

**National Assembly for Wales**  
Bill Summary

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

May 2013

Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



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Anne Thomas and Owain Roberts

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

## 1. Introduction

**Introduction date:** 29 April 2013

**Member in charge:** Leighton Andrews AM, Minister for Education and Skills

**Assembly Committees undertaking Stage 1 scrutiny of the Bill:** Children and Young People Committee

**Stage 1 reporting deadline:** 19 July 2013

The *Further and Higher Education (Governance and Information) (Wales) Bill*<sup>1</sup> ('the Bill') aims to enhance the autonomy and decision making abilities of Further Education Corporations in Wales by removing and modifying existing legislative controls on them.

The Bill also includes a separate provision for the higher education sector which enables Her Majesty's Revenue & Customs ('HMRC') to share information relating to the assessment of eligibility for student grants and loans with the Welsh Ministers through a data link.

This paper includes background information about the current proposal, including details of the Welsh Government's reasons for introducing the Bill, and an overview of relevant consultations and reviews held by the Welsh Government and others in relation to further and higher education in Wales to date. It also provides an overview of the Bill's main objectives and provisions, and summarises the initial reactions of Assembly Members to the Bill's publication.

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<sup>1</sup> [Further and Higher Education \(Governance and Information\) \(Wales\) Bill](#) [accessed 21 May 2013]

## 2. Background

### 2.1. Further Education Institutions in Wales

Further Education Corporations and designated Further Education Institutions were established in Wales in **April 1993** by the *Further and Higher Education Act 1992*.<sup>2</sup> The current framework for governing Further Education Corporations in Wales is set out in *The Further Education Corporations (Replacement of Instrument and Articles of Government) (Wales) Order 2006*.<sup>3</sup>

There are currently 14 Further Education Corporations and four designated Further Education Institutions in Wales, which are collectively referred to in this document as FEIs.<sup>4</sup> They are listed below:

#### **Further Education Corporations:**

- Bridgend College
- Cardiff and Vale College (Barry College merged with Coleg Glan Hafren in August 2011)
- Coleg Ceredigion
- Coleg Gwent (Created from five colleges – Usk, Newport, Cross Keys, Ebbw Vale and Pontypool colleges)
- Coleg Morgannwg (includes Pontypridd and Rhondda Colleges and Aberdare College)
- Coleg Powys
- Coleg Sir Gâr
- Deeside College (Merged with Coleg Llysfasi and the Welsh College of Horticulture)
- Gower College Swansea (Swansea College merged with Gorseinon College in August 2011)
- Grwp Llandrillo Menai (Coleg Llandrillo merged with Coleg Meirion Dwyfor and Coleg Menai in April 2012)
- Neath Port Talbot College (created from the merger of Afan College and Neath College in 1999)
- Pembrokeshire College
- Yale College
- Ystrad Mynach College

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<sup>2</sup> [Further and Higher Education Act 1992](#) (Chapter 13) [accessed 2 May 2013]

<sup>3</sup> [The Further Education Corporations \(Replacement of Instrument and Articles of Government\) \(Wales\) Order 2006](#) SI 2006/13 [accessed 3 May 2013]

<sup>4</sup> Additional information about further education in Wales is included in the [Research Service Paper: Further Education structure in Wales](#), published in April 2013

## Further Education Institutions:

- YMCA Community College
- St. David's Catholic College
- Coleg Harlech WEA North<sup>5</sup>
- WEA South

### *2.2. Re-classification of Further Education Institutions*

At the time of their formation in **April 1993**, FEIs were classified for the purpose of national accounts as 'Non-Profit Institutions Serving Households' ('NPISH'). The NPISH sector includes a number of bodies like universities, charities, trade unions or civic society bodies that could be regarded as being part of the 'Third Sector' (i.e. not in the private or public sector). In national accounts terms however, **NPISH is part of the private sector**. This is in contrast to the majority of pre-16 education institutions in the UK (apart from independent/private schools) which are classified in the general government sector.

In **October 2010**, the Office of National Statistics ('the ONS') announced that it would **reclassify FEIs in England and Wales**, Sixth Form College Corporations (which only exist in England), Colleges of Further Education in Scotland and Institutions of Further Education in Northern Ireland to the general government sector, from the NPISH sector, where the ONS said that they had been incorrectly classified since the early 1990s.

