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Llywodraeth Cymru
Welsh Government

Jayne Bryant MS
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Senedd Cymru
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4 February 2022

Dear Jayne,

Tertiary Education and Research (Wales) Bill

Thank you for your letter of 13 January following my attendance at Committee to give evidence on the Tertiary Education and Research (Wales) Bill ('the Bill'). Your letter raised a number of questions to which I have responded in the Annex to this letter.

I will write again shortly with further detail in respect of my intended plans for the implementation of the Bill.

Following my attendance at the Legislation, Justice and Constitution Committee in December, the Committee wrote to me querying an omission in the Statement of Policy Intent. In response to this query I asked my officials to update the statement and the revised version is included with this letter. This revised version also correct two minor errors.

This letter has been copied to the Legislation, Justice and Constitution Committee and the Finance Committee.

I would like to take this opportunity to thank the Committee again for the valuable input to the Bill.

Yours sincerely,

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Annex

1. The Council of Deans has requested further clarity "about whether the Commission will fund pre-registration healthcare programmes and how this will link with funding from NHS Wales and HEIW". The Council also asks for more information on how the Commission will fund healthcare research in Wales; and how pre-registration healthcare professional apprenticeship programmes will be funded

1.1 These are matters for the Commission itself to determine once it is established. The public investment in healthcare education and training programmes is currently made through a variety of funding streams and programmes including funding from Welsh Government, NHS Bursaries, student tuition fees as well as HEFCW's teaching funding. It will be for the Commission to decide whether or not it continues with HEFCW's current system or adopts a different approach.

2. The Open University in Wales has expressed concerns about lifelong learning provision being framed specifically in terms of further education in the Bill. The OU seeks clarify on this point, writing: "We do not believe that it is the Welsh Government's intention to limit these funding mechanisms to further education providers but would welcome clarification that our understanding is correct".

2.1 Section 2 of the Bill requires the Commission to promote lifelong learning across all tertiary education. This duty includes the promotion of opportunities for lifelong learning at a variety of levels, subjects, settings and modes of study.

2.2 We are committed to the benefits of further expanding lifelong learning opportunities across further and higher education. The reforms to student financing and HEFCW funding following the Diamond Review enabled significant expansion of lifelong learning opportunities in higher education. Student numbers at the Open University in Wales have more than doubled between 2017/18 and 2020/21.

2.3 Whilst student finance will remain a matter for the Welsh Ministers after the Commission is established, we presently anticipate that the Commission may make similar grant funding arrangements for part-time courses of higher education to those currently made by HEFCW, subject to the provisions of sections 85 to 89 (and other relevant provisions) of the Bill; we are interested in the views of the sector in what further steps can be taken to facilitate lifelong learning in higher education.

2.4 The new duty in Section 91 of the Bill - which provides that the Commission must secure proper facilities for relevant further education and training for eligible adults aged over 19 - is therefore only one of several ways we expect the new Commission to drive forward our commitment to lifelong learning.

3. NPTC Group has asked for clarity regarding the effect of S67 and S68 in the Bill. They write: "Further explanation is […] required regarding how this [power] interacts alongside the role of WG as Principal Regulator of the FE institutions as exempt charities"

3.1 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. Under current arrangements, section 57

of the Further and Higher Education Act 1992 (the 1992 Act) provides the Welsh Ministers with powers to intervene in the conduct of an institution in the further education sector in Wales. The Bill will repeal the powers in the 1992 Act and broadly restate them under sections 67 and 68. Currently, the Welsh Ministers also perform the role of Principal Regulator for further education corporations in Wales (and institutions administered by or in connection with them), and for St David's Catholic College (and institutions administered by or in connection with it) as exempt charities (exempt by virtue of section 22 and paragraph 7 of Schedule 3 to the Charities Act 2011 ("the 2011 Act")). "Principal Regulator" is defined in section 25 of the 2011 Act, and regulations made by the Minister for the Cabinet Office in 2013 appointed the Welsh Ministers to the role in respect of exempt charities in the further education sector in Wales. The Bill does not change these arrangements.

