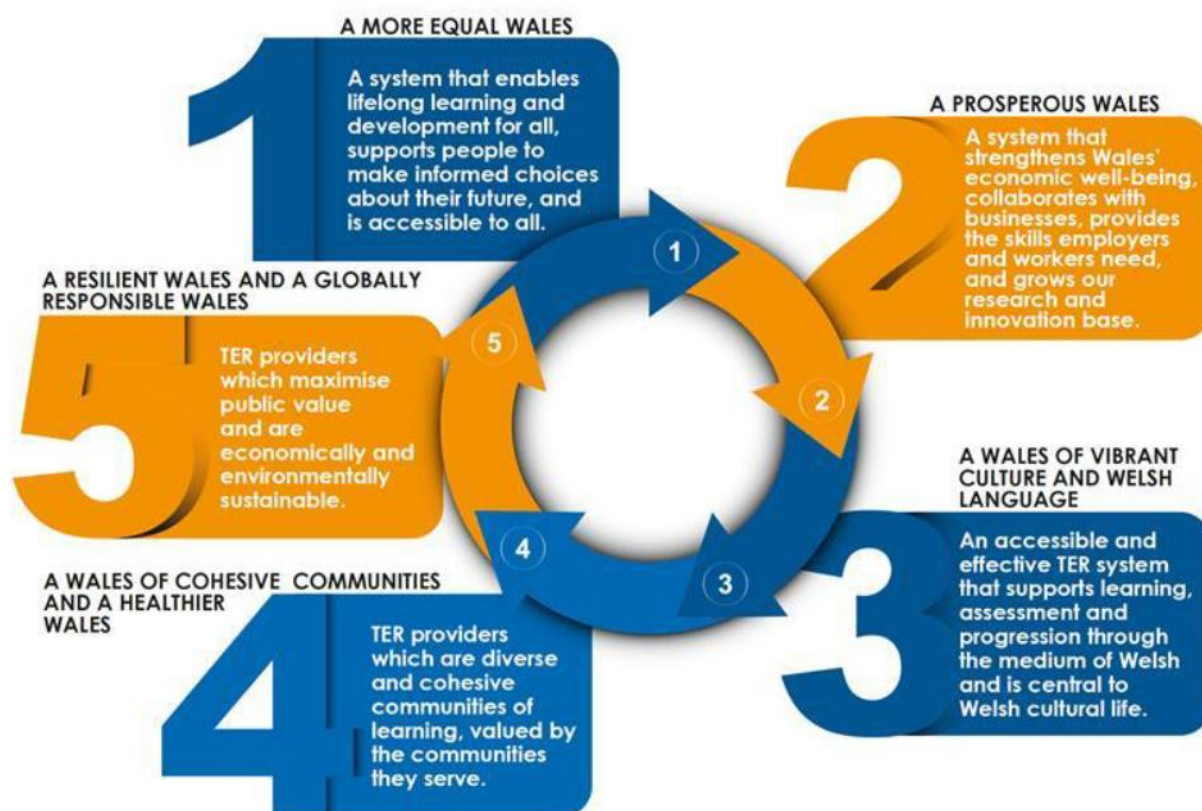
The Bill has broad general support from stakeholders, but all identified areas for amendment. We welcome the Bill and agree with the general principles, subject to further changes being brought forward.

Policy objectives

18. The policy objectives the Bill is intended to help achieve are not clearly set out in the Explanatory Memorandum. However the Explanatory Memorandum does set out:

- That the Bill creates a Welsh Government sponsored body (“the Commission”) and that it is the policy intent for the Commission to be able to deal with the previously separate post 16 education sectors ‘as a single sector.’
- That the Welsh Government has drafted a non-statutory vision for the tertiary education sector. It has described the establishment of the Commission as a ‘key aspect’ of delivering that vision, stating that the Commission’s strategic duties are aligned to it. The Explanatory Memorandum also sets out the five high level goals of the Commission (which differ in many respects from the goals in the vision) and 11 high level objectives for the Commission.

19. The Explanatory Memorandum includes an infographic setting out the Welsh Government’s vision.



Stated High level goals of the Commission

- A system that strengthens Wales' economic well-being and foundations, encourages enterprise, responds to employer needs and enables a relevant and growing research base.
- A system that enables learning, assessment and progression through the medium of Welsh.
- A learner focused system that promotes lifelong learning and delivers effective choice and guidance, and equitable access to appropriate learning pathways and opportunities.
- A high resilience, integrated, sustainable and responsive system that promotes collaboration, excellence; and regulates with autonomy.
- A system supported by collaborative and engaged providers that enhance the communities they serve.¹²

¹² Welsh Government, Tertiary Education and Research (Wales) Bill Explanatory Memorandum, Paragraph 7.6, 1 November 2020

Stated High level objectives of the Commission

For the system to:

- Be responsive to employer needs and address skill gaps.
- Improve research institutions ranking (currently defined by the Research Excellence Framework ranking), reputation and research funding.
- Improve apprenticeship opportunities.
- Raise standards for all; improving learning participation, progression, performance and outcomes.
- Improve the curriculum offer.
- Improve the learner experience and capture the learner voice.
- Improve the reputation, agility, and direction of tertiary education and training.
- Introduce an improved, compliant and effective data collection, analysis and dissemination system that ensures timely, accessible and relevant information about tertiary education in Wales is available for all who need it.
- Reduce unnecessary course duplication and competition.
- Improve the coherence and consistency of financial and performance monitoring, and quality assurance.
- Improve the community use of tertiary education facilities and greater connectivity.¹³

20. There were mixed views as to how clear the policy objectives are in the Bill. Universities Wales and the Chairs of Universities Wales said that the aims and objectives of the legislation were “clear”¹⁴. Estyn said that they believed the introduction of the strategic duties in Part 1 of the Bill had made it “much clearer” how the Bill will achieve the policy objectives.¹⁵

¹³ Welsh Government, *Tertiary Education and Research (Wales) Bill Explanatory Memorandum*, Paragraph 7.7, 1 November 2020

¹⁴ *Children, Young People and Education Committee*, 2 December 2021, *Record of Proceedings* paragraph 124

¹⁵ *Children, Young People and Education Committee*, 9 December 2021, *Record of Proceedings* paragraph 299

21. However, some felt more clarity was needed. Colegau Cymru said that “some of the policy intention could be made clearer ... but the specifics about what we’re trying to achieve and where we’re trying to go – I think some of that could be sharpened up a little.”¹⁶ The National Training Federation for Wales (“NTfW”) said they were “unsure” what issues the establishment of the Commission would address.¹⁷

22. The Minister told us that including the nine strategic duties on the face of the Bill would “enshrine in law” for the first time the Welsh Government’s vision for the sector. As a result he believed the Bill “meets those fundamental objectives.”¹⁸

Need for legislation

23. Most of the evidence we gathered was in support of the need of legislation to drive through the Towards 2030 agenda. HEFCW said you can “get so far” by establishing clear expectations but to “really capture that prize ... new, harmonised and simplified statutory arrangements are required.”¹⁹ The Open University in Wales believed the Bill was “an opportunity” to ensure lifelong learning was a “realistic prospect for everyone in Wales ...” and noted the benefits this brings to individuals and the wider economy and society.²⁰ The Learned Society of Wales believed the Bill will provide “a strong and sustainable framework” for the sector to face future challenges.²¹

24. The NTfW said they did not believe there was a need for legislation to meet some of the policy objectives.²² While the NASUWT had serious concerns about the establishment of the Commission which they believed represented “the formation of a quasi-autonomous non-governmental organisation (quango) lacking in democratic accountability.”²³

25. The Minister, when asked why new legislation was needed, identified the strengths within the current legislative framework, but said that the Bill was a process to build and develop on these. He said that the “fundamental differences ... can’t be achieved simply by tinkering around the edges.”. He believed the Bill strikes the balance of keeping the elements that currently work

¹⁶ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 246

¹⁷ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 7

¹⁸ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 100

¹⁹ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 251

²⁰ Written evidence, TER 12, The Open University in Wales, paragraph 1.4

²¹ Written evidence, TER 25, Learned Society of Wales, paragraph 1.2

²² Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 7

²³ Written evidence, TER 04, NASUWT, paragraph 8

whilst also “moving us forward and helping the sector to move forward.”²⁴. He went on to describe it as “a Bill of firsts ... in many, many ways.”²⁵.

Parity of esteem

26. The Minister in his initial evidence to us talked about delivering on parity of esteem, believing that the Bill provides the tools to do this. He said:

*“The fact that both vocational and academic providers are included within the same strategic umbrella of policy auspices ... will encourage that, will encourage more collaboration, less competition, and that is good for parity of esteem ... at the other end, it’s about having a common view of quality across all parts of the sector, and that, I think, will also drive parity of esteem ...”*²⁶

27. Adult Learning Wales told us that cracking the nut of parity of esteem was “very hard ...” but the Commission was an opportunity to deliver on it.²⁷ They also said that “we’re never going to have complete parity of esteem, but we’ll be much closer to it than we are now.”²⁸. The NTfW told us that it will “take some extremely strong leadership” within the Commission to deliver on “fairness across the whole piece.”²⁹.

28. NUS Wales hoped that bringing all post 16 education under one commission would lead to greater parity of esteem and increased choice and opportunities for students.³⁰

29. Unison Cymru while supportive of bringing together the post 16 education sector, said there will be challenges in “overcoming the long-term and deeply rooted perceptions that favour higher education.”. They believed that establishing the Commission would go some way to addressing these issues but that it was not sufficient on its own and that it “must be addressed proactively.”³¹. Adult Community Learning agreed that tackling parity of esteem was a “very long job” and that it’s not just for the post 16 sector to address but for the “whole school system, school teachers, the press, the media, the public, and so on ...”³².

²⁴ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings 105

²⁵ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings 109

²⁶ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings 102

²⁷ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 91

²⁸ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 44

²⁹ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 41

³⁰ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 374

³¹ Written evidence, TER 08, Unison Cymru, paragraphs 7 and 11

³² Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 146

30. Colegau Cymru said that the Bill laid the foundations for parity of esteem, but it will be on the implementation and “evolution of the system” that will actually bring about delivery. They did not believe the Bill could be the “miracle cure” because it is an issue that is “embedded in some of our really deep social attitudes towards training and education.”. They said that:

“... if we can have a Bill that creates a structure that removes those silos and creates a uniform sector, they we’ve got a better opportunity of promoting parity of esteem.”³³

31. NEU Cymru were also concerned that the different requirements and expectations on different set of providers meant that it would be a “maintenance of the status quo.”³⁴. Colegau Cymru said that any focus on parity should look to properly address “the issue of nugatory competition for learners ...”³⁵. They cited concerns about some specific provisions of the Bill, including Learner Protections Plans as an example. They disagreed with the exemption for sixth forms, saying this approach would be lead to FE and sixth forms being treated inequitably and would entrench “an inadequate two tier system”.³⁶ We look at the issue of Learner Protection Plans in more detail in Chapter 10.

32. HEFCW suggested that the different approaches taken in the Bill to quality assurance in the higher education (HE) and further education (FE) sectors could undermine the concept of a single sector and parity of esteem.³⁷ While the NTfW suggested the different approaches taken to academic freedom and freedom of speech between HE and FE “only serve to bring one element of post-16 provision against each other ...”³⁸.

33. Cardiff and Vale College called for the Commission to address a lack of parity, stating that A Levels and universities are “not always the best option but the guidance that children receive at school is not balanced.”³⁹. Adult Learning Wales expressed concerns that in the “sweeping changes” adult community learning could be “lost”. They wanted to see it given “just and equitable status.”⁴⁰.

³³ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 265.](#)

³⁴ Written evidence, [TER 14, National Education Union Cymru](#)

³⁵ Written evidence, [TER 31 Colegau Cymru, Annex A, paragraph 2.6](#)

³⁶ Written evidence, [TER 31 Colegau Cymru, Annex A, paragraph 2.5](#)

³⁷ Written evidence, [TER 32 HEFCW, paragraph 2.5](#)

³⁸ Committee Paper, [CYPE\(6\)-07-21, Paper 1, National Training Federation for Wales](#)

³⁹ Written evidence, [TER 33 Cardiff and Vale College](#)

⁴⁰ Written evidence, [TER 29, Adult Learning Wales, paragraph 9](#)

Evidence base

34. The Explanatory Memorandum states the Regulatory Impact Assessment which outlines the “best estimate of the costs and benefits of the Bill” based on the available evidence was informed by a range of engagement and evidence. This includes a report commissioned from Alma Economics “Costs benefits analysis of education reforms: A Rapid Evidence Assessment”.⁴¹ The report is appended to the Explanatory Memorandum as Appendix B.

35. We note that this review seems to include some misunderstandings on the nature of the proposed reforms, for example it states that by bringing the sector under one regulatory body, this will eliminate “confusion” around the “overlapping roles of a number of organisations.”. It then details a range of organisations, some of whom, like HEFCW will find their roles and responsibilities being taken over by the Commission, but other organisations are included which remain non-devolved, such as the UK Government Department for Education and Skills or are not under government control such as the QAA or Ser Cymru (a research programme).⁴²

Implementation

36. The establishment of a new body such as the Commission is a large and complex job. The Minister has highlighted on numerous occasions the size and breadth of responsibilities that the Commission will have. In our first evidence session, he told us that excluding the NHS, this will be the biggest body “outside the Welsh Government ... in terms of the magnitude of the budget and the impact.”⁴³. It is therefore not surprising that we have taken a range of evidence about the importance of effective implementation of the legislation, in particular around the establishment of the new Commission.

37. The Minister told us in November 2021 that it was his intention to establish the Commission in 2023, with implementation to follow in 2024 / 2025. He also said that implementation would need to be “staged.”⁴⁴. Annex A of the Regulatory Impact Assessment sets out a number of assumptions on which the costings have been identified, including that the organisation would exist from April 2023.⁴⁵ It also states that the Interim Chief Executive would

⁴¹ Welsh Government, *Tertiary Education and Research (Wales) Bill Explanatory Memorandum*, Paragraph 19.3 November 2020

⁴² Welsh Government, *Tertiary Education and Research (Wales) Bill Explanatory Memorandum*, Appendix B November 2020

⁴³ Children Young People and Education Committee, 18 November 2021, *Record of Proceedings* paragraph 142

⁴⁴ Children Young People and Education Committee, 18 November 2021, *Record of Proceedings* paragraph 123

⁴⁵ Welsh Government, *Tertiary Education and Research (Wales) Bill Explanatory Memorandum*, Appendix A, paragraph 5, November 2020

be in post from 1 February 2022 to 31 December 2022, with the substantive post holder in post from 1 January 2023.⁴⁶ This timeline for this appears to have changed, as the Minister told us in November 2021 that he hoped to advertise this post “in the first half of next year.”⁴⁷

38. It was helpful to hear from the recent experience of HEFCW in implementing the Higher Education (Wales) Act 2015, and what lessons could be learnt for implementation of this Bill. They told us that it took two and a half years to put in place the systems, and a further two years before the full process was established.⁴⁸ The work started in March 2015, and by 2019, the first fee and access plans were being monitored. Based on their experience they felt that the timescales for the Commission as set out when the Bill was introduced were “challenging” and that it would take “much longer” for all the Commission’s functions to be fully implemented.⁴⁹

39. We heard the timetable for implementation described by Estyn as “ambitious”⁵⁰ and by Colegau Cymru,⁵¹ Universities Wales,⁵² and Swansea University⁵³ all separately as “challenging”.

40. HEFCW agreed with the broader approach being taken by the Government, in establishing the Commission so that the Commission staff can start to develop the regulatory machinery. They also highlighted the need for “transitional” arrangements so that HEFCW can continue funding and regulating whilst the Commission is established.⁵⁴ Others including the Learned Society of Wales⁵⁵ agreed with this staged approach, whilst Estyn highlighted the need for a “continued period of reflection and review of the new operating arrangements ...”⁵⁶.

41. Stakeholders, such as Universities Wales told us that it was important to “not compromise” on the implementation. They did not want to see a “big-bang rush job”. They also wanted to see some of the existing HEFCW infrastructure used to help “get a little bit ahead” of the establishment of the Commission.⁵⁷ Something supported by HEFCW, who believed that use of

⁴⁶ Welsh Government, Tertiary Education and Research (Wales) Bill Explanatory Memorandum, Appendix A, paragraphs 35–36 November 2020

⁴⁷ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 122

⁴⁸ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 263

⁴⁹ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 266

⁵⁰ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 321

⁵¹ Written evidence, TER 31 Colegau Cymru

⁵² Written evidence, TER 36, Universities Wales and the Chairs of Universities Wales, paragraph 1.6

⁵³ Written evidence, TER 39, Swansea University

⁵⁴ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 266

⁵⁵ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 183

⁵⁶ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 321

⁵⁷ Children, Young People and Education Committee 2 December 2021, Record of Proceedings paragraph 145

existing arrangements and systems would “minimise complexity” and risks from the transition.⁵⁸ Colegau Cymru did not want to see that in a rush to move too quickly that existing silos are simply moved into the Commission. They felt that the time was needed to “create a structure that is much more flexible and breaks down those silos.”⁵⁹

42. Most respondents acknowledged it would take time for the new Commission to “bed” in. Adult Community Learning said it may take “two, three, four years” until everything is in place.⁶⁰

43. HEFCW did highlight the on-going uncertainty for its staff and the impact this could have on implementation. They reminded us that their staff have lived with the likelihood of HEFCW being dissolved since 2016, and that this level of uncertainty has meant that staff are “now looking at other opportunities for employment, with some already being appointed to new positions elsewhere.”. This loss of expertise poses a barrier to both successful implementation of the Bill, as well as the ongoing work of HEFCW which will continue to function until 2024.⁶¹

44. The NTfW wanted more clarity on how the implementation will fit with the current apprenticeship contractual framework. It is currently year 1 of the new framework agreement. Therefore, they would like “more clarity in terms of where the commission contract holders are in that brand-new framework agreement, how we fit in with the commission, and at what time, and how do our existing commissions stand, going forward.”⁶²

45. The Minister acknowledged the challenges of transitioning from one organisation to another. He outlined that the Welsh Government has taken an approach of “partnership and inclusivity” in developing the legislation and implementation plans, with staff having a voice and being “directly included” in the process and not just being engaged with. Both HEFCW and Welsh Government staff have been involved in project work, and secondment arrangements have been in place. All the recognised unions at both organisations have been members of the “relevant delivery boards.”⁶³

46. There were further developments on the timeframe for implementation during our consideration of the Bill. At the final evidence session in January 2022, the Minister said that whilst it was still his intention to establish the Commission in 2023, based on the views of

⁵⁸ Written evidence, [TER 32 HEFCW, paragraph 2.14](#)

⁵⁹ [Children, Young People and Education Committee 2 December 2021, Record of Proceedings paragraph 256](#)

⁶⁰ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 19](#)

⁶¹ Written evidence, [TER 32 HEFCW, paragraph 2.14](#)

⁶² [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 17](#)

⁶³ [Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraph 27](#)

stakeholders, he had decided to reschedule the closing of HEFCW from April 2023, to “at the latest until early 2024.”. He believed that this “short period of overlap” would enhance “the outcome of a smooth and orderly transition to the new commission.”⁶⁴.

47. We explored with the Minister how the two organisations would co-exist, and he outlined that there would have always been an “overlap”, and this co-existence would help with a “seamless soft landing”. He explained that this period would be managed in a range of different ways, including legislation, staffing, and other operational matters.⁶⁵

Equality Impact Assessment

48. On introduction of the Bill, the Welsh Government published the Equality Impact Assessment (“EIA”).⁶⁶ The Equality and Human Rights Commission have concerns that it does not meet the legislative requirements of an EIA. They also said it does not contain “adequate information” on the impact of the Bill across “protected groups of the whole of the proposed changes.”. Other concerns they listed included:

“There appears to be a lack of evidence supporting the equality impact assessment. Most sections contain little or no supporting evidence referencing only legal equality duties that the new Commission will be subject to. ...

With such a complex and wide ranging piece of legislation, covering, further education, higher education, adult education and apprenticeships, it is unclear how and whether the EIA relates to the breadth of the Bill and the scope of its measures.”⁶⁷

49. The EHRC goes on to note that the EIA in many places says it will have no impact on people with protected characteristics:

“The published EIA appears to focus on not discriminating, and not having a detrimental impact on those with the protected characteristics. In most cases it is stated that the Bill will have ‘neither a positive nor negative impact’ and for others it says there is no evidence to suggest an impact or that the Bill will ‘impact directly’ on protected characteristic groups. The EIA appears to almost omit any consideration of how the proposed changes will meet the aims of

⁶⁴ Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraph 11.

⁶⁵ Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraph 39.

⁶⁶ Welsh Government, Tertiary Education and Research (Wales) Bill, Equality Impact Assessment, 1 November 2020

⁶⁷ Written evidence, TER 24, Equality and Human Rights Commission

the general duty i.e. to a) eliminate unlawful discrimination, harassment and victimisation; b) advance equality of opportunity between different groups and c) foster good relations between different groups."⁶⁸

50. They conclude that such lack of evidence or emphasis on the aims of the general duty seems "incongruent" with the strategic duty in the Bill on promoting equality of opportunity.⁶⁹

51. The Minister accepted the EHRC's evidence and said that the Government "could and should" include more information in the EIA. He highlighted that much of the necessary evidence had been collected and the work undertaken but that there was a "a strong argument" that this could be "better reflected" in the EIA. He said that officials have been tasked to see what improvements can be made to the EIA.⁷⁰ The Minister subsequently confirmed that an amended EIA would be published ahead of Stage 2. He also confirmed that the Commission will be a listed body under the Equality Act 2010.⁷¹

Impact of the Internal Market Act

52. Universities Wales and the Chairs of Universities Wales said it was "not yet clear" the extent to which the Bill's provisions were "fully compatible" with the UK Internal Market Act 2020. They added that it was unclear more broadly how far the 2020 Act applies to universities. Whilst the UK Government has confirmed that tuition fees are not covered by the Act, Universities Wales noted that it is less clear "how university services more generally would interact with the Act ...". Whilst they were clear that the current regulatory framework means universities are not affected by the Act, they were concerned that any substantive changes to regulatory regimes could change this because "it has the potential to be directly discriminatory for purposes of IMA 2020."⁷²

53. They outlined the areas they felt needed further investigation. They noted that these were all areas they had listed in response to the draft Bill:

"The regulatory requirements in the Bill are seemingly not confined to regulating the exercise of functions 'of a public nature' for purposes of IMA 2020 on our current best interpretation and it is difficult to see how we could be confident that the regulation only applies to functions of a public nature

⁶⁸ Written evidence, [TER 24, Equality and Human Rights Commission](#)

⁶⁹ Written evidence, [TER 24, Equality and Human Rights Commission](#)

⁷⁰ [Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraph 66](#)

⁷¹ [Letter from the Minister for Education and Welsh Language, 4 February 2021, paragraph 4.2](#)

⁷² Written evidence, [TER 36, Universities Wales and the Chairs of Universities Wales, paragraphs 13.1-13.5](#)

until IMA's application to universities has been clarified as indicated by the UK Government.

- *For instance, differences in constitutional requirements and new information powers are not confined to 'public functions' only.*
- *The regulation of courses applies to all courses, irrespective of whether they are publicly funded or not.*
- *The Welsh Ministers and, in certain instances, the Commission can impose terms and conditions of funding which are not related to the use of public funds.*
- *In the Bill, both the Commission and the Welsh Government have powers to set registration conditions that do not relate specifically to public functions.”⁷³*

54. They also noted that at the time of submitting the consultation response, there was a legal challenge to the Act on-going. They were concerned that the higher education sector could become the “test case in this area.”⁷⁴ Cardiff University shared these concerns and said that proceeding with the Bill “before the position of universities has been clarified by the UK Government through regulations, and before the legislation has been future-proofed against the Act, could involve very considerable risks” for higher education regulation in Wales.⁷⁵

55. The Welsh Government’s view was that “there isn’t an implication ... and it doesn’t affect the actual drafting of the Bill, as is, at the moment.”⁷⁶

Committee view

56. There has been clear support for the broad policy direction of the Bill from across the range of post 16 sectors. We note there has been a great deal of consultation through the lifespan of the policy development. Following each consultation there have been changes made to reflect issues and concerns raised. Whilst there are areas within the Bill where we would like to see changes made, we support the general principles of the Bill.

⁷³ Written evidence, [TER 36, Universities Wales and the Chairs of Universities Wales, paragraph 13.4](#)

⁷⁴ Written evidence, [TER 36, Universities Wales and the Chairs of Universities Wales, paragraph 13.5](#)

⁷⁵ Written evidence, [TER 22 Cardiff University, paragraph 6.3](#)

⁷⁶ [Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 116](#)

57. Throughout our scrutiny of the Bill the Minister has made it clear he is open to changing the Bill in some key areas. We welcome this open approach, and look forward to a positive response to the recommendations we make throughout the report.

Recommendation 1. That the Senedd agrees the general principles of the Tertiary Education and Research (Wales) Bill.

Policy objectives

58. It would be helpful for scrutiny of the Bill, and any future post legislative scrutiny or evaluation for there to be a clearer setting out of the policy objectives of the Bill, and how the provisions of the Bill will seek to meet these. Throughout our scrutiny, it has been clear that on much the Minister is open minded and willing to engage with potential changes to the Bill. However, the flipside of this, is that the Minister has more space to be flexible as the vision is not yet clearly defined or if it is, it has not been clearly communicated. Within the Explanatory Memorandum, there are five high level goals of the Commission, followed by the objectives and of course the nine strategic duties as laid out in Part 1 of the Bill. We feel that it would be helpful for the policy objectives to be clearly laid out within the Explanatory Memorandum.

Recommendation 2. That the Explanatory Memorandum is updated to list the policy objectives for the Bill and how the Bill's provisions seeks to meet them.

Parity of esteem

59. We are sympathetic to the views expressed from some that the different approaches taken in places to the Bill could undermine the delivery of parity of esteem. It is already a very difficult challenge to deal with the entrenched attitudes which hamper full parity of esteem. Yet by treating different sectors in different ways in certain places in the Bill, for example in relation to quality assurance; academic and institutional autonomy; and equality of opportunity requirements, there is a risk that this will become an even bigger challenge. We acknowledge that this is a much wider issue than can be solved with this individual Bill. But as we outlined in paragraphs 30-33, there are provisions within the Bill which could lead to delivering on parity of esteem more difficult.

60. Through the report, we identify some places where we would like to see changes made to the Bill. If these changes are made, we think they will help improve the Bill's ability to support delivery of parity of esteem. But this is also fundamentally an issue about the clarity of vision that the Welsh Government has for the PCET sector. We believe the Welsh Government should articulate clearly what parity of esteem means in practice, and the expectations they have for the whole post 16 sector to deliver on this.

Recommendation 3. That the Welsh Government sets out clearly to the Committee, the Commission and the wider sector how they define parity of esteem, what delivering on parity of esteem would look like, and how they expect the post 16 sector to achieve this.

Evidence base

61. We note the errors made in the ALMA Economics report. In future, the Welsh Government should ensure that whoever they are commissioning for research has a full understanding of the complexities around devolution.

Implementation

62. This is a Bill which has been a long time in development. We acknowledge that there is a clear appetite from across the sector to get the changes implemented. It is also clear that it is very ambitious timetable for implementation, which is why we welcome the announcement by the Minister to extend the lifespan of HEFCW to help with the transitional arrangements.

63. We note that there may be legal ambiguities that may arise from the period of cross over between HEFCW and the Commission. We hope that the roles of each body will be clearly defined during the transition period, and that there is clear communication to all the sectors affected during the transition period. This will ensure that any difficulties are identified and solutions found as early as possible so that the transition does not affect the delivery of services and support.

Equality Impact Assessment

64. We welcome the Minister's commitment to review and revise the EIA in light of the EHRC's observations. EIA's are important tools for the Senedd and wider stakeholders to understand the impact of policies and legislation. We believe it would be useful for the revised EIA to be published before Stage 2 proceedings.

Recommendation 4. That the Welsh Government publish a revised Equality Impact Assessment which takes account of the issues raised by the EHRC before Stage 2 proceedings.

Impact of the Internal Market Act

65. We note the concerns raised by Universities Wales about the potential impact of the Internal Market Act 2020. Since we took evidence, the Court of Appeal (see paragraph 54) has ruled that it will not decide on the impact of the Act on competence in abstract, and that a Senedd Bill would be required to decide the issue. The Welsh Government are seeking permission to appeal to the Supreme Court. In light of these on-going proceedings, and the lack of information from the Welsh Government on their analysis of the impact, we can

understand the nervousness of the sector. We think the Welsh Government should provide more detailed information as to why it is unconcerned about the potential impact of the Internal Market Act 2020 on this Bill.

Recommendation 5. That the Minister provides more information to the Committee and Universities Wales on why they believe the Internal Market Act does not have any implication for this Bill.

4. Part 1: Strategic Framework for Tertiary Education and Research

Part 1 establishes the Commission and sets the strategic framework for the organisation. There is broad support for the introduction of the strategic duties, although there are calls for additional duties. There are also calls for further changes to the Commission membership.

66. Part 1 establishes the Commission and the strategic framework for its operation. The Commission will exercise new functions created by the Bill, the existing statutory functions of HEFCW and many existing functions of Welsh Ministers in relation to further education and training. It abolishes HEFCW, and also makes provision for the transfer of property and staff to the Commission.

67. The Commission will be accountable to the Welsh Ministers and the Welsh Ministers will be able to influence the Commission – the Bill provides that the Commission must have regard to any guidance issued by the Welsh Ministers and gives the Welsh Ministers the power to issue general directions to the Commission about the exercise of their functions. Welsh Ministers may also confer supplementary functions on it. Welsh Ministers also appoint Commission Members including the Chair and they may modify the strategic plan of the Commission subject only to consulting it.

