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Llywodraeth Cymru
Welsh Government

Jayne Bryant MS
Chair
Children, Young People and Education Committee
Senedd Cymru
Ty Hywel
Cardiff Bay
Cardiff
CF99 1NA

14 February 2022

Dear Jayne,

Tertiary Education and Research (Wales) Bill

When I attended the Children and Young People Committee in November I agreed to provide further information on my planned approach to implementation and the exercise of the associated delegated powers within the Tertiary Education and Research (Wales) Bill.

I would also like to take this opportunity to provide an indication of the areas where I am considering potential amendments based on the feedback and evidence provided by stakeholders to the Committee and directly to me and my officials, as well as wider comments and matters raised by the Committee.

Amendments

Subject to the recommendations of each of the Senedd Committee's scrutinising the Bill, I am considering the potential of bringing forward amendments in relation to:

- Institutional autonomy and academic freedom
- Ensuring both research & innovation and Welsh Language have appropriate prominence across the Bill
- The application of the mandatory ongoing registration conditions on equal opportunity to all registered providers
- Emphasising the importance of learner voice
- Quality of tertiary education
- Increasing transparency in respect of the Commission's funding decisions
- Ensuring consistency across the different funding powers
- Consent for funding to pass to collaborating bodies
- HEC dissolution
- Extension of the provisions in respect of compatibility with charity law

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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.

Implementation

As I have indicated to the Committee, I intend to establish the Commission during 2023 and adopt a phased approach to the implementation of the functions provided for in the Bill, from its establishment in 2023 and into 2024 and 2025. To support this approach, and ensure continuity of provision and a smooth transition, the closure of HEFCW has been rescheduled to early 2024.

A key principle underpinning the implementation of the Bill, and the establishment of the Commission, is that of working closely with key stakeholders to, wherever appropriate, enable co-construction of policy, subordinate legislation and guidance necessary to support that implementation. This comprehensive engagement and consultation has already started through the Strategy and Implementation Board I chair and through my officials engaging with HEFCW and other key stakeholders.

In order to ensure stakeholders are afforded ample opportunities to inform the development of the necessary regulations, and to ensure that those regulations reflect any refinement to the Bill following consideration of the Committee's recommendations, I do not anticipate being in a position to share draft regulations with the Committee whilst the Bill is undergoing scrutiny.

Staffing

The appointments of the Chair and CEO are a critical step in the establishment of the Commission, having this leadership in place to drive the development of the Commission and the embedding of its functions from the early days is essential.

It is my intention, subject to the Senedd agreeing the general principles of the Bill, to commence the recruitment process during the latter stages of scrutiny so as to allow sufficient time to complete the recruitment and appointment process. Allowing for the processes involved and the notice period to be expected for an individual at the CEO level, I anticipate the Chair and CEO recruitment completing in early 2023.

Ahead of the appointment of the CEO, work is in hand to develop the draft organisational structure later this year. Once in post the CEO will have a key role reviewing, amending and agreeing that structure, prior to a matching process where all staff will have an opportunity to engage in the process of identifying which posts are the best match in the new structure for their current role. Throughout this process active engagement with staff in Welsh Government and HEFCW will continue, to ensure we are able to maintain visibility with staff, so they can see where the opportunities are for them in the new organisation.

Lifelong Learning

Turning to the provisions of the Bill, section 91 of the Bill requires the Commission to secure proper facilities in Wales for relevant education and training for eligible persons. This duty is a central to one of my key priorities of ensuring Wales is a nation of second chances, it is essential that lifelong skills and training must become the norm and that we give every citizen the chance to benefit and I consider this duty to have a key role in helping achieve this. Fundamental to the adult further education funding duty is the capacity in the longer-term to expand provision, depending on emerging economic and social needs.

The implementation of this duty requires the making of regulations to define relevant education and training and it is my intention to also make regulations providing for the specification of an eligible person.

The development of the policy underpinning these regulations is ongoing, and is being informed by the Wales Centre for Public Policy report, '*Supporting the Welsh Lifelong Learning System*'. A constructive and informative discussion was held at a recent meeting of the Strategy and Implementation Board and this initial engagement will continue enabling the regulations to be co-constructed and informed by the expertise of the sector. As these regulations are developed they will be subject to formal consultation during 2023 and it is my intention to deliver this commitment for greater provision during the 2024/2025 academic year.

Regulatory System

Chapter 1 of Part 2 of the Bill provides for a new system of registration of tertiary education providers, the implementation of which will require the making of a package of subordinate legislation. The timeline for implementing these provisions is being informed by lessons learnt from the implementation of the Higher Education (Wales) Act 2015, balanced with the need to ensure the reforms delivered by the Bill are brought forward as soon as practicable.

It is my aim that the new regulatory arrangements set out in the Bill will be in place for the 2025/26 academic year.

In order to establish the new regulatory system there are a number of regulations which need to be made including, but not necessarily limited to, those listed below (section numbers refer to the Bill at introduction).

Section	Description
23(2)	specification of the categories of registration for which provision must be made in the register
23(5)	prohibiting the registration of a provider in one category of the register at the same time that it is registered in one or more of the other categories
25(3)	specification of further initial conditions of registration
30(2)(b)	specification of the category of registration to which a fee limit condition is to apply
44(6)	set the maximum amount that the fee limit specified in a fee limit statement may not exceed
52(5)	Specification of the periods at which higher education assessments are to be conducted and reports are to be published
77(3)	duty on the Welsh Ministers to make provision in connection with decision reviews, for example, details regarding the role of the decision reviewer and procedure to be followed
85(3)	Specification of the categories of registered provider to which the Commission may provide financial support in respect of expenditure incurred for the purposes of the provision of higher education and facilities or activities connected with the provision of higher education.
102(4)	Specification of the categories of registration which a provider must be registered in before the Commission can provide financial resource to the provider in respect of expenditure for the purpose of (or in connection with) research or innovation.

The initial policy intention in respect of these regulations is set out in the statement of policy intent which accompanied the Bill at introduction, this intention will be further refined and developed following engagement with key stakeholders.

The development and consultation on the underpinning policy and the subsequent drafting of these regulations will be a priority activity as the scrutiny of the Bill starts to draw to a close.

In addition to making the above regulations it will also be necessary to reflect the new arrangements in existing legislation, such as regulations dealing with eligibility for students support, and it is intended to address this as part of the regular annual update of those regulations.

Identification of the interdependencies between the regulations and other subordinate legislation is also being undertaken and arrangements made to address the necessary changes. All of these matters will be reflected as the timeline for implementation is refined and finalised.

The establishment of the new regulatory system includes a series of actions to be completed by the Commission, including developing and publishing the requirements that providers must meet, for it to be satisfied as to the initial conditions of registration (s.25(2)). In addition developing, consulting on and publishing the general ongoing registration conditions (s.26