3.2 However, Committee may wish to note that the Welsh Government proposes to review the role of the Principal Regulator going forward, subject to the successful passage of the Bill and the establishment of the Commission. In particular, consideration will be given to whether this role should more appropriately lie with the Commission given its responsibility for the regulatory oversight of tertiary education providers in Wales that are institutions within the further education sector. The Welsh Government will engage with all relevant stakeholders as part of its consideration of this matter. However, any appointment to the role of Principal Regulator must be by regulations made by the Minister for the Cabinet Office.

4. The Equality and Human Rights Commission write: "it is unclear how and whether the EIA relates to the breadth of the Bill and the scope of its measures". The Committee would be grateful if the Minister can clarify this point for the EHRC

4.1 In response to the comments raised by the Equality and Human Rights Commission, I would like to confirm that, once established the Commission will be a listed body under the Equality Act 2010.

4.2 I have asked my officials to consider the EHRC's evidence specifically and look at what we need to do to improve the document to ensure we have demonstrated publicly our thorough assessment of the impacts of the policy. Following that assessment and, if appropriate, any additional investigations, I shall re-publish the amended Equality Impact Assessment ahead of Stage 2.

4.3 Discussion with stakeholders has been frequent and is ongoing since the policy was first considered, and the EIA can be updated to reflect the breadth and scope of that engagement, at the various consultations and learner voice events through to day-to-day interaction with stakeholders and student groups.

5. The Charity Commission has asked for clarity on the following point: "Under clause 25(4)(b)(i) of the Bill, the Welsh Ministers may, by regulation, specify further initial registration conditions relating to the charitable or other status of tertiary education providers. It would be helpful to have clarity as to what conditions may be imposed in practice".

5.1 Section 25(3) of the Bill enables the Welsh Ministers, by way of regulations, to specify further initial registration conditions in addition to those set out on the face of the Bill. Different conditions may be specified for different categories of registration. The list

provided at section 25 (4)(b) indicates the kind of conditions that may be specified in such regulations which include:

- the charitable or other status of tertiary education providers;
- the information provided to prospective students about a provider, its courses, and its terms and conditions of contracts with students;
- complaints procedures of providers.

5.2 The above examples are not exhaustive. Additionally, not all of the above matters may be appropriate initial conditions of registration for all the categories on the proposed register.

5.3 The Statement of Policy Intent accompanying the Bill sets out the Welsh Government's initial policy intentions for subordinate legislation. It is presently intended that the categories of registration to be prescribed in regulations to be made under section 23(2) of the Bill will be informed by engagement and consultation with stakeholders. The current policy proposal is to prescribe two categories of registration namely:

- **Higher Education Providers (Core)** – It is intended that providers registered in this category would benefit from automatic higher education course designation for Welsh Government student fee and maintenance support at the higher fee level, currently £9000 per year. Student support regulations are made under the Teaching and Higher Education Act 1998. Providers registered in this category would be subject to a fee limit registration condition and would also be eligible to receive higher education grant funding from the Commission.

- **Higher Education Providers (Alternative)** – It is intended that providers registered in this category would benefit from automatic higher education course designation for Welsh Government student fee and maintenance support at the lower fee level, currently £6165 per year. Providers registered in this category would not be subject to a fee limit condition nor would they be eligible to receive higher education grant funding from the Commission.

5.4 It is presently intended that regulations to be made under section 25(3) of the Bill will provide a further initial condition of registration for the proposed "Core" registration category that requires providers to be a charity. This would be consistent with the Higher Education (Wales) Act 2015 ("the 2015 Act"), which provides that a "regulated institution" (an institution which has an approved fee and access plan) must be (inter alia) a charity. The Welsh Government will consult on its policy proposals for subordinate legislation in due course.