The Commission

68. Section 1 of the Bill establishes the Commission and introduces Schedule 1. Schedule 1 includes provisions for a range of operational aspects of the Commission. Our scrutiny has focused on issues around the Board Membership.

69. Schedule 1 sets out that the Commission membership will be a Chair, a deputy Chair and between 4 and 14 ordinary members which will all be appointed by Welsh Ministers. In addition, there will be associate members, who will not have voting rights, as below:

- at least two members representing the tertiary education sector workforce (appointed by Welsh Ministers);

- one person to represent Commission staff (who must be a Member of a Commission recognised trade union and is appointed by a statutory committee of the Commission); and
- at least one person representing learners (appointed by Welsh Ministers).

70. The Commission will be required to have a:

- Research and Innovation Committee, chaired by the Deputy Chair;
- Quality Committee, to advise on quality of tertiary education; and
- Staff Member Committee, to appoint the associate member representing Commission staff.

71. The Commission will have the power to establish any other committees as it sees fit.

72. The first Chief Executive will be appointed by Welsh Ministers for up to four years, with subsequent chief executive appointments being made by the Commission, but with the approval of Welsh Ministers.

73. We received a range of views on the composition of the Commission's membership. Most of those expressing views wanted to see as broad a membership as possible, to reflect the full range and spectrum of activity covered by the Commission. The WLGA acknowledged that there was a tension to ensuring a broad range of experience within the Commission's membership whilst also ensuring the membership number was manageable. However, they felt that due to the "huge remit" it was "necessary" that there was sufficient "oversight and capacity" amongst the members to "propose, scrutinise, and properly consider and respond to relevant matters."⁷⁷.

74. Organisations including the WLGA,⁷⁸ Ceredigion County Council,⁷⁹ and Colegau Cymru⁸⁰ emphasised the importance of ensuring that the membership reflects the full range of diversity of Wales. This needs to include diversity of geography, settings, context, as well as ensuring the Commission is representative. Ceredigion County Council said "the board needs to be

⁷⁷ Written evidence, [TER 01, WLGA, paragraph 4](#).

⁷⁸ Written evidence, [TER 01, WLGA, paragraph 4](#).

⁷⁹ Written evidence, [TER 09, Ceredigion County Council](#).

⁸⁰ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 360](#)

representative of the individuals the CTER will be servicing.”⁸¹ Colegau Cymru said that “we can’t just hope for the best” in this regard.⁸²

75. All the unions who gave evidence had concerns about the level of staff representation on the Commission. Unison Cymru expressed concerns that the Commission would not reflect the breadth of staff experience within the post 16 sector, highlighting the “vastly distinct roles” in different sections of the sector. They believed the worker voice could not be “underestimated or undervalued.”⁸³ NASUWT said that it was important that the “significant differences” between schools and colleges were reflected on the Commission membership.⁸⁴ Ceredigion Council agreed stating that there should be “at least three” representatives to ensure that schools, FE and HE staff are represented.⁸⁵ NEU Cymru called for representatives from the following groups, who should not be chosen by Welsh Ministers:

- *“Lecturers in FE*
- *Managers in FE*
- *Teachers*
- *Support staff*
- *Learning Support staff.”*⁸⁶

76. The unions also questioned why associate members would not have voting rights. UCAC said as a result it was “not clear what the size and nature of their influence would be, so they don’t have a vote.”⁸⁷ They also shared these concerns for the learner associate members as well. (We cover the evidence on this point in paragraph 82.)

77. The importance of placing the learner voice at the heart of the Commission’s decision making was raised by a wide range of stakeholders. NUS Wales wanted to see an increase in student representation, to ensure that a wider range of student and learner voice is “given space at the table.”⁸⁸ They highlighted that:

⁸¹ Written evidence, [TER 09 Ceredigion County Council](#)

⁸² [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 361](#)

⁸³ Written evidence, [TER 08, Unison Cymru, paragraph 3](#)

⁸⁴ Written evidence, [TER 04, NASUWT, paragraph 19](#)

⁸⁵ Written evidence, [TER 09 Ceredigion County Council](#)

⁸⁶ Written evidence, [TER 14, National Education Union Cymru](#)

⁸⁷ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 408](#)

⁸⁸ Written paper, [CYPE\(6\)-07-21 Paper 6, NUS Wales](#)

*"A major principle of modern and progressive representation work is to get the people you represent in the room ... Students are the experts in their own experience, and they are best placed to represent themselves ... it can't be about us without us, so I don't think it can be truly learner focused without ... focus on student voice and representation within the commission."*⁸⁹

78. The WLGA called for two learner members.⁹⁰ The Quality Assurance Agency for Higher Education ("QAA") called for a commitment to student representation from HE and FE.⁹¹ Carmarthenshire County Council Education Department said that any board representation must understand the needs of all learners "and the challenges learners face in different settings ...". They also called for an increase in the number of learner members, as well as the importance of ensuring there is a structure beneath the Commission which can "capture learner voice in an inclusive way."⁹² The Children's Commissioner supported calls for at least two learner members, and wanted to see a requirement that one of the learner representatives was from the 16-19 cohort.⁹³ UCAC called for an increase in learner representation to ensure that there is a "diversity of representation across age groups and sectors."⁹⁴

79. Colegau Cymru said that in terms of having a learner focus:

*"... it's hard to divorce that from the people who will actually make up the commission."*⁹⁵

80. The Open University in Wales raised concerns about the risk of only having one associate member representing learners, saying it was reasonable to presume that NUS Wales would have this seat. However, OU students are not represented by NUS Wales, and the Open University is therefore concerned that the current arrangements would not allow the voice of part-time learners to be fully represented. (The Open University is the largest provider of part time undergraduate higher education in Wales.)⁹⁶ As we detailed in paragraph 88, the Minister went on to clarify that they will be "at least one" member representing learners.

⁸⁹ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 394

⁹⁰ Written evidence, TER 01, WLGA, paragraph 4

⁹¹ Written evidence, TER 16, Quality Assurance Agency for Higher Education, paragraph 21

⁹² Written evidence, TER 20, Carmarthenshire County Council Education Department, paragraphs 2.1 and 3.1

⁹³ Written evidence, TER 28, Children's Commissioner for Wales

⁹⁴ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 435

⁹⁵ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 360

⁹⁶ Written evidence, TER 12, The Open University in Wales, paragraphs 7.1-7.4

81. We specifically asked the QAA for their views on whether the Bill should mandate a learner member on the quality committee. They believed that students should be “involved in all governance bodies”. They talked about their own experiences of student engagement, and how it improved the sector as a whole.⁹⁷

82. We also heard evidence questioning why learner members of the Commission would be associate members and not have voting rights including from NUS Wales;⁹⁸ and UCAC⁹⁹ (see paragraph 76). NUS Wales highlighted that the plans within the Bill meant that the students “would be the only group” which would have less representation on the Commission than they currently have on HEFCW. They also highlighted that all universities and colleges in Wales have “at least two voting student governors on their board.”¹⁰⁰ We heard directly from institutions about their own arrangements, with NPTC Group of Colleges using their experience to say that involving the learner voice within their own structures has led to improvements in “strategic decision making”. They argue that the learners should not simply be “observers”.¹⁰¹

83. NUS Wales called for the Bill to be amended to include “something along the lines of a student voice committee”. They highlighted that the Bill provides committees for research, and quality. They believed that if the student voice is a priority for the Government this should be included.¹⁰²

84. In responding to our consultation, HEFCW have provided us with a set of proposed amendments to the Bill. In relation to membership of the Commission, they wanted to see the power for Welsh Ministers to appoint the Deputy Chair (who is also the Chair of the Research and Innovation Committee) removed. They did not believe there was a clear reason for this and that it could “risk the balance of expertise on the Commission’s Board.”¹⁰³ Cardiff University also questioned whether it was “necessary or desirable for a truly independent Commission” for this to be a ministerial appointment.¹⁰⁴

⁹⁷ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 394

⁹⁸ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraphs 388-389

⁹⁹ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraphs 408 and 435

¹⁰⁰ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 388

¹⁰¹ Written evidence, TER 15, NPTC Group of Colleges

¹⁰² Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 389

¹⁰³ Written evidence, TER 32 HEFCW, paragraph 2.4

¹⁰⁴ Written evidence, TER 22 Cardiff University, paragraph 3.2

85. We raised all these issues with the Minister in our final evidence session. On how the Commission can reflect the broad diversity of Wales, the Minister highlighted the work that is being done by the Public Bodies Unit to improve diversity on boards and ensure representation from “all sorts of communities in Wales..”. He wanted to see this work as a “core part” of appointments to the Commission, and that the Government would ensure that the recruitment processes “will encourage applications from and appointments of a diverse range of people.”¹⁰⁵.

86. In relation to workforce representation in the Commission, he said that the Bill provides for “a minimum” of two workforce representatives, and that this was not a “limit” so there was scope for there to be more representation. He described how he wanted the Commission’s functions to be “co-determined and co-developed” with a “culture of trust” that has a better understanding of the “needs” of the workforce in delivering tertiary education. He believed the workforce associate members would be “a very crucial role” in this.¹⁰⁶

87. He also made the broader point that the board will not be “comprised on the basis of a representative of individual parts of the sector.”. That as part of the public appointments process Ministers will have to ensure that the “breadth of the Board, represents the skills and experience across the full range of the commission’s proposed functions.”. He said it was therefore representative “in that broader sense.”¹⁰⁷.

88. We also sought clarity on some discrepancies between the text of the Bill and the information in the accompanying documentation, including whether there was only to be one learner associate member, or whether this was “at least one” such member. The Minister said the intention was “for there to be at least one associate learner member”. He has asked officials to look at these inconsistencies. He also said that the Commission could look to develop and establish additional processes for learner involvement (and worker engagement), which could enhance “even further” the learner and worker voice.¹⁰⁸

89. On the issue of learner and staff members having “associate” status and therefore not having voting rights, the Minister said that this approach meant that those most affected by the Commission’s work had a role in influencing board discussions and decisions. But it enabled a distance to be maintained between the “activities that are required as a member of the board

¹⁰⁵ [Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraph 42](#)

¹⁰⁶ [Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraph 16](#)

¹⁰⁷ [Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraph 23](#)

¹⁰⁸ [Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraph 18](#)

and the wider activities" as a representative body. He felt this would lead to a reduction of any potential conflict of interest. He added that:

*"... there may be some reluctance, perhaps, for representatives to, if you like, be bound under decisions of the commission that they themselves might not feel that their members would endorse ... that situation will arise from time to time, So it protects that relationship as well."*¹⁰⁹

Strategic duties

90. Sections 2-10 set out the Commission's strategic duties it must discharge:

- Promote life-long learning that offers a variety of levels, types and modes of study.
- Promote equality of opportunity including participation for under-represented groups and to reduce any attainment gap that arises from social, cultural, economic or organisational factors. The Bill defines under-represented groups for the purpose of this duty.
- Encourage participation in tertiary education by both learners and employers.
- Promote continuous improvement in tertiary education and research, including by having regard to the importance of ensuring that the tertiary education workforce is able to provide high quality education.
- Promote collaboration and coherence in tertiary education and research.
- Contribute to a sustainable and innovative economy. The Bill defines the term "sustainable economy".
- Promote tertiary education through the medium of Welsh. The Commission must encourage people to study through the medium of Welsh and take all reasonable steps to ensure the workforce can meet reasonable demand to study through the Welsh medium.
- Promote a civic mission by further and higher education institutions. "Civic mission" is defined.

¹⁰⁹ Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraphs 20-21

- Promote a global outlook including promoting opportunities in tertiary education for persons ordinarily resident in Wales to study, teach, or carry out research elsewhere in the world.

91. The Explanatory Memorandum states that the strategic duties are “intended to frame the strategic direction and focus of the Commission and support the delivery of its functions, providing clarity as to its purpose and overarching remit.”. It also states that the Commission must take these strategic duties into consideration in conjunction with the statement of priorities from Welsh Ministers in exercising its functions. The Welsh Government says that by placing the strategic duties on the face of the Bill it is “providing a consistent set of principles under which the Commission will operate.”¹¹⁰.

92. We received a range of evidence about the strategic duties; both in terms of calls to amend the existing ones, and to add to the strategic duties.

93. The introduction of the strategic duties was one of the more significant changes to the Bill as introduced compared to the draft Bill. They were broadly welcomed by stakeholders. Estyn told us that it meant it was “much clearer” how the Commission will take forward these areas, and that the single body with these set of strategic duties “has the potential to drive change.”¹¹¹. The WLGA said that the duties were a “consistent and clear statement of intent and direction” noting that they also resonate with the Well-Being of Future Generations (Wales) Act 2015, and are consistent with wider education reforms such as the new curriculum.¹¹² The Open University in Wales “strongly” welcomed them as “clear and comprehensive” which reflect the “breadth” that the sector offers to “learners and society at large.”¹¹³.

94. Although some felt that they duties could go further, with Cardiff University saying that the duties “are arguably limited in both scope and ambition.”. For example they suggested that promoting participation was not sufficient and no “guarantee of good student outcomes”. They called for an “amended duty which seeks to measure and improve the impact of education on students.”¹¹⁴.

¹¹⁰ Welsh Government, Tertiary Education and Research (Wales) Bill Explanatory Memorandum, Paragraphs 3.45-3.47, 1 November 2020

¹¹¹ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraphs 229-300

¹¹² Written evidence, TER.01.WLGA, paragraph 1

¹¹³ Written evidence, TER.12.The Open University in Wales, paragraph 3.1

¹¹⁴ Written evidence, TER.22.Cardiff University, paragraphs 2.1-2.2

Equality of opportunity duty

95. The Open University in Wales highlighted that the strategic duties needed to be future proofed and did not “freeze in things that may not be the future for further and higher education.”. They cited the equality duty which uses the term “to the end of courses” and that this could be seen to be “freezing in a kind of three-year undergraduate model ...” which is not the way in which the Open University is operating. They flagged the development of micro-credentials and other more flexible ways for people to learn.¹¹⁵

Continuous improvement duties

96. Estyn welcomed the strategic duty on continuous improvement, and how it recognises the “crucial role of the workforce ...”¹¹⁶. They called for a clearer linking to this duty in other places in the Bill. As an example they called for the Chapter heading in Part 2 to be changed from “Quality Assurance and Improving Quality” to “Quality Assurance and improving quality to support the strategic duty to promote continuous improvement.”¹¹⁷.

97. NUS Wales called for an amendment to this duty, they wanted to see the Commission “duty bound” to have specific regard to the “importance of the collective and individual voices of learners and students in the management and delivery of that provision.” They believed it would be a demonstration of a clear commitment to placing students at the “heart of the system” and would provide a strong steer for the Commission.¹¹⁸

Duties for collaboration and competitiveness

98. Universities Wales highlighted that whilst most of the strategic duties were very clear, they felt the duty to promote collaboration could be “more explicit.” They noted that the other strategic duties “have phrases that the commission should have regard to x, y and z” but that this was not as explicit on this particular strategic duty.¹¹⁹ Wrexham Glyndŵr University agreed, highlighting that this area was a “key rationale” for the recommendations in Towards 2030. They called for “explicit reference to regional partnerships and pathways being incentivised” for both students and local economies and a move away from “the sometimes haphazard and commercially driven franchise arrangements currently in place.”¹²⁰.

¹¹⁵ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 195](#)

¹¹⁶ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 301](#)

¹¹⁷ Written evidence, [TER.11.Estyn](#)

¹¹⁸ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 396](#)

¹¹⁹ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 126](#)

¹²⁰ Written evidence, [TER.05. Wrexham Glyndŵr University, paragraph 14](#)

99. Although HEFCW called more generally for this sort of level of detail to be removed from the strategic duties, saying that this should be done via guidance from Welsh Ministers to the Commission.¹²¹

100. HEFCW called for a new strategic duty for collaboration and competitiveness, alongside with the current duty on collaboration and coherence to be narrowed down to “focus only on education.”

“We believe that a duty on the Commission to take coherence into account when discharging its functions relating to research could risk preventing universities from being able to compete for external research funding.”¹²²

101. The Minister in direct response to this suggestion said that “there’s definitely an interesting discussion to be had about that” and that it was “one of the things I’m looking at ...”¹²³.

Strengthening research within the strategic duties

102. Universities Wales and the Chairs of Universities Wales felt that the Bill was “a bit light on its duties towards research and innovation.”¹²⁴. They wanted to see a strengthening of these duties. They were concerned that due to the broad scope of the Commission there was a “real risk” that research and innovation could get “overlooked.”. They said:

“... part of the reason why research needs to be perhaps better situated with a specific duty is the role we expect research and innovation to play in the future in terms of economy and society ... It’s seen as a key driver of future success ... it has to be absolutely central to the commission.”¹²⁵

103. The Learned Society of Wales acknowledged that whilst research is covered in the strategic duties, they called for a “particular strategic objective related to research ...”¹²⁶. They also made the link to strengthening the presence of research and innovation within the strategic duties and how this could provide further assurances to universities that they have the

¹²¹ Written evidence, TER 32 HEFCW, paragraph 2.19

¹²² Written evidence, TER 32 HEFCW, paragraph 2.8

¹²³ Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraph 81

¹²⁴ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 155

¹²⁵ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraphs 163-164

¹²⁶ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 162

“autonomy to pursue the research that they think is important.”¹²⁷. Although they felt that the duty on academic freedom not extending to research was “likely an oversight.”¹²⁸.

104. Universities Wales and the Chairs of Universities Wales cited how research and innovation has driven skills development, highlighting the long term work on semiconductors, where research and innovation was “now really driving development of skills and skills policy.”. They believed that ensuring research was not kept separate from the rest of the Commission was one of the “real potential benefits” of the establishment of the Commission. They believed that this was why there needed to be a specific duty on research and innovation.¹²⁹

105. At the end of our evidence gathering, the Minister outlined areas where he was considering further changes to the Bill, and he said he was “very alive to” the “questions to do with how research is represented in the Bill.”¹³⁰. He then went further saying there was a “debate” as to whether research on its own terms should be promoted and that this was the “kind of space that I’d be interested in looking at.”¹³¹.

Academic freedom and institutional autonomy

106. The Bill currently provides for academic freedom for HE providers and freedom of speech for HE staff outside of the strategic duties, in sections 15 and 16 of the Bill. These provisions require Welsh Ministers and the Commission to have regard to academic freedom and freedom of speech, but only relate to the HE sector. These provisions also define academic freedom and freedom of speech. There are also “safeguards” in other provisions of the Bill.

107. Universities Wales and the Chairs of Universities Wales called for a general duty to be added to the Bill on the institutional autonomy of universities. They noted that there is “equivalent legislation elsewhere in the UK”.¹³² They felt that such a duty would help “mitigate some of our wider concerns” as well as ensuring that Welsh institutions can “operate in the globally competitive way that ... brings benefits to all our communities ...”¹³³.

¹²⁷ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 279

¹²⁸ Written evidence, TER 25, Learned Society of Wales, paragraph 5.1

¹²⁹ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 165

¹³⁰ Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraph 10

¹³¹ Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraph 83

¹³² Higher Education and Research Act 2017

¹³³ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraphs 155-156

108. Cardiff Metropolitan University said that if the Bill is not strengthened in relation to both academic freedom and institutional autonomy, Wales “will be at risk of being disadvantaged in recruitment of world-class researchers, lecturers and ... students ...”. They also cited concerns that if they are unable to demonstrate both, they could be forced to withdraw as a signatory to the Observatory Magna Charta Universitatum. (This “encompasses principles of academic freedom and institutional autonomy as a guideline for good governance and self-understanding of universities.”)¹³⁴.

109. The Learned Society felt more could be done in the Bill to “emphasise the importance of academic freedom and autonomy ...”. They identified the potential risk that the Bill will “encourage greater control of what research is done in universities ...”. They told us that basic research “has to come from researchers themselves”, and that the Bill must allow for this sort of research alongside mission-led research.¹³⁵ Cardiff Metropolitan University shared concerns that the protections do not extend to research and innovation.¹³⁶ Whilst Cardiff University called for the definition to “explicitly include the freedom for providers to determine the pursuit and focus of research and the methodologies employed to carry it out.”¹³⁷.

110. UCU also raised the “potential economic damage” if an individual academic right to freedom is not included in the Bill. They called for the same definition as in the Irish Universities Act 1997, noting that whilst the Bill “adopted the formulation, they have done so in the form of a weaker right to freedom of speech.”. They said that as the Bill “describes ... an individual right to academic freedom, it should be defined as such.”. They also identified that the approach taken in this Bill differs from the Scottish approach, as well as the Irish.¹³⁸

111. The Minister set out that the Welsh Government believes “very strongly in the principle of academic freedom and free speech across the education system, and are generally assured that that is being upheld.”. He also said that UK higher and further education institutions, under the 1986 Education Act, “already have a duty to ensure that freedom of speech is secured for staff, students and speakers ...”¹³⁹. He asserted that the Government “strongly” believes in and supports the “principles of academic freedom and free speech across the education system, and

¹³⁴ Written evidence, [TER 21 Cardiff Metropolitan University, paragraphs 4.1-4.2](#)

¹³⁵ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 279](#)

¹³⁶ Written evidence, [TER 21 Cardiff Metropolitan University, paragraph 6.1](#)

¹³⁷ Written evidence, [TER 22 Cardiff University, paragraphs 4.2](#)

¹³⁸ Written evidence, [TER 23 UCU Wales](#)

¹³⁹ [Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 164](#)

are generally assured that such principles are well upheld in our universities and colleges.”. He said that section 16 of the Bill “underlines and reaffirms this commitment.”¹⁴⁰.

112. He explained that the rationale for not expanding freedom of speech and academic freedom to further education providers was because the HE and FE sectors operate “very differently”, with HE institutions having freedom to determine “content, the teaching, assessment, admissions, appointment of academic staff ...”. Where as in the FE sector, “there’s a curriculum, there are Government funding decisions, teaching staff are regulated by the Education Workforce Council.”. He therefore believe that “academic freedom would be slightly incongruous” with those approaches.¹⁴¹

113. When we queried why the Bill did not contain a general duty to protect institutional autonomy, the Minister said that the “starting point ... is that we have institutions that are autonomous. That’s the steady-state position ... thankfully ...”. He went onto add that section 15 provides some protections for academic freedom, whilst section 17 has protections around governance and charitable status. However, he had “heard” the evidence we had gathered and was “looking at what we can do to ... give a little bit more assurance to stakeholders in this space ...”¹⁴².

Promoting tertiary education through the Welsh medium

114. Whilst this duty was welcomed, some stakeholders raised concerns about the precise wording of the duty, including the use of “reasonable”.

115. The Coleg Cymraeg Cenedlaethol welcomed it, but queried whether the duty was “sufficiently robust to deliver the objectives?”. They said that the phrases “reasonable steps” and “reasonable demands” were slightly dated terms, and that there is a need to encourage demand for Welsh medium provision in “proactive way”. They called for the wording of this duty to be strengthened.¹⁴³ The Welsh Language Commissioner agreed and called these “historic” and “weak” concepts. He highlighted that this mindset is not the one present in the pre-16 sector, so was therefore “surprised” to see it in the Bill.¹⁴⁴

¹⁴⁰ Letter from the Minister for Education and Welsh Language to Chair, Children, Young People and Education Committee, paragraphs 16.1-16.3 4 February 2022

¹⁴¹ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 165

¹⁴² Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraphs 63-64

¹⁴³ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraphs 441-445

¹⁴⁴ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 474

116. The Welsh Language Commissioner said that because there has been limited tertiary education Welsh medium provision “there is a need to actively promote” Welsh medium provision, and that using the concept of “reasonable demand” “will lead to a lack of progress.”

“We therefore believe that the Bill’s wording should be amended in order to place a duty on the Commission to ensure that tertiary education provision enables all Welsh learners/students to continue to develop their Welsh language skills when transferring from statutory education to tertiary education. This is essential when considering the vision that the sector will contribute significantly to national and individual prosperity, as bilingual skills will increase the employability of individuals.”¹⁴⁵

117. Ceredigion County Council also called for this duty to be stronger, and said the aim should be “for parity for Welsh and English medium offers.”¹⁴⁶

118. Estyn called for the duty to be reworded to make it clearer and less open to “individual or organisational interpretation”. They wanted to see references to “reasonable” deleted and that the duty placed upon the Commission should be “to ensure that there is sufficient provision through the medium of Welsh”. In section 8(c) they called for the word “encourage” to be replaced with “require” and to “impose a statutory duty on the Commission to achieve these aims.”¹⁴⁷

119. UCAC highlighted that this duty only refers to education, and does not cover research. They called for “and research” to be added to the duty.¹⁴⁸ They said they thought this might just be “an oversight of some kind.”¹⁴⁹

120. The Minister said that it was not the Government’s ambition “just to meet the current demand.” He said he wanted the Commission to “respond to reasonable demand” which goes beyond dealing with actual demand. He said that he wanted to “push” the level of provision “more broadly and encourage more and more people within the system to take advantage of it ...”. He highlighted that one of the new priorities within the Cymraeg 2050 work is to further develop the Welsh medium offer in post 16 education, with additional funding being provided to Coleg Cymraeg Cenedlaethol, and their remit being expanded. He also cited the statement

¹⁴⁵ Written evidence, [TER.03.Welsh Language Commissioner, paragraph 2.2](#)

¹⁴⁶ Written evidence, [TER.09.Ceredigion County Council](#)

¹⁴⁷ Written evidence, [TER.11.Estyn](#)

¹⁴⁸ Written evidence, [TER.46.UCAC, paragraph 5.3](#)

¹⁴⁹ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 449](#)

of strategic priorities as another tool available to the Welsh Government to ensure that the Commission was responding to the “ambitions of the Welsh language policies.”¹⁵⁰

Relationship between the Commission and Coleg Cymraeg

121. The Welsh Language Commissioner said that it was crucial that there was “effective collaboration” between the Commission and Coleg Cymraeg Cenedlaethol and the National Centre for Learning Welsh. They also said that funding for these two organisations must be “sufficient” for them to achieve the objectives both of this Bill and the Cymraeg 2050 Strategy. They called for the relationship between the Commission, Coleg Cymraeg Cenedlaethol and the National Centre to be “clear” and for “clarity” on their roles and responsibilities. They said that whilst the Welsh expertise of the Coleg and Centre should be reinforced, Welsh language matters needed to be “mainstreamed” into the Commission’s work.¹⁵¹

122. The Coleg Cymraeg Cenedlaethol noted the Commission’s duties in relation to the Welsh language, and said that “most” of those duties are within the Coleg’s remit. They said there is still a “vital” need for a body like the Coleg and that “careful consideration” was needed as to whether the Bill and accompanying documentation took account of that.¹⁵² They also said there needed to be “greater clarity” on the areas where there would be joint responsibility.¹⁵³

123. The Coleg Cymraeg Cenedlaethol reflected on its current relationship with a range of statutory bodies, including the development of a Memorandum of Understanding with HEFCW. They believed that these effective working relationships will “provide a strong basis” for developing an effective relationship with the Commission. However, they did suggest that it would be “beneficial” to have “greater direct involvement” from the Coleg in “planning processes” and that funding responsibilities are devolved to the Coleg.¹⁵⁴

124. The Minister said that the relationship between these bodies was “at one level ... a complex area, but, on the other hand, it’s quite simple.”. He said the Coleg has a “specific role” highlighting that it is not an education provider but has an overview role. He said the Bill allows for the Commission to “be quite innovative” with how it works with these organisations.¹⁵⁵

¹⁵⁰ [Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraph 118](#)

¹⁵¹ Written evidence, [TER 03 Welsh Language Commissioner, paragraphs 3.1 and 3.3](#)

¹⁵² Written evidence, [TER 30 Coleg Cymraeg Cenedlaethol](#)

¹⁵³ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 445](#)

¹⁵⁴ Written evidence, [TER 30 Coleg Cymraeg Cenedlaethol](#)

¹⁵⁵ [Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraphs 120-122](#)

125. When we asked for further clarification on how this relationship would operate, the Minister said that the Bill will enable the Commission “to have the flexibility to work innovatively and effectively” with the Coleg and “other relevant bodies such as the National Centre for Learning Welsh.” He emphasised the “important and distinct” roles these organisations have, saying it would be “vital” for the Commission to engage with the Coleg and make use of their expertise.

“The expectation is that responsibilities for taking forward areas of work will be determined reflecting the remit and respective expertise of each organisation to avoid duplication of effort and maximise the impact of interventions. It is envisaged that strategic planning documents will be aligned where appropriate and robust arrangements should be put in place to measure the impact of interventions on increasing opportunities to learn through the medium of Welsh across the tertiary education sector.”¹⁵⁶

A learner voice duty

126. NUS Wales called for the student and learner voice to be added to the strategic duties and are disappointed it is not currently included. As drafted they did not believe the Bill’s “environment” was “sufficiently reflective of student and learner interests.”¹⁵⁷

127. We explore the issue of the learner voice more broadly in the Bill in Chapter 10.

A social partnership duty

128. There are calls for a strategic duty on social partnership and fair work to be added to the Bill. NEU Cymru said it would “underpin the Bill” and that it would “line up with all of the aims of this Bill.”¹⁵⁸ This was supported by UCAC,¹⁵⁹ UCU,¹⁶⁰ and Unison Cymru.¹⁶¹ UCAC said that some of their concerns about representation on the Board, which are outlined in paragraphs 75-76 would be allayed if the social partnership arrangements were strengthened.¹⁶²

¹⁵⁶ Letter from the Minister for Education and Welsh Language to Chair, Children, Young People and Education Committee, 4 February 2022, paragraphs 17.1-17.3

¹⁵⁷ Written paper, CYPE(6)-07-21 Paper 6, NUS Wales

¹⁵⁸ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 402

¹⁵⁹ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 408

¹⁶⁰ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 416

¹⁶¹ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 420

¹⁶² Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 434

129. Unison Cymru said that it was important for specific reference to be made in this Bill, rather than relying “solely” on the expected Social Partnership and Public Procurement (Wales) Bill. This is because there is no guarantee that the ambition for this Bill to become law “will be realised” and secondly because it would “reinforce” that social partnerships apply across the tertiary education sector.¹⁶³

130. The Minister told us that the Commission would have “a crucial role” in promoting social partnership and fair work. He said that the Commission would become subject to the Well-Being of Future Generations (Wales) Act 2015, and therefore would also become subject to the social partnership duty once that Bill has been passed. However he felt that it would be “counter-productive ... to legislate twice for the same duty, one in one Bill and one in another.” He was clear that Commission would be subject to the “full range of social partnership and fair work duties in that new legislation.”¹⁶⁴.

