

**Children and Young People Committee  
The Further and Higher Education (Governance and  
Information) (Wales) Bill  
31 May 2013**

1. The NASUWT welcomes the opportunity to submit written evidence to the Children and Young People Committee (CYPC) on the Further and Higher Education (Governance and Information) (Wales) Bill (the Bill).
2. The NASUWT is the largest teachers' union in Wales and the UK representing teachers and school leaders.

**GENERAL COMMENTS**

3. The NASUWT's opposition to enhancing the autonomy and decision-making abilities of further education institutions (FEIs) is well-documented and was reiterated in the response to the Further and Higher Education (Wales) Bill (the White Paper). A copy of the response is attached at annex A.
4. It is with regret, therefore, that the NASUWT notes that one of the main purposes of the Bill is to increase autonomy in the further and higher education sector by removing and modifying existing legislative controls on FEIs.
5. As regrettable as this situation is, it pales against the reason why the Welsh Government is pursuing this course of action, as it appears that

this is an attempt to ensure that FEIs are not categorised as public sector organisations.

6. The NASUWT maintains that this approach cannot be reconciled with the 2010 Welsh Labour Party manifesto statement that noted that FEIs are public assets that belong to their local communities, staff and learners, and would fly in the face of the commitment given by the First Minister, to the Wales TUC Conference 2013, that there would be no place for further privatisation of the public sector in Wales.
7. As the NASUWT understands the situation, in constructing national accounts, the Office for National Statistics (ONS) can categorise FEIs as either private or public sector bodies, on the basis of the relationship between government and public-funded bodies
8. After the incorporation in 1993, the ONS categorised FEIs as private sector organisations. However, in 2010, the ONS reviewed its approach to categorisation and determined that FEIs would be more accurately described as public sector organisations. Factors that influenced the ONS decision included the fact that FEIs must get the approval of Welsh Ministers to borrow money from the private sector; that Welsh Ministers have the power to amend and replace the instruments and articles of governance of FEIs; and that FEIs require permission from the Welsh Government to operate through a subsidiary, such as a charity.
9. The NASUWT considers that it is reasonable to suppose that, ultimately, the Welsh Government is able to make whatever decisions it sees fit in relation to the running of the further education (FE) sector in Wales – particularly in respect of ministerial powers over individual institutions – regardless of whether the ONS has categorised FEIs as public or private sector bodies.
10. Of course, the ONS could change its categorisation of FEIs following a change in FE-related legislation but the Union does not believe that any

change in categorisation should of itself constrain or influence Welsh Ministers' decisions about the way in which the FE sector should be run.

11. However, it appears that the Welsh Government believes that the categorisation of FEIs as public sector organisations by the ONS has negative effects for the sector. The NASUWT questions this view and notes that the Welsh Government has not provided an evidence base to support this contention.
12. The NASUWT suggests, therefore, that the question the CYPC needs to consider is whether or not the categorisation of FEIs by the ONS as either public or private sector bodies makes a material difference to the way in which FE policy is developed and implemented in Wales. The NASUWT believes that this question is fundamental to the deliberations of the CYPC as the rationale for the Bill seems to be predicated on the basis that it does. Although, as stated earlier, the explanation of why this conclusion has been reached is sadly lacking.
13. The NASUWT is gravely concerned that, at best, the purpose of the Bill could be misconceived but, at worst, it could present a veiled attempt to justify increasing the autonomy of FEIs.

### **SPECIFIC COMMENTS**

14. Given that the NASUWT stands opposed to increasing the autonomy of FEIs, rather than answer the questions posed by the CYPC, the Union offers the following analysis of, and comments on, some of the changes proposed in the Bill.
15. The NASUWT notes the provisions that would allow an FE institution to change or replace its instrument and articles of government, whilst still maintaining that requiring minimum requirements be met.

The Union maintains that this proposal highlights the confusion inherent in the principles underpinning the changes set out in the Bill. It appears

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that the intention is to allow FEIs to change their instrument and articles of governance without any need to make reference to the Welsh Government, so that the FE sector is seen to be sufficiently independent of the Welsh Ministers to allow the ONS to re-categorise the FEIs as private sector bodies.