6. Universities Wales asks for clarity on why the Commission is obliged to have regard to the 'distinctive characteristic' of providers when funding under some headings but not others, for instance when funding research and innovation

6.1 This is an area where I am considering bringing forward an amendment with a view to ensuring there is consistency within the Bill in respect of the duty of the Commission to have regard to the 'distinctive characteristic' of providers when funding research and innovation.

On the matter of Additional Learning Needs:

7. The Children's Commissioner has requested further details be provided that would "support the Commission to more effectively fulfil [the activity listed in para 3.276 of the EM]" in relation to learners with ALN.

7.1 The Commission will have a statutory duty to secure the proper and reasonable facilities for the further education and training of learners in Wales and to fund such provision including funding to meet the needs of young people with Additional Learning Needs (ALN). In providing funding to secure such facilities it must consider whether the needs of people with ALN are being met. In supporting learners with ALN the Commission will be required to have regard to:

- **the different abilities and aptitudes of different persons** – this includes those learners with ALN;

- **the education and training required** to ensure that:
  - employees and potential employees are available who are able to deliver additional learning provision in Welsh; and
  - that facilities are available for assessing through the medium of Welsh whether persons have ALN

- **facilities whose provision the Commission thinks might reasonably be secured by other persons** including provision secured by local authorities under Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (ALNET Act 2018).

- the needs of persons with additional learning needs; and

- the desirability of facilities being available which would assist the discharge of duties under the ALNET Act 2018.

7.2 Additionally, the Commission will be required to consider the further education and training needs of the ALN workforce. Specifically the capacity to undertake assessments and provide additional learning needs support through the medium of Welsh. Overall, this means integrating consideration of ALN into the Commission's further education planning and funding decisions from the outset rather than after other funding decisions have been made. In funding provision the Commission will be able to impose terms and conditions on funding including regulatory requirements in respect of the needs of persons with ALN.

7.3 It will be a matter for the Commission to decide funding allocations and in doing so it will need to have regard to the achievement of objectives in its approved strategic plan and comply with any terms and conditions the Welsh Ministers attach to their funding to the Commission.

8. Natspec asks how the Bill will require providers to be accountable for meeting the needs of students with ALN; and draws the Committee's attention to "a need to ensure young people with complex ALN who require a placement at a specialist further education college are not excluded from the protections offered by the Commission". The Committee would appreciate more information on these points.

8.1 The primary legislation governing support for individual learners' ALN and the statutory requirements placed on local authorities are clearly specified in the ALNET Act 2018. The Act makes provision for supporting children and young people with ALN while they are in school and, if they are over compulsory school age, while they are in further education. 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. Local authorities would be responsible under the ALNET Act 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. Local authorities are best placed to consider and make arrangements to meet individual learners' needs in these circumstances at a local level.

8.2 The Welsh Government is yet to announce the detail of how and when implementation of the ALN Act will commence for young people who are post-16, including the details and timing of how and when responsibility and funding for securing post-16 specialist provision will be transferred from Welsh Ministers to Local Authorities.

8.3 The Bill makes explicit reference to provision secured by local authorities under the ALNET Act 2018 in the context of the Commission taking account of the facilities that might be secured by others. The Commission will make an assessment of the sufficiency of facilities for additional learning needs provision at a general population level and not on a personalised individual learner basis. We will consider the terms of the Bill and supporting documentation to establish whether any amendments are needed to clarify the position in respect of specialist additional learning needs institutions or the requirements and relationship with the ALNET Act 2018 further.

9. Estyn has told us that: "we feel the Bill as introduced is not clear about the Commission's role in funding [high need and ALN] learners to have appropriate provision". They seek clarity regarding: "why or how learners with high needs could be funded differently according to the type of provision they need and may have differing quality experiences according to which provider they attend".

9.1 As discussed in Committee, the Commission has a duty to fund provision for ALN at a population level, but is not required to fund specialist provision identified for individual learners with high level or complex needs.