Arms-length principle

131. Under section 11 of the Bill, Welsh Ministers must publish a statement setting out their strategic priorities for tertiary education and research. They may amend it at any time. The Explanatory Memorandum states that it is “anticipated” that this statement will be based on a five year programme of government “reflecting the Welsh Government’s move to term of government business planning.”¹⁶⁵.

132. Sections 12-14 set out the arrangements for the Commission’s strategic plan. The Commission must prepare a strategic plan which sets out how it intends to discharge the strategic duties listed under sections 2-10, and how it will address the Welsh Ministers’ priorities published under section 11. Any strategic plan prepared by the Commission must be sent to Welsh Ministers for approval. Welsh Ministers have unilateral powers to modify the plan, however, they must consult with the Commission before they do this. The Explanatory Memorandum notes that “In the unlikely event of a resolution not being possible the Welsh Ministers could approve the plan with modification.”¹⁶⁶.

¹⁶³ Written evidence, [TER 08, Unison Cymru, paragraph 6](#)

¹⁶⁴ [Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraph 13-14](#)

¹⁶⁵ Welsh Government, [Tertiary Education and Research \(Wales\) Bill Explanatory Memorandum](#), Paragraph 3.69, 1 November 2020

¹⁶⁶ Welsh Government, [Tertiary Education and Research \(Wales\) Bill Explanatory Memorandum](#), Paragraph 3.75, 1 November 2020

133. The Commission must publish the approved strategic plan, and the Commission can review its strategic plan at any time.

134. There are a number of issues of concerns about Welsh Ministers' powers and "reach" within the Bill, as drafted, and what this could mean in practice. In relation to specific powers over institutions, we look at this in more detail in Chapters 7 (covering powers over FE institutions) 0 (Welsh Ministers funding powers); and 8 (covering Welsh Ministers powers to dissolve Higher Education Corporations). In this section we focus on the powers Welsh Ministers will have in relation to the Commission.

135. HEFCW had significant concerns about the nature of the relationship, and provided us with details of where they saw possible areas of concern (which we expand on below). They believed that the legislation as drafted meant that the model was actually "a bit hybrid" which is "not clean" and would cause operational challenges. They said there are tensions between the arm's length concept and "some of the clauses that actually prevent" the Commission from "owning that space ..." calling it a "slightly peculiar tension."¹⁶⁷

136. HEFCW said that the "point" of an arms-length organisation is to "provide the expertise for ... regulation, funding and oversight" of the post 16 sector, and that much of that is "detailed technical expertise.". They said that:

*"... there should be no need for the Government to work around the commission, or to work through the commission, in ways where there is no choice for the commission in how to respond. As an arm's-length body, the commission should be trusted to implement the Minister's remit and strategies approved by Government. It also allows the Government not to become embroiled in the operational issues ... respect for that expertise and a relationship built on trust are fundamental and spelt out explicitly in the Welsh Government's own framework ... it creates the space for the expertise to do what it needs to do, and for the Government to be comfortable that that's happening without having to do it itself."*¹⁶⁸

137. They argued that the arrangements in place such as the strategic plan, and the Commission's annual funding settlement would provide "sufficient line of sight ..." ¹⁶⁹. They were also concerned that the Commission's ability to discharge its duties could be affected because

¹⁶⁷ Children, Young People and Education Committee, 18 November 2021. Record of Proceedings paragraphs 286 and 288

¹⁶⁸ Children, Young People and Education Committee, 18 November 2021. Record of Proceedings paragraph 278

¹⁶⁹ Children, Young People and Education Committee, 18 November 2021. Record of Proceedings paragraph 279

of the level of ministerial powers leading to “confusion at the heart of its governance and accountability”. It could also hinder the Commission’s ability to be “agile” to respond to “evolving economic, social, cultural or environmental events.”¹⁷⁰.

138. Colegau Cymru said that the Bill did leave an “awful lot in the gift of Welsh Ministers” to direct the Commission. They wondered if the Government wanted to have these powers “in case of worst-case scenario” and suggested that there may be “too much fear about the exceptional circumstances and not enough about giving power to the commission” to enable it to work effectively with the sector.¹⁷¹ They also suggested that each time a power is retained with Ministers it undermines the Commission’s independence.¹⁷² Universities Wales and the Chairs of Universities Wales also accepted that a Government may need “exceptional power in exceptional circumstances” but that the “number of levers we’re seeing in this legislation suggests that this would be potentially more routine.”. They felt that this could lead to “confusion, duplication and, potentially, increased costs.”¹⁷³.

139. The NTfW described it as an arm’s length body where the Government has “a very tight grip on the hand ...”. Although they also noted that the Commission would be responsible for a considerable amount of funding, and that it was understandable there should be sufficient oversight. However, they felt that the Commission should be accountable to the Senedd which would make it “truly arm’s-length”.¹⁷⁴ Cardiff and Vale College agreed with this.¹⁷⁵

140. HEFCW were concerned about the powers for Welsh Ministers to modify the Commission’s strategic plan. They did not believe this would be “useful or sensible” highlighting that there is the possibility that the Government could change the plan to include things that the Commission “is actually incapable of delivering.”. They believed it is for the Commission to identify what is achievable, not the Government.¹⁷⁶ Concerns about this particular power were shared by:

- Universities Wales and the Chairs of Universities Wales;¹⁷⁷

¹⁷⁰ Written evidence, TER.32 HEFCW, paragraph 1.7.

¹⁷¹ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 311.

¹⁷² Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 318.

¹⁷³ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 169.

¹⁷⁴ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 67.

¹⁷⁵ Written evidence, TER.33 Cardiff and Vale College.

¹⁷⁶ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 284.

¹⁷⁷ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 168.

- Adult Learning Wales¹⁷⁸;
- UCU;¹⁷⁹
- The Open University in Wales¹⁸⁰;
- Council of Deans of Health Wales;¹⁸¹
- Cardiff University¹⁸²;
- Colegau Cymru;¹⁸³ and
- National Training Federation for Wales.¹⁸⁴

141. We note that whilst the NTfW highlighted this power as one which suggested the Commission was “not truly” arms-length, they also acknowledged that the Bill could provide a basis for the Commission to be “a really effective, powerful, accountable arms-length body.”¹⁸⁵.

142. Universities Wales and the Chairs of Universities Wales were particularly concerned about how this power could relate to the Government seeking changes in relation to research and innovation. They cited the AstraZeneca protein work at Cardiff, saying it would have been “quite tricky for a Minister to have actually realised that that piece of work needed doing.”. They said it was important to acknowledge that not one part of the sector has “all the ideas”.¹⁸⁶

143. Others including the Learned Society, David Notley and Estyn were more relaxed about the powers. The Learned Society said that it would come to the “practicalities” of how it would work but so far all the indications they had is that it would be a “consultative approach ...”¹⁸⁷. Estyn said that there should be “appropriate mechanisms” to ensure the Commission was supporting the “overall aims” of Welsh Ministers. They said “our experience over a good number

¹⁷⁸ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 70](#)

¹⁷⁹ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 465](#)

¹⁸⁰ Written evidence, [TER 12 The Open University in Wales, paragraphs 3.14-3.15](#)

¹⁸¹ Written evidence, [TER 10 Council of Deans of Health Wales](#)

¹⁸² Written evidence, [TER 22 Cardiff University, paragraph 4.1](#)

¹⁸³ Written evidence, [TER 31 Colegau Cymru](#)

¹⁸⁴ Committee Paper, [CYPE\(6\)-07-21, Paper 1, National Training Federation for Wales](#)

¹⁸⁵ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 68](#)

¹⁸⁶ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 218](#)

¹⁸⁷ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 262](#)

of years is that they've only ever been used when needed, and it hasn't led to Welsh Ministers being too involved in operational matters."¹⁸⁸.

144. Universities Wales and the Chairs of Universities Wales said one "key concern" was the powers within the Bill (in section 19) for Welsh Ministers to give general directions. They said that unlike the current powers, such directions would bypass Senedd scrutiny. They "would strongly recommend these provisions be amended to require such directions to be made by statutory instrument only.". This they noted would bring the provisions in line not just with existing legislation but also provisions across the UK.¹⁸⁹

145. HEFCW have proposed a number of amendments which they believe would address their concerns and protect the independence of the Commission. They include the removal of powers which enable Ministers to:

- unilaterally modify the Commission's strategic plan (section 13);
- direct the Commission to exercise its functions in relation to particular courses or areas of research (sections 19(4) and 19(5));
- fund further education and training at the same time and in the same way as the Commission – HEFCW consider that these powers should remain the preserve of the Commission (sections 94 to 100);
- give the Commission financial support directions – HEFCW believes that this power "muddies the water" in terms of respective responsibilities (section 106);
- specify requirements in relation to approved Welsh apprenticeships (section 111); and
- require the Commission to provide information to Ministers (section 126).¹⁹⁰

146. In relation to the extent of the arms-length nature of the relationship, the Minister said that this was a "familiar context" for the Government when establishing an arms-length body. He said if the Government wanted to keep the powers "we wouldn't be proposing the Bill.". He also said that:

"The creation of the new body is going to ensure that significant powers and responsibility and funding will be with the new body."

¹⁸⁸ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings, paragraph 338.

¹⁸⁹ Written evidence, TER 36, Universities Wales and the Chairs of Universities Wales, paragraph 10.

¹⁹⁰ Written evidence, TER 32 HEFCW, paragraph 2.4.

147. He cited the size and breadth of the responsibility of the Commission and the need to “strike a balance” between the Commission’s freedom to operate and the need for accountability.¹⁹¹

148. On Welsh Ministers’ powers to amend the Commission’s strategic plan, he reiterated that the “fundamental, baseline concept” in the Bill was for the Commission to respond to the Welsh Government’s strategic plan. He talked about the need for a “line of sight” between the elected Government and the Commission and that it was unlikely any Government would devolve this level of funding without having some sort of “baseline control, a backstop ...”. He believed that there would be “very restricted circumstances” where the Government would want to amend the Commission’s plan, and that there is a “requirement to consult” and that any actions would “have to happen on the basis of public law principles ...”. He said that currently, Ministers write a remit letter to HEFCW on an annual basis setting out the terms of funding, and that this is consistent with HEFCW’s operational independence. He believed that the new approach would be “more strategic, more long term ... and maybe more transparent.”¹⁹²

149. On the specific issue of general directions being issued without any Senedd involvement, he said that there are safeguards such as having to consult with the Commission, the publication of such directions and a declaration to the Senedd of the directions. These would “provides safeguards in terms of the interests of the institutions and the Senedd too.” He said during the recent pandemic when the Government has had to “move with urgency” has influenced the approach to this section.¹⁹³ He cited when the Government had to issue a direction under the Qualifications (Wales) Act 2015 on the cancellation of exams and determination of grades. He also cited possible examples such as where “financial support directions” were necessary, such as if there was “serious financial mismanagement and there might be a need to act with urgency.”. He described this power as “very much at the backstop end of things.”¹⁹⁴. However, he also said he was “happy to consider alternative approaches.”¹⁹⁵.

Potential ONS recategorisation

150. HEFCW were concerned that the reach of the legislation could increase “the extent of control that the Government can directly exert on providers.”. They said that this could

¹⁹¹ Children, Young People and Education Committee, 18 November 2021. Record of Proceedings paragraphs 141-142

¹⁹² Children, Young People and Education Committee, 18 November 2021. Record of Proceedings paragraphs 147-150

¹⁹³ Children, Young People and Education Committee, 13 January 2022. Record of Proceedings paragraphs 47-48

¹⁹⁴ Children, Young People and Education Committee, 13 January 2022. Record of Proceedings paragraphs 53-54

¹⁹⁵ Children, Young People and Education Committee, 13 January 2022. Record of Proceedings paragraph 48

potentially be incompatible with charity law as well as undermining the non-profit status of providers and “potentially bring their accounts on to the Government books” which following what happened in Scotland needed to be “best avoided.”¹⁹⁶

151. Universities Wales and the Chairs of Universities Wales raised concerns that the Bill did not have a similar provision for Welsh Ministers as there is for the Commission in section 17.¹⁹⁷ They said that putting this on the face of the bill would “give some comfort” to institutions that they would be able to carry on their work “to serve the interests of their communities and of the nation.”¹⁹⁸

Committee view

The Commission

152. As outlined in paragraphs 73-84, there was a range of respondents who expressed some concerns about the composition of the Board as set out in the Bill.

153. We note the Minister’s position that the Commission was not meant to be representative of all the sectors, but that across the piece it would reflect the broad range of provision. He also said that the public appointments process would endeavour to ensure that applications come from the broadest range of people, and that the board would subsequently be drawn from the widest pool of people. But we know that despite the best efforts, public appointment process do not always result in truly diverse appointments. We would like to see these provisions strengthened, to place a requirement on Welsh Ministers to have regard to the need to ensure that the Board, as a whole, reflects the breadth of education provision and research, and the broad diversity of Wales.

Recommendation 6. That the Minister brings forward amendments to Schedule 1 at Stage 2 to place a requirement on Welsh Ministers that they must have regard to the need to ensure that the Board (as a whole) reflects the breadth of education provision and research, and the diversity of Wales. This should encompass the appointment of all members to the Commission including associate members.

154. We note that the Bill provides for “at least” two worker and “at least” one learner representative, so this is the minimum and not the maximum. Therefore there is scope for the

¹⁹⁶ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 280

¹⁹⁷ This prohibits the Commission for requiring a provider to act in a way which is incompatible with either charity law or the institution’s governing documents.

¹⁹⁸ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 183

number to be increased, but this may not address the concerns raised by respondents. We want the Bill to be more ambitious for learner and worker representation. We are calling for the Bill to be amended so that the minimum number of representatives increases. For example, within higher and further education institutions, governing bodies generally have at least two student representatives, we believe that the Commission should at least match this, if not exceed it. The Commission's responsibilities are far reaching and will have an huge impact on both students and those working in the sector. It is therefore vital that their voice is prominent within the structures of the Commission. We also note the concerns raised by the trade unions and others about the breadth of the sectors covered by the Commission and that one academic and one non-academic representative will not reflect the plurality of voices within the sector.

Recommendation 7. That the Minister brings forward amendments at Stage 2 to increase the worker and learner representation on the Commission, and to make explicit in the Explanatory Memorandum the Government's expectation that the Commission should be seeking to go beyond the minimum set out in the legislation.

155. In relation to voting rights, we believe that the learner and worker associate members should have voting rights. This would reflect good practice in the sector. We believe that this is already an effective feature within the sector, should allay the concerns the Minister had about representatives being bound by decisions made by the Commission, and ensure that they have an equal voice at the table.

Recommendation 8. That the Minister brings forward amendments at Stage 2 to give the learner and worker associate members voting rights on the Commission.

156. We note the concerns raised by some stakeholders about Welsh Ministers being responsible for the appointment of the Chair of the Research and Innovation Committee (who is also the Deputy Chair of the Commission.) We believe that a compromise would be to ensure that the appointment process includes pre-appointment hearings by the relevant Senedd Committee. This would provide a balance between Welsh Ministers' powers and external scrutiny.

Recommendation 9. That the Welsh Government ensures that the appointment process for the Chair of the Research and Innovation Committee includes a pre-appointment process by the relevant Senedd committee.

Strategic duties

157. We note the broad support from across the sector for the introduction of the strategic duties. We also welcome the Minister's stated willingness to look at some of the issues around strategic duties which have been highlighted in our evidence gathering.

Strengthening research within the strategic duties

158. It is clear from the stakeholders and from the Minister's own evidence that more could be done to strengthen the Bill in relation to research and innovation. A key way of doing that is to foreground it more prominently within the strategic duties. We welcome the Minister's openness to consider amendments to the Bill within this space. The amendments we are calling for we believe would help strengthen the Bill.

Recommendation 10. That the Minister brings forward amendments at Stage 2 to include a strategic duty to promote collaboration and competitiveness in research and innovation.

Recommendation 11. That the Minister brings forward amendments at Stage 2 to include researchers within section 5(2) regarding the capability of the tertiary education and research workforce.

Academic freedom and institutional autonomy

159. Whilst the Bill addresses academic freedom, it is only in relation to higher education provision and not other academic activity. It is also not explicit regarding institutional autonomy. We have felt the weight and strength of feeling amongst stakeholders about ensuring that academic freedom for both individuals and institutions is protected, that the Bill should not create barriers and should promote and actively support it. As we have heard the loss of such freedom can have very real world effects that can be felt outside of the individual institution or by the individual academic. (Although these impacts are also significant and should not be under estimated.).

160. We agree that this is an area where the Bill could be strengthened. We also note that there are examples in legislation in England, Scotland and the Republic of Ireland which seek to protect academic freedom and/or institutional autonomy. We are therefore making a number of recommendations in relation this area.

161. Institutional autonomy is vital, but individual academic freedom also is, and there have been instances in recent years, where this has not always been protected.

Recommendation 12. That the Minister brings forward amendments at Stage 2 to add a general duty to protection the institutional autonomy of tertiary education providers.

Recommendation 13. That the Minister brings forward amendments at Stage 2 to expand academic freedom beyond higher education provision to include research and innovation, and, to suitably future proof the legislation, provision in all other tertiary education settings.

Recommendation 14. That the Minister brings forward amendments at Stage 2 to ensure that academic freedom covers individual academics, both in their teaching and research.

Promoting tertiary education through the Welsh medium

162. It has been clear from stakeholders that the use of “reasonable” in the Bill is out of kilter with the Welsh Government’s ambition of 1 million Welsh speakers by 2050. We have already seen the role that pre 16 education provision can do to encourage, increase use of, and enhance confidence in using Welsh. The post 16 education sector also has a vital role to play, and it is worth noting is coming from a lower baseline of provision than the pre-16 sector. We note the comments made by the Minister about his ambitions for the expansion of post 16 Welsh medium tertiary education, and how other mechanisms such as the strategic priorities will help ensure that the Commission’s role will go beyond meeting reasonable demand, and will seek to generate demand. If this is the Government’s stated policy intention however, we fail to understand why the wording on the strategic duty cannot be strengthened to ensure that this is beyond doubt. The Commission will play a vital role in supporting the delivery of Cymraeg 2050, and the Bill needs strengthening to emphasise that important role. This will help empower the Commission to play a key role in driving forward the expansion of Welsh medium provision in the post 16 education sector.

Recommendation 15. That the Minister brings forward amendments at Stage 2 to strengthen the duty on the Commission to promote Welsh medium tertiary education to reflect the ambition of Cymraeg 2050 and the Commission’s important role in helping to deliver on one million Welsh speakers. The duty on the Commission must be stronger and go further than “meeting reasonable demand.”.

163. We share the concerns of UCAC that this strategic duty does not reference research and is only focused on education. In line with the Welsh Government’s ambitions for the Welsh language, we believe the strategic duty should be amended to ensure the duty to promote the Welsh language also covers research within the tertiary education sector.

Recommendation 16. That the Minister brings forward amendments at Stage 2 so that the strategic duty to promote tertiary education through the medium of Welsh is broadened to include the promotion of research through the Welsh medium.

Relationship between the Commission and the Coleg

164. We welcome that the Coleg will sit outside the remit of the Commission. We note the comments made by the Coleg on the importance of ensuring effective relationships between the Commission and the Coleg and clarity with regards to roles and responsibilities.

Recommendation 17. That the Minister brings forward amendments at Stage 2 to set out how the Commission will work collaboratively and strategically with Coleg Cymraeg on the planning and delivery of Welsh medium provision, to avoid the potential for duplication.

A learner voice duty

165. The Minister has been very clear that he wants to ensure a learner focused sector. We are sympathetic to the calls made by NUS Wales that an important way of demonstrating a commitment to this is to include it as one of the Commission's strategic duties. This would be in keeping with the Government's policy intentions, and would be a clear demonstration of embedding the learner's voice at the heart of the new regulatory system for the post 16 sector. We would envisage that in line with this duty individual institutions will have to demonstrate to the Commission how they are supporting and embedding the learner's voice. There is already some excellent learner engagement within the sector, but the prize now is to ensure this is the norm across all types of provisions and for all learners.

Recommendation 18. That the Minister brings forward amendments at Stage 2 to add a strategic duty for the Commission to promote the learner voice.

A social partnership duty

166. We note the strength of views of those stakeholders who called for a social partnership duty to be added to the Bill. It was clear that by adding the social partnership duty this would help alleviate concerns these stakeholders had in relation to other aspects of the Bill, such as protection of academic freedom and the level of staff representation on the Commission's Board. We also heard about concerns around democratic governance in institutions (see paragraph 234) and such a duty could also play a role in ensuring that institutions demonstrate that they have democratic governance arrangements. Stakeholders also believed it was an important statement of intent. We agree, and consider that such a duty would make for a better Commission and better legislation. We also believe it will help alleviate some of the concerns that stakeholders have raised about the potential overreach of some of the powers which will be retained by Welsh Ministers. We believe the inclusion of such a duty will help protect the sector's autonomy and therefore strengthen the sector.

Recommendation 19. That the Minister brings forward amendments at Stage 2 to add a social partnership strategic duty for the Commission.

Arms length principle / Independence of the Commission

167. We note the very strong feelings from across the breadth of the post 16 sector about the specific powers the Welsh Ministers have to be able to unilaterally change the Commission's strategic plan. The Minister has referred to these powers as a "backstop" and referred to a "very restricted circumstances" where these powers would likely be used. We welcome the Minister's commitment that these powers are unlikely to be used, but we believe that the Bill should be strengthened to ensure that these powers truly are a backstop and cannot be misused.

168. The Commission will have a budget second only to some Health Boards and an important role in shaping the future of Wales, therefore the Welsh Government must have a role in setting that strategic direction. We have heard clearly from the Minister of the need for a clear line of sight between the Government and the Commission. This is also accepted by stakeholders. We agree. We also understand that recent events such as the pandemic have shown that sometimes there needs to be flexibility for the Government to respond to emergency and developing situations. But a balance must be struck, and as it currently stands, we do not think the balance is right.

169. We note the comments from the NTfW who acknowledged that the Bill could provide a firm footing for an effective arms-length relationship. However, the extent of the distance will be the result of how the Welsh Government may choose to use, or not use the powers provided to it within the Bill (see paragraph 140).

170. We are therefore calling for the Bill to be amended to ensure there is a clear line of sight between the Government and the Commission without damaging the Commission's autonomy to do the job it is being set. The amendments that we are suggesting will still preserve the arms-length relationship and ensure the correct balance is struck.

171. In relation to section 13, we understand why Ministers may, in exceptional circumstances, need the power to change the plan, but we wish to see further safeguards put in place, to tip the balance in the favour of the independence of the Commission. This would not remove the right of Welsh Ministers to make these changes, but would ensure it was done in a consultative manner.

Recommendation 20. That the Minister brings forward amendments at Stage 2 to amend section 13 of the Bill to ensure that the Commission's strategic plan cannot be changed without the agreement of the Commission.

172. On the ability of Welsh Ministers to issue general directions without any Senedd scrutiny, we agree with stakeholders that the Bill should be amended to bring it in line with current processes and for the Senedd to have a role to scrutinise. As well as respecting the role of the Senedd, it will provide another safeguard in relation to some stakeholders' concerns about the potential extent of the reach of Welsh ministerial powers. This would ensure it was done in a consultative manner. The amendments that we are suggesting will preserve the arms-length relationship, and ensure the correct balance is struck.

Recommendation 21. That the Minister brings forward amendments at Stage 2 to amend section 19 of the Bill to ensure that any general directions issued by Welsh Ministers are made by Order subject to the negative procedure.

5. Part 2: Registration and Regulation of Tertiary Education Providers

Part 2 sets out the registration and regulatory framework for the tertiary education sector. Whilst we welcome these provisions, we are calling for some changes.

173. Part 2 is about the registration and regulation of tertiary education providers. The Part covers regulation for both registered and non-registered providers. It is divided into four chapters.

- Chapter 1 covers registration, including the register; registration procedure; registration conditions; monitoring and enforcement; de-registration; and fee limit statements;
- Chapter 2 covers quality assurance and improvement for publicly funded tertiary education providers (both registered and non-registered providers);
- Chapter 3 covers intervention powers in FE institutions; and procedures for the exercise of enforcement powers outlined in Chapter 2; and
- Chapter 4 makes general provision in relation to Part 2.

174. It is via this Part that the Bill provides for the Commission's regulation and policy leverage across the sector. This is through:

- Terms and conditions attached to funding from the Commission; and
- The creation of a register of providers that requires registered providers to meet relevant conditions for the category under which they are registered and any specific conditions the Commission considers appropriate to an individual provider.

175. Registration is voluntary and providers can choose to remain outside the regulatory system established by the Bill (although it may be the case the Commission has powers in relation to inspection and quality assurance for non-registered providers in Wales). However, being part of the regulatory system is likely to bring benefits and access to funding, thus providing an incentive for institutions to apply. By not being registered, a provider may be

unable to access some or all Commission funding, or their students being unable to access the full range of statutory student financial support.

What the provisions in Part 2 do

Chapter 1: Registration of tertiary education providers

176. Section 23 establishes the register. The Commission must maintain a register of tertiary education providers, and must enter a provider onto the register in the category the provider requests if the provider meets the criteria set out in section 23(4). There will be different categories of registration, which will be specified by Welsh Ministers in regulations.

177. Section 24 sets out the registration procedure that the Commission must follow if it intends to refuse an registration application or where the Commission intends to refuse an application from a registered provider to change categories.

178. Section 25 sets out the initial registration conditions, which a provider must satisfy to be entered onto the register. These relate to: education quality; governance and management; and the provider's financial sustainability. It also provides Welsh Ministers with regulation making powers to create more initial registration conditions.

179. Section 26 sets out that the Commission must determine and publish general ongoing registration conditions that providers must satisfy to remain on the register. The Commission has the power to set different conditions for different registration categories.

180. Section 27 sets out that the Commission can impose ongoing conditions on a specific individual provider in the register, if there are specific issues it requires the provider to address. These conditions can be varied or removed.

181. Section 28 places a requirement on the Commission to ensure that its ongoing registration conditions and the associated guidance are proportionate to the risks posed.

182. Section 29 sets out the ongoing conditions that registered providers must meet, they must apply to all providers across all categories and none of them can be disapplied. There are eight conditions set out on the face of the Bill, which relate to quality of education, financial sustainability and conditions relating to requirements for governing bodies to notify the Commission of certain events.

183. Section 30 requires the Commission to ensure that each provider registered in a category specified by the Welsh Ministers (under section 25) is subject to a fee limit condition. The Explanatory Notes to the Bill describe a fee limit condition as requiring "the provider to have an

approved fee limit statement and to ensure that regulated course fees do not exceed the applicable fee limit.”¹⁹⁹ More detail on the fee limit statements is set out in sections 44-46. The key terms in section 30 such as the “fee limit category” is not defined on the face of the Bill and will be set by Welsh Ministers in regulations. These provisions will mean in practical terms that institutions which must be registered under the fee limit category will not be able to charge tuition fees more than the maximum amount set out in regulations. (This is currently £9,000 per annum in Wales.).

184. Section 31 sets out that Welsh Ministers may make regulations which specify the categories of registration to which mandatory ongoing registration conditions on equal opportunity must apply. The Commission will be required to ensure that any provider registered under a category to which this condition applies has conditions requiring the delivery of measurable outcomes against several aims as set out on the face of the Bill:

- To increase participation in tertiary education by under-represented groups;
- Retain learners from the same group;
- Reduce attainment gaps; and
- Support under-represented learners finishing their courses.

185. Section 32 provides Welsh Ministers with regulation making powers to specify new ongoing mandatory registration conditions. Section 33 requires the Commission to publish guidance about on-going registration conditions.

186. Sections 34-36 cover the Commission’s role in ensuring compliance with registration conditions. Section 34 specifies that the Commission must monitor registered provider’s compliance with registration conditions. Section 35 provides that the Commission may offer advice and guidance on compliance. Section 36 provides that the Commission can conduct reviews on any matters it considers relevant to compliance with ongoing registration conditions. These reviews can be carried out by another appropriate body (for example Estyn).

187. Sections 37-38 provides for steps the Commission can take in relation to a registered provider’s failure to comply with on-going registration conditions. Under section 37, the Commission may issue a direction to a governing body (subject to the procedures as set out in sections 73-76) to comply with a condition where it believes the provider will, or has failed to

¹⁹⁹ Welsh Government, Tertiary Education and Research (Wales) Bill Explanatory Memorandum, Explanatory Notes, Paragraph 99, 1 November 2020

comply. Section 38 sets out that the Commission may issue guidance about how providers comply with directions issued under section 37.

188. Sections 39-42 cover de-registration. Under section 39, the Commission must de-register a provider in certain circumstances, Welsh Ministers are able to add additional circumstances by regulations. The Commission can also de-register a provider if a provider has breached one of its ongoing registration conditions, and the Commission has already issued a direction for the provider in relation to any breach of registration condition; or if the breach is so significant that the Commission considers that using the regulatory powers under section 37 would be insufficient.

189. Section 40 sets out the procedure for de-regulation, which requires the Commission to notify the governing body of an institution that it intends to de-register the institution and give it at least 28 days to make representations. Sections 41-42 cover voluntary de-registration. Section 41 enables registered providers to apply to be removed from the register or a category of the register or give consent for the Commission to remove the provider from either the register or a category of the register. Section 42 allows for the Commission to register a provider that has been removed from a category in another category if the governing body consents and other conditions have been met.

