

Main Provisions

The Bill implements proposals contained in the Department for Education and Skills' (DfES) White Paper "*Further Education: Raising Skills, Improving Life Chances*" which was published on 27 March 2006⁷.

The Bill makes provision:

- about the Learning and Skills Council for England
- about institutions within the further education sector
- with respect to industrial training levies
- about the formation of, and investment in, companies and charitable incorporated organisations by higher education corporations
- to enable the making of Assembly Measures in relation to the field of education and training
- and for connected purposes.

Links to the Bill⁸ and the explanatory notes⁹ are below.

Committee Consideration

Members were provided with a comprehensive paper on the Bill (ELLS(2) 02-07-p2)¹⁰ by the Minister for Education, Lifelong Learning and Skills Jane Davidson AM. They were also provided with copies of the Bill and the explanatory notes as well as a paper from the Members' Research Service setting out the Bill's main provisions. The Parliamentary Under Secretary of State for Wales, Mr Nick Ainger MP, also attended the Committee meeting to aid the Committee in its consideration of the Bill.

During discussion, the following issues were raised:

- **Clause 10 – Provision of Services**
Clause 10 allows the Learning and Skills Council in England to offer ancillary services, such as providing accommodation and facilities or managing these facilities or procuring goods and services, to education or training bodies in England, Wales, Scotland and Northern Ireland, provided that the consent of the relevant Minister has been obtained.

⁷ Department for Education and Skills' (DfES) White Paper "*Further Education: Raising Skills, Improving Life Chances*" March 2006,

<http://www.dfes.gov.uk/furthereducation/index.cfm?fuseaction=content.view&CategoryID=21&ContentID=25>.

⁸ <http://www.publications.parliament.uk/pa/ld200607/ldbills/006/07006.i-ii.html>.

⁹ <http://www.publications.parliament.uk/pa/ld200607/ldbills/006/en/07006x--.htm>.

¹⁰ <http://www.wales.gov.uk/cms/2/EducationLifelongLearningAndSkillsCommittee/AgendasPapersTranscripts/d53e8086633f9d633d3c84d2a79c2a36.html>.

The Minister for Education, Lifelong Learning and Skills explained that this was simply an enabling power which could only be used with the consent of Welsh Ministers. Welsh Ministers would have the power to develop structures that were entirely Welsh based. However, there could be occasions when it would be sensible to arrange the provision of services on a cross-administration basis.

- **Clause 11 – Assistance with respect to employment and training.**

Clause 11 raised, in relation to the administration of Career Development Loans, the same issue as clause 10. That is, the extent to which Welsh Ministers would be free to develop wholly Welsh arrangements or would be tied in to cross-administration arrangements. The Minister for Education, Lifelong Learning and Skills confirmed that, as with clause 10, this was an enabling power, which could only be used with the consent of Welsh Ministers.

- **Clause 18 – Intervention: Wales**

Policy Background

Clause 26 (Measure Making Powers for the National Assembly) provides the Assembly with wide powers in many of the areas covered by the Bill. However, clause 18 gives powers direct to Welsh Ministers to intervene in the case of underperforming institutions, rather than the Assembly deciding these powers through Assembly Measures.

Mr Ainger explained that the Assembly could decide through Measures how the powers will be exercised by Welsh Ministers. The Minister for Education, Lifelong Learning and Skills explained that a separate clause was needed to make provision in respect of Wales because clause 17 (Intervention: England) removed the power of intervention from Ministers in England and gave them to the Learning and Skills Council.

Effect on Employment Law

Fforwm, the organisation representing further education colleges and institutions in Wales, had raised concerns with Committee Members about the impact on employment law of the use of the clause. It considered that natural justice would not be seen to have been carried out if a Minister summarily dismissed a principal for whatever reason.

Mr Ainger gave an assurance that the Bill could not overturn current employment law. However, there needed to be greater clarity around appeal processes in Wales. In England, because the initial power would be exercised by the Learning and Skills Council, there was the possibility of an appeal process to the Secretary of State. However, in Wales Ministers will exercise the power directly.

The Minister for Education, Lifelong Learning and Skills explained that she wanted to ensure that there are appropriate powers of intervention, that allow the appropriate appeal mechanisms. She was hopeful that a suitable solution could be found when the Bill was considered at report stage. She undertook to keep the Committee informed of developments.

- **Clause 19 – Power to Award Foundation Degrees**

Policy Background

Clause 19 provides an option for the Privy Council to grant further education institutions in England the power to award foundation degrees. This provision does not extend to Wales. Clarification was sought of the reasons for this.

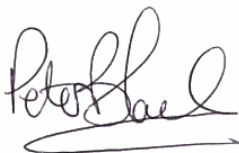
Mr Ainger explained that the Assembly Government decided not to take up this option because of the already close links between higher education institutions and further education colleges in Wales. Expanding on this the Minister for Education, Lifelong Learning and Skills explained that arrangements may be put in place around the awarding of foundation degrees by employers. However, degrees were already monitored through the Higher Education Funding Council for Wales and the Quality Assurance Agency. In the Welsh context it was considered better not to have duplicated or competing arrangements.

Assembly ability to amend by Measure

A further issue raised on this clause was whether the measure powers set out in clause 26 would enable the Assembly to bring forward measures enabling further education institutions to award foundation degrees if there was such a desire in the future.

Initial legal opinion given at the meeting suggested that the measure powers (and in particular Matter 5.2) would enable the Assembly to make such provision. However, written advice¹¹ from the Minister provided after the meeting suggests that clause 26 does not allow the Assembly to confer functions on the Privy Council.

The Committee did not propose any amendments to the Bill.



Peter Black AM
Committee Chair

February 2007

¹¹ Letter of 5 February from the Minister for Lifelong, Learning and Skills. Attached as an annex to this report.