The ONS' reasons for stating this arose from the 'discovery of public sector controls over these institutions',<sup>6</sup> which were sufficient enough to result in the ONS concluding that the public sector had control of these bodies' general corporate policy. The ONS also stated that this decision should be applied retrospectively to cover the period for which they should have been classified within the general government sector (from April 1993 in Wales).

A number of different public sector controls were identified by the ONS, but one of the most important related to borrowing by FEIs, where the consent of the relevant government was required for any FEI to borrow funds.

According to the Bill's accompanying Explanatory Memorandum ('EM'), the effect of this reclassification has significant negative impacts for the further education sector in Wales.

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<sup>5</sup> The Minister for Education and Skills issued a [Cabinet Written Statement on Coleg Harlech WEA North on 29 April 2013](#). It provided details of Coleg Harlech WEA North's desire to merge with WEA South, with the intention of establishing an all Wales college by 31 December 2013 at the latest.

<sup>6</sup> Office of National Statistics, [Reclassification of Further Education Corporations and Sixth Form Colleges in England](#), 31 May 2012, page 1 [accessed 7 May 2013]

In particular, the reclassification will lead to changes to the way financial information from FEIs is collected and monitored as well as impacting on how FEIs manage their internal affairs. In particular, the Welsh Government claims that it would have an impact on Welsh Government capital budgets and inhibit FEIs carrying forward budget surpluses and building reserves for future projects.

**As a result, the Bill aims to secure a reversal of the re-classification and have colleges in Wales re-instated as NPISH.** According to the Welsh Government, this would lead to FEIs having more control over their own affairs and greater decision making powers in deciding how to meet the needs of their learners and local communities.

### *2.3. Developments in England*

Following the decision by ONS to classify FEIs in the general government sector in 2010, the UK Government proposed new legislation that had broadly the same effect, in relation to **FEIs in England**, as that proposed in the current Bill.

The *Education Act 2011*<sup>7</sup> received Royal Assent on 15 November 2011. Schedule 12 of the Act entitled 'Further Education Institutions - Amendments' is the key section of the legislation. It amends the *Further and Higher Education Act 1992*<sup>8</sup> and the *Apprentice, Skills, Children and Learning Act 2009*<sup>9</sup> in respect of the powers held by the public sector **in England over** Further Education Corporations and Sixth Form College Corporations (which exist in England only).

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

The relevant sections of the Act came into force on 1 April 2012 and consequently Further Education Corporations **in England** and Sixth Form College Corporations (England) **were reclassified to the NPISH sector as of 1 April 2012.**

The ONS has confirmed that this decision to reclassify Further Education Corporations and Sixth Form College Corporations in England to the NPISH sector as of April 2012 does not affect the classification of the bodies in Wales, Scotland and Northern Ireland which remain classified in the central government sector, pending any legislative changes affecting these institutions.

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<sup>7</sup> [Education Act 2011](#) (Chapter 21) [accessed 2 May 2013]

<sup>8</sup> [Further and Higher Education Act 1992](#) (Chapter 13) [accessed 2 May 2013]

<sup>9</sup> [Apprentice, Skills, Children and Learning Act 2009](#) (Chapter 22) [accessed 2 May 2013]

#### *2.4. Sharing data relevant to higher education grants and loans*

The higher education elements contained in the Bill relates to the Welsh Government's intention to transfer the system for determining certain eligibility criteria for the receipt of financial support from local authorities to the Student Loans Company by **February 2014**.<sup>10</sup>

In order to do this, the provisions contained in the Bill enables the Student Loans Company to establish a process for verifying household income to replace the current paper based model used by local authorities to collect data in this area.

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<sup>10</sup> Welsh Government, Minister for Education and Skills (Leighton Andrews), [\*The Review of Student Finance Delivery in Wales\*](#), Cabinet Written Statement, 9 June 2010 [accessed 7 May 2013]

### 3. Timeline

#### 3.1. Previous reviews of further education

FEIs in Wales have been the subject of a number of reviews over the years, which have in turn informed the content of this Bill. These are summarised below:

In **December 2006**, **Sir Adrian Webb** was commissioned by the Welsh Government to undertake an independent wide-ranging review ('**the Webb Review**') of the further education sector in Wales. The resulting report, *[Promise and Performance](#)*, was published in **December 2007**. It made a number of recommendations on a wide range of areas including governance.