190. Section 43 allows providers to request a review of significant decisions relating to their registration.

191. Sections 44-46 sets out the provision around fee limit statements (first introduced in section 30.) Section 44 sets out what a fee limit statement is and what it must include. Section 45 sets out that a governing body of a tertiary education provider may apply to the Commission for approval of a fee limit statement. Section 46 sets out that a provider with an approved fee limit statement must publish the statement along with any variations or replacements.

192. Section 47 relates to validity of contracts, where a student is expected to pay fees higher than the applicable fee limit, then the provider cannot recover the excess fee but will still be bound by the rest of the contract, including its duty to provide education to the student.

Chapter 2: Quality assurance and improving quality

193. This Chapter makes provision for quality assurance of publicly funded tertiary education, both registered and unregistered through monitoring, assessment and inspection.

194. Section 48 gives the Commission powers to produce and publish one or more quality assurance frameworks. Such a framework would be high-level and would set out key issues such

as criteria for assessing tertiary education provision, roles and responsibilities and the processes for undertaking such work. The Commission is required to consult registered tertiary education providers, Estyn and any other stakeholders the Commission sees fit. Estyn and the designated quality body (see section 54) must have regard to the framework.

195. Section 49 places a duty on the Commission to monitor and promote improvement in the quality of education and training across registered and funded tertiary education.

196. Section 50 gives the Commission the power to issue advice and guidance to any registered or funded provider to support quality improvement.

197. Section 51 gives the Commission the power to carry out reviews that are relevant to the quality of tertiary education and training. They may arrange for these reviews to be carried out on behalf of the Commission.

Assessment of quality in higher education

198. Section 52 requires the Commission to assess or make arrangements for the assessment of the quality of higher education delivered by registered providers and delivered on behalf of a registered provider. The Commission may also carry out quality assessments or make arrangements for this to be undertaken of the quality of higher education provided in Wales by any tertiary education provider. The Commission must publish reports of each assessment. This section gives Welsh Ministers regulation making powers to specify intervals of assessment and the timing of report publication.

199. Section 53 sets out that following a quality assessment and after the report has been published, the registered provider must develop an action plan for responding to the review. This action plan must be shared with the Commission and designated quality body, and must be published.

200. Section 54 introduces Schedule 3. Schedule 3 covers matters on designating a body to conduct quality assessment on behalf of the Commission, including the designation of such a body, oversight of the body by the Commission and the provision for the designated body to charge fees. Section 54 sets out that the Commission will not normally be expected to conduct the assessment function if it has designated a body to undertake this, but will retain the power to do so.

Inspection of further education or training etc

201. Section 55 sets out the areas of education and training which must be inspected by Her Majesty's Chief Inspector of Education and Training for Wales. The Chief Inspector staff and

inspectors are part of the body known as Estyn. We refer to Estyn throughout this report rather than the Chief Inspector. The areas of provision covered by Estyn are further education, sixth forms and apprenticeships.

202. Section 56 gives Estyn the power to inspect and report on any education and training set out in section 55. Estyn must also publish any reports on such inspections. This section also gives Estyn the power to inspect and report on any provision not listed in section 55 but that which is funded by the Commission if the provider asks the inspector to inspect.

203. Section 57 places a duty on Estyn to keep the Commission informed about inspections and reports carried out under section 55. Estyn must also give the Commission advice on matters relating to education and training, inspect provision and report on any such inspections.

204. Section 58 places a duty on Estyn to keep Welsh Ministers informed about inspections and reports carried out under section 55. Estyn must also give Welsh Ministers advice on matters relating to education and training, inspect provision and report on any such inspections.

205. Section 59 gives Welsh Ministers regulation making powers to confer other functions on Estyn in relation to the education and training provision listed in section 55.

206. Section 60 sets out that providers must respond to an inspection, and publish the action plan. Compliance with this duty is a requirement of the terms and conditions of funding from either the Commission or Welsh Ministers.

207. Section 61 places a requirement on Estyn to carry out area inspections if the Commission ask it to.

208. Section 62 gives Estyn powers of entry and powers of inspection. This section also provides for it to remain a criminal offence to wilfully obstruct Estyn.

209. Section 63 sets out that the Commission may direct Estyn to carry out surveys or studies. Estyn can also carry out such work without any direction from the Commission.

210. Section 64 sets out that Estyn's annual report must include an account of its activity under this Chapter of the Bill.

211. Section 65 sets out in Estyn's annual plan of the funding and expenditure it thinks is necessary to carry out its duties must include information as to how Estyn will manage the funding from the Commission.

212. Section 66 sets out that the Commission must provide such funding to Estyn as the Commission considers appropriate for carrying out Estyn's function in relation to tertiary education funded or secured by the Commission. Welsh Ministers will no longer be responsible for providing Estyn funding for Estyn's activities discharged under this Chapter. Estyn must submit the plan to the Commission (and Welsh Ministers) for approval. The Commission can require Estyn to make changes to the plan.

Chapter 3: Further enforcement and procedural provisions

Intervention in the conduct of further education institutions

213. Sections 67 and 68 replace current provisions in the Further and Higher Education Act 1992 in relation to Welsh Minister's powers to intervene in further education. Section 67 sets out the grounds that must be met for Welsh Ministers to intervene, while section 68 provides Welsh Ministers with the powers to intervene. Section 68 sets out a requirement for Welsh Ministers to consult with the Commission before exercising their intervention powers.

214. Section 69 places a duty on the Commission to notify the Welsh Ministers if they believe the grounds for intervention set out in section 67 have been met. Welsh Ministers must have regard to the Commission's view before deciding whether to exercise the intervention powers.

215. Section 70 requires Welsh Ministers to publish and keep under review a statement on how they propose to exercise their intervention functions. Welsh Ministers must consult people who they consider appropriate before publishing their statement.

Access to information and facilities

216. Section 71 requires governing bodies of external providers to co-operate with either the Commission or those who are exercising duties on behalf of the Commission in regard to the Commission's duties of monitoring and improving quality as set out in sections 49, 51 and 55.

217. Section 72 gives the Commission powers to authorise a person in writing to enter and inspect certain providers in relation to monitoring and reviewing compliance with registration conditions (as set out in sections 34 and 36) or in relation to monitoring quality (as set out in sections 49, 51 and 52).

Warning and review procedure

218. Section 73 sets out when sections 74 to 76 will apply. They will relate to:

- Directions in respect of failure to comply with ongoing registration conditions (section 37);

- Rejection of proposed fee limit statement (section 45);
- Rejection of proposed variation or replacement of a fee limit statement (section 45);
- Directions in respect of failure to co-operate (section 71).

219. Section 74 places a duty on the Commission to issue a warning notice prior to giving a governing body a notice or direction. As part of this duty, the Commission must also give the governing body time to make representations before issuing the notice or direction.

220. Section 75 sets out the information the Commission must provide to a governing body when issuing a notice or direction under section 73.

221. Section 76 sets out that a governing body has the right to apply for a review of the notice or direction by the decision reviewer. Section 77 sets out that Welsh Ministers must appoint a person or a panel to conduct the review and provides them with regulation making powers regarding reviews.

Miscellaneous duties

222. Section 78 sets out that the Commission must monitor the financial sustainability of registered providers and certain tertiary education providers such as those providers who are not registered but are in the further education sector and funded by the Commission. The Commission must send Welsh Ministers a report on the financial outlook of these providers each year.

223. Section 79 places a duty on the Commission to publish a statement setting out how it will use its powers of intervention.

Directions

224. Section 80 sets out that a governing body of a provider must comply with any direction issued by either the Commission or Welsh Ministers issued under this part. The directions will be enforceable by injunction.

Registration and charity status

225. HEFCW said that “one of the more significant difficulties” with the Bill, was the “retention of pre-existing legislative machinery.”. They called for more “harmonising the machinery of regulation to deal with the complexities of the current arrangements and barriers.”. Without

changes, there was a missed opportunity to make a “step change” in arrangements.²⁰⁰ They said that the differing requirements for each part of the sector will “make it challenging” for the Commission to establish a “cohesive PCET sector.”. They believed it would lead to a “provider-focussed approach, rather than one that is learner led.”²⁰¹ The level of prescription in the Bill, and the mirroring of current arrangements means there is “very little room” for the Commission to develop a “more joined up approach.”. They are concerned that it will lead to the silos developing within the Commission, “rather than encouraging a consistency of approach across all modes of provision ...”. A harmonised system, they said, minimises friction at the “interfaces between a separate system ... that’s for the benefits of the learners.”. They were very clear that a harmonised approach did not mean “homogenous institutions” but that:

“[it] can support a range of provision and the current education system in Wales shows that. We have a diverse range of higher education providers, but they’re funded and regulated within the same machinery.”²⁰²

226. They wanted to see changes to the Bill including applying the “same baseline expectation for all providers”. This means that all providers are covered by the regulatory machinery set out in the Bill.²⁰³ Cardiff and Vale College agreed that the register should cover all providers.²⁰⁴

227. HEFCW also sought greater clarity as to why the whole sector would not be subject to the equality of opportunity requirements set out in section 31. They suggested that the focus on increasing participation was relevant to all providers and not just higher education institutions.²⁰⁵

228. WonkHE called for the Commission to be monitored against compliance with equalities legislation “as well as just checking metrics.”²⁰⁶ Universities Wales and the Chairs of Universities Wales supported section 31 “in principle” but flagged that if the conditions “were to apply to each provider identically, this would appear to make it difficult or impossible to set meaningful requirements.”. However, if they are tailored they believed “it would mean the individual

²⁰⁰ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraphs 253-255.

²⁰¹ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 313.

²⁰² Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraphs 294-295.

²⁰³ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 305.

²⁰⁴ Written evidence, TER 33, Cardiff and Vale College.

²⁰⁵ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 315.

²⁰⁶ Written evidence, TER 02, Jim Dickinson, Associate Editor at WonkHE.

outcomes can be imposed rather than agreed – effectively becoming ‘outcome agreements’ without the agreement.”²⁰⁷.

229. In general terms, Cardiff University were concerned that there was the “potential” for “a significant extra burden to be created” in relation to the registration conditions. They said that “current arrangements ... have been very effective in Wales.”. They urged “maintaining the regulation requirements at a proportionate level of burden ...”²⁰⁸. A view that was shared by Universities Wales and the Chairs of Universities Wales, saying the registration “would benefit from being further rationalised” in order to reduce complexity as well as the risk of the number of conditions increasing. They raised concerns about a lack of “practical distinction between initial and ongoing conditions”; as well as a similar lack of distinction between mandatory and non-mandatory conditions.²⁰⁹

230. Universities Wales and the Chairs of Universities Wales raised that “a significant detail” “is left to regulations with a lack of detail on the face of the Bill.”. They called for amendments:

“including the power to impose ongoing registration conditions for specific, individual institutions and the need for the detail of the initial conditions to be subject to a duty to consult.”

231. They said that they had expected more details on registration to have been either in the Bill or in “accompanying draft regulations.”. This lack of information therefore makes it “difficult to assess the workability of the proposals.”²¹⁰. They wanted to see that the detail of the initial conditions should be subject “at the very least, to a duty to consult.”²¹¹. We cover the issue of regulation making powers in more detail in Chapter 7.

232. NEU Cymru said they were a “bit concerned” about the “asymmetric duties” within the Bill, with different duties placed on different elements of the sector. They talked about how FE can often feel like the “poor relation to HE”, and they were not convinced that the Bill answered some of the long standing issues.²¹²

233. NUS Wales called for the registration conditions to include “effectiveness of the learner and student voice structures”. They believed this would mean that providers would “really, really

²⁰⁷ Written evidence, [TER 36, Universities Wales and the Chairs of Universities Wales, paragraphs 6.10-6.11](#)

²⁰⁸ Written evidence, [TER 22, Cardiff University, paragraph 5.3](#)

²⁰⁹ Written evidence, [TER 36, Universities Wales and the Chairs of Universities Wales, paragraphs 6.4](#)

²¹⁰ Written evidence, [TER 36, Universities Wales and the Chairs of Universities Wales, paragraphs 6-6.2](#)

²¹¹ Written evidence, [TER 36, Universities Wales and the Chairs of Universities Wales, paragraphs 6.7](#)

²¹² [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 405](#)

pay due regard to the student voice” and that the Commission would be able to “require” providers to “improve their student voice structures” if they did not think they were satisfactory.²¹³ Additionally they also wanted to see “protecting learners’ health and well-being” added as a registration condition, citing it as a serious and significant issue in the sector.²¹⁴ WonkHE felt that adding learner well-being as a registration condition made the most “practical sense” and highlighted that an equivalent provision was being used in Australia. They suggested it could be done by adding at section 29(i) “a condition relating to the health, welfare and safety of students enrolled at the provider, including matters of harassment and sexual misconduct and mental health.”²¹⁵

234. The UCU Wales Higher Education Sector Committee / Governance Working Group²¹⁶ and the UCU called for “democratic governance” to be added as a condition of registration, citing “various concerns” on university governance over the past 15 years in Wales, “which only come to light after it is too late.”. They believed this would be in line with the expected Social Partnership Bill and developments in Scotland.²¹⁷ Whilst NEU Cymru suggested social partnership “could” be a registration condition (or condition for grant funding).²¹⁸ We cover the issue of a social partnership strategic duty in Chapter 6.

235. HEFCW raised concerns about the different requirements that will be placed on those providers registering in the “alternative” category of the register, as opposed to the “core” register.²¹⁹ In particular, they were concerned that those in the alternative category would not be required to have charitable status which “could increase the risk of more providers delivering higher education in Wales and increasing nugatory competition.”. They noted the changes resulting from the Higher Education (Wales) Act 2015 that all higher education providers must have charitable status had been a “positive move”. They were aware that the Government had previously tried to make charitable status a requirement for “specific course designation in Wales”, and that the opportunity in this Bill to achieve this “positive policy outcome” should be taken.²²⁰ Cardiff University agreed, saying that it would “act as an important check and balance

²¹³ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 397.](#)

²¹⁴ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 416.](#)

²¹⁵ Written evidence, [TER 02, Jim Dickinson, Associate Editor at WonkHE](#)

²¹⁶ Written evidence [TER 38, UCU Wales Higher Education Sector Committee / Governance Working Group.](#)

²¹⁷ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 417.](#)

²¹⁸ Written evidence, [TER 14, National Education Union Cymru](#)

²¹⁹ Providers registered on the alternative register will be eligible for student fee and maintenance support at the lower fee level (currently £6,165 per year), those on the Core Register will be eligible for student fee and maintenance support at the higher fee level (currently £9,000 per year).

²²⁰ Written evidence, [TER 32 HEFCW, paragraph 2.27](#)

against private providers who may not add value to the sector.”²²¹. Colegau Cymru highlighted that there may be some complications in relation to charity law for those colleges who are also part of Higher Education Groups.²²²

236. In relation to section 17(1), the Charity Commission for England and Wales highlighted that the scope of what might be considered “incompatible” with an institution’s charitable status could be open to interpretation. They called for further guidance to be developed on this point. They also raised concerns about the definition of governing document in subsection (2) suggesting that it is narrower than the definition of “trusts” in the Charities Act 2011, and the use of governing documents as opposed to trusts could “inadvertently fail to capture all providers of tertiary education.”. They also highlighted whether the terminology of instruments and articles of government in section 68(9) (relation to the appointment of a member of a governing body) “ought to be expanded”.²²³

237. Cardiff University raised concerns about section 27, saying that it could provide the Commission with “huge latitude for unexpected and disproportionate powers to be meted upon institutions at will.”. They were also concerned that it potentially opened the door to “unfair or unequal treatment of different providers.”²²⁴. Universities Wales and the Chairs of Universities Wales,²²⁵ along with Wrexham Glyndŵr University shared these concerns. Wrexham Glyndŵr University were concerned that institutions which “might be considered outliers could be singled out for specific ongoing registration conditions.”²²⁶. All believed that such conditions should only be applied to specific categories of providers, rather than individual providers.

238. The Council of Deans of Health Wales highlighted that “existing healthcare regulation by the NMC and HCPC, which is UK-wide, must take precedence over the Commission” for courses where “these regulators control entry to professional registers.”²²⁷. The Open University in Wales said that regulatory requirements should avoid duplication and “account for assurances that might be relied upon from other UK regulators.”²²⁸.

²²¹ Written evidence, [TER 22 Cardiff University, paragraph 7.7](#)

²²² Written evidence, [TER 31 Colegau Cymru](#)

²²³ Written evidence, [TER 27, Charity Commission for England and Wales, paragraphs 12-15;](#)

²²⁴ Written evidence, [TER 22 Cardiff University, paragraph 5.4](#)

²²⁵ Written evidence, [TER 36, Universities Wales and the Chairs of Universities Wales, paragraph 6.6](#)

²²⁶ Written evidence, [TER 05, Wrexham Glyndŵr University, paragraph 10](#)

²²⁷ Written evidence, [TER 10 Council of Deans of Health Wales](#)

²²⁸ Written evidence, [TER 12 The Open University in Wales, paragraph 2.7](#)

239. The NPTC Group of Colleges sought assurances that in relation to the financial sustainability registration condition (section 25(1)(c)) that organisations that have to “operate” pension schemes (such as the Local Government Pension Scheme) will not be penalised for “non-cash accounting entries and the potential scheme deficits required by FRS102.”. They highlighted that these are schemes where organisations do not have control on administrative or investment decisions.²²⁹

Evidence from the Minister

240. We explored with the Minister the differing regulatory approaches for different parts of the post 16 sector. The Minister set out that “initially, only HE providers will be required to register with the commission.”. He said that the reasoning for not including FE providers within the register was because the “funding mechanism is different.”. He explained that the Commission will be able to “impose terms and conditions” on funding and that these will include “requirements around financial assurance and quality ... So, the mechanism for the regulatory oversight may be different, even though the overarching policy context is the same.”²³⁰. He went on to clarify that the “basis” of the decision for the type of regulation is dependent on the main source of funding for the provider.²³¹

241. The Minister also believed that the Bill in relation to registration was “future proof” saying that if funding structures were to change in the future, the “existence of the register” provides “flexibility” to respond to that change. He was also clear that “being on the list doesn’t actually tell us anything about parity of esteem ... we don’t distinguish on the basis of provider, we distinguish on the basis of provision.”²³².

242. In correspondence, the Minister confirmed that the regulations made under section 25(3) will include an initial condition of registration for core providers that requires “providers to be a charity.”²³³.

243. We asked the Minister about the intervention powers available to the Commission, in the context of HEFCW saying that the interventions powers under the 2015 Act are difficult to use in practice. The Welsh Government told us that this Bill enables “a more staged approach”. They said that a benefit of the register as the “main regulatory framework” means it can cover “a much broader range of regulatory matters of quality, governance, finance, equal opportunities

²²⁹ Written evidence, [TER.15, NPTC Group of Colleges](#)

²³⁰ [Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 162](#)

²³¹ [Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 181](#)

²³² [Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraph 69](#)

²³³ [Letter from the Minister for Education and Welsh Language, 4 February 2021, paragraph 5.4](#)

but also the learner engagement code, and then there might be other regulatory or registration conditions in the future.”. The staged approach will mean advice can be issued first, followed by a more detail review, before directions being issued. There would then be the “ultimate, sort of nuclear option of deregistration, which we would hope would only be used in the very last resort, if ever”. They said this was a more flexible approach than the current arrangements.²³⁴

Quality Assurance

244. HEFCW were disappointed that the quality assurance provisions retain “current arrangements, missing an opportunity to simplify ... and perpetuating discrete treatment of different parts of the PCET sector.”. They believed this posed a risk to parity of esteem as well as creating accountability issues and undermining the Commission’s ability to “maintain its strategic oversight.”²³⁵. They believed that it added “more complexity, more additional work and potential tensions of perspective ...”. They were concerned that there was a risk that with the Bill being very specific in places there may be gaps and that “the bits you miss are left out forever ... once you’ve got legislation, the only way you can morph it is to change it through a primary process again ...”²³⁶.

245. Estyn disagreed saying that they believed that the:

“... provisions in the Bill build on the current strengths in quality assurance across ourselves and QAA and reflect the need for tailored approaches across the tertiary sector. There is strength in diversity and the approach reflects that. Consistent is not the same as homogenous.”²³⁷

246. Coleg Cymraeg Cenedlaethol noted that the current arrangements work effectively, and were confident they would continue to be effective.²³⁸

247. While the QAA believed that the proposals would allow for “greater collaboration across agencies through that single framework”, they also thought it would help develop a “common

²³⁴ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraphs 174-175

²³⁵ Written evidence, TER 32 HEFCW, paragraph D

²³⁶ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraphs 325-327

²³⁷ Written evidence, TER 11 Estyn

²³⁸ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 524

language and approach to quality across the sectors into one sector, and that should make transitions and collaborations between institutions and providers a lot easier.”²³⁹.

248. Colegau Cymru acknowledged the “stark contrast” to the different approaches taken to quality assurance between HE and other types of provision within the Bill. They suggested that there needed to be further thinking about “flexibility ... maybe clarifying or leaving room for different types of qualifications, different types of appropriate inspection in the future.”. They said that in being too specific in the Bill there was a risk that there is not enough “room” for what the Commission may need to respond to, or develop in the future.²⁴⁰ They also said it was “a bit untidy” to revert to “old definitions” where there is currently “blurring” between provision, highlighting that colleges deliver level 4 and 5 qualifications, which is “inherently further education” whilst universities are running year zeros and foundation levels.²⁴¹

249. NPTC Group of Colleges welcomed the Quality Assurance Framework provisions and the move to a consistent approach, but they called for a “greater parity” between the quality assurance processes of FE, school sixth forms and HE.²⁴² Cardiff and Vale College supported introduction of “one overarching quality assurance framework” for the whole post 16 sector. They said there should be “no division of inspection provision between HE and FE, especially where providers deliver both.”²⁴³.

250. Adult Learning Wales were supportive of the proposals in the Bill but did say that “over time” the Commission may want to bring together “the inspection arrangements for all post-16 provision.”²⁴⁴. NUS Wales also said that they would like to see “more convergence” between the sectors.²⁴⁵

251. QAA noted the difference in approach to the fees for quality assessment work. While welcoming that the designated quality body would “have the option to charge fees” they called for the quality assurance of higher and further education “to be on the same footing.”. They noted that Estyn do not charge, and they called for quality assurance in higher education to be “funded directly by the Commission.”. They also called for the designated quality body to be

²³⁹ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 318](#)

²⁴⁰ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 352](#)

²⁴¹ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 254](#)

²⁴² Written evidence, [TER 15, NPTC Group of Colleges](#)

²⁴³ Written evidence, [TER 33, Cardiff and Vale College](#)

²⁴⁴ Written evidence, [TER 29, Adult Learning Wales, paragraph 11](#)

²⁴⁵ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 431](#)

“adequately funded” by the Commission to undertake enhancement activities “beyond baseline requirements, to support the strategic duties of the Bill.”²⁴⁶.

252. UCU Wales compared the differences between the provisions covering higher education, and those covering the rest of the tertiary education sector, saying that university QA “is effectively covered off in 3 sections”, the rest of the tertiary sector “commands 11”. They believed this may indicate “a substantial imbalance” which might mean that the “regulatory requirements for sixth form (by far the smallest element) driving arrangement for the rest of the sector.”²⁴⁷. NEU Cymru had concerns about the role of Estyn, and questioned why they would have a role within the tertiary sector, saying if there is to be “greater regulatory alignment” through the Commission “the role of Estyn seems problematic.”²⁴⁸.

253. The Minister said in relation to the issue of no single quality assurance regime that the Bill “delineates” responsibilities by “type of provision, rather than by provider.”. He also said that at the “root” of it all was the Commission’s oversight over both the designated quality body and Estyn. He called the approach “evolutionary” which recognises the “existing strengths” within Estyn and the QAA, but which allows the Commission to have a “coherent picture” of quality across the sector “regardless of provider.”. He also noted that it means that Welsh higher education will “remain part of the UK-wide quality assurance infrastructure” but in a way that enables “greater alignment with Welsh priorities” which he believed struck the right balance.²⁴⁹

Higher Education (Designated Quality Body)

254. Universities Wales and the Chairs of Universities Wales welcomed the quality assurance provisions, saying they reflected “the importance of international recognition” of quality assurance in higher education. They also welcomed the Minister’s statements (see paragraph 253) of regulation based upon provision rather than provider.²⁵⁰

255. HEFCW called for the removal of section 54 and Schedule 3. They said that for the sector and the Commission to be “agile” to respond to the range of demands facing the sector and wider society, the Commission “must be able to determine” quality assurance arrangements. They believed that “adding a rigid layer of process” on these arrangements undermines the Commission’s agility. They noted that whilst these provisions were comparable to those in

²⁴⁶ Written evidence, [TER 16, Quality Assurance Agency for Higher Education, paragraph 15](#)

²⁴⁷ Written evidence, [TER 23, UCU Wales](#)

²⁴⁸ Written evidence, [TER 14, National Education Union Cymru](#)

²⁴⁹ [Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraphs 193-195](#)

²⁵⁰ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 225](#)

England, they believe that the context in Wales “is different and will remain so with the Commission” and that it was not desirable to mirror those provisions.²⁵¹ The Open University disagreed and welcomed that the Bill “vests responsibility” in the Commission for the designation of the quality body.²⁵²

256. The QAA called for greater clarity within the Bill on the length of a designation period, and whether there would be a renewal procedure. They called for any renewal process, or rules on the removal of a designation to be “linked to the higher education review cycle”. Currently each higher education institution is reviewed every five to six years in line with quality assurance standards and guidelines. They said that designation periods, or changes to designation “should not interfere with these review cycles.”²⁵³

257. The QAA said they believed there was an opportunity for the designated quality body to “work across the tertiary sector to undertake research and facilitate events” to support quality enhancement. They said it was important that the body “will have the capacity” to do this “beyond any baseline requirements.”. They also called for the designated quality body to be selected as soon as possible, to enable the body to “plan its review and enhancement work for the years ahead.”²⁵⁴. They also called for strengthening the voice of learners in the development of the quality enhancement frameworks.²⁵⁵

Arrangements for transnational / validated higher education provision

258. HEFCW raised concerns that the quality assurance arrangements do not cover “oversight of provision validated, franchised or delivered directly by a provider with awarding powers in Wales, but delivered outside of Wales.”. They indicated that this can be the “riskiest” type of provision which can have “reputational damage” to the whole of the Welsh sector. They called for the Bill to be amended to ensure the Commission has oversight of this provision, in a similar way the Office for Students has oversight for this area.²⁵⁶ Or alternatively they said all the quality assurance arrangements need “to be made less explicit” giving the Commission more flexibility to deal with these issues.²⁵⁷

²⁵¹ Written evidence, [TER 32 HEFCW, paragraph 2.7](#)

²⁵² Written evidence, [TER 12 The Open University in Wales, paragraph 4.18](#)

²⁵³ Written evidence, [TER 16, Quality Assurance Agency for Higher Education, paragraphs 19-20](#)

²⁵⁴ Written evidence, [TER 16, Quality Assurance Agency for Higher Education, paragraphs 17-20](#)

²⁵⁵ Written evidence, [TER 16, Quality Assurance Agency for Higher Education, paragraphs 22](#)

²⁵⁶ Written evidence, [TER 32 HEFCW, paragraph 2.21](#)

²⁵⁷ [Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 331](#)

259. QAA agreed that this is a “high-risk” area, but that the risk is “dynamic” and needs to be “responsive” meaning it may not sit well on the face of the Bill. They therefore urged “caution”. They noted that HEFCW have funded all Welsh higher education institutions to participate in the QAA voluntary scheme of quality evaluation and enhancement of transnational provision. They also highlighted their “strong international presence” which enables them to take forward areas of concern.²⁵⁸

260. Universities Wales and the Chairs of Universities Wales said that they believed the current arrangements that apply for transnational provision would continue, with the QAA reviewing all of an institution’s provision, regardless of where it is delivered.²⁵⁹

Arrangements for degree apprenticeships

261. A number of stakeholders called for clarity around quality assurance arrangements for degree apprenticeships, including QAA.²⁶⁰ They indicated that there are no specific references to degree apprenticeships within the Bill’s Explanatory Notes.²⁶¹ Estyn also called for more clarity in either the Bill or the Explanatory Memorandum and that in relation to technical vocational qualifications it could be “delineated better.”²⁶²

262. Estyn believed that the Bill left the possibility for this to be clarified in the future which was “appropriate” highlighting that this could be done through the regulation making powers under section 55(1). They believed that if these responsibilities were delegated to them it would enable a joined up approach to the quality assurance and improvement of “all work based learning apprenticeship provision at whatever level.”. They said they could collaborate with the designated quality body to ensure the right expertise was being drawn upon.²⁶³ Estyn cited their experience of inspecting higher apprenticeships which go up to level 5, and that their counterpart in England leads on the inspection of all apprenticeship programmes. They believed it makes sense to “use and combine the strengths of our and QAA’s approaches ...”²⁶⁴.