However, this raises a question about what would happen if an FE institution changed its instrument and articles of governance in a way that failed to meet the governance requirements of the Welsh Government. Notwithstanding the fact that these governance requirements are not yet specified, the NASUWT believes that it would appear reasonable to suggest that, in such circumstances, Welsh Ministers would have little choice but to intervene in the governance of the institution concerned. However, the ONS could then continue to hold that the Welsh Government had significant powers of intervention that would make the categorisation of FEIs as public rather than private sector bodies more appropriate.

The NASUWT reminds the CYPC that the instrument and articles of governance of FEIs can currently be changed, subject to ministerial approval. The provisions in the Bill would effectively allow an FE institution to change or replace its instrument and articles of government without any effective scrutiny or oversight. The Union questions seriously the prudence of the approach.

16. The NASUWT notes the provisions to allow FEIs to dissolve themselves and to transfer properties, rights and liabilities to another body before dissolution takes effect (subject to regulations made by the Welsh Ministers).

The NASUWT maintains that this proposal is reckless and repeats the comment made in the response to the White Paper that allowing FEIs to take decisions on the wholesale transfer of assets is thwart with danger and could open the door for privateers and marketeers to take over the delivery of FE provision in Wales.

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The Union urges the CYPC to reject this proposal, not least since the regulations relating to the implied ministerial powers are not yet known.

17. The NASUWT notes the provisions in the Bill that would allow FE institutions to borrow money without the permission of Welsh Ministers.

The Union reminds the CYPC that FEIs can already borrow money as long as they have the permission of Welsh Ministers and see no reason why any reasonable request to borrow money would be refused.

Consequently, the NASUWT views the removal of such scrutiny and accountability as a retrograde step, as it risks FE institutions borrowing unwisely and unreasonably. Such practice could, in turn, risk the employment security of the workforce in FEIs.

18. The NASUWT notes the provisions in the Bill to allow FEIs to run subsidiary arrangements, such as charities, with the consent of Welsh Ministers.

Again, the NASUWT reminds the CYPC that FEIs can already run subsidiary arrangements as long as Ministers agree.

The NASUWT maintains that requiring FEIs to obtain permission before making such arrangements is a sensible safeguard that should remain.

19. The NASUWT notes the provision to remove the requirements on Welsh Ministers to have an intervention policy in relation to FEIs.

The NASUWT finds no merit in this proposal as the Union is unaware of any evidence to suggest that the retention of such a policy impedes the effectiveness of the FE sector, or the management and oversight of the sector by the Welsh Government.

The NASUWT maintains that the requirement to have an intervention policy presents a sensible precaution that enables Welsh Ministers to

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take timely and well-planned remedial action when problems arise within the FE sector or in individual FEIs.

The NASUWT suggests that the CYPC should consider carefully whether the removal of this requirement is more focused on the ONS categorisation of FEIs than on the effectiveness of FE provision in Wales.

20. The NASUWT notes the provisions to remove the requirement on FEIs to consult with learners and employers.

Again, the Union is concerned that this proposal relates more to the ONS categorisation tests than to effective accountability and scrutiny within the FE sector, as it appears to remove important safeguards in respect of consultation.

The NASUWT suggests that the CYPC should gauge this proposal against the Committee's position on the rights of children and young people.

21. The NASUWT notes the provisions to remove the power of Welsh Ministers to restrict the provision of higher education (HE) courses within the FE sector.

The NASUWT finds no merit in this proposal as the current power of Welsh Ministers provides an important safeguard to militate against competition and the adverse influence of market forces developing within the FE and HE sectors.

The NASUWT does not oppose the provision of HE courses within the FE sector as long as those charged with the responsibility for delivering the courses enjoy the same pay and conditions of service as their counterparts in HE.

The NASUWT urges the CYPC to be alert to the fact that this proposal could lead to FE providers attempting to provide HE courses 'on the cheap'.

22. The NASUWT remains unconvinced by the need for the Bill and remains gravely concerned that, if enacted, it will present an abnegation of responsibility for the control of the FE sector by Welsh Ministers and subject FEIs to further privatisation and the vagaries of market forces.



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