The report in particular emphasised the importance of networks and that college governance needs to be accountable for the performance of the institutions and its contribution to networks. Webb recognised the good practice that existed in some FEIs in ensuring governors play an important evaluative part in quality assessment and performance processes, but stressed that this needed to be adopted more generally.

In **April 2009**, the then Deputy Minister for Skills, John Griffiths AM, announced the Welsh Government's intention to carry out a stakeholder review of the governance arrangement of FEIs. To take forward the review, a **Task and Finish Review Group** was established to advise on options for reform. Its overall purpose was to provide the Deputy Minister with a set of practical options for improving existing further education governance arrangements. The ensuing report, entitled *[Responsibility and Responsiveness](#)*, was published in **May 2010**.

<sup>11</sup>

In **July 2010**, the then Minister for Children, Education and Lifelong Learning established an expert review panel to explore different models of governance for FEIs. The Review was conducted by an independent task and finish group which was Chaired by **Mr Rob Humphreys, Director for Wales at the Open University**. The group's report, *[Independent Review of Governance Arrangements for Further Education Institutions in Wales](#)*, was published in **March 2011**.

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<sup>11</sup> Welsh Government, *[Responsibility and Responsiveness – stakeholder Review of FE Governance Arrangements](#)*, May 2010 [accessed 2 May 2013]

The Review (**'the Humphreys Review'**) considered models of governance that are responsive to the current and future needs of citizens, learners, employers and communities. The report made 41 recommendations. The Review panel's proposals centred on a new system of governance for FEIs in Wales, comprising two strands: a new, 'leaner' board, comprising Non-Executive and Executive Directors, appointed on the basis of skills and expertise rather than category, and a new **Membership Body** to ensure that the FEI has full engagement with its community including learners, customers, employers, other strategic partners and staff.

Following the publication of the report, the Welsh Government ran a public consultation to seek public views on some of the recommendations, between **March and June 2011**.<sup>12</sup>

### *3.2. The Welsh Government's legislative programme*

On **12 July 2011** the First Minister, the Rt. Hon. Carwyn Jones AM, made a statement in Plenary on the Welsh Government's legislative programme for the next five years up to the National Assembly elections in May 2016.<sup>13</sup>

That statement included a commitment to bring forward a *Structures, Governance and Special Educational Needs (Wales) Bill* that would encompass four broad objectives across the educational spectrum. In particular it was envisaged that such a Bill would cover the following areas:

- The introduction of provisions relating to the performance management and continuing professional development of teachers;
- Reforming Wales' higher education sector;
- Taking forward changes to the governance of FEIs; and
- Reforming the existing system of statements for children and young people with Special Educational Needs.<sup>14</sup>

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<sup>12</sup> Welsh Government, [\*Consultation: An independent review of the governance arrangements of further education institutions in Wales\*](#), 28 March 2011 [accessed 2 May 2013]

<sup>13</sup> National Assembly for Wales, [\*RoP, Plenary: The Welsh Government's Legislative Programme 2011-2016\*](#), 12 July 2011 [accessed 2 May 2013]

<sup>14</sup> Ibid

By the end of the first year of the legislative programme however, the Welsh Government had decided to include these provisions in separate Bills, with the proposals relating to further and higher education delivered through a *Further and Higher Education (Wales) Bill* instead. In his statement on the legislative programme on **17 July 2012**, the First Minister said that a Bill was required in light of:

the decision by the Office for National Statistics to reclassify further education colleges as part of central Government for the purpose of national accounts. We intend to seek a reversal of that reclassification, subject to stakeholder views. The Welsh Ministers will continue to retain intervention powers to ensure that the quality of learning and financial viability will not be compromised.<sup>15</sup>