²⁵⁸ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraphs 391-392](#)

²⁵⁹ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 227](#)

²⁶⁰ Written evidence, [TER.16, Quality Assurance Agency for Higher Education, paragraph 26](#)

²⁶¹ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 369](#)

²⁶² [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 374](#)

²⁶³ Written evidence, [TER.11 Estyn](#)

²⁶⁴ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 367](#)

263. QAA agreed with Estyn, in relation to the need for flexibility to respond to the “rapidly developing field” and that there are “good enough” relationships within Wales to make sure there is a “joined up and sensible approach” to apprenticeships.²⁶⁵

264. The NTfW said that degree apprenticeships should come under the same quality assurance mechanisms as other levels of apprenticeships. They believed this would make it “much more collaborative” and provide for a “clearer pathway” through the process.²⁶⁶

Further education and tertiary provision (Estyn)

265. Estyn did not share HEFCW’s concerns about the level of specificity within the Bill as it relates to the work of Estyn (see paragraph 244). They acknowledged that the relationship between Estyn and the Commission would “require strong communication and liaison, but this is not a concern.”. They cited their existing relationships with the Welsh Government, HEFCW and QAA and that they have already started to develop “shared approaches” in relation to quality in further and higher education and training. They called for a “clear memorandum of understanding” or similar documentation which would help “determine the range of” Estyn’s work for the Commission, and that for Welsh Ministers. One approach could be “two remit letters and joint panel meetings” between the three parties.²⁶⁷

266. In relation to the funding arrangements set out in section 66, Estyn said they would prefer that the funding for their core, statutory work “came to us centrally as one allocation, rather than partly through the Commission, a Welsh Government sponsored body.”. However, they would welcome “a mechanism ... to allow the Commission to directly fund us for specific additional in-year work ...”²⁶⁸. They cited current arrangements in place with individual departments of the Welsh Government, which provides “some separation” between those departments responsible for delivering education and training and the department where “our additional accounting officer sits ... there’s almost a wall of independence there.”²⁶⁹. They said it might be possible that a “central core allocation” which covered both Commission and Welsh Government funding and included “arrangements to ensure that funding mechanisms do not compromise our independence, may be achievable without changes to the legislation.”²⁷⁰.

²⁶⁵ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 369](#)

²⁶⁶ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 102](#)

²⁶⁷ Written evidence, [TER.11.Estyn](#)

²⁶⁸ Written evidence, [TER.11.Estyn](#)

²⁶⁹ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 351](#)

²⁷⁰ Written evidence, [TER.11.Estyn](#)

267. Estyn did feel that there was a missed opportunity in that a duty was not placed upon Estyn to inspect the provision of initial teaching education for the post compulsory sector. They believed that by placing this on the face of the Bill it would “really cement that overall importance of the workforce in taking forward all the strategic duties, but particularly that continuous improvement one.”²⁷¹.

268. The Minister disagreed with HEFCW in relation to their concerns about duplication of responsibilities with the Commission and Estyn. He said it was neither the intention nor the outcome of the Bill that there would be any overlap in powers between the Commission and Estyn. He also believed that requiring the plans for inspection of provision to be agreed will “reduce overlap for providers because the commission will be in a position to ensure that quality assessment, both in FE and HE, is actually more aligned ... in a way that can’t currently happen.”²⁷².

269. In relation to the points raised about the level of detail in the Bill around Estyn, the Minister said this was because they were necessary “to ensure that Estyn is able to operate within the law ...”. He explained that officials had been working “closely” with Estyn about what they need to discharge their responsibilities. He felt that it was reasonable that they are set out “fully” on the face of the Bill.²⁷³ He was “not sure” how these provisions could come out of the Bill.²⁷⁴

270. On the funding arrangements for Estyn he said the rationale is that as there are two sets of activities, there are two sources of funding. He believed that the changes were “pretty straightforward” and “a simple transfer of responsibility.”²⁷⁵.

Welsh Ministers direct powers over and in relation to further education institutions

271. NPTC Group of Colleges said the Bill “assigns consideration power back” to the Welsh Government, and that it could have “considerable impact” on how individual institutions regulate themselves and make decisions. They had specific concerns around clauses 67 and 68 saying “it could be interpreted as a repeal” to the freedoms resulting from the Further and Higher Education (Governance and Information) (Wales) Act 2014. They wanted more

²⁷¹ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 316

²⁷² Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraphs 94-95

²⁷³ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 192

²⁷⁴ Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraph 101

²⁷⁵ Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraphs 98-99

information as to how it interacts “alongside the role of WG as Principle Regulator of the FE institutions as exempt charities.”²⁷⁶.

272. The Minister clarified that the Bill “does not impact on the interface between the Welsh Ministers’ powers of intervention in respect of further education institutions in Wales and their role as Principal Regulator for charitable purposes.”. He stated that Bill will restate the powers that currently apply in the Further and Higher Education Act 1992. He indicated that the Welsh Government is proposing to “review the role of the Principal Regulator going forward” with consideration being given as to “whether this role should more appropriately lie with the Commission” in light of its regulatory role. He confirmed that any changes would be subject to consultation.²⁷⁷

Committee view

Registration and charity status

273. We note the broad points raised by stakeholders about the need for registration conditions and process to be as streamlined and efficient as possible. We are also aware that with so much detail to come in regulations, it is difficult for stakeholders and ourselves to make assessments as to whether this is a concern that is warranted.

274. In relation to the discrepancies between those providers who may become subject to the registration conditions (e.g Higher Education) and those who are not (all other providers) we believe that it is important that there is a more consistent base-line approach taken to ensuring equal opportunities and widening access.

275. We believe equivalent requirements should be placed on those tertiary education providers who are outside the registration system as are placed on those who must register to access funding. We acknowledge that the specific requirements may look different depending on the type of provider, but the broad principle of emphasising the importance of meaningful equality of opportunities and widening access should apply to all, and the Commission must have powers to monitor and manage this. If an institution is in receipt of public funding, it must uphold Government expectations. It is a clear priority to improve access, participation and outcomes for all across all providers and this would be a clear way of showing this, as well as being underpinned by the strategic duty.

²⁷⁶ Written evidence, TER 15, NPTC Group of Colleges

²⁷⁷ Letter from the Minister for Education and Welsh Language to Chair, Children, Young People and Education Committee, 4 February 2021, paragraphs 3.1-3.2

Recommendation 22. That the Minister bring forward amendments at Stage 2 to provide a more consistent and wide ranging approach to the equal opportunity and widening access duties for all parts of the post 16 sector, and not just those providers who have to register.

Quality Assurance

276. We note the concerns raised by HEFCW about the level of specificity for quality assurance in the further education and training sector. We can see there is a risk, that further primary legislation could be needed if there were to be changes to the role or functions of Estyn. This reduces the future proofing of the Bill. It would therefore be helpful for the Minister to outline how such a situation would be managed.

Recommendation 23. That the Minister outline either in the Stage 1 debate or in writing ahead of the Stage 1 debate how the Welsh Government would manage any changes to the role and function of Estyn in relation to this Bill's provisions.

Welsh Ministers direct powers over further education institutions

277. These powers will confer distinct powers for Welsh Ministers over a particular sector within the post 16 sector. There are already a number of places where different parts of the sector are treated differently, each time this happens, it creates a possible barrier to the cohesive sector which the Bill seeks to establish. However, we note that those witnesses we asked about this power were reasonably relaxed about it (in stark contrast to those direct powers for Welsh Ministers over higher education corporations, see Chapter 7.) In light of this, we are comfortable with the powers set out for Welsh Ministers in relation to this part of the Bill.

6. Part 3: Securing and Funding Tertiary Education and Research

Part 3 sets out the funding mechanisms for the tertiary education section. Here we consider issues relating to outcome agreements, lifelong learning, research and innovation, sixth forms, balance of funding and collaboration and consent.

278. Part 3 sets out the funding arrangements for tertiary education, training and research. It separates out the funding arrangements for:

- The Commission;
- Higher Education;
- Further education and training;
- Apprenticeships;
- Research and innovation; and
- Other activities connected to tertiary education.

279. In broad terms the Minister said that the basic principle was that the “funding powers are designed to follow the type of education provided, rather than the type of funding.”. This was the “consistent principle ... a really foundation point in the Bill ... that drives an awful lot of the other benefits in the Bill.”. He acknowledged the “complex and diverse” provision across the sector and that a “coherent funding approach can’t remove what are the fundamental differences between different types of tertiary education and who they are funded by more broadly.”. He felt that the Commission’s powers were therefore “as coherent as it’s possible to be in recognising these different models, because they have to operate within one common funding structure.”²⁷⁸.

²⁷⁸ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraphs 160-161

What the provisions in Part 3 do

Funding the Commission

280. Section 83 provides Welsh Ministers with powers to fund the Commission and to make this funding subject to terms and conditions. It also sets out that the terms and conditions may include a requirement for the Commission to enter into an outcome agreement with a person to whom to provides funding.

281. Section 84 sets out what Welsh Ministers cannot put into the terms and conditions of the Commission's funding under section 83. These are intended to safeguard the autonomy of the Commission, providers and academic and research freedom. The limitations on funding placed on the Commission in sub-sections (4), (5) and (6) only apply to higher education and research funding, but do not apply to courses being provided and assessed through the Welsh medium. This consequently means Welsh Ministers can allocate funding to the Commission to be targeted at Welsh medium provision.

Funding of higher education

282. Sections 85 and 86 provide additional protections for higher education funding, and in section 102 for funding for research. (We have explored the issues around institutional and academic freedom in chapter 4.).

283. Section 85 provides the Commission with powers to fund certain providers in order to support the provision of higher education by the provider or on their behalf. Welsh Ministers will via regulations be able to specify the categories of registered providers who will be eligible to receive Commission funding under this section.

284. Section 86 makes provision for Welsh Ministers to be able to specify by regulations eligible courses which the Commission may then fund outside the registration system. The intention is that Welsh Ministers can fill gaps in provisions for certain subjects or in certain locations.

285. Section 87 provides the Commission with the power to attach terms and conditions to funding made under sections 85 and 86. The Commission can only place terms and conditions on funding from the Commission, and not from other sources, such as income generated by a provider from other activities. The Commission must attach certain terms and conditions to funding made under section 86 which are intended to make up for the provider not being subject to registration conditions.

286. Section 89 provides Welsh Ministers with powers to directly fund a specific and narrow range of higher education courses as set out in the Education Reform Act 1998 (for example

non-degree courses in preparation for professional examinations at a higher level of providing education at a higher level.).

Further education and training

287. Section 90 sets out the Commission's duty to secure facilities for education and training for those aged between 16 and 19. The Commission must secure "proper" facilities for those who are above the compulsory school age and not yet 19. This section defines "proper" if they are of "sufficient" quality and of "adequate" quality to meet learners needs. It also sets out that provision must satisfy students' entitlements to local curricula under the Learning and Skills Act 2000.

288. Section 91 sets out the Commission's duty to secure "proper facilities" for education and training for eligible persons over 19. The definition of an eligible person will be made in regulations made by Welsh Ministers (although the Bill sets out they must be over 19).

289. Section 92 sets out that the Commission must secure "reasonable" facilities for education and training for people over 19. "Reasonable" facilities are those that, taking into account the Commission's resources, are of such of a quality and quantity that the Commission can be expected to secure its provision. The Explanatory Notes set out that this type of provision covers all types of learning, including non-formal learning which may not lead to a qualification.

290. Section 93 sets out the requirements placed upon the Commission when discharging its duties under sections 90-92, these include having regard to the requirements of employers; requirements for Welsh medium training; and requirements under the Additional Learning Needs and Educational Tribunal (Wales) Act 2018.

291. Section 94 sets out the powers for the Commission and Welsh Ministers to fund further education and training. It provides powers to fund providers but also to fund learners directly in the form of financial support (for example transport and / or childcare costs.).

292. Section 95 sets out that Welsh Ministers may by regulations specify that the provision of resources under section 94 can only be made to registered providers in certain categories of registration. There are also powers under this section for Welsh Ministers to make regulations to enable either the Commission or Welsh Ministers to directly fund provision by un-registered providers for specific education and training. This would allow the provision of learning that was too specialised or not cost effective for registered providers to offer.

293. Section 96 sets out that the Commission or Welsh Ministers may attach terms and conditions that they consider appropriate to funding made under section 94. The section sets

out what the terms and conditions must or may cover (including a prohibition on charging fees to 16-19 year olds in further education and training.).

294. Section 97 gives the Commission or Welsh Ministers the powers to carry out or fund means tests, and enables them to take them into account when making decisions on any entitlements for any financial support for people seeking to undertake further education or training.

295. Section 98 gives the Commission power to fund education provided by school sixth forms maintained by local authorities, and enables them to place “appropriate” terms and conditions to the support.

296. Section 99 requires the Commission to have regard to the needs of people with additional learning needs and the desirability of facilities being available which would help with the discharge of duties under the Additional Learning Needs and Educational Tribunal (Wales) Act 2018.

297. Section 100 gives both the Commission and Welsh Ministers powers to fund a wide range of activities in relation to tertiary education. This can include provision of information, advice and guidance.

Financial support for apprenticeships

298. Section 101 gives the Commission to fund providers of an approved apprenticeship framework, as well as the powers to fund a person to develop such a framework. Under this section, the Commission can attach terms and conditions to this funding. Welsh Ministers may make regulations to restrict eligibility for this funding to providers registered in certain categories, as well as enabling them to make exceptions. This section enables a provider to pass on funding to a collaborating body, with the permission of the Commission.

Research and innovation

299. Section 102 may fund research and innovation at a registered provider registered in a specific category, as set out in regulations made by Welsh Ministers.

300. Section 103 sets out that funding allocated under section 102 may be subject to terms and conditions that the Commission deems appropriate.

301. Section 104 sets out other Commission functions in relation to research and innovation. This includes a duty on the Commission to promote awareness of the research and innovation

activity it funds, to disseminate results and encourage more research and innovation activity. It must report on research and innovation in its annual report.

Financial support provisions

302. Section 105 provides Welsh Ministers with the powers to set controls around funding begin passed on from providers to collaborating bodies (for example sub-contractors).

303. Section 106 gives Welsh Ministers powers to issue a financial direction to the Commission if it appears to Welsh Ministers that the financial affairs of a registered provider or persons in receipt of funding have or are being mismanaged.

Outcome agreements

304. Outcome agreements are introduced and defined in section 83. They are intended to be a key policy lever for both Welsh Ministers and the Commission to ensure funded providers align with Commission and Welsh Ministers priorities and the Commission's strategic duties as set out in sections 2-10.

305. HEFCW were unclear as to how the outcome agreements would meet the policy objective of promoting coherence across the sector. They cited their experience of operating fee and access plans, in particular the time period between a plan being developed and when effectiveness can be assessed, which can be years. They also felt that they "focus" on a specific institution's "intentions ... provide relatively little means of incentivising commitments to collaborative development and delivery ...". They said there have been similar issues in Scotland, and such tools are "long-term and slow."²⁷⁹

306. The WLGA were concerned that there was "still little in the way of explanation" of what outcome agreements may look like. They highlighted that if they are used as the basis of funding decisions these will be "new requirements" for many providers. They called for consideration of international examples, such as those that have been in place in Scotland since 2016.²⁸⁰ Adult Learning Wales also pointed at the Scottish approach as being "positive", rather than the approaches in England which have focused on "pay of their graduates."²⁸¹ Universities Wales and the Chairs of Universities Wales highlighted that in Scotland the agreements were

²⁷⁹ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 247

²⁸⁰ Written evidence, TER 01, WLGA, paragraph 12

²⁸¹ Written evidence, TER 29, Adult Learning Wales, paragraphs 26-27

focused on specific areas which are agreed between the sector and regulator, and that they are not “across the whole sweep” of what providers do “in their normal course of business.”²⁸²

307. Wrexham Glyndŵr University were concerned that the outcome agreements could “create bureaucratic overload” when combined with registration requirements.²⁸³ Universities Wales and the Chairs of Universities Wales also shared concerns about the potential “onerous” requirements when combined with registration conditions.²⁸⁴ The Open University in Wales were also “eager to avoid” them becoming “a device for catch-all, quasi-regulation.”. They were also concerned that they would not take account of the unique set of circumstances of the Open University.²⁸⁵ QAA were supportive as long as they are “implemented well” and that they are proportionate in terms of the “bureaucratic burden”.²⁸⁶

308. Universities Wales and the Chairs of Universities Wales said “they could work as long as they don’t just duplicate what we do already”. They said institutions did not want to be “hamstrung by needing to deliver what’s in an outcome agreement rather than deliver what is really important for our region, for our economy, and to do that on the basis of the institutional autonomy and the academic freedom that we have.”²⁸⁷

309. The Council of Deans of Health Wales disagreed with the introduction of outcome agreements, concerned that it could be based “solely on quantitative metrics” and not consider wider factors. If introduced they wanted to see “qualitative and contextual information” included, with “wider socio-economic factors, rurality and use of the Welsh language” taken into account.²⁸⁸ Carmarthenshire County Council Education Department also called for the agreements to “embrace wider notions” of “‘value’ and ‘quality’”, rather than what they considered the narrower definitions from the references in the Explanatory Memorandum.²⁸⁹ The EHRC also called for a focus on the strategic duties of equality of opportunity and encouraging participation when drawing up the outcome agreements.²⁹⁰ Colegau Cymru said that “if we can reduce the focus on inputs and move the focus to outputs in a sensible way” this

²⁸² [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 148](#)

²⁸³ Written evidence, [TER.05, Wrexham Glyndŵr University, paragraph 6](#)

²⁸⁴ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 148](#)

²⁸⁵ Written evidence, [TER.12 The Open University in Wales, paragraph 5.3](#)

²⁸⁶ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 335](#)

²⁸⁷ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 149](#)

²⁸⁸ Written evidence, [TER.10 Council of Deans of Health Wales](#)

²⁸⁹ Written evidence, [TER.20, Carmarthenshire County Council Education Department, paragraph 1.3](#)

²⁹⁰ Written evidence, [TER.24, Equality and Human Rights Commission](#)

would be the “right thing.”²⁹¹ Adult Learning Wales said that the agreements would need to “reflect the actual specific mission and aims of an organisation.”²⁹²

310. Some such as Unison Cymru,²⁹³ and QAA²⁹⁴ felt that outcome agreements could be an effective tool to drive through the strategic priorities as well as help with accountability. The Welsh Language Commissioner said there was an opportunity for outcome agreements to be used to secure Welsh medium provision.²⁹⁵ However, he also urged caution to ensure that the outcome agreements do not cause a weakening of Welsh medium sixth form provision.²⁹⁶ Estyn also believed they had the “potential” for benefits. They felt it was “reasonable” for the Commission to set out expected outcomes.²⁹⁷

311. The NTfW was “very supportive” of outcome agreements calling it an “absolute benefit”, which is in line with how apprenticeships are currently managed. They said it was right that providers are “held to account ... it is public money.”. They also said “we can’t underestimate the significant importance” outcome agreements could make to the Welsh economy “in terms of actually driving behaviour to follow both national and regional priorities.”²⁹⁸

312. The Minister described outcome agreements as “a really important part of the Bill” because they provide the “line of sight” between national priorities and decisions taken by individual institutions. He said it will be “a very transparent, public way” to show this link.²⁹⁹ A member of the Welsh Government Policy Team described them as “effectively, terms and conditions of funding”.³⁰⁰

Lifelong and adult learning

313. The intention of sections 90-92 is that the Commission prioritises securing provision for further education and training, in the following order:

²⁹¹ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 349.

²⁹² Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 23.

²⁹³ Written evidence, TER 08, Unison Cymru, paragraph 12.

²⁹⁴ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 335.

²⁹⁵ Written evidence, TER 03, Welsh Language Commissioner, paragraph 2.6.

²⁹⁶ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 516.

²⁹⁷ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 334.

²⁹⁸ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraphs 21 and 27.

²⁹⁹ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 103.

³⁰⁰ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 176.

- 'Proper' provision for 16-19 year olds and specific relevant education and training for specific eligible persons over 19;
- 'Reasonable' provision for everyone else aged over 19.

314. The Explanatory Memorandum states that the Commission "will need to give priority to meeting the learning and skills needs of the younger age group and those adults over the age of 19 who meet the criteria.". This, the Welsh Government says, is "an expansion of current policy."³⁰¹.

315. The Open University in Wales called sections 91 and 92 "very promising".³⁰² Whilst Colegau Cymru said it was "a step forward."³⁰³ They also indicated that they understood the "incremental approach" the Government is taking to expand provision:

*"... a pragmatic response that says there is a longer term commitment to progressively improving lifelong learning opportunities is a good way forward, because yes, we have to make priorities and I guess our priorities for 16-19-year olds are important ..."*³⁰⁴

316. HEFCW said that by failing to place a duty on the Commission to secure proper facilities for all there was a risk of some provision "being funded disproportionately to other areas ...". It called for the Bill to be amended to either place a duty to secure proper facilities for all, or to add a duty to ensure there is a balanced approach to funding across all Commission funded provision.³⁰⁵ This also links to broader evidence we gathered on the need for a balanced funding duty which we cover in the section below. Adult Learning Wales also called for the duty to provide proper facilities to cover all learners "regardless of age".³⁰⁶ The Open University in Wales said "all persons, eligible for the purposes of the bill or otherwise, should be able to access equally proper learning opportunities throughout life."³⁰⁷

317. The Learning and Work Institute whilst welcoming the duty on the Commission to secure proper facilities, were concerned that the definitions of both relevant and eligible "will be

³⁰¹ Welsh Government, Tertiary Education and Research (Wales) Bill Explanatory Memorandum, Paragraph 3.264, 1 November 2020

³⁰² Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 200

³⁰³ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 275

³⁰⁴ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 273

³⁰⁵ Written evidence, TER 32 HEFCW, paragraph 2.20

³⁰⁶ Written evidence, TER 29, Adult Learning Wales, paragraph 23

³⁰⁷ Written evidence, TER 12 The Open University in Wales, paragraph 5.8

narrowly drawn.”. They had concerns that the eligibility criteria will be focused on younger cohorts initially, therefore excluding mid-career and older learners. They said such an approach would undermine the strategic duty within the Bill to promote lifelong learning. They said a “trade-off between cohorts” should be avoided, and that there should be “balanced investment across the sector and the age profile of learners.”³⁰⁸. The Open University in Wales said the Bill “needs to be really open to reskilling people throughout their lives at all sorts of levels, and be able to move through.”. They said it was important to ensure the Bill “doesn’t act against that.”³⁰⁹.

318. Cardiff and Vale College called for greater clarity on the definitions of “proper”, “reasonable” “eligible” and “relevant” within sections 90-92.³¹⁰ Whilst the NTfW said they “can’t get excited” about meeting lifelong learning commitments until they know what an “eligible person” is.³¹¹

319. There was a broad welcome from Adult Learning Wales for the additional flexibility in section 91 for Welsh Ministers to expand by regulations which learners over 19 could be covered by the “proper facilities” duty.³¹² Adult Learning Wales said that this wording “helps” because “civil servants would always say, ‘We have to cut adult learning because of the legislation’, and they would follow that legislation.”³¹³. They also hoped that these regulations “would open the door for many categories of learners” who currently are not included in funding.³¹⁴

320. The Open University in Wales called for reference to the delivery of training to be included in the types of further education or training that may be described in regulations under section 91(4). They highlighted this in the context of the likely increase in distance and online provision in the future. They said a clear statement of this within the Bill would be a “welcome indication that the progressive expansion of lifelong learning will include” learning delivered online or distance learning.

321. The Open University also noted that section 91 makes reference to courses at levels 1-3, but lifelong learning “does not simply mean accessing a course at levels 1-3 as an adult; rather it

³⁰⁸ Written evidence, [TER 26, Learning and Work Institute](#)

³⁰⁹ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 205](#)

³¹⁰ Written evidence, [TER 33, Cardiff and Vale College](#)

³¹¹ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 98](#)

³¹² Written evidence, [TER 29, Adult Learning Wales, paragraphs 23-25](#)

³¹³ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 59-60](#)

³¹⁴ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 95](#)

should mean that learning is a progressive and continuous process.”³¹⁵. The NTFW said that specifying these levels within this Bill was a “level of detail” within the Bill which was “un-useful.” They highlighted that people doing higher level apprenticeships “generally” are over 19.³¹⁶ Colegau Cymru agreed that care needed to be taken so that there is not “accidentally” ruling out of “potentially higher level qualifications, or if we moved to systems that are used elsewhere ... where a qualification isn’t a single level.”³¹⁷.

322. Colegau Cymru said that the leadership on levels 4 and 5 “is very confused ... bit of a no-man’s-land between HE and FE.”. They believed that the Commission provided a “real opportunity” to show this leadership. They called for “some of the constraints” currently in place to be removed, “such as having to franchise from HE ... take those shackles away and really allow these levels to really blossom, and that curriculum to blossom.” Although they also noted that the Bill as it is currently drafted did not really address it as a “big issue.”³¹⁸.

323. Adult Learning Wales noted “a strong emphasis on qualification based education for adults”. In particular they noted this in relation to access of proper facilities for eligible persons over 19. Whilst acknowledging the importance of accredited / qualification based learning, they said there are important benefits for non-accredited “engagement type activities”. They said such “hook courses” play “an essential part in getting those hardest to reach and furthest from education, employment, and training back into learning.”³¹⁹. They called for “reference” to this type of provision within the Bill.³²⁰

324. As outlined in paragraph 327, the Minister has indicated that the approach in the Bill will allow a progressive expansion of lifelong learning. The Open University welcomed this, and said that prioritising eligible learners “in the first instance, appears to us to be a sensible approach.” Yet, they have “reservations that embedding the disparity between ‘reasonable’ and ‘proper’ facilities in primary legislation could become a practical barrier” to the aspirations of the Minister.³²¹

³¹⁵ Written evidence, [TER 12 The Open University in Wales, paragraphs 5.13-5.14; 5.17](#)

³¹⁶ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 48](#)

³¹⁷ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 275](#)

³¹⁸ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraphs 281, 283](#)

³¹⁹ Written evidence, [TER 29, Adult Learning Wales, paragraphs 7-8](#)

³²⁰ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 54](#)

³²¹ Written evidence, [TER 12 The Open University in Wales, paragraphs 5.10-5.11](#)

325. Adult Learning Wales raised concerns about the lack of progress with the establishment of a national strategic body to oversee adult community based learning. The previous Minister for Education had said that the arrangements for the national body would sit within the Commission, but they highlighted there was no reference to this in the Bill or accompanying documentation. They said that this body “was very much needed” because there is a “danger” that adult community learning will be “lost” in the wider adult learning agenda.³²² They called for the Bill to be strengthened to ensure that adult community learning is “properly considered, managed, and represented within” the post 16 sector.³²³ The Learning and Work Institute also agreed that there needed to be a “clear recognition” by the Commission of the role adult community learning can play.³²⁴

326. On a broader issue related to lifelong learning, the NTfW called for Welsh Government funded employability programmes to be within the remit of the Commission. They said that these are learners “who need the most support, need the greatest level of oversight and quality of provision, and rightly so, providers held to account for that ...”. They accepted there may be “valid reasons” for this, but they were not yet aware of why “those individuals furthest from the job market, needing the greatest level of support, have no protection or oversight from the commission.”³²⁵

327. The Minister said that lifelong learning is “a very, very important part of the Bill.” He said that “in line” with the Government’s commitment to “expand lifelong learning” the Bill “extend the requirements to provide proper facilities, which is a higher level of obligation, to those post 19 who are eligible learners ...”. He added that the regulation making powers that enable Welsh Ministers to define eligible persons are:

“...the mechanism in the Bill that allows the progressive expansion of lifelong learning for the first time. So it isn't simply 'reasonable facilities' it's broader than that.”

He said the reason why the Bill does not provide for proper facilities for everybody is that the number of people post 19 is “much larger” which requires this “progressive expansion.” The regulations “provide us with the flexibility to do” this.³²⁶

³²² Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 29

³²³ Written evidence, TER 29, Adult Learning Wales, paragraph 1

³²⁴ Written evidence, TER 26, Learning and Work Institute

³²⁵ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 62

³²⁶ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraphs 184-186

328. The Minister also explained that the use of proper and reasonable are “a borrowed concept ... from the existing legislative framework” with these coming from the Learning and Skills Act 2000. He said it is a “mechanism by which you allocate priority ...” and that the point of the mechanism is to “progressively extend that higher level of obligation.”³²⁷.

329. When we raised the concerns about lifelong learning provision being framed specifically in terms of further education in the Bill; he said that he “presently” anticipates that the Commission “may make similar grant funding arrangements for part-time courses of higher education to those currently made by HEFCW ...”. He added that the Government was “interested” in the sector’s views on what can be done to “facilitate lifelong learning in higher education.”³²⁸.

330. The Minister committed to these regulations being “co-constructed and informed by the expertise” within the sector. He said that the recent report by the Wales Centre for Public Policy “Supporting the Welsh Lifelong Learning System” would inform the regulations. He intends for the regulations to be consulted on during 2023, and to be in place for the 2024 / 25 academic year.³²⁹

331. On the issue of a national body for adult community learning, the Minister said that the previous statement by the then Minister for Education was a decision to “explore the feasibility of a national body ...”. He said his view is that the key issue is “national co-ordination ...” and that “things have moved on” since the previous statement.³³⁰ He subsequently provided further information saying that policy considerations had “moved forward” since the 2019 statement, and that the Commission will be responsible for planning and funding across the sector “including adult and lifelong learning.”. He outlined that he is setting up an “External Reference Group to take forward a programme of national co-ordination with key stakeholders from the sector.”³³¹.

³²⁷ Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraphs 73-75

³²⁸ Letter from Minister for Education and Welsh Language to Chair, Children Young People and Education Committee, 4 February 2022, paragraph 2.3

³²⁹ Letter from the Minister for Education and Welsh Language to Chair, Children, Young People and Education Committee, 14 February 2022

³³⁰ Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraphs 85-86

³³¹ Letter from the Minister for Education and Welsh Language to Chair, Children, Young People and Education Committee, 4 February 2022, paragraphs 10.1-10.2

Funding for research and innovation

332. Stakeholders including HEFCW,³³² and the Learned Society of Wales³³³ emphasised the importance of protecting the “dual system” of support for research funding. HEFCW said this enabled Wales to “punch above our weight” in relation to the quality of research produced.³³⁴

333. A number of stakeholders including HEFCW³³⁵ and the Learned Society³³⁶ raised concerns that the Bill could reduce the research funding streams known as “Quality Research Funding (‘QR funding’). The Learned Society called QR funding “absolutely crucial” to university research and said it needed to be recognised as “the basic building block” of all university research and innovation.³³⁷ HEFCW said that there is a risk if the Bill specifies research areas to be funded it could risk crowding out the QR funding which is focused on “long-term research development.”³³⁸ They also highlighted that by being more specific on areas to fund, it increases the risk of reducing the capacity of the “research machinery to respond to opportunities as they arise.” They emphasised that neither HEFCW nor the Welsh Government are at the “chalkface” which limits their ability “to actually see where the new knowledge is going to come from.”³³⁹

334. The Learned Society called for the QR fund to be protected in line with the recommendations of the Diamond and Reid Review. They also called for QR funding to be increased in line with moves in England to ensure that Wales remains “competitive”. They also emphasised the role QR funding plays in enabling universities to have the “platform to secure a greater share of competitively awarded research funding.”³⁴⁰ They also noted the increase in funding available at a UK level, and that QR funding was important to ensure the Welsh sector is “fighting fit” to be able to successful bid to compete for this “much bigger pot of funding.”³⁴¹

335. Universities Wales and the Chairs of Universities Wales highlighted the importance of core funding to build “the foundations of the research base”. They said that it was “imperative” that

³³² Written evidence, TER 32, HEFCW, paragraph 2.10.