9.2 The ALNET Act is currently being implemented on a phased basis for particular cohorts of children and young people. Once the Act is commenced for a particular cohort, Local authorities will have a duty under the Act for considering the needs of those young people. Where a young person's needs cannot be met by mainstream provision, Local Authorities have a duty to secure specialist provision as appropriate and in line with the requirements placed on local authorities to maintain Individual Development Plans.

9.3 Alongside the inspection of post 16 provision, including ALN, in mainstream schools and FE Colleges Estyn has a statutory responsibility to inspect provision in independent specialist FE colleges. The Chief Inspector is required to inspect and report on the quality of the further education and training being provided, the standards achieved by learners and whether the financial resources made available to specialist colleges to support learners' needs are managed efficiently and provide value for money.

9.4 It is expected that under the new ALN arrangements that local authorities would take into account Estyn's inspection outcomes of independent specialist colleges when making arrangements for individual learners complex needs.

Following discussion of the evidence, we would welcome some further information on:

10. Your thinking on the development of the national strategic body for adult community learning.

10.1 Policy considerations have moved forward since a national body for adult learning was considered in 2019, not least with the introduction of the bill. As we have discussed, the Commission will be responsible for planning and funding across the sector including adult and lifelong learning.

10.2 To support my commitment to increase the number of adults learning in Wales, I have agreed a Terms of Reference for an External Reference Group to take forward a programme of national co-ordination with key stakeholders from the sector. I expect to receive an outline of the programme in March and will report back to the committee once I have considered it.

11. How ALN provision will work for learners in practice and how this Bill will interact with other pieces of relevant legislation such as the 2018 Additional Learning Needs Act

11.1 The statutory requirements on how provision for learners with ALN will work in practice is set out in the ALNET Act 2018, supporting regulations, guidance and Code. In drafting the Tertiary Education and Research Bill we have looked closely at the interface between the ALNET Act 2018 and the planning and funding functions of the Commission recognising the policy importance of meeting the needs of learners with ALN.

12. Why you believe 6th forms should be included in the Commission's remit, and if so, clarity as to why some of the provisions around learner protection and learner voice do not cover 6th forms

<u>Commission's Remit</u>

12.1 We have taken a considered and balanced decision to include maintained school sixth forms within the remit of the Commission and believe that this approach will enable it to have clear, strategic oversight of all post-16 provision to inform policy on those areas that affect 16-19 year old learners wherever they choose to learn, study or train. I believe that this approach ensures that we are able to continue to deliver a mixed economy model of 16 – 19 provision across Wales offering diversity of choice for

learners, establishing parity and equal status of academic and vocational qualifications while valuing the benefits and merits of the different provision available. It offers a unique opportunity to adopt a coherent approach to planning and funding 16 – 19 provision, monitoring the delivery, availability and quality of courses, while facilitating collaborative working and improving accessibility.

12.2 The Committee may wish to note that the provisions in the Bill will not directly affect local authorities or schools in their day to day school organisation, or amend the legislation governing the arrangements for local school governance. These remain as now to ensure the integrity of the broader school structure is maintained.

Provisions around learner protection, learner voice and complaints procedures

12.3 The aim of a mandatory Learner Engagement Code (LEC) is to recognise and strengthen the existing arrangements in place across the breadth of the post 16 sector actively monitoring adherence to the LEC and ensuring that learners' voices are heard regardless of their course, location, level and mode of study. It will become mandatory for school sixth forms to have a LEC in place to ensure all our young learners are represented fairly and consistently. The Code will complement the existing arrangements in place at a school level, including the school council arrangements.

12.4 We are seeking to avoid duplication and ensure we are not placing additional administrative burden on schools and local authorities in managing different arrangements for learners at pre 16 and post 16 in a maintained school setting. It is also our intention to avoid potential confusion for learners and their parents which may arise as a result of different learner protection and complaints procedures operating within a school. Therefore, with the exception of making the Learner Engagement Code mandatory for school sixth forms, we have not extended the provisions in Part 5 of the Bill governing learner protection and the learner complaints procedures and schemes to maintained schools.