In relation to the higher education sector, the First Minister stated that the Bill would:

seek to reform the functions of the Higher Education Funding Council for Wales. The council's quality assurance functions will be retained and extended to include the enhancement of higher education provision. We want to establish a more co-ordinated approach between all providers of post-16 education, and we will seek powers for the Welsh Ministers to fund higher education provision directly to support partnership and collaborative activity where it is strategically appropriate.<sup>16</sup>

He also said that 'The Bill will also seek provision to strengthen the learner voice, fair access arrangements and dispute resolution procedures in higher education'.<sup>17</sup>

### *3.3. White Paper consultation*

The Welsh Government issued a [White Paper on the Further and Higher Education \(Wales\) Bill](#) on **2 July 2012**.<sup>18</sup> The consultation lasted until **24 September 2012**. A total of 55 responses were received to the consultation. A [summary of the responses](#) is available on the Welsh Government's website.<sup>19</sup>

The main proposals contained in the White Paper relating to further education governance remain the same in the Bill as introduced. The proposals relating to the higher education sector however are significantly different to what is included in the Bill.

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<sup>15</sup> National Assembly for Wales, [RoP, Plenary: The Legislative Programme](#), 17 July 2012

<sup>16</sup> Ibid

<sup>17</sup> Ibid

<sup>18</sup> Welsh Government, [Consultation: Further and Higher Education \(Wales\) Bill](#), 2 July 2012 [accessed 2 May 2013]

<sup>19</sup> Welsh Government, [Summary of responses: Further and Higher Education \(Wales\) Bill](#), March 2013 [accessed 2 May 2013]

In the White Paper, the Minister for Education and Skills, Leighton Andrews AM, had said that proposals for higher education addressed the need to:

Reshape the framework of accountability and control which operates through the Higher Education Funding Council for Wales ('HEFCW') to take account of the new tuition fee and funding regime being introduced from September 2012.<sup>20</sup>

**However, these provisions for the higher education sector have not been included in the Bill.**

The White Paper did not consult on the proposals for data sharing for student loans and grants. The Welsh Government says that this is because the proposals for data sharing were considered to be minor technical changes.<sup>21</sup>

On **6 March 2013**, the Minister issued a written statement in which he acknowledged the proposals relating to higher education needed further development. He stated that:

With regard to higher education I have asked my officials to undertake further analysis and development of the White Paper proposals. I will bring forward provisions relating to higher education reform through legislation later in this Assembly term. (...)The Further Education provisions and HMRC Data Sharing will go forward as legislation to be introduced in the spring of 2013.<sup>22</sup>

### *3.4. Petitions submitted to the National Assembly for Wales*

A petition entitled '[Keep Further Education in the Public Sector](#)' was submitted to the Assembly in **February 2013** by UCU Cross Keys Branch. It current has 246 signatures. The Petition says:

We call upon the National Assembly for Wales to urge the Welsh Government to ensure:

1. Further education, along with publicly funded assets, is retained within the public sector.
2. Colleges continue to be bound by the national agreements in FE, such as the national pay scales.
3. The introduction of an all-Wales contract for FE lecturers.
4. Welsh Ministers do not dissolve colleges and give colleges the ability to transfer the property, rights and liabilities to another body.<sup>23</sup>

The petition is currently under consideration by the National Assembly for Wales' Petitions Committee.

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<sup>20</sup> Welsh Government, [Consultation: Further and Higher Education \(Wales\) Bill](#), 2 July 2012, page 1 [accessed 2 May 2013]

<sup>21</sup> Welsh Government, [Explanatory Memorandum: Further and Higher Education \(Governance and Information\) \(Wales\) Bill](#), April 2013, paragraph 42 [accessed 2 May 2013]

<sup>22</sup> Welsh Government, Leighton Andrews (Minister for Education and Skills), [Welsh Government Summary of Responses to the White Paper - Further and Higher Education \(Wales\) Bill 2013](#), Cabinet Written Statement, 6 March 2013 [accessed 2 May 2013]

<sup>23</sup> National Assembly for Wales, [P-04-458 Keep Further Education in the Public Sector](#), 19 February 2013 [accessed 2 May 2013]

## 4. The Bill

### 4.1. *Policy aims and objectives*

The Bill contains separate provisions for the further and higher education sectors.