³³³ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 154.

³³⁴ Written evidence, TER 32, HEFCW, paragraph 2.10.

³³⁵ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 299.

³³⁶ Written evidence, TER 25, Learned Society of Wales, paragraph 6.5.

³³⁷ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraphs 237-238.

³³⁸ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 299.

³³⁹ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 309.

³⁴⁰ Written evidence, TER 25, Learned Society of Wales, paragraph 6.5.

³⁴¹ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 154.

the Commission is “incentivised” to promote research and innovation, including basic or fundamental research.³⁴²

336. As we explored in Chapter 4 on the Commission’s strategic duties, there was a call to strengthen the position of research within these. The Learned Society believed that such a strengthening would also help to “protect research funding” within the Commission.³⁴³

337. One of the areas for concern was that some of the provisions around consent may hinder collaboration. We cover this in the section below on Collaboration and Consent.

338. Universities Wales and the Chairs of Universities Wales raised concerns that the Commission will not be under a duty to consult with universities on funding policy changes. They said all such funding powers “should be subject to this requirement as a matter of prudent and responsible practice.”³⁴⁴

339. We explored the restrictions which seem to be within the Bill which only enable the Commission to provide research and innovation funding to registered providers, which currently means only higher education institutions would be eligible. The Learned Society said there were other sources available to non-HE institutions, and said it was right the Commission was focusing on universities. They did not believe there would be a “huge” impact on research and innovation outside of the higher education sector. They said it was important that there was the opportunity to collaborate with non-HE institutions.³⁴⁵

340. David Notley disagreed with the Learned Society’s position saying there was a risk of funding being “siloe”, and that approach may not encourage or mandate collaboration. He was happy for research and innovation funding to be “rooted” in the education sector, but there needed to be mechanisms that “facilitates, encourages, and possibly even mandates” collaboration. His concern was that it becomes incumbent on the education sector to reach out and collaborate, which might not always happen.³⁴⁶

341. In relation to the Commission’s lack of powers to fund research outside of the higher education sector, the Minister emphasised that the principle “scope” of the Bill was “regulation, funding and oversight of the tertiary education sector.”. Whilst research is an important part of

³⁴² Written evidence, [TER 36, Universities Wales and the Chairs of Universities Wales, paragraph 5](#)

³⁴³ Written evidence, [TER 25, Learned Society of Wales, paragraph 4.4](#)

³⁴⁴ Written evidence, [TER 36, Universities Wales and the Chairs of Universities Wales, paragraph 7.11](#)

³⁴⁵ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraphs 193-194](#)

³⁴⁶ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 197](#)

that, he said some research is done outside of this sector. He said the Commission did not have other strands of research funding available as the Commission would not be regulated these funding providers so it would not be “appropriate.”³⁴⁷.

Sixth Forms

342. Sixth forms are included within the remit of the Commission. The Explanatory Memorandum explains that as the Commission will have strategic responsibility for securing proper facilities for 16-19 year olds, the Commission will be able to “in certain circumstances” direct that a school sixth form be established or discontinued. Local authorities and governing bodies will retain the power to bring forward their own proposals but Welsh Ministers will no longer have a “general proposals role to restructure school sixth form provision”. The Explanatory Memorandum also states that the “circumstances and limitations” on what may trigger the Commission to issue directions will be “consulted on and included in the statutory School Organisation Code.”³⁴⁸.

343. We heard concerns about the Commission having these responsibilities. Carmarthenshire County Council Education Department believed removing the “‘local’ context ... could be a recipe for disaster.”. They also believed it undermined the principles of subsidiarity, local autonomy and emphasis which are being seen in the new Curriculum. They suggested that it could be “argued too it implies an insidious political aim to undermine the role of Local Authorities and their schools as tertiary education providers. This implication is reinforced by the removal of sixth forms from many aspects of the legislation, in particular the learner protection and engagement ones.”³⁴⁹. The Education Workforce Council raised concerns that the Commission’s powers over sixth forms could lead to the “removal” of “local accountability for this unique element of our education provision.”³⁵⁰. NEU Cymru agreed saying it “undermines local democracy and representation.”³⁵¹.

344. The Catholic Education Service were also concerned that an unintended consequence of the Bill will be “closure of traditional sixth forms in favour of ... provision in further education colleges.” They indicated this would reduce diversity as well as affect the local communities who

³⁴⁷ Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraphs 77-78

³⁴⁸ Welsh Government, Tertiary Education and Research (Wales) Bill Explanatory Memorandum, Paragraph 3.280 and 3.282, 1 November 2020

³⁴⁹ Written evidence, TER 20, Carmarthenshire County Council Education Department, paragraph 1.2.

³⁵⁰ Written evidence, TER 13, Education Workforce Council

³⁵¹ Written evidence, TER 14, National Education Union Cymru

are supported by Catholic schools and affect schools ability to “deliver a ‘civic mission’”.³⁵² They were concerned that the needs of learners who want to continue in a “church school” have not been given “due consideration”. The Catholic Education Service Post 16 Development Group agreed and said they hoped for “equality of opportunity” for those students who wish to access provision within a church school setting.³⁵³ This was also supported by St Joseph’s Catholic School and Sixth Form Centre.³⁵⁴

345. NASUWT were also concerned and highlighted that they have previously “advised” that the Commission’s role should be limited to registration and reporting and should not include the planning, funding and monitoring of school sixth forms.³⁵⁵ They were also concerned that it could lead to “chaos and confusion” and that the proposals are more confusing than the current situation.³⁵⁶ NEU Cymru was “extremely concerned” about these powers, and flagged the role learners in sixth forms play in their wider school community.³⁵⁷ In light of the broader impacts on young people across the school sector, they believe it is “a bit of an inappropriate power.”³⁵⁸ NAHT Cymru said they were “very concerned” about these powers and that they supported the “overwhelming consensus” in the response to the draft Bill that the triggers for the Commission to instigate sixth form reorganisation should be “clearly defined” as well as subject to full consultation.³⁵⁹

346. UCAC said they have “significant concerns” about these proposals which they have indicated in previous consultations. They also said that the use of “‘rationalise’ here and in places on the face of the Bill itself is utterly inflammatory and unacceptable.”. They said that for staff in sixth forms, that “even if it is not intended ...” this language will “mean only one thing, namely closing sixth forms.”. They added that they feel these powers are “inappropriately invasive” and that there are no comparable powers for any other sectors.³⁶⁰

347. The Welsh Language Commissioner highlighted the important role sixth forms play for Welsh medium education enabling pupils to “maintain and develop those Welsh language skills and also contribute to the Welsh ethos of those schools.”. They said it was important that the

³⁵² Written evidence, [TER 17. Catholic Education Service](#).

³⁵³ Written evidence, [TER 19. Catholic Education Service Post 16 Development Group](#).

³⁵⁴ Written evidence, [TER 37. St Joseph’s Catholic School and Sixth Form College](#).

³⁵⁵ Written evidence, [TER 04. NASUWT, paragraph 23](#).

³⁵⁶ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 425](#).

³⁵⁷ Written evidence, [TER 14. National Education Union Cymru](#).

³⁵⁸ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 403](#).

³⁵⁹ Written evidence, [TER 40. NAHT Cymru](#).

³⁶⁰ Written evidence, [TER 46. UCAC, paragraphs 6.4.2-6.5](#).

Commission had “an understanding and appreciation” of sixth forms in Welsh medium schools.³⁶¹ UCAC emphasised that Welsh sixth forms continue with the “immersion model, which is such an effective methodology for developing language skills ...”³⁶². Coleg Cymraeg Cenedlaethol said that in many places sixth form provision is the only place where learners can access Welsh medium provision.³⁶³ A situation that the Welsh Language Commissioner agreed with saying “we need to be aware that this is the situation in some areas.”³⁶⁴. The Coleg Cymraeg Cenedlaethol called for “checks and balances” within the process to ensure that there are considerations on the impact on the language locally, and impact on delivery of Cymraeg 2050 strategy.³⁶⁵

348. Colegau Cymru said that the Bill “needs to treat all 16-to-19 provision on the basis of what’s in the best interests of learners.”. They noted the importance of:

“... the fundamental independence of the commission to oversee a system in which decisions are made on the basis of what is in the best interests of learners, rather than trying to find ways in which to protect or insulate specific types of provider.”³⁶⁶

349. The WLGA agreed saying that the priority is about getting “the correct pathway for the learner ... whether it is sixth form at a school or whether it’s further education.”³⁶⁷. They also called for assurance that current levels of funding for both sixth forms and adult community learning “will, at the least, be maintained at current rates.”³⁶⁸.

350. The Minister told us that including sixth forms within the remit of the Commission will enable the Commission to be “strategic in its oversight.”. He believed it will also enable a “mixed-economy model” of provision offering “a diversity of choice” to be continued whilst allowing a “coherent approach” for planning and funding. He said that the Bill will not impact on local authorities or individual schools in their day to day management or the legislative framework for this. In instances where the Commission is proposing changes it will have to act “in accordance with the school organisation code ...”. He said that the Code is approved by the

³⁶¹ Written evidence, [TER.03 Welsh Language Commissioner, paragraph 2.4](#)

³⁶² Written evidence, [TER.46, UCAC, paragraph 6.9](#)

³⁶³ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 508](#)

³⁶⁴ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 515](#)

³⁶⁵ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 520](#)

³⁶⁶ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 323](#)

³⁶⁷ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 325](#)

³⁶⁸ Written evidence, [TER.01, WLGA, paragraph 13](#)

Senedd and this “remains the democratic backstop.”. He believed this power was “a last-resort power” which “provides the right balance.”³⁶⁹.

351. In response to UCAC’s concerns about the use of rationalisation within the Bill, he said the “concept of rationalisation ... that language is used in the existing legislation ... that’s the relevance of that phrase.”³⁷⁰ He would later “reiterate” that the use of these terms was “not intended to suggest closure or reduction, rather it is intended to suggest bringing better order to things, ensuring that sixth form provision is sensible and coherent.”³⁷¹.

352. The Minister also told us that the sector had been “broadly supportive” of including sixth forms within the remit of the Commission, and that it will help promote “a more coherent workforce development, professional learning and best practice, but also to make a reality of ... a seamless journey between pre and post 16.”³⁷².

Welsh Ministers’ funding powers

353. HEFCW raised concerns about section 86 and called for it to be removed from the Bill. They believed that if there are “strategic gaps” in provision that the Commission should have the “necessary funding and use its powers to fund, influence and regulate providers.”. As well as risking the Commission funding provision where they have no regulatory oversight, they felt this section “enables” Welsh Ministers through the regulation making power to fund provision “potentially undermining the Commission’s strategic position.”³⁷³. Cardiff Metropolitan University shared these concerns. They said that if the Welsh Government is able to specify funding for particular courses or research “it would undermine our autonomy and put Welsh universities at a serious disadvantage to the rest of the UK.”³⁷⁴.

354. HEFCW also had concerns about Welsh Ministers’ retaining powers to directly fund higher education research. They said that if the Commission is responsible for the strategic funding, it should be “the sole conduit of Welsh Government funding for those providers.”³⁷⁵. They believed this would undermine the Commission’s strategic leadership, as well as their ability to act at a UK level, as well as undermining the “arms-length principle that ensures that research in higher

³⁶⁹ Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraphs 106-107.

³⁷⁰ Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraph 105.

³⁷¹ Letter from the Minister for Education and Welsh Language to Chair, Children, Young People and Education Committee, 14 February 2022.

³⁷² Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 207.

³⁷³ Written evidence, TER 32, HEFCW, paragraph 2.18.

³⁷⁴ Written evidence, TER 21 Cardiff Metropolitan University, paragraph 6.2.

³⁷⁵ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 298.

education is free from direct government influence or control.". They called for the related powers in other pieces of UK legislation to be "dissolved" or if the powers are retained amendments brought forward to these existing pieces of legislation "to include a legal commitment for Government to involve the Commission when deciding on how it allocates higher education research funding.". They were also concerned that the Government having the ability to direct funding to specific areas of research "risks reducing overall research capacity funding in order to focus on short-term priorities."³⁷⁶.

355. HEFCW said that in those circumstances where funding needed to be provided directly, then it was reasonable to expect that the Commission be consulted, and "asked to advise prior to the funding decisions being made."³⁷⁷

356. Universities Wales and the Chairs of Universities Wales called for amendments to the Bill to limit Welsh Ministers' powers to fund universities directly, saying there currently are "no limitations" to this power. They said that such powers should be "subject to the same limitations that apply to the Commission when funding providers." They were also concerned that Welsh Ministers will no longer be "prohibited" from specifying particular courses or areas of research when setting the Commission's terms and conditions of funding. They were unconvinced that sufficient explanation had been given for such changes, and that it would pose risks to both academic freedom and the Commission's strategic role.³⁷⁸

357. Universities Wales and the Chairs of Universities Wales had concerns about the "gaps in the limitations" in powers transferred in the Bill to both Welsh Ministers and the Commission imposing terms and conditions on funding. They did not believe that these powers were "fully covered by the extension of the general duties in relation to compatibility with charity law and academic freedom."³⁷⁹

358. HEFCW also had concerns about Welsh Ministers powers to fund further education and training under sections 94-100. They were concerned that with both the Commission and Welsh Ministers sharing funding powers which could be used simultaneously there was a risk of "unclear strategic priorities, blurring the lines of accountability and adding unnecessary complexity for providers."³⁸⁰

³⁷⁶ Written evidence, [TER 32, HEFCW, paragraphs 2.9-2.12](#)

³⁷⁷ [Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 298](#)

³⁷⁸ Written evidence, [TER 36, Universities Wales and the Chairs of Universities Wales, paragraphs 7.13-7.14](#)

³⁷⁹ Written evidence, [TER 36, Universities Wales and the Chairs of Universities Wales, paragraph 7.10](#)

³⁸⁰ Written evidence, [TER 32, HEFCW, paragraphs 2.4](#)

359. In responding to concerns about the dual funding powers for higher, further education and training, the Minister said that these are in line with currently held powers to fund “some aspects.” He said this is a “specific power” with a focus on “professional qualifications.”. He clarified that:

“The powers in terms of things that lead to specific qualifications lie within the scope of the work of the commission, and things that are in the field of employability are still within the Government's hands. So, that's the broad allocation. So, if you look, for example, at Jobs Growth Wales and Working Wales, there are elements of those that require direct funding from the Welsh Government, and retaining those financial powers allows us to continue providing that kind of scheme.”³⁸¹

Balance of funding and transparency

Balance of funding

360. There were calls from stakeholders for a balanced funding duty, including Universities Wales and the Chairs of Universities Wales who said there was a “need” for this duty.³⁸² Cardiff Metropolitan University were concerned about the extent the Commission will be able to balance its duties across the full range of its responsibilities. They urged the Bill to be amended to include a balanced funding principle “to ensure clear, equitable and transparent funding arrangements across the Commission’s duties.”³⁸³.

361. Universities Wales and the Chairs of Universities Wales highlighted that there is already a precedent for such a principle in higher education legislation in the UK, and believed this could help with devising a form of words as to how “Welsh Ministers and Commission must ensure a reasonable balance is achieved in the allocation of funding as between the Commission’s different functions, including the funding of further education and training, higher education, and research and innovation.”³⁸⁴

³⁸¹ [Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 144](#)

³⁸² [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 217](#)

³⁸³ Written evidence, [TER 21 Cardiff Metropolitan University, paragraphs 5.1-5.2](#)

³⁸⁴ Written evidence, [TER 36, Universities Wales and the Chairs of Universities Wales, paragraph 7.3](#)

362. HEFCW also said there should be an “obligation” for the Commission to “maintain a reasonable balance of funding.” Maintaining such a balance they said “will be important to ensure stability” in allocation of funding particularly in the “early stages of the commission.”³⁸⁵

363. The Learning and Work Institute called for the Commission to balance investment across the sector to “ensure learning is accessible.” They highlighted that funding must provide “appropriate opportunities within communities” as well as outreach and engagement, advice and guidance and a “responsibility” on all parts of the sector “to widen participation to under-represented groups.”³⁸⁶

364. The Learned Society of Wales believed a balanced funding duty, along with strengthening the strategic duties around research and innovation would “recognise and protect” important QR funding. They described QR funding as the “foundation on which the competitive, project-based funding streams from other sources depend.”³⁸⁷ We have covered this in more detail in the previous section on funding for research and innovation

Transparency

365. Colegau Cymru emphasised the importance of transparency across the funding systems. They understood the need for different funding systems for different parts of the sector, but said there needed to be sufficient transparency so that all elements of the post 16 sector feel they are being treated “equitably”.³⁸⁸

366. HEFCW raised concerns about the extent to which financial information shared by institutions under section 78 may then be shared by the Commission with Welsh Ministers. They highlighted that the often “confidential and commercially sensitive” nature of this information may lead to providers being reluctant to share if it may then be shared with Welsh Ministers. They called for the Bill to be amended so that there is only a requirement for “a reasonable summary to be shared”. They believed this would balance “providing assurances to Welsh Ministers whilst enabling the Commission to deliver on its responsibilities.”³⁸⁹

367. These concerns were shared by Universities Wales and the Chairs of Universities Wales. They said that the sharing of commercially sensitive information “during the recruitment cycle”

³⁸⁵ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 318

³⁸⁶ Written evidence, TER 26, Learning and Work Institute

³⁸⁷ Written evidence, TER 25, Learned Society of Wales, paragraph 6.3

³⁸⁸ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraphs 341-342

³⁸⁹ Written evidence, TER 32, HEFCW, paragraph 2.23

or financial information “presented without context. could advantage or disadvantage providers in a way incompatible with competition law.”³⁹⁰

368. In responding to the calls for a balanced funding duty, the Minister made the links between balanced funding and transparency. He said the Bill had been inspired by examples across the world, including New Zealand, which has a “high level of transparency” about budget allocations across the different parts of the sector. He believed the current arrangements were already “very transparent”, with HEFCW setting a “very good example in this space.” He indicated that the issue of transparency was one of the areas he was seeking to consider in terms of possible changes to the Bill.³⁹¹

Collaboration and consent

369. HEFCW shared their experiences, saying regulation is not a “effective tool” to encourage collaboration, and that funding “with appropriate terms and conditions” is more effective. They also noted that they do not approve “most of these arrangements” when funding is passed on by institutions. They use the terms and conditions of funding which provides “a clear line of sight.”³⁹²

370. We heard concerns about how some of the provisions may significantly hinder collaboration. In particular in relation to research and innovation; and training and apprenticeship provision. HEFCW called these provisions “too prescriptive” adding that they do not seem to cover all possible collaborative “scenarios”. The provisions are “burdensome” and will be difficult for both the Commission and providers to adhere to. They also had concerns about the powers of the Welsh Ministers to “set the parameters” for approval. They called for the legislation to be “more high level” and for the specifics to be covered in terms and conditions of funding.³⁹³ The Learned Society said the provisions could be a “barrier to effective collaboration” and called for transparent and efficient processes to avoid this.³⁹⁴

371. Cardiff Metropolitan University had concerns about the consent requirement, noting the scale of collaboration within universities who work with “thousands of partners” and that the “scope and scale” of this “additional” requirement will cause “excessive burden” and be “likely

³⁹⁰ Written evidence, TER 36, Universities Wales and the Chairs of Universities Wales, paragraph 9

³⁹¹ Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraph 58

³⁹² Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraphs 317 and 320

³⁹³ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 321

³⁹⁴ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 292

reduce collaboration.”³⁹⁵. Universities Wales and the Chairs of Universities Wales shared concerns about this, citing experiences in England, where a more limited consent requirement was introduced, but has now been “scaled back” after consultation. They agreed with Cardiff Metropolitan University, that it would create barriers, and could potentially encourage businesses to “prioritise that activity elsewhere in the UK.” They questioned whether the consent requirement was even needed within the Bill, saying that the Commission has “sufficient flexibility through terms and conditions.”. They called for these powers to be amended to ensure that the Commission does not have to “individually agree every potential collaborative agreement or type of collaboration.”³⁹⁶

372. Colegau Cymru called for more information about these provisions saying it was “legitimate” that funding is not just passed onto other providers “without any form of accountability.” They wanted to know the threshold at which these provisions would apply, saying that further education colleges currently collaborate with other colleges and other providers “in legitimate ways” often with “very, very small quantities of funding.” They said the processes would need to be responsive and “proportionate”.³⁹⁷

373. Colegau Cymru used a real life example to illustrate how the sector often has to respond quickly to circumstances:

“... working with the private sector, for example, the latest crisis has been in terms of heavy goods vehicle drivers. We've used the extra personal learning accounts funding now and worked in collaboration as a college with local HGV trainers in order to provide them with funding to try and solve some of this problem. So, I think we need flexibility here if we're going to react quickly to certain problems. We need flexibility to be able to commission, and I think please let's not inhibit that because it can work very, very effectively.”³⁹⁸

374. The NTfW highlighted the way the apprenticeship frameworks are currently commissioned, saying that the introduction of the consent provisions were a barrier in what is “potentially going to be an under-resourced system”. They said there was no need to introduce it now or in any future apprenticeship programmes.³⁹⁹ They also called for processes that do not

³⁹⁵ Written evidence, TER 21 Cardiff Metropolitan University, paragraph 6.4

³⁹⁶ Written evidence, TER 36, Universities Wales and the Chairs of Universities Wales, paragraphs 7; 7.16-7.17; 7.21

³⁹⁷ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraphs 289 and 294

³⁹⁸ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 291

³⁹⁹ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 37

duplicate time, energy or public money on things that are being delivered elsewhere in the system.⁴⁰⁰

375. The Minister told us that the consent provisions were not a barrier and that:

*"actually, in substance, it extends collaboration in the following way: the commission will not have a direct regulatory or funding relationship with collaborating bodies ... what the mechanism provides is an extension of that funding beyond the direct relationship into third parties, so it enhances that ability to collaborate ... there is some mechanism for that to be consented, just on the basis of value for money and public funding principles ..."*⁴⁰¹

Committee view

Outcome agreements

376. There were a range of views in relation to the outcome agreements, which we note. It is clear that the outcome agreements must be meaningful, and should not just be overly bureaucratic exercises. There should be a clear acknowledgement, understanding and protection of the distinctive characteristics of individual institutions in the implementation of outcome agreements.

Lifelong and adult learning

377. We believe there should be a clear commitment to delivering lifelong learning opportunities to people across Wales, regardless of age. We are concerned that the current provisions could create barriers to people accessing such opportunities. Society and the world of work is changing rapidly, with people often either wishing to, or having to, change jobs, and needing to reskill. It is a basic question of parity across different groups of people. We do not believe it is clear why the lifelong learning offer should not be much wider and progressive.

378. We would like to see greater clarity from the Minister in relation to the national body for adult community learning (see paragraph 325). The evidence seems to suggest that this body is no longer being developed, but we would like a definitive answer from the Minister on this.

Recommendation 24. That the Minister provides absolute clarity as to whether a national body for adult community learning will be established.

⁴⁰⁰ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 110

⁴⁰¹ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 188

Balance of funding and transparency

379. The Commission is going to have an incredibly broad remit, and the budget it will be responsible for will be second only to some NHS trusts in Wales. It will hold the levers to the delivery of provision which impacts on many devolved areas. With such a breadth of responsibility, we can understand concerns about ensuring that certain sections of the post 16 sector are not “lost” in this space or, because of funding realities, find themselves disproportionately under-resourced in the future because the Bill places duties on the Commission to prioritise securing proper further education and training.

380. We agree with stakeholders that a balanced funding duty coupled with transparent information on funding will help alleviate these concerns, and help the Commission ensure it delivers its strategic duties across the full breadth of the post 16 sector.

381. The duty should be underpinned with transparency around funding. We note that this is already in place in relation to HEFCW’s funding, who set out every detail of their funding allocations to providers and the methodologies used, but there is much less transparency in other parts of the post 16 sector where Welsh Government itself regulates and funds. Much of the information that is in the public domain is a result of Senedd Committees requesting this information during scrutiny of the Welsh Government’s draft budget. This is not acceptable, and much more of this information should be in the public domain as a matter of course. Transparency of funding arrangements is vital for effective scrutiny of the Welsh Government and the sector and to enable providers to plan their provision with more confidence and less risk. There is no reason why there should not be greater transparency at least to the current standards of HEFCW. There is also broad and wide support within the sector for greater levels of transparency.

382. We would also highlight that throughout the Bill there are requirements placed upon the Commission to publish a wide range of information in discharging its duties, and believe the lack of a similar duty in relation to funding decisions is a discrepancy that must be rectified.

Recommendation 25. That the Minister tables amendments at Stage 2 to put a balanced funding duty on the face of the Bill.

Recommendation 26. That the Minister tables amendments at Stage 2 to place duties on the Commission to publish the details of at least its funding allocations, funding methodologies, funding formulas, and financial outturns, as well as a duty to be transparent in its funding decisions.

Funding for research and innovation

383. We note the evidence outlining the importance of the current funding systems for research and innovation funding. We would bring to the Welsh Government's attention the calls for the Reid and Diamond reviews to be fully implemented. We would not want to see any unintended consequences arising from this Bill that would dilute the Welsh sector's ability to make successful bids for UK research and innovation funding.

384. We also believe that the Commission should have further latitude to provide research funding to a limited range of non-registered bodies. The list of eligible bodies from UK Research and Innovation would seem an appropriate starting point in developing an appropriate list for Wales, and would help minimise the risks that may arise from the Commission funding organisations outside of its regulatory remit.

Recommendation 27. That amendments are tabled at Stage 2 to enable the Commission to provide research and innovation fund to a limited range of non-registered bodies.

Welsh Ministers funding powers

385. We share concerns raised by stakeholders about the extent of Welsh Ministers funding powers in certain places within the Bill. We also note the Minister's clarification that these funding powers are specific and not general. We believe that the Bill should therefore make this explicit to ensure there is no confusion or potential overreach in the future.

Recommendation 28. That the Minister brings forward amendments at Stage 2 to make a clear distinction between Welsh Ministers powers to directly fund tertiary education providers to deliver employability provision and the Commission's broader funding powers.

Sixth Forms

386. We note the strength of feeling from some stakeholders about the provisions around sixth forms. Whilst we welcome sixth forms being included within the remit of the Commission to help deliver on the seamless learner journey which is a key ambition of the legislation, we understand the concerns that have been raised.

387. The Minister told us that this power was a backstop, which raises the question, that if it is unlikely the power is going to be used, should it be included in the Bill? Sixth forms play an important role, particular in terms of Welsh medium provision, and provision within a religious context. We believe there should be additional safeguards, for example, robust impact assessment processes, put in place to avoid a situation where the Commission could seek re-organisation which could have a detrimental impact on the delivery of Cymraeg 2050 or reduce

provision within schools with a religious character. These decisions should not be taken against the will of the local authority or governing body.

Recommendation 29. That the Minister brings forward amendments at Stage 2 to provide additional safeguards to ensure that any plans brought forward by the Commission for changes to sixth form provision does not have a detrimental impact on Welsh medium provision or provision within a religious school setting.

Collaboration and consent

388. There were clear concerns about the impact of section 105 of the Bill⁴⁰² on collaboration. Colagau Cymru's example of the need to be responsive to develop HGV skills was a powerful case study of how the sector needs to and can be agile to respond to events. We note that due diligence is already present in the current system, and that the primary responsibility must sit with the institution passing on the funding. We do not want to see unnecessary barriers being put in place which may reduce collaboration and consent or may impeded the sector's ability to respond to events.

Recommendation 30. That the Minister brings forward amendments at Stage 2 to delete section 105 and sets out a different approach to managing due diligence when funding is passed onto third parties.

⁴⁰² This section requires Commission consent to be given before its funding can be passed onto third parties.

7. Part 4: Apprenticeships

The Bill gives the Commission powers in relation to apprenticeships, whilst Welsh Ministers continue to retain some powers. We believe it is appropriate to share these powers.

389. Part 4 provides for approved Welsh apprenticeships. These are apprenticeships which take place wholly or mainly in Wales in line with the apprenticeship frameworks published by the Commission.

390. Section 107 defines the meaning of “approved Welsh apprenticeship” as an arrangement that takes place under an approved Welsh apprenticeship agreement.

391. Section 108 defines the meaning of “approved Welsh apprenticeship agreement” as an agreement which must provide for a person to work for reward in an occupation that has a relevant published apprenticeship framework.

392. Section 109 gives Welsh Ministers powers to make regulations to allow an apprenticeship to be treated as an approved Welsh apprenticeship in certain circumstances.

393. Section 110 defines the meaning of an “apprenticeship framework” as a document that sets out the conditions that need to be completed to achieve an approved Welsh apprenticeship.

394. Section 111 gives Welsh Ministers a power to specify approved Welsh apprenticeship requirements and the development of the apprenticeship framework. Section 112 requires Welsh Ministers to consult on specifications issued under section 111.