12.5 A learner protection plan will set out a tertiary education provider's arrangements for protecting the interests of a learner in the event of their course ceasing to be provided and for supporting a learner who wishes to transfer to another course. Learner protection plans would be in a format appropriate to the individual provider and its structures. Support and arrangements for learner protection at school and at a local authority level are already well established for the transfer of data about learners when they move from one setting to another, whether due to a school or course closure, a change in personal circumstances or learner preference.

12.6 While robust learner complaint arrangements, underpinned by legislation, are already in place in schools I am of the view that it would be beneficial for the Commission to broaden consultation with local authorities and school sixth forms in relation to learners aged 16 - 19 to encourage more active participation in the delivery and quality of their learning experience and to share good practice.

12.7 Provision has been included in the Bill to enable Welsh Ministers to specify by regulations a registered institution, other than a registered institution in receipt of financial resources from the Commission, as a qualifying institution for the purposes of the student complaint scheme currently operated by the Office of the Independent Adjudicator (OIA).

12.8 It is intended that providers that are registered with the Commission or receive funding from the Commission, for the purpose of higher education, further education or apprenticeships will be specified as qualifying institutions for the purposes of the OIA complaints scheme. It is recognised that all higher education providers and some further education providers in Wales that deliver higher education are currently qualifying institutions and it is envisaged that where further education providers are already members of the scheme, access to the scheme will be extended to their further education learners.

12.9 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.

12.10 This balanced, proportionate and practicable approach will enable the Commission to support learners' interests ensuring that learner voice is at the centre of the reforms and a fundamental principle that applies across all post 16 provision.

13. Comparative information on composition and differing types of Board membership in similar organisations to the Commission

13.1 Welsh Revenue Authority (WRA), Qualifications Wales, the Education Workforce Council and Citizen Voice Body for Health and Social Care (CVB), are each established by statute, with a Board or Council making the key decisions.

Citizen Voice Body for Health and Social Care

- The statutory framework of the CVB, as set out in the Health and Social Care (Quality and Engagement) (Wales) Act 2020, provides for the appointment of one non-voting associate member who is a member of the Body's staff, and a member of a trade union recognised by the Body.

WRA

- The WRA Board includes:
  - one or two members of staff appointed to the Board by the Chief Executive;
  - one member of staff appointed to the Board following a ballot of staff members
  - there is no requirement in the legislation for staff members to be members of recognised trade unions

Qualifications Wales

- Qualifications Wales' board comprises the Chair, Chief Executive and eight to ten ordinary members. No provision is made for representation of staff, trade unions or other key interested parties on the Board.

Education Workforce Council

- The Education Workforce Council comprises of 14 members with all appointed by the Welsh Ministers.

- In respect of seven of the members the Welsh Ministers must seek nominations from the below bodies and appoint those members from the nominations received. The Welsh Ministers must, as far as possible, ensure that four of the members are from nominations made from bodies listed in the left-hand column

National Education Union. National Association of Schoolmasters Union of Women Teachers (Cymru). Association of School and College Leaders. Professional Association of Teachers. National Association of Head Teachers in Wales. Undeb Cenedlaethol Athrawon Cymru. University and College Union. UNISON. GMB. Unite the Union. Aspect Group of Prospect Union. Wales TUC.	Colleges Wales. Y Coleg Cymraeg Cenedlaethol. Association of Directors of Education in Wales. Welsh Local Government Association. Confederation of School Governors Associations in Wales. The Church in Wales. The Catholic Education Service. Higher Education Wales. Universities Council for the Education of Teachers. Welsh Independent Schools Council. Wales Association of SACREs. Association of Directors of Social Services Cymru. Federation of Small Businesses. Wales Council for Voluntary Action. Council for Wales of Voluntary Youth Services Cyngor Cymreig y Gwasanaethau Ieuenctid Gwirfoddol. Wales Principal Youth Officers' Group. National Training Federation for Wales Ltd. Education Training Standards Wales.

