

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

Estyn Response – May 2013

The Explanatory Memorandum prepared by the Welsh Government describes the Bill's main purposes in the following terms:

The Bill seeks to enhance the autonomy and decision making abilities of Further Education Institutions by removing and modifying existing legislative controls on them.

The Bill also gives effect to the Welsh Government policy data relevant to students grants and loans to be shared by Her Majesty's Revenue and Customs (HMRC) with the Welsh Ministers and anyone to whom the Welsh Ministers delegate or transfer functions. The data sharing gateway is an integral part to modernise the Student Finance Wales delivery to simplify and create efficiencies in that service.

General

Do you think the Bill, as drafted, delivers the stated objectives as set-out in the Explanatory Memorandum?

Yes, we agree there is a need for a Bill for the stated purposes. In order to avoid the complications proposed by the ONS, Wales needs to have its own clear and robust procedures for governing FECs. Inspection evidence demonstrates that since incorporation, and particularly since transformation, most colleges have robust procedures in place to manage their own finances and improve quality and standards. The introduction of this Bill strengthens the ability of FECs to manage their own provision and deliver high quality education and training to meet the needs of learners, employers and communities in Wales.

Are the sections of the Bill, as drafted appropriate to bring about the purposes described above? If not, what changes need to be made to the Bill.

Yes, we think the Bill as drafted delivers the stated objectives. The Bill makes clear the position of Welsh Government Ministers and the roles and responsibilities of FECs in terms of governance and regulation. The Bill is clear about the need to include a lighter touch on the Government framework, that colleges can develop their own instruments and articles of Government, dissolve themselves and merge with other organisations or borrow money without Ministerial approval. However, without the Bill there might be a serious disincentive for the sector to provide good financial management if colleges were not allowed to keep their annual surpluses. Currently, FECs make good use of surpluses to build reserves to fund projects or restructuring. Without the Bill, colleges would be reluctant to seek alternative income streams outside of Government funding or even continue to manage their finances as efficiently as they do now. Estyn welcomes the new enhanced intervention power for Ministers which can be used where a governing body is mismanaging its affairs or giving an unacceptable standard of education and training. This will provide a check on colleges that may 'overreach' themselves in terms of acquisitions that lead them

away from their core purposes. Examples would include acquiring wholly owned subsidiaries in other parts of the UK or beyond, or diversifying to develop other business that are not core to the delivery of education and training. The Bill ensures that FECs will be accountable for the use of public funds.

How will the Bill change what organisations do currently and what impact will such changes have, if any?

We do not think that the Bill will change what FECs do currently although there is the risk of too much diversification as highlighted in the previous answer. However, the Bill will enable FECs to have more independence in determining their future direction with less Ministerial intervention. This will enable them to respond quickly and appropriately to the needs of learners, employers and the local community. We do not think the proposed Bill will have any detrimental effect on quality and standards. Estyn is pleased that the Bill will not have a negative impact on the Welsh language. However, Estyn has a concern that the Bill will repeal the duty on FECs to consult with learners and employers. We support the aim of reducing the power of Ministers to restrict the provision of HE in FE as this is a fertile area for growth and cooperation between the sectors, each bringing their own specific strengths to the delivery of higher level courses to learners with a variety of needs.

What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?

We do not see any significant barriers to implementing the Bill.

Do you have any views on the way in which the Bill falls within the legislative competence of the National Assembly for Wales?

We are unable to comment on the legislative competence on the National Assembly for Wales.

Powers to make subordinate legislation

What are your views on powers of the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?

We are unable to make a comment on the powers for Welsh Ministers.

Financial Implications

What are your views on the financial implications of the Bill?

We agree that the 'do nothing' option would have significantly negative impact on WG budgets and the ability for FECs to carry forward surpluses to enable them to carry-out capital projects as they have successfully undertaken in the past. Introducing a funding council will significantly increase costs and will not address the issues. The cost of introducing a funding council will have to be met by diverting money from the FE budget and is highly unlikely to satisfy the ONS requirements to reverse the reclassification of FE colleges. Whilst it would increase the autonomy of FECs, while maintaining the ability to exercise arm's length control by Ministers, it will not remove many of the controls Ministers have over FECs. Hence our preferred option is option 3, to introduce an Assembly Bill. This will enable the Welsh Government to repeal a wide range of restrictions and controls on colleges and

enable them to develop their own Instruments and Articles of Government, dissolve themselves, merge with other organisations and borrow money without Ministerial approval.

Other comments

Are there any other comments you wish to make about specific sections of the Bill?

No