395. Section 113 allows the Commission to prepare or have prepared by another person apprenticeship frameworks. The Commission must publish any apprenticeship frameworks, and must keep published frameworks under review, and review or withdraw them when it sees fit.

396. Under section 114 the Commission must maintain and publish a register of apprenticeship frameworks published under section 113.

397. Section 115 gives the Commission powers to issue certificates for people who have completed a Welsh apprenticeship.

398. Section 116 allows the Commission to delegate to another person its power to publish apprenticeship frameworks under section 113; and to delegate its power to issue apprenticeship frameworks under section 115. This section allows the Commission to make payments either to cover expenditure or to pay remuneration to people who it has delegated functions to under this section.

399. Sections 117-120 cover technical matters such as ineffective provisions in an approved Welsh apprenticeship agreement; not treating an approved Welsh apprenticeship agreement as a contract of apprenticeship; the transfer of copyright from author to the Commission when a framework is published by the Commission; and Crown servants being able to undertake apprenticeships.

Strategic management of the apprenticeship system

400. Colegau Cymru said that to help the Commission contribute to a sustainable and innovative economy it was “vital” the Commission can “address the issue of provision of technical and vocational qualifications” to help the FE sector work more “efficiently and effectively” in this sphere.⁴⁰³

401. NTfW had concerns that the Bill will make the system “more clunky” because the functions which are currently all held by the Welsh Government will be split between the Commission and Welsh Government. They said the current system made it “more simplistic” for apprenticeships to “meet and respond to the needs of employers.” They said what was “absolutely needed ... is for it [apprenticeships] to be far more responsive, far more fleet of foot and ... additional resource into that infrastructure to make it meet the needs of Welsh Ministers.”⁴⁰⁴ They added that if the Commission is to be “strategic” it should have the power to withdraw apprenticeship frameworks if necessary. However, in the Bill as drafted Welsh Ministers will retain powers over apprenticeships potentially leading to “unclear lines of demarcation and the potential for the commission to say one thing and Welsh Ministers to decide another thing ...”⁴⁰⁵.

402. NTfW called for a “body to have responsibility for apprenticeships in its entirety”. They said there was a good apprenticeship programme in Wales but “infrastructure” to develop it further was needed. This, they said, “involves people ... clusters ... discussion ... but that takes resource,

⁴⁰³ Written evidence, TER 31 Colegau Cymru, Annex A, paragraph 5

⁴⁰⁴ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 33

⁴⁰⁵ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 75

and what I'm not seeing anywhere in the Bill, or indeed in the explanatory memorandum, is where Wales is going to get its resources from to maintain its own apprenticeship system."⁴⁰⁶

403. The Minister also described the current apprenticeships arrangements as "clunky" and based on "outdated" legislation. He said the Bill seeks to strike the balance:

"between maintaining the link to national economic priorities on the one hand but enabling the provision and design of frameworks to be nimble, flexible and engaging stakeholders fully on the other hand ..."

He said he envisaged that the Commission would get "framework developers" to refresh the frameworks, followed by a review cycle. He said the approach in the Bill was to "allow that to develop flexibly." He indicated that the mechanism for Welsh Ministers to "articulate those cross cutting policy priorities" would be through the core requirements in the Welsh apprenticeship specification.⁴⁰⁷

404. He said he hoped the new approach would make the apprenticeships "more nimble, faster and more responsive ...". He added it was "absolutely legitimate" for the Welsh Government to be able to influence the priorities of the apprenticeship system and that it would mean there was "stewardship at the very highest level whilst also making the delivery, the consultation, the actuality of it on the ground infinitely more flexible."⁴⁰⁸

Committee view

405. We note the evidence received from NTfW, however, we believe that it is important the Welsh Government maintains the strategic oversight of the apprenticeship system. We therefore believe that the powers within the Bill are appropriate.

406. We note the complexities around the apprenticeship system, and the differing views as to whether the provisions within the Bill will reduce these complexities. In light of these competing views, we think there should be a review of apprenticeship framework development that would look at these in the broadest context, to help ensure that the frameworks are relevant, timely, have currency and are periodically reviewed.

⁴⁰⁶ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 143

⁴⁰⁷ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraphs 205 and 209

⁴⁰⁸ Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraphs 110-111

Recommendation 31. That the Welsh Government commissions a review of apprenticeship framework development which considers the wider context beyond the Commission.

8. Part 5: Learner Protection, Complaints Procedure and Learner Engagement

This Part of the Bill covers learner protection and engagement. We believe more can be done to strengthen the learner's voice in the Bill.

407. Section 122 enables the Commission to give notice to a relevant tertiary education provider asking the provider to submit a learner protection plan. This section defines a learner protection plan as a document which sets out the provider's arrangements to protect the interests of students who are on courses that cease or those learners who wish to transfer to other course. Once the Commission has issued a notice to a provider, the plan is enforced through conditions of registration and terms and conditions of funding. The Commission is required to issue guidance on the preparation and revision of learner protection plans. The Commission must monitor the effectiveness of learner protection plans and cover this in its annual report.

408. Section 123 requires the Commission to take steps to ensure that a relevant tertiary education provider has in place a complaints procedure and makes learners aware of how to access the procedure.

409. Section 124 amends the Higher Education Act 2004 to give Welsh Ministers the power to make regulations to widen the range of learners that can access the Office of the Independent Adjudicator.

410. Section 125 requires the Commission to prepare and publish a Learner Engagement Code about the engagement of learners in making of decisions. The Commission must keep the code under review, and will apply to relevant providers and relevant decisions made by relevant providers. Compliance will be enforced where relevant through registration and terms and conditions of funding.

Learner voice

411. As we note in Chapter 4, there were calls from NUS Wales to add the student voice to the strategic duties. We agreed with this, and therefore made recommendation 18.

412. HEFCW said the “only place” they could see a “manifestation of a more learner-focused approach” is in the learner engagement and protection provisions.⁴⁰⁹ Colegau Cymru said they felt there was a “lot of learner-centredness around the Bill” although noting that the “devil’s a bit in the detail.”⁴¹⁰

413. NUS Wales said that the Bill “does not reflect the importance of the student voice.”⁴¹¹ They felt that the Bill was “a real golden opportunity to give students a real say in their education, no matter where they’re studying, what they’re studying or the mode of study.” They said the Bill shows a “fundamental misunderstanding ... about what good student representation is.” In fact, they highlighted, current student representation across the sector “far exceeds” what is in the Bill. They said an opportunity was being lost by not putting the student voice “more prominently and explicitly” in the policy objectives.⁴¹²

414. NUS Wales believed the use of learner will lead to “confusion” and a “dilution” of student identity and the student movement and called for amendments to the Bill to reinstate the use of the word student. They believed the loss of the word student was “more significant than the Welsh Government realises.” They outlined why:

“The two words are not used interchangeably in the different sectors the Bill will cover. While we accept that there are pedagogical arguments for the use of ‘learner’, this descriptor removes agency and implies that ‘learners’ exist only to learn. ‘Learner’ may reflect the Welsh Government’s aim of embedding a lifelong understanding of the person as a learner, but it also defines them entirely through their course of study. Being a learner is just one part of being a student or an apprentice: university students access housing, mental and physical health support and financial aid through their institution; college students are embedded in their communities and make use of local transport and sporting facilities; and apprentices often work for more hours than they receive training, usually below minimum wage without access to the same level support and advocacy as their peers in full-time education.”

⁴⁰⁹ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 337

⁴¹⁰ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 356

⁴¹¹ Written paper, CYPE(6)-07-21 Paper 6, NUS Wales

⁴¹² Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraphs 376-378

They said this could be easily amended in the Bill “currently the term “persons receiving tertiary education” is used and is shorthand to “learner” – this could be amended to “student/learner” with “little overall impact on the Bill”.⁴¹³

415. The WLGA emphasised the importance of an “embedded culture” across the sector to ensure ongoing engagement between learners and providers “at all levels”. They acknowledged that mechanisms may differ depending on the provider but there needed to be “consistent principles underpinning these.”⁴¹⁴ Cardiff and Vale College said that a learner focused system must take account of “ALL” learners within the sector.⁴¹⁵

416. The Open University called for learner engagement to take account of the “non-traditional ... part time learner” voices. They flagged that Open University students are not represented by NUS Wales.⁴¹⁶ NUS Wales agreed that there was a “huge lack of parity of esteem between student voice depending on where you study ...” They highlighted that HE students have access to “stronger and more independent advocacy” compared to peers in FE or adult community learning.⁴¹⁷ Coleg Cymraeg Cenedlaethol highlighted the importance of the Welsh speaking learners’ voice being heard highlighting that “very often, their experiences are different and their needs are different.”⁴¹⁸ Estyn agreed saying it was important the learner voice is “not homogenous” and that it was particularly important to ensure learners who are not in representatives groups are included.⁴¹⁹

417. Universities Wales and the Chairs of Universities Wales called for a “baseline requirement” either through registration or funding terms and conditions to give students “greater protection” and that there are “adequate learner engagement arrangements.”⁴²⁰

418. At the last evidence session, the Minister acknowledged that there were discussions about how they can do more to “strengthen even further the learner voice provisions” in the Bill.⁴²¹

⁴¹³ Written paper, [CYPE\(6\)-07-21 Paper 6, NUS Wales](#)

⁴¹⁴ Written evidence, [TER 01, WLGA, paragraph 16](#)

⁴¹⁵ Written evidence, [TER 33 Cardiff and Vale College](#)

⁴¹⁶ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 196](#)

⁴¹⁷ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 381](#)

⁴¹⁸ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 536](#)

⁴¹⁹ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 360](#)

⁴²⁰ Written evidence, [TER 36, Universities Wales and the Chairs of Universities Wales, paragraph 8.1](#)

⁴²¹ [Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraph 10](#)

Learner Engagement Code

419. There was broad support for the Learner Engagement Code, including from the QAA who said they felt it would “ensure” learner engagement was “at the heart” of the tertiary section⁴²² and NUS Wales.⁴²³

420. We heard about the importance of ensuring that learner engagement is inclusive and open to all learners within the post 16 sector. The Open University in Wales highlighted that the Commission in preparing the Learner Engagement Code would need to take into account how the engagement of part time learners differs from full time learner. They also called for the Code to take account “appropriately for institutions such as ours for whom learner engagement is a complicated and resource-intensive activity.”⁴²⁴

421. The Third Sector Additional Needs Alliance called for requirements to be placed on providers to show that they have engaged with disabled student views, and that must include deaf, visually impaired and non-verbal learners.⁴²⁵ A view supported by NDCS Cymru who said “disabled students are not one homogeneous group with the same needs.”⁴²⁶ QAA called for more “specificity” to ensure the broadest student voice is engaged in the development of the Code.⁴²⁷

422. There were some differing views on the Learner Engagement Code including sixth forms. Estyn welcomed this, but said to ensure the Code was inclusive, it would need to:

“...recognise and take account of differences in maturity, independence and communication skills of pre and post-18 learners, including those with ALN, communication difficulties and those for whom English is an additional language. The code enshrines the importance of providing a voice for all learners, so it will be important that the Commission and providers consider the very broad nature of all learners in the PCET sectors, and that learner voice is not homogenous.”⁴²⁸

⁴²² Written evidence, [TER 16. Quality Assurance Agency for Higher Education, paragraph 24](#)

⁴²³ Written paper, [CYPE\(6\)-07-21 Paper 6. NUS Wales](#)

⁴²⁴ Written evidence, [TER 12. The Open University in Wales, paragraphs 6.5-6.6](#)

⁴²⁵ Written evidence, [TER 34. Third Sector Additional Needs Alliance](#)

⁴²⁶ Written evidence, [TER 41. NDCS Cymru](#)

⁴²⁷ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 363](#)

⁴²⁸ Written evidence, [TER 11 Estyn](#)

423. Universities Wales and the Chairs of Universities Wales called on the Commission to take a “provision-based rather than provider based approach” in relation to the Learner Engagement Code, in line with provisions elsewhere in the Bill. They said this was the wrong approach “in principle.”⁴²⁹ HEFCW said that good learner engagement should be “expected” across all provision, and that it was unclear why the legislation sets “different expectations ... for different providers.” They also noted that effective engagement is “bottom-up”.⁴³⁰

424. The Welsh Language Commissioner said that the Code should ensure that those who wish to learn through the medium of Welsh can do so and that it “is reflected in terms of the requirements on providers to offer that provision.”⁴³¹

425. The Minister said the aim of the mandatory Learner Engagement Code was to “recognise and strengthen the existing arrangements in place across the breadth of the post 16 sector.” This will ensure that “learners’ voices are heard regardless of their course, location, level and mode of study.” In relation to sixth forms, this will “complement the existing arrangements in place at a school level, including the school council arrangements.”⁴³²

Complaints procedures

426. The Children’s Commissioner raised concerns that sixth forms were not covered by section 123. They said that current school complaints procedures do not “usually enable unresolved complaints” to be referred to an independent adjudicator. Whereas section 123 will provide students and learners access to the Office of the Independent Adjudicator. They cited their own casework with young people and families both expressing concerns about a lack of independence in school complaints procedures. They called for further consideration to be given to including sixth forms in section 123 to ensure “parity of accountability” for all post 16 learners.⁴³³ Cardiff and Vale College supported access to an independent adjudicator, calling for the Commission to “put in place a body similar to OIA HE to adjudicate on complaints.”⁴³⁴

⁴²⁹ Written evidence, [TER 36, Universities Wales and the Chairs of Universities Wales, paragraph 8.5](#)

⁴³⁰ [Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraphs 342-344](#)

⁴³¹ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 537](#)

⁴³² [Letter from the Minister for Education and Welsh Language to Chair, Children, Young People and Education Committee, 4 February 2022, paragraph 12.3](#)

⁴³³ Written evidence, [TER 28, Children’s Commissioner for Wales](#)

⁴³⁴ Written evidence, [TER 33, Cardiff and Vale College](#)

427. NUS Cymru said it was “important” that students could access the OIA, although they did highlight that it can be a complex and difficult process to navigate, even if they have the support of a well-resourced student union.⁴³⁵

428. Carmarthenshire County Council Education Department said having separate procedures for sixth forms “lacks coherence”. They also raised concerns that governing bodies would respond to complaints, where the registered provider will be the local authority and “will have to deal with the problem if the Commission finds any tertiary provision unsatisfactory.” They called for the local authority to have oversight, and called for this to extend to all learners within a local authority as unsatisfactory provision in a college could have “implications for the learners and sixth forms within that local authority.”⁴³⁶

429. NDCS Cymru called for complaint procedures to be “fully accessible and made as clear as possible to all learners.”⁴³⁷

Learner protection plans

430. According to the Explanatory Memorandum, a learner protection plan will set out a provider’s arrangements for protecting a learner’s interests when a course ceases to run, and to support a learner who wants to transfer to another course (either at the same provider or at a different provider.) There is not a requirement for all providers to have such plans. This is at the Commission’s “discretion” to ensure that providers for whom such plans would “not be appropriate or proportionate” do not have to develop them.⁴³⁸

431. In relation to learner protection plans, we were told that the “real problem” is not necessarily when a course closes but when there are “major changes”. WonkHE described a scenario involving “the removal of most of the optional module choices in the second and third year, or changes that would change the focus of a media course from practical to theoretical.” They called for the learner protection plans to also cover where there is a change to the “material component of a course.” They also called for the Welsh Government to establish a “basic principle that no student should suffer detriment ... including financial ...” noting the

⁴³⁵ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 413

⁴³⁶ Written evidence, TER 20, Carmarthenshire County Council Education Department, paragraph 3.2

⁴³⁷ Written evidence, TER 41, NDCS Cymru

⁴³⁸ Welsh Government, Tertiary Education and Research (Wales) Bill Explanatory Memorandum, Paragraphs 3.350-3.352, 1 November 2020

problems faced by students who need to study locally but face difficulties if a course is closed down.⁴³⁹

432. HEFCW said that “two issues” are being “conflated” – protecting students when a course is closing; and facilitating the transfer from one course to another. They said that whilst the solution to one is the other, they are “not the same thing.” They said establishing meaningful learner protection plans in England has been “very difficult”, and that it is “almost unheard of” that an institution would “leave students dangling.” In cases where there are difficulties, they said it’s often down to very specific circumstances around the course, the students, location of study and the subject being studied, meaning learning protection plans at an institutional level are at such a high level that they would be “almost useless in terms of understanding how you would protect the individual students in those circumstances.”⁴⁴⁰

433. NUS Wales believed there were “some holes” in the learner protection plans.⁴⁴¹ They agreed with HEFCW’s concerns, as well as being concerned that the plans are only at the request of the Commission, which they said does not do much to “reassure students they’re protected.” They also shared the concerns raised by WonkHE that the more common reason for needing such protection is because a course can no longer be delivered in the way it was advertised. They said that in those types of examples, it is very unusual for the Office of the Independent Adjudicator or the Competition and Markets Authority to get involved.⁴⁴²

434. Alternatively, Universities Wales and the Chairs of Universities Wales said there was some “crystal ball gazing” as they do not know what parts of the Bill will be effective at this stage. However, they flagged that universities are “subject to substantial consumer rights legislation and Competition and Markets Authority legislation.” They said it was important that there were local learner protection plans in place as well as the wider legislative framework which they are subject to.⁴⁴³

435. Universities Wales and the Chairs of Universities Wales called for the Bill to be amended to remove the ability of the Commission to “impose its own modification without the provider’s agreement.” They said the Commission should be able to specify requirements as a condition

⁴³⁹ Written evidence, [TER 02, Jim Dickinson, Associate Editor at WonkHE](#)

⁴⁴⁰ [Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraphs 338-339](#)

⁴⁴¹ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 394](#)

⁴⁴² [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraphs 418-419](#)

⁴⁴³ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraphs 231-232](#)

for approval, but it should then be a matter for the governing body to decide whether they agree and accept the modifications. They also raised concerns that the power to impose modifications without the provider's consent could "seemingly risk" the Commission being in breach of the duty on compatibility with charity law, meaning the Bill is relying on "provisions that are unworkable."⁴⁴⁴

436. Sixth forms are not subject to the learner protection plan provisions. The WLGA welcomed this "clarity and approach".⁴⁴⁵ Coleg Cymraeg Cenedlaethol said it was "interesting" that the plans would not cover sixth forms and said "we should ask the question, 'Well, what will safeguard the interests of those sixth-form students if a provision should come to an end?'"⁴⁴⁶ The Welsh Language Commissioner agreed that Welsh medium provision should be included within the learner protection plans.⁴⁴⁷

437. Estyn noted that in developing learner protection plans, it would be important "not to overlook the interests of learners" in different types of provision, particularly those in work based learning, or adult community learning settings, or sixth forms.⁴⁴⁸

438. Cardiff and Vale College welcomed the learner protection plans but raised concerns that some of the most vulnerable learners were in training which sits outside of the Commission's remit, such as the DWP Employability Programme.⁴⁴⁹

439. The Open University in Wales noted that they already have a Student Protection Plan which is approved by the Office for Students, and applies to all OU students including those in Wales. They said that the implementation of learner protection plans under this Bill should be flexible enough to take account of the Open University's specific and individual set of circumstances.⁴⁵⁰ We explore some of the wider issues around the Open University in Chapter 10.

440. The Minster said that the decision not to extend the learner complaints and learner protection plan requirements to sixth forms was to "avoid duplication". It would also ensure the Welsh Government was not "placing additional administrative burden on schools and local authorities in managing different arrangements for learners at pre 16 and post 16 in a

⁴⁴⁴ Written evidence, [TER 36, Universities Wales and the Chairs of Universities Wales, paragraphs 8 and 8.3](#)

⁴⁴⁵ Written evidence, [TER 01, WLGA, paragraph 14](#)

⁴⁴⁶ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraphs 536](#)

⁴⁴⁷ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 542](#)

⁴⁴⁸ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 361](#)

⁴⁴⁹ Written evidence, [TER 33, Cardiff and Vale College](#)

⁴⁵⁰ Written evidence, [TER 12, The Open University in Wales, paragraphs 6.1-6.3](#)

maintained school setting.” He said that there were already “well established” arrangements and support in place for learner protection at a school and local authority level when learners move from one setting to another because of a “school or course closure, a change in personal circumstances or learner preference.” In relation to the calls for the sixth form students to have access to independent adjudication for complaints, he said that Welsh Ministers “will not be able to specify that local authorities in relation to maintained school sixth form provision are qualifying providers and will not be part of the OIA scheme.” He believed the approach was “balanced, proportionate and practicable...”⁴⁵¹.

Committee view

441. We believe placing the voice of the learner at the heart of the post 16 education system is both good for individual learners but also for the quality and effectiveness of the wide range of provision across the sector. This is why we have made Recommendation 18, placing the learner voice at the heart of the Commission’s strategic duties.

Learner voice

442. We agree with the stakeholders that it is important that there is equality of opportunity for a learner’s voice to be heard, across all types of provision and for all learners. It is currently easier for some learners to have their voice heard, as NUS Wales highlights. In particular students in higher education are far more likely to have access to strong participatory structures that can help them amplify their voice. We need to ensure that these opportunities are available across the piece, acknowledging that how this may happen will differ according to the provision and the individual learner.

Learner Protection plans

443. We note the evidence we heard about some of the complexities around learner protection, and that these challenges are often less about wholesale closure of courses and more about significant changes in course content. We are also acutely aware that this can be particularly challenging if the provision is Welsh medium, where there may be far more restricted options to transfer, in a worst case scenario a student may find they cannot continue to access their studies through the Welsh medium.

444. We know that sometimes students / learners need to transfer for personal reasons, and not just because of decisions made by the institution. It is essential that in these instances the individual’s needs and preferences are supported, and that learner protection plans facilitate

⁴⁵¹ [Letter from the Minister for Education and Welsh Language to Chair, Children, Young People and Education Committee, 4 February 2022, paragraphs 12.41-12.10](#)

this. It can be the case that in these circumstances the person may be facing challenging personal circumstances. Institutions must ensure they take into account the individual student / learner's welfare and well-being. The needs of the learner should be paramount in these circumstances. We therefore want to see further changes to the Bill to ensure that student welfare is at the heart of the learner protection plans. Student and learner well-being and welfare is a particular area of interest to the Committee, and we are likely to revisit these issues in more detail during the Senedd term.

Recommendation 32. That the Minister brings forward amendments at Stage 2 to ensure that learner protection plans must take account of student / learner welfare and ensuring students can continue to study through the medium of Welsh.

9. Part 6: Information, Advice and Guidance

There are broad information sharing provisions within the Bill, which we believe should be tightened.

445. Part 6 provides powers and duties to give information, advice and guidance.

446. Sections 126-131 set out the provisions regarding information sharing. They encompass:

- Information and advice that the Commission must give to Welsh Ministers (section 126);
- The Commission's powers to request information from other persons (section 127);
- Provision to allow specified bodies to share information with the Commission (section 128);
- Powers for Welsh Ministers to request application-to-acceptance information to be given to Welsh Ministers or the Commission for limited research purposes (section 129);
- How Welsh Ministers may use application-to-acceptance information (section 130); and
- The powers of the Commission to give advice and issue guidance to any person about the provision of tertiary education or any other matter connected with the Commission's functions (section 131).

447. Section 132 provides for Welsh Ministers or the Commission to carry out research, setting out the subjects on which it may be conducted.

448. Universities Wales and the Chairs of Universities Wales had called for the Bill to be amended to provide "clarity and assurance" about the "onward use" of commercially sensitive information. They were also concerned that the provisions would mean the Commission would have to share information provided by institutions to the Commission voluntarily and in confidence with the Welsh Ministers. They highlighted that Charity Commission guidance states that one of the charitable status criteria is for charities to "not agree to conditions that

undermine the confidentiality of their discussions.”⁴⁵² Swansea University shared these concerns and highlighted that these concerns were raised during the draft Bill consultation.⁴⁵³

449. Universities Wales and the Chairs of Universities Wales called for section 126 to be amended so that “Welsh Ministers cannot require that the Commission share information that is ‘obtained in the performance of any of its functions’ if that information does not relate to its functions.”⁴⁵⁴

450. In relation to the information on application data (sections 129-130) they said that these powers would give “direct access to information that is not published or necessarily verified by the providers themselves. All such data would require careful contextualisation if it is to be interpreted without being misleading, a role for which the Commission would be better equipped.”⁴⁵⁵

451. HEFCW emphasised the importance of “maintaining the trust of providers so that they can share information ...” especially commercially sensitive information. They said this was “essential” to have a “proper understanding of the challenges, risks, opportunities” providers are facing. They said in practical terms this means that the Commission should not have to share all the information it holds with the Welsh Government. They acknowledged that the Government will need to be aware of risks faced by providers, but that the “detailed oversight” must sit with the Commission.⁴⁵⁶

452. Colegau Cymru said “our educational systems aren’t talking to each other.” They believed more data sharing would help improve the service to learners. But they did say that it needed to be “proportionate”, especially in relation to commercially sensitive information.⁴⁵⁷ A view shared by Adult Learning Wales.⁴⁵⁸ Colegau Cymru said the “unintended consequences” needed to be thought through to make sure that information sharing was “better and wider” but doesn’t “contract” what people are willing to share.⁴⁵⁹

⁴⁵² Written evidence, [TER 36, Universities Wales and the Chairs of Universities Wales, paragraph 9.9](#)

⁴⁵³ Written evidence, [TER 39, Swansea University](#).

⁴⁵⁴ Written evidence, [TER 36, Universities Wales and the Chairs of Universities Wales, paragraph 9](#)

⁴⁵⁵ Written evidence, [TER 36, Universities Wales and the Chairs of Universities Wales, paragraph 9.3](#)

⁴⁵⁶ [Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraphs 270-271](#)

⁴⁵⁷ [Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 260](#)

⁴⁵⁸ [Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 14](#)

⁴⁵⁹ [Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraphs 260 and 262](#)

453. NTfW said that they did not have any concerns about the information sharing provisions saying they currently operate “in a very open and transparent information sharing process.”⁴⁶⁰ Neither Estyn⁴⁶¹ nor QAA⁴⁶² had any particular concerns about the provisions.

Committee view

454. We note the concerns raised in relation to these provisions, in particular the concerns of HEFCW’s which are rooted in years of experience of regulating the higher education sector. We believe that further tests should be added to reduce the risk to individual institutions of commercially sensitive information being shared too widely or for no clear purpose. We acknowledge that the Commission should be able to seek any information that it requires from institutions, but do not believe that the same breadth of information sharing is necessary for Welsh Ministers.

Recommendation 33. That the Minister brings forward amendments at Stage 2 to section 126 so that Welsh Ministers can only request information from the Commission when it directly relates to Welsh Ministers’ functions.

⁴⁶⁰ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 11

⁴⁶¹ Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 308

⁴⁶² Children, Young People and Education Committee, 9 December 2021, Record of Proceedings paragraph 311

10. Part 7: Miscellaneous & General

Part 7 includes provisions relating to Higher Education Corporations and regulation making powers.

455. Sections 133-134 have technical provision relating to the governing documents of Higher Education Corporations (“HECs”).

456. Section 135 is covered in more detail in the next section.

457. Section 136 will place Welsh Ministers under a duty to consult the Commission on an annual basis with regard to the strategic priorities on careers services.

458. Section 137 makes provisions relating to every publication duty under the bill.

459. Section 138 makes general provisions about how the various regulations that may be made under the Bill are to be made.

460. Section 139 sets out definitions of terms used throughout the Bill.

461. Section 140 gives Welsh Ministers regulation making powers to apply the provisions under the Bill to the Open University.

462. Section 143 sets out the commencement details. Only sections 138-141 will come into force the day after Royal Assent. All other provisions will be commenced by Order.

Dissolving Higher Education Corporations

463. Section 135 enables Welsh Minister to dissolve HECs. It amends section 128 of the Education Reform Act 1998, and goes further than similar powers in England, where the Secretary of State may only dissolve a HEC at the request of its own governing body. Under section 128 of the 1988 Act, Welsh Ministers need only to consult the HEC of their intention to dissolve it, meaning it can be dissolved against the will of the HECs governing body.

464. The Explanatory Memorandum states that the Welsh Government “consider it necessary” to retain these powers, and that if the power matched that in England “there is a risk that in certain circumstances no such request would be made ...”. This would mean that an Act of

Parliament or Senedd would be needed to remove the corporation from the statute book, which the Government does not believe to be “a desirable position.”⁴⁶³.

465. Two of the three HECs told us in their written evidence that they disagreed with this power as drafted. Both felt the rationale behind retaining the power was unclear. As did HEFCW⁴⁶⁴ and Universities Wales and the Chairs of Universities Wales.⁴⁶⁵ Wrexham Glyndŵr University “strongly” objected,⁴⁶⁶ whilst Cardiff Metropolitan University were “concerned” about the power.⁴⁶⁷ Wrexham Glyndŵr University said it would run contrary to recommendations from the Law Commission, whilst placing Welsh HECs in the “weakest position across the entire UK.”⁴⁶⁸ Cardiff Metropolitan said that it was “vital” to see the HE sector as “one ... and not two sectors distinguishable by some arbitrary divide.”. They believed that this difference between Welsh institutions would “weaken rather than strengthen the sector.”⁴⁶⁹. A position shared by Universities Wales and the Chairs of Universities Wales, who called it “inequitable” for this power to be maintained that “relates to a small number ... for historical reasons only.”⁴⁷⁰.