14. Further information on the latest position on the power to dissolve Higher Education Corporations

14.1 As I explained when I attended the Committee last month it is my intention to bring forward an amendment in respect of the power to dissolve Higher Education Corporations and work is continuing in this respect.

15. Further information on the issues arising from the petition on the postgraduate STEMM bursary

15.1 The Bill makes provision for the Commission to fund certain categories of providers who are registered with the Commission, for the purpose of supporting higher education provided by or on behalf of such providers.

15.2 The categories of registered providers eligible to receive funding from the Commission will be specified in regulations. The register will ensure that matters of critical public interest are monitored in tertiary education institutions and that there are appropriate protections for Welsh public money, including student support and grants made by the Commission.

15.3 The benefits derived from registration are intended to be commensurate with the regulatory requirements. The Statement of Policy Intent accompanying the Bill sets out my intention for providers who register in the proposed "core" category to be eligible to receive higher education funding from the Commission.

15.4 It will be for individual providers to determine whether to seek registration with the Commission and to consider which category of registration they wish to apply for.

15.5 Our current policy intention is that providers in Wales seeking to be designated for the purposes of Welsh Government student support, or seeking eligibility for higher education and research grant funding, will need to register with the Commission to access these sources of funding.

16. Further information on how the Bill can support academic freedom for individual academics, as opposed to the broader protections within the Bill for institutional academic freedom

16.1 Section 16 provides that in exercising their functions under the Bill, the Commission and the Welsh Ministers have regard to the academic freedom within the law of academic staff at tertiary education providers in Wales that provide higher education to question and test received wisdom and to put forward new ideas and controversial or unpopular opinions, without jeopardising their jobs or privileges.

16.2 Those concerned in the government of higher and further education institutions in Wales (and in certain higher and further education institutions in England) are also under a duty to "take such steps as are reasonably practicable" to ensure that freedom of speech is secured for members, staff, students and visiting speakers, under section 43 of the Education (No. 2) Act 1986.

16.3 We strongly believe in and support the principles of academic freedom and free speech across the education system, and are generally assured that such principles are well upheld in our universities and colleges. Section 16 of the Bill underlines and reaffirms this commitment.

17. Further information on how the Coleg Cymraeg Cenedlaethol, Commission and other associated bodies will work together in relation to their roles in relation to Welsh medium provision

17.1 Provision included in the Bill will enable the Commission to have the flexibility to work innovatively and effectively with the Coleg Cymraeg Cenedlaethol and other relevant bodies such as the National Centre for Learning Welsh to support the development of Welsh medium tertiary education. Both the Coleg and the National Centre have important and distinct roles to play in the achievement of the Welsh Government's Cymraeg 2050 vision, supporting the development of Welsh medium tertiary education and language acquisition. The Cymraeg 2050 Work Programme from 2021 to 2026 includes a commitment to further expand the role of the Coleg and to develop proposals to place it on a statutory footing.

17.2 The Commission will be responsible for strategic planning and funding across the whole of the tertiary education sector and research and innovation sector in Wales. It will be vital for the Commission to engage with the Coleg and make use of the Coleg's established expertise to plan strategically to positively promote and increase Welsh-

medium tertiary education, as specifically noted in the explanatory memorandum accompanying the Bill. 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.

17.3 Further detail on the envisaged relationship between the Commission and the Coleg will be included in our implementation plan. The Commission and the Coleg will determine how best to deliver their respective functions. It should be noted that the Coleg has developed an effective working relationship with HEFCW over several years which has been codified in a memorandum of understanding.

18. Whether consent has been granted for section 128

18.1 My officials continue to engage with the UK Government and we anticipated receiving consent shortly.