**In relation to further education, the Bill seeks to secure a reversal of the re-classification of FEIs, for accounting purposes, from part of general government to ‘non-profit institutions supporting households’ (‘NPISH’).**

The Bill aims to achieve this by enhancing the autonomy and decision making abilities of FEIs by removing and modifying existing legislative controls on them. In particular, the Bill proposes to make the following changes to allow for re-classification:

- The removal of the current statutory requirement for FEIs to receive the consent of Welsh Ministers before entering into any **borrowing arrangements**. The ONS considers public sector controls on borrowing as one of the most important factors in their classification criteria.
- Allowing FEIs to **modify or replace their instrument and articles of government**, providing that they continue to contain minimum requirements.
- The removal of Welsh Ministers’ existing power to **appoint up to two members of a governing body**.
- Allowing FEIs the freedom to **make changes to their governing body, composition and ways of working**. This would include allowing FEIs greater freedom to conduct themselves through **subsidiary arrangements** (such as a limited company or charitable incorporated organisation), without the consent of Welsh Ministers.
- Allowing **FEIs to dissolve themselves** and to transfer the college’s property, rights and liabilities to another body. The Bill also includes provision for the Welsh Ministers to set out the process FEIs would be required to follow before dissolution can take effect through regulations.

**In relation to higher education, the Bill puts the Welsh Government’s intended policy of allowing a data sharing link between HMRC and Welsh Ministers for the purposes of student support on a statutory footing.**

The current statutory framework, contained in the *Teaching and Higher Education Act 1998*<sup>24</sup> ('the 1998 Act'), provides that HMRC may only provide data in relation to the operation of the student loan scheme to the Secretary of State or those to whom the Secretary of State has delegated or transferred certain functions. As neither the Welsh Ministers nor the Student Loan Company currently falls within those categories, the Bill aims to amend the 1998 Act to enable the HMRC to supply information for the purposes of student support directly to the Welsh Ministers.

This provision is intended to create a 'data sharing gateway' to modernise the Student Finance Wales delivery service in order to simplify and create efficiencies in that service. It is also aimed at creating a more efficient application process and help reduce fraudulent claims by allowing the Student Loans Company to verify household income figures electronically (rather than the paper-based system currently in operation). In addition, the Welsh Government says that this change will ensure that the Welsh Ministers have the same functions as the Secretary of State for Business, Innovation and Skills in England and the Department for Education in Northern Ireland.

#### 4.2. Provisions

The Bill is relatively short and contains **11 Sections** and **2 Schedules**. 8 Sections are relevant to FEIs (Sections 1 to 8) while only 1 Section (Section 9) is relevant to the higher education sector. Each Section is summarised below:

**Section 1 (Borrowing and investing by further education corporations)** amends the *Further and Higher Education Act 1992*<sup>25</sup> in order to remove the requirement for FEIs in Wales to obtain the consent of Welsh Ministers before they can exercise powers to borrow money, to form or invest in a company or become a member of a charitable incorporated organisation.

**Section 2 (Instrument and articles of government of further education corporations)** introduces **Schedule 1 (Instrument and articles of government)** and amends section 20 of the *Further and Higher Education Act 1992* to make new and less prescriptive provision about the content of instruments and articles of government of FEIs in Wales. **Schedule 1** sets out the essential elements that FEIs are required to include in their instrument and articles of government.

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<sup>24</sup> [Teaching and Higher Education Act 1998](#) (Chapter 30) [accessed 2 May 2013]

<sup>25</sup> [Further and Higher Education Act 1992](#) (Chapter 13) [accessed 2 May 2013]

**Section 3 (Dissolution of further education corporations)** replaces Sections 27 to 27B of the *Further and Higher Education Act 1992* in order to remove the power of Welsh Ministers to dissolve FEIs and transfer their property, rights and liabilities to another education provider. Instead, FEIs will have the power to dissolve themselves, provided they have met certain conditions. It also removes the powers of Welsh Ministers to modify and replace articles and instruments of government

**Section 4 (Designated institutions: instruments and articles of government)** replaces Sections 29B and 29C of the *Further and Higher Education Act 1992* in order to remove the requirement for Welsh Ministers to give their consent before FEIs can modify or replace their instruments and articles of government. Instead, FEIs will have the power to modify or replace their own instrument and articles of government.

**Section 5 (Intervention by Welsh Ministers in respect of institutions within further education sector)** amends Section 57 of the *Further and Higher Education Act 1992* to allow Welsh Ministers to direct the governing body of a FEI to use its new powers to dissolve itself.

**Section 6 (Abolition of duties of further education institutions to comply with directions)** amends Sections 33J and 33L of the *Learning and Skills Act 2000*<sup>26</sup> and Sections 116I and 116K of the *Education Act 2002*<sup>27</sup> in order to remove the requirement for FEIs to comply with directions made by the Welsh Ministers relating to the planning of local curricula and joint working to deliver local curricula. FEIs must however still have regard to guidance given by Welsh Ministers in respect of planning and delivering local curricula.

**Section 7 (Abolition of power to regulate higher education courses in further education sector)** repeals section 139 of the *Education Act 2002* so that Welsh Ministers may no longer make regulations that prohibit the provision of higher education courses by FEIs without their approval and that regulate the numbers and categories of students on such courses.

**Section 8 (Minor and consequential amendments)** introduces **Schedule 2 (Minor and consequential amendments)** which makes amendments to various Acts, an Order and an Assembly Measure (the *Learning and Skills (Wales) Measure 2009*),<sup>28</sup> as a result of other sections in the Bill.

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<sup>26</sup> [Learning and Skills Act 2000](#) (Chapter 21) [accessed 3 May 2013]

<sup>27</sup> [Education Act 2002](#) (Chapter 32) [accessed 3 May 2013]

<sup>28</sup> [Learning and Skills \(Wales\) Measure 2009](#) (Nawm1) [accessed 2 May 2013]

**Section 9 (Supply of information in connection with student loans and grants)** amends Section 24 of the Teaching and Higher Education Act 1998 to enable a data sharing link to be established between HMRC and the Welsh Government, including anyone to whom the Welsh Ministers delegate or transfer functions.

**Section 10 (Commencement)** states that that Section 9 and 11 will come into force on the day that the Bill received Royal Assent. The remaining sections will be brought into force by an Order made by Welsh Ministers.

**Section 11 (Short title)** provides that the short title of the Bill, once it has received Royal Assent, will be the Further and *Higher Education (Governance and Information) (Wales) Act 2014*.

#### 4.3. *Implementation and review*

The EM states that current timetable for the consideration and implementation of the Bill is as follows:

- **Early December 2013:** Bill passed, subject to the will of the Assembly;
- **Summer 2014:** Subordinate legislation finalised; and
- **September 2014:** Changes for FEIs introduced.<sup>29</sup>

The EM states that provisions in the Bill that affect the higher education sector will commence immediately on Royal Assent, which could be as early as **January 2014**.<sup>30</sup> This is to ensure that the Welsh Government can launch its Student Finance Wales initiative as close as possible to the establishment of the UK wide student finance system, which could be in place as early as November 2013. Following Royal Assent, the Student Loans Company will fully roll out the Student Finance Wales service for **academic year 2014-2015** which will include launching the data sharing link for Student Finance Wales on behalf of Welsh Ministers.<sup>31</sup>

The EM also states that the Welsh Government will review the legislation one year on from implementation in order to seek the views of stakeholders on its impact.<sup>32</sup>

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<sup>29</sup> Welsh Government, *Explanatory Memorandum: Further and Higher Education (Governance and Information) (Wales) Bill*, April 2013, paragraph 36 [accessed 2 May 2013]

<sup>30</sup> Ibid, paragraph 38

<sup>31</sup> Ibid, paragraph 39

<sup>32</sup> Ibid, paragraph 145

## 5. Financial implications

According to the Regulatory Impact Assessment ('RIA') contained in the Welsh Government's EM, **introducing the Bill gives rise to no additional costs to the Welsh Government as it is retaining the status quo.**<sup>33</sup>

The costs provided in the RIA as a result are for year 1 only. These include costs borne by the Welsh Government relating to collecting and collating additional financial returns (£4,700 p.a.) and FEIs' additional auditing costs (£72,600 p.a.).

In respect of the higher education provisions in the Bill relating to sharing data for the verification of student household income, the EM says that as the Student Loans Company will utilise systems and processes that are already in operation in England, 'there will be no development or implementation costs associated with these reforms'.<sup>34</sup> Once implemented, the EM states that HMRC have estimated that the Student Finance Wales part of the process to be £30,000 based on the planning assumption of handling 23,500 income checks of sponsors per annum.<sup>35</sup>

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<sup>33</sup> Welsh Government, *Explanatory Memorandum: Further and Higher Education (Governance and Information) (Wales) Bill*, April 2013, paragraph 94 [accessed 2 May 2013]

<sup>34</sup> Ibid, paragraph 114

<sup>35</sup> Ibid, paragraph 115

## 6. Reactions

In his legislative statement on the Bill to Assembly Members in plenary on **30 April 2013**, the Minister for Education and Skills, Leighton Andrews AM, said in relation to further education governance that:

I am committed to removing a number of legislative restrictions and controls on colleges, without changing the principal powers of further education institutions to provide further, higher and (within some limits) secondary education.<sup>36</sup>

He added however that the Bill would also contain ‘appropriate controls’<sup>37</sup> on FEIs to complement the new flexibilities provided. The Minister explained:

So, should a college demonstrate it is failing to meet the needs of learners and those it serves I have included intervention powers for the Welsh Ministers in the Bill. These powers are significant; and could result in the removal of the governing body or a direction for the governing body to collaborate ... As such, members can be assured, that these proposals increase the capacity and flexibility of colleges, but do not translate into ‘taking the pressure off colleges’.<sup>38</sup>

In relation to the proposals in the Bill relating to the higher education sector, the Minister stated that:

I believe that this provision will have clear advantages for both students and Student Finance Wales. It will speed up the administrative process for the student, and will also increase the effectiveness of Student Finance Wales to detect, deter and prevent fraud by checking an applicant’s household income with HMRC’s tax records.<sup>39</sup>

According to the Minister, these changes will also ‘create significant efficiencies, simplify the application process and provide a quicker learner service for students applying for loans and grants’.<sup>40</sup>

The Welsh Conservatives’ education spokesperson, Angela Burns AM, welcomed both the further and higher education provisions contained in the Bill. However, she raised the following point in relation to the re-classification of FEIs:

one of the risks is that the legislation does not give the Office for National Statistics national accounts classification committee the assurances needed that key steps have taken place to increase the autonomy of FE colleges, and therefore that we will not achieve what we are setting out to achieve. Can you detail what you will do to minimise that risk?<sup>41</sup>

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<sup>36</sup> National Assembly for Wales, RoP, *Plenary: Introduction of the Further and Higher Education (Governance and Information) (Wales) Bill*, 30 April 2013 [accessed 2 May 2013]

<sup>37</sup> Ibid

<sup>38</sup> Ibid

<sup>39</sup> Ibid

<sup>40</sup> Ibid

<sup>41</sup> Ibid

In response, the Minister stated that:

my officials have had regular discussions with the Office for National Statistics and I would expect those to continue. It understands, I imagine, our objectives through this legislation. A similar approach has been taken in England, and there are other discussions under way in Northern Ireland, I believe, and possibly in Scotland as well. I cannot give absolute guarantees, but certainly we are working, we think, within the spirit of what the ONS is seeking.<sup>42</sup>

Simon Thomas AM, told Members that Plaid Cymru would ‘not oppose this Bill’ and that they will be ‘relatively neutral’ during its consideration.<sup>43</sup> However, he raised similar points to those made by Angela Burns AM about whether the Bill will achieve its aims of achieving re-classification of FEIs by the ONS:

I am a little concerned that the Minister cannot tell us clearly that he believes that this Bill will achieve the requirements of the ONS and that it will be possible, therefore, to rectify the situation. If it cannot be done, I would prefer to go back to the Humphreys report, to be honest, and look at that pattern. If we are to have such a pattern, we may as well legislate in that way. I ask the Minister, once again, to explain how he believes that this Bill will achieve what the ONS is seeking in the Welsh context.<sup>44</sup>

He added that some stakeholders have expressed concerns about the Bill in its current form ‘because it provides so much flexibility to the sector that it could even be interpreted as though it were releasing the sector entirely from the requirement to meet the Government’s objectives’.<sup>45</sup>

He also believed that the Bill would lead to a ‘strange’ situation ‘whereby the Minister will have a right to abolish a university, but not an FE college’.<sup>46</sup>

In response, the Minister stated that:

I think that I have made it clear before—it is no secret—that this was not my preferred route. I set up the Humphreys review. I looked to develop a social enterprise model for further education. It is still a model that can be implemented by the sector on a voluntary basis, and we have some interest in certain parts of the sector in doing just that. In my speech to the University and College Union conference last month, I explained that I would have preferred to be going down a different route. However, the ONS is making its views clear in respect of the European legislation and its interpretation, and I need to safeguard Welsh Government budgets, and I think that that has been generally understood

In respect of the legislative route and the risks therein, it is clear to the ONS that we are sending out a signal that shows the direction of travel in which we are moving. We can also provide guidance on governance. My officials have done what they can to ensure that the ONS is clear about our objectives, and we will continue to maintain a dialogue with it.<sup>47</sup>

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<sup>42</sup> National Assembly for Wales, RoP, *Plenary: Introduction of the Further and Higher Education (Governance and Information) (Wales) Bill*, 30 April 2013 [accessed 2 May 2013]

<sup>43</sup> Ibid

<sup>44</sup> Ibid

<sup>45</sup> Ibid

<sup>46</sup> Ibid

<sup>47</sup> Ibid

Simon Thomas AM also raised issues relating to working conditions and the terms and conditions of those working in the further education sector:

I would also want to scrutinise the Bill to ensure that there is nothing herein that will preclude the developments that are already in the pipeline to put in place a national agreement on the terms and conditions of those who work in this sector—I hope that the Bill will promote this work. A great deal of negotiation has gone on voluntarily over the past two years; Plaid Cymru wants to see that happening and being concluded successfully. We want to ensure that this Bill does not give anyone an opportunity to escape from finding agreement on those issues.<sup>48</sup>

Similar issues were also raised by the Welsh Labour Member David Rees AM, and the Welsh Liberal Democrat education spokesperson, Aled Roberts AM, who stated that:

There is some concern within the sector, if this new structure is implemented before those discussions come to a completely successful conclusion, that some colleges will face additional costs if they adopt the national standards, avoiding the move to national agreements. Are you satisfied with the control that you will have as Minister? Is there a danger that some colleges will transfer assets to companies? That point has been raised. You have some powers over the colleges; are you satisfied that those powers are sufficient?<sup>49</sup>

The Minister in response believed that working conditions ‘are slightly separate issues, but we can return to them for further discussion during the passage of the Bill’.<sup>50</sup>

Despite welcoming the Bill, David Rees AM also raised a number of concerns relating to provisions in the Bill that will affect the accountability of FEIs, the members of governing boards of FEIs, the proposed borrowing powers of FEIs and the proposed duty on FEIs to meet the needs of learners and local communities.<sup>51</sup>

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<sup>48</sup> National Assembly for Wales, RoP, *Plenary: Introduction of the Further and Higher Education (Governance and Information) (Wales) Bill*, 30 April 2013 [accessed 2 May 2013]

<sup>49</sup> Ibid

<sup>50</sup> Ibid

<sup>51</sup> Ibid

In response, the Minister stated that:

There are a number of areas that we have tried to clarify in the course of drafting this legislation. We always intended there to be a place for learners on the governing bodies, we expect there to be places for staff, and we expect the staff to be distinct from the role of the chief executive or principal of the college in that regard, and we would expect good practice to be followed. There are issues here as to how we set out our expectations, which we can explore during the passage of the Bill.

Once again, in respect of borrowing, I do not object to colleges borrowing for expansion, as long as that borrowing for expansion is to satisfy their core raison d'être in terms of supporting learners. That is something that we can return to and discuss further.<sup>52</sup>

The further and higher education provisions of the Bill will now be considered by the Children and Young People's Committee however the proposals relating to the higher education sector will also be scrutinised by the Enterprise and Business Committee. The Business Committee has set a deadline of **19 July 2013** for the publication of the Stage 1 report on the Bill's general principles.

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<sup>52</sup> Ibid