466. Universities Wales and the Chairs of Universities Wales agreed, wanting to see the power amended so that no HEC could be dissolved against its will.⁴⁷¹ They noted that rather than remove this power, the Bill “makes it easier to exercise”⁴⁷² and that in light of the range of legal duties which apply to universities, “it is difficult to conceive of a situation where a backstop to dissolve an HEC without the consent of the governing body would be required.”⁴⁷³. HEFCW were unclear what it was a backstop to.⁴⁷⁴ Universities Wales and the Chairs of Universities Wales said that if the rationale is that it is only a backstop power, and is needed to for learner protection then they queried why it would only apply to three universities in Wales.⁴⁷⁵

⁴⁶³ Welsh Government, Tertiary Education and Research (Wales) Bill Explanatory Memorandum, Paragraphs 3.405-3.406, 1 November 2020

⁴⁶⁴ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 282

⁴⁶⁵ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 173

⁴⁶⁶ Written evidence, TER 05, Wrexham Glyndŵr University, paragraph 8

⁴⁶⁷ Written evidence, TER 21 Cardiff Metropolitan University, paragraph 3.1

⁴⁶⁸ Written evidence, TER 05, Wrexham Glyndŵr University, paragraph 8

⁴⁶⁹ Written evidence, TER 21 Cardiff Metropolitan University, paragraphs 3.3-3.4

⁴⁷⁰ Written evidence, TER 36, Universities Wales and the Chairs of Universities Wales, paragraphs 4.1-4.2

⁴⁷¹ Written evidence, TER 36, Universities Wales and the Chairs of Universities Wales, paragraph 1.3

⁴⁷² Written evidence, TER 36, Universities Wales and the Chairs of Universities Wales, paragraph 4.1

⁴⁷³ Written evidence, TER 36, Universities Wales and the Chairs of Universities Wales, paragraph 4.3

⁴⁷⁴ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 282

⁴⁷⁵ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 175

467. Universities Wales and the Chairs of Universities Wales noted that this power to dissolve without an institution's consent was removed in England due to concerns that it was likely that if it was exercised, the Office for National Statistics would reclassify "universities to central government from the not-for-profit sector."⁴⁷⁶ HEFCW also told us that similar provisions with the 1992 Act were tested by the Welsh Government and the legal advice said "'it's not operable. Unless the governing body actually supports the dissolution, it's effectively impossible ... to exercise the power.'" In that context, they questioned why it was included in the Bill.⁴⁷⁷ Universities Wales said that there were already "existing, absolute backstops that will not be superseded by this power."⁴⁷⁸

468. We heard that the power should be amended so that it can only be exercised "only at the instigation and with the consent of the institution itself."⁴⁷⁹ HEFCW said their issue with this power was that it gives Welsh Ministers the powers to dissolve a HEC "against the will of the governing body", and that this was a "significant problem".⁴⁸⁰

469. The Minister told us that these powers "are backstop". He said that the powers within the Bill are the same powers that currently exist "apart from some technical modifications in the margins ...". He said that they would be used in a "worst case" scenario where an institution was "not in a position" to ask the Government to dissolve the institution to ensure it could be done in a "ordered way that safeguards students." He added that use of the power would be "subject to the principles of public law."⁴⁸¹

470. The Minister had said at the outset of our scrutiny that he was open to hearing any suggestions to strengthening this element of the Bill, and at the final scrutiny session on the Bill he told us that he was intending to introduce an amendment, but that the details were to be finalised. He reflected on the evidence we have gathered, and the direct feedback he has received especially from those institutions that are directly affected.⁴⁸²

⁴⁷⁶ Written evidence, TER 36, Universities Wales and the Chairs of Universities Wales, paragraph 4.4

⁴⁷⁷ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 282

⁴⁷⁸ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 177

⁴⁷⁹ Written evidence, TER 36, Universities Wales and the Chairs of Universities Wales, paragraph 4.5

⁴⁸⁰ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraph 282

⁴⁸¹ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraphs 152-153

⁴⁸² Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraph 45

Definitions

471. Adult Learning Wales raised concerns about a discrepancy in the definition of tertiary education. They noted that the definition in section 139 (1) refers only to higher education, further education and training but that the Explanatory Notes to the Bill includes adult community learning in the definition of tertiary education.⁴⁸³ The Explanatory Notes state:

*"The facilities to be secured for education and training include both full-time and part-time further education and training as well as vocational, social, physical and recreational training (see the definitions in section 139(2) to (5)). This includes organised activities offering opportunities for non-formal learning which may not lead to a qualification. For example, adult learning opportunities in community settings including education engagement activities."*⁴⁸⁴

Unique role of Open University

472. Section 140 enables Welsh Ministers to make regulations in relation to the Open University. The Open University in Wales reminded us of their unique position within the sector in Wales, because they are part of a UK-wide university, and as their activities are not "mainly or wholly" based in Wales, Welsh Ministers have to designate them as a tertiary education provider for the basis of the Bill.⁴⁸⁵ The Open University in Wales said that whilst leaving the "entirety" of their future funding and regulatory in Wales to regulations provides the "opportunity to work" with the Welsh Government "to ensure that those regulations are correct and proportionate." It also means they current have no "certainty" about their future relationship with the Commission.⁴⁸⁶ They called for these regulations to be brought forward in a "timely and considered fashion."⁴⁸⁷

473. They were keen that duplication between the regulatory requirements in Wales and those in the rest of the UK was avoided. They said there was an opportunity to "strike an appropriate balance between maximising the potential of harmonised standards across the nations of the UK and minimising an overly onerous regulatory burden on providers."⁴⁸⁸ In particular, they

⁴⁸³ Written evidence, [TER 29. Adult Learning Wales, paragraph 3](#).

⁴⁸⁴ Welsh Government, [Tertiary Education and Research \(Wales\) Bill Explanatory Memorandum, Explanatory Notes, Paragraph 285](#), 1 November 2020

⁴⁸⁵ Written evidence, [TER 12. The Open University in Wales, paragraph 1.7](#).

⁴⁸⁶ Written evidence, [TER 12. The Open University in Wales, paragraph 4.9](#).

⁴⁸⁷ Written evidence, [TER 12. The Open University in Wales, paragraph 2.3](#).

⁴⁸⁸ Written evidence, [TER 12. The Open University in Wales, paragraphs 4.7-4.8](#).

sought assurances that they would not be subject to “conflicting duties or duplicative regulation in respect of academic freedom and/or freedom of speech” by the Commission and the Office of Students.⁴⁸⁹

474. The Minister told us “the values and the objectives of the Bill are four-square with those of the OU.”. He indicated that part of the development of the Bill’s Legislation Implementation Plan would take account of the development of these regulations. He said that he would work with the OU to “determine the most appropriate application for the different parts of the Bill.” He indicated the likely areas would cover:

- Registration conditions;
- Learner Protection Plans; and
- Funding and protection for students studying with the OU.⁴⁹⁰

Use of regulation making powers

475. The Bill contains 46 regulation making powers. Some of these regulations will contain the detail of how the Bill will operate in practice, for example the entitlement to lifelong provision (see Part 3: Securing and Funding Tertiary Education and Research). Stakeholders told us that in some places it was difficult to come to a view on the Bill without seeing the detail of the regulations.

476. Cardiff University said they had concerns that the Bill lacked detail on “many of its basic features” including registration categories and requirements. They believed there was “a reasonable expectation” that these details should have been placed on the face of the Bill or in accompanying draft regulations. This lack of detail means they have found it difficult to “assess the workability” of the Bill. They also indicated that they had raised concerns at the number of regulation making powers when responding to the draft Bill. They said that progress in this area between the draft Bill and the Bill as introduced “has been minimal.”⁴⁹¹ The Open University in Wales also said the lack of detail meant understanding how the registration model will work in practice is “a challenge.”⁴⁹²

477. Universities Wales and the Chairs of Universities Wales said they welcomed the flexibility within the Bill and that they did not want it to be “overly prescriptive.” However, they said it

⁴⁸⁹ Written evidence, [TER 12 The Open University in Wales, paragraph 3.18](#)

⁴⁹⁰ [Children, Young People and Education Committee, 13 January 2022, Record of Proceedings paragraphs 34-35](#)

⁴⁹¹ Written evidence, [TER 22 Cardiff University, paragraphs 5.1-5.2](#)

⁴⁹² Written evidence, [TER 12 The Open University in Wales, paragraph 4.1](#)

would be “extremely helpful” for draft regulations to be available alongside the Bill. They said “we ought to know before the Bill is passed what the general conditions of registration and regulation will be.”⁴⁹³.

478. Colegau Cymru said that many of the proposed regulations, plans and codes reference consultation with “appropriate persons”. As much of the detail of the Bill and its impact “will be determined by statutory instruments under the negative procedure” they wanted to see “a greater emphasis on meaningful consultation”. They also wanted to see a requirement to show that “genuine efforts have been made to consult ‘appropriate persons’.”⁴⁹⁴. St Joseph’s Catholic School and Sixth Form Centre also highlighted the need to ensure that consultations will be “wide and include the institutions that will be affected by it.”⁴⁹⁵. While Adult Learning Wales called for more information on how the consultation requirements in the Bill will “translate”.⁴⁹⁶

479. Universities Wales and the Chairs of Universities Wales called for the “substantial matters of regulation” which were due to be done through regulations to be subject to the “full Senedd scrutiny (through affirmative resolution) ...”⁴⁹⁷.

480. Universities Wales and the Chairs of Universities Wales had specific concerns about the “significant Henry VIII power which allows the Welsh Ministers to subsequently amend primary legislation through regulations.” They called for the power in section 141 to be reviewed “and its potential use more narrowly limited.”⁴⁹⁸. Swansea University also raised concerns about this power.⁴⁹⁹

481. The Minister set out that the wide range of regulation making powers “come in different categories.” These categories include: ones to “enable the sector to be future proofed” whilst others “may not be used for some time” and some are “technical” that have to be made. He acknowledged that there was a set of regulations that would have “a more substantive policy impact” and that it would be helpful for them to be available as soon as they can.⁵⁰⁰

⁴⁹³ Children, Young People and Education Committee, 2 December 2021, Record of Proceedings paragraph 139

⁴⁹⁴ Written evidence, TER 31 Colegau Cymru, Annex A, paragraph 3.1

⁴⁹⁵ Written evidence, TER 37 St Joseph’s Catholic School and Sixth Form College

⁴⁹⁶ Written evidence, TER 29, Adult Learning Wales, paragraph 8

⁴⁹⁷ Written evidence, TER 36, Universities Wales and the Chairs of Universities Wales, paragraph 1.5

⁴⁹⁸ Written evidence, TER 36, Universities Wales and the Chairs of Universities Wales, paragraph 6.13

⁴⁹⁹ Written evidence, TER 39, Swansea University

⁵⁰⁰ Children, Young People and Education Committee, 18 November 2021, Record of Proceedings paragraphs 111-112

482. Towards the end of our scrutiny, the Minister advised us that it was unlikely that they would be able to share draft regulations with the Commission during the passage of the Bill. This was to ensure that stakeholders would have “ample opportunities to inform the development” of the regulations and to ensure they would reflect any changes to the Bill as a result of Senedd scrutiny.⁵⁰¹

Committee view

Dissolving Higher Education Corporations

483. Whilst section 135 only directly affects three institutions within in Wales, we have had very clear, consistent and strong evidence about the extent of the power. Those responding did not ask for the power to be removed completely, but wanted to see it amended to bring it in line with the provisions in England, which would provide protection against an institution being dissolved against its own will. We agree, the power as currently drafted is disproportionate and needs amending. We note that a previous Welsh Government **expressed an intent** to use the existing power to dissolve the then University of Wales Institute Cardiff (UWIC, now Cardiff Metropolitan University) against the will of its governing body as part of a pro-active policy of sector reconfiguration which saw the dissolution of two other HECs to create the University of South Wales.

484. We welcome the Minister’s openness to amend this section, and we recommend that section 135 is amended so that either a HEC requests to be dissolved or consent from the HEC is gained before it could be dissolved. We believe this strikes the right balance, and would show that the power was being retained simply as an emergency backstop.

Recommendation 34. That the Minister brings forward amendments at Stage 2 to explicitly require the consent of, or to act on the request of a governing body of a higher education corporation to being dissolved.

Definitions

485. We thank Adult Community Learning for bringing to our attention the inconsistency in the definition of tertiary education. We agree with them that this is likely to be an oversight, and would like to see the definition in the Bill amended in line with that in the Explanatory Notes of the Bill.

⁵⁰¹ Letter from the Minister for Education and Welsh Language to Chair, Children, Young People and Education Committee, 14 February 2022

Recommendation 35. That the Minister brings forward an amendment at Stage 2 to broaden the definition to include adult community learning, in line with the definition in the Explanatory Notes.

Unique role of the Open University

486. We note the concerns raised by the Open University, in particular in relation to the need to move quickly with the development of the relevant regulations. We agree that this work needs to be taken on with pace. This is closely linked with the views outlined in the next section.

Use of regulation making powers

487. Much of the detail of how the Bill will work will be in the regulations. We believe that this is broadly appropriate, and also enables changes to be made in the future, which will hopefully future-proof the legislation. However, it is very disappointing that when the detail in the regulation is so vital to how the bill will effectively work that the key regulations were not available for consideration as part of this scrutiny process.

488. We note the Minister's letter dated 14 February, where he states that draft regulations will not be available to the Committee before the end of our scrutiny. This is incredibly disappointing. Even more so, when we consider the time it has taken to develop and introduce the Bill (acknowledging the disruption caused by COVID-19). We believe not having these draft regulations has hampered stakeholders in understanding the full implication of the Bill in certain key areas (such as registration conditions and the lifelong learning entitlements). We acknowledge the time, and consultation that is necessary when drawing up regulations. But when so much detail of how the Bill will operate is in these regulations, it is difficult for us and stakeholders to come to a considered view, or to decide on what, if any, amendments are necessary. We would urge the Minister to provide further detail on these key areas before the end of the amending stages to ensure that the Senedd can consider the Bill in its broadest context and allow Members to bring forward any necessary amendments.

489. We would like to see the draft regulations issued under sections 23; 25; 31; 32 81; 91; 107 and 140 to be issued in draft form before the Stage 2 proceedings, and with sufficient time to enable Members and stakeholders to digest them and develop any necessary amendments.

Recommendation 36. That the Welsh Government publish draft regulations on:

- Categories of registration (section 23(2))
- Conditions of registration (sections 25(3); 31(1); 32)

- Designation of other providers of tertiary education (section 81(4))
- Securing and funding tertiary education (section 91(3); 91(7)(b))
- Apprenticeships (section 107(4))
- Open University (section 140(1))

before the Stage 2 proceedings.

11. Additional Learning Needs

We heard concerns about how this Bill will interact with existing additional learning needs legislation. We believe there is a need for greater clarity on these issues.

490. The Explanatory Memorandum states that the Commission will be “required to have regard to the needs of persons with additional learning needs and the desirability of facilities being available which would assist the discharge of duties under the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (“the 2018 Act”).”. It says the “intention” is for the Commission to “secure general, proper and reasonable facilities” for learners with additional learning needs, and local authorities will “under the 2018 Act, be responsible for funding and securing specialist provision on an individual basis, including any necessary board and lodging.”⁵⁰².

491. We heard concerns from stakeholders that the Bill did not take enough account of young people with additional learning needs (“ALN”). The Third Sector Additional Needs Alliance said that they were “disappointed by the lack of reference” in the Bill, especially in the context of the breadth of the Bill. They were concerned that these students would not be covered by the “protections offered by the Commission” believing that it “appears discriminatory” and it could impact adherence with the ALN Code. They also wanted to see funding for supported internships covered in the Bill.⁵⁰³ A call supported by Learning Disability Wales.⁵⁰⁴ NEU Cymru highlighted that the general duties within this Bill were “very different” to provisions in the 2018 Act, they were particularly concerned about the impact on those learners “who are not in mainstream provision, or who live in more rural parts of Wales.”⁵⁰⁵.

492. Learning Disability Wales were also concerned about the “relative absence” of support for people with learning disabilities and neurodivergent people in the Bill. They called for principles

⁵⁰² Welsh Government, Tertiary Education and Research (Wales) Bill Explanatory Memorandum, Paragraphs 3.276-3.277, 1 November 2020

⁵⁰³ Written evidence, TER 34. Third Sector Additional Needs Alliance

⁵⁰⁴ Written evidence, TER 44. Learning Disability Wales

⁵⁰⁵ Written evidence, TER 14. National Education Union Cymru

to be included that will lead to these groups being “explicitly included in the legislation.”⁵⁰⁶. NDCS Cymru called for the “pathway of progression” to be made clearer for deaf students.⁵⁰⁷

493. Natspec were concerned that the Commission’s scope would not include specialist FE colleges for students with complex additional learning needs. They called for this provision to be “recognised” as part of the post 16 sector. They also highlighted that there appeared to be “no link between these reforms and the ALN legislation, which establishes a register which does include specialist FE colleges, referred to as Independent Special Post-16 Institutions (ISPIs).” They felt this would lead to negative impacts on young people with complex ALN. They called for regulations to “explicitly” include “non-accredited learning accessed by in FEIs and specialist FE colleges.” They felt that not including this type of provision within the scope of the Commission would lead to the categorisation of:

“...these learners as ‘other’, for whom regulation, quality assurance, professional development of the workforce and research are not deemed relevant. Protecting the interests of this group of Wales’s learners should be a responsibility of the Commission as it is for their less disabled peers.”⁵⁰⁸

494. Estyn were concerned that the Bill was not clear enough about the Commission’s “role in funding” learners with ALN to have “appropriate provision.” They called for further clarification on how learners with higher needs “could be funded differently according to the type of provision they need ...”⁵⁰⁹ Whilst Carmarthenshire County Council said that because the Commission will not be responsible for ALN funding it “reinforces the impression it will not be learner centred in its work.”⁵¹⁰ The Third Sector Additional Needs Alliance believed the Bill provided a chance for the Welsh Government to clarify “ambiguities” resulting from the ALN reforms. These relate to “different funding mechanisms meaning the route to a specialist FE college is far less certain than for young people who leave special school to go to an FEI.”⁵¹¹

495. The requirements in the Bill to ensure that ALN provision is available in Welsh, including facilities for assessing whether a person has additional learning needs through the Welsh medium were welcomed by the Welsh Language Commissioner.⁵¹² Ceredigion County Council

⁵⁰⁶ Written evidence, [TER 44, Learning Disability Wales](#)

⁵⁰⁷ Written evidence, [TER 41, NDCS Cymru](#)

⁵⁰⁸ Written evidence, [TER 35, Natspec](#)

⁵⁰⁹ Written evidence, [TER 11, Estyn](#)

⁵¹⁰ Written evidence, [TER 20, Carmarthenshire County Council Education Department, paragraph 1.6](#)

⁵¹¹ Written evidence, [TER 34, Third Sector Additional Needs Alliance](#)

⁵¹² Written evidence, [TER 03, Welsh Language Commissioner, paragraph 2.4](#)

also supported these requirements, but felt it should go further to “align with the ALN transformation to provide courses which allow progression for pupils from 16-25 years of age and onwards.”⁵¹³.

496. The Children’s Commissioner called for greater alignment with the changes resulting from the 2018 Act. They called for a mechanism within the Bill to “require” the Commission to have regard to the reviews that are mandatory under the Additional Learning Needs Code for Wales 2021 where local authorities must consider the extent to which arrangements meet the needs of children and young people with ALN, this also covers additional learning provision in Welsh.⁵¹⁴

497. Mudiad Meithrin stressed that learners with ALN should not experience difficulties in attending provision, and that “clear and robust procedures” would be needed to ensure learners can access support during their training.⁵¹⁵

498. The Minister confirmed the Commission would have a statutory duty to secure and fund facilities and provision “including funding to meet the needs of young people with Additional Learning Needs.” In doing so they “must consider whether the needs of people with ALN are being met.”⁵¹⁶.

499. In response to the concerns raised about how providers will be accountable for meeting the needs of students with ALN, the Minister confirmed that the “primary legislation” for supporting learners with ALN is the 2018 Act. This Act covers children and young people with ALN in school, and if over compulsory school age, while they are in further education. He said the Commission has a duty to fund provision for ALN “at a population level but is not required to fund all ALN provision for post 16 learners.” The Commission will “make an assessment of the sufficiency of facilities for” ALN provision at a “general population level” The responsibility for securing “specialist ALN provision for individual young people aged 16-25 with complex needs in private specialist colleges where they are required to maintain Individual Development Plans for them” will sit with local authorities. He said local authorities were “best placed” to make arrangements that met individual learners’ needs at a local level. The Welsh Government has not yet announced when the 2018 Act will commence for young people over 16. But the Minister has committed to “consider the terms of the Bill and supporting documentation to establish whether any amendments are needed to clarify the position in respect of specialist

⁵¹³ Written evidence, [TER 09 Ceredigion County Council](#)

⁵¹⁴ Written evidence, [TER 28 Children’s Commissioner for Wales](#)

⁵¹⁵ Written evidence, [TER 07 Mudiad Meithrin, paragraph 7](#)

⁵¹⁶ [Letter from the Minister for Education and Welsh Language to Chair, Children, Young People and Education Committee, 4 February 2022, paragraph 7.1](#)

additional learning needs institutions or the requirements and relationship with the ALNET Act 2018 further.”⁵¹⁷.

500. The Minister also highlighted that the Commission will be “required” to consider the “further education and training needs of the ALN workforce.” This will also “specifically” include assessment and learning needs support delivered in Welsh. They said this should mean that ALN is considered at the outset of planning and funding decisions, rather than “after other funding decisions have been made.” The Commission will also be able impose terms and conditions on funding “including regulatory requirements in respect of the needs of persons with ALN.”⁵¹⁸.

Committee view

501. We note the detailed concerns of stakeholders and would welcome greater clarity and reassurance from the Minister on these issues, in particular that the needs of people with additional learning needs will be taken into account by the Commission. It is essential that that provision is maintained and expanded, where necessary, to meet the needs of learners with additional learning needs.

Recommendation 37. That the Minister provides greater clarity either as part of the Stage 1 debate or in writing before Stage 2 commences on how the Bill will align with the 2018 Act and will support appropriate provision and support for learners/students with additional learning needs.

⁵¹⁷ [Letter from the Minister for Education and Welsh Language to Chair, Children, Young People and Education Committee, 4 February 2022, paragraphs 8.1-8.3](#)

⁵¹⁸ [Letter from the Minister for Education and Welsh Language to Chair, Children, Young People and Education Committee, 4 February 2022, paragraph 7.2](#)

Annex A: List of oral evidence sessions.

The following witnesses provided oral evidence to the committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed on the **Committee's website**.

Date	Name and Organisation
18 November 2021	<p>Jeremy Miles MS, Minister for Education and Welsh Language</p> <p>Zenny Saunders, Deputy Director, Post-compulsory Education and Training (PCET) Reform, Welsh Government</p> <p>David Morris, Policy Team, Welsh Government</p> <p>Cath Wyatt, Bill Manager, Welsh Government</p> <p>Dr David Blaney, Chief Executive, Higher Education Funding Council for Wales (HEFCW)</p> <p>Bethan Owen, Deputy Chief Executive, Higher Education Funding Council for Wales (HEFCW)</p>
02 December 2021	<p>Professor Elizabeth Treasure, Chair of Universities Wales and Vice Chancellor of Aberystwyth University</p> <p>Professor Maria Hinfelaar, Vice Chair of Universities Wales and Vice Chancellor of Wrexham Glyndŵr University</p> <p>Amanda Wilkinson, Director, Universities Wales</p> <p>Maxine Penlington, Chair of the Board of Governors at Wrexham Glyndŵr University and representing Chairs of Universities Wales (ChUW)</p>

Date	Name and Organisation
	<p>Dr Lynn Williams, Secretary Chairs of Universities Wales (ChUW)</p> <p>Louise Casella, Director, The Open University in Wales</p> <p>Cerith Rhys Jones, External Affairs Manager, The Open University in Wales</p> <p>Guy Lacey, Chair of ColegauCymru and Chief Executive Officer of Coleg Gwent</p> <p>Dafydd Evans, Chief Executive Officer of Grŵp Llandrillo Menai and representing ColegauCymru</p> <p>Dr Rachel Bowen, Director of Policy and Public Affairs, ColegauCymru</p> <p>Sharon Davies, Head of Education, Welsh Local Government Association (WLGA)</p> <p>Becky Ricketts, President, National Union of Students Wales (NUS)</p> <p>Joe Atkinson, Press and Public Affairs Consultant, National Union of Students Wales (NUS)</p> <p>Aled Roberts, Welsh Language Commissioner</p> <p>Dr Ioan Matthews, Chief Executive, Coleg Cymraeg Cenedlaethol</p> <p>Gwenllian Griffiths, Chief Engagement Officer, Coleg Cymraeg Cenedlaethol</p>
09 December 2021	<p>Jeff Protheroe, Director of Operations, National Training Federation for Wales</p> <p>Arwyn Watkins, Managing Director of Cambrian Training Company and Board Member, National Training Federation for Wales</p> <p>Kathryn Robson, Chief Executive, Adult Learning Wales</p> <p>Dr John Graystone, Chair, Adult Learning Wales</p>

Date	Name and Organisation
	<p>David Notley, Co-Chair, The Innovation Advisory Council for Wales (IACW)</p> <p>Professor Hywel Thomas, President, The Learned Society</p> <p>Professor Helen Fulton, Vice President for Humanities, Arts and Social Sciences, The Learned Society</p> <p>Alastair Delaney, Director of Operations & Deputy Chief Executive, Quality Assurance Agency for Higher Education</p> <p>James Harrison, Lead Policy Officer, Nations and Europe, Quality Assurance Agency for Higher Education</p> <p>David Gale, Quality Assurance Manager, Wales, Quality Assurance Agency for Higher Education</p> <p>Jassa Scott, Strategic Director, Estyn</p> <p>Jackie Gapper, Assistant Director, Estyn</p> <p>Mary van den Heuvel, Senior Policy Officer, National Education Union (NEU)</p> <p>Rebecca Williams, Deputy General Secretary, Undeb Cenedlaethol Athrawon Cymru (UCAC)</p> <p>Jamie Insole, Policy Officer, University and College Union (UCU)</p> <p>Lynne Hackett, Regional Organiser, Lead for Further and Higher Education, UNISON Wales</p> <p>Neil Butler, National Official (Wales), NASUWT</p>
13 January 2022	<p>Jeremy Miles MS, Minister for Education and Welsh Language</p> <p>Zenny Saunders, Deputy Director, Post-compulsory Education and Training (PCET) Reform, Welsh Government</p>

Date	Name and Organisation
	David Morris, Policy Team, Welsh Government

Annex B: List of written evidence

The following people and organisations provided written evidence to the Committee. All Consultation responses and additional written information can be viewed on the

Committee's website.

Reference	Organisation
TER 01	Welsh Local Government Association (WLGA)
TER 02	Jim Dickinson, Associate Editor at Wonkhe
TER 03	Welsh Language Commissioner
TER 04	NASUWT
TER 05	Wrexham Glyndŵr University
TER 06	Older People's Commissioner for Wales
TER 07	Mudiad Meithrin
TER 08	UNISON
TER 09	Ceredigion County Council
TER 10	Council of Deans of Health
TER 11	Estyn
TER 12	The Open University in Wales
TER 13	Education Workforce Council
TER 14	National Education Union Cymru
TER 15	NPTC Group of Colleges
TER 16	Quality Assurance Agency for Higher Education (QAA)

Reference	Organisation
TER 17	Catholic Education Service (CES)
TER 18	Office of the Independent Adjudicator for Higher Education (OIA)
TER 19	Catholic Education Service Post 16 development group
TER 20	Carmarthenshire County Council Education Department
TER 21	Cardiff Metropolitan University
TER 22	Cardiff University
TER 23	University and College Union
TER 24	Equality and Human Rights Commission
TER 25	The Learned Society of Wales
TER 26	Learning and Work Institute
TER 27	Charity Commission for England and Wales
TER 28	Children's Commissioner for Wales
TER 29	Adult Learning Wales
TER 30	Coleg Cymraeg Cenedlaethol
TER 31	Colleges Wales
TER 32	Higher Education Funding Council for Wales (HEFCW)
TER 33	Cardiff and Vale College
TER 34	TSANA (Third Sector Additional Needs Alliance)
TER 35	Natspec
TER 36	Joint response from: Universities Wales and the Chairs of Universities Wales (ChuW)
TER 37	St Joseph's Catholic School and Sixth Form Centre
TER 38	UCU Wales Higher Education Sector Committee Democracy/Governance Working Group
TER 39	Swansea University
TER 40	NAHT Cymru

Reference	Organisation
TER 41	National Deaf Children's Society Cymru
TER 42	Russell Group
TER 43	Joint response from: Professor Kirsti Bohata Fhea Flsw – Swansea University; Professor Matthew Jarvis Flsw, Aberystwyth University & University of Wales Trinity Saint David and Professor Daniel G Williams Flsw, Swansea University
TER 44	Learning Disability Wales
TER 45	National Library of Wales
TER 46	Undeb Cenedlaethol Athrawon Cymru (UCAC)

Additional Information

All correspondence relating to the Bill can be found on the [website](#).

Title	Date
Letter from the Minister for Education and Welsh Language to the Chair of the Children, Young People and Education Committee	14 February 2022
Letter from the Minister for Education and Welsh Language to the Chair of the Children, Young People and Education Committee	04 February 2022
Letter to Chair of the Legislation, Justice and Constitution Committee from the Minister for Education and Welsh Language	18 January 2022
Letter from the Chair of the Children, Young People and Education Committee to the Minister for Education and Welsh Language	13 January 2022
Letter from the Minister for Education and Welsh Language to the Chair of the Finance Committee	21 December 2021
Letter from the Minister for Education and Welsh Language to the Chair of the Children, Young People and Education Committee	14 December 2021
Letter from Chair of the Legislation, Justice and Constitution Committee to the Minister for Education and Welsh Language	10 December 2021
Letter from the Chair of the Economy, Trade and Rural Affairs Committee to the Chair of the Children, Young People and Education Committee	01 December 2021
Letter from the Chair of Finance to the Minister for Education and Welsh Language	26 November 2021

Letter from the Chair of the Children, Young People and Education Committee to the Minister for Education and Welsh Language	24 November 2021
Letter from the Chair of the Children, Young People and Education Committee to the Chair of the Economy, Trade and Rural Affairs Committee	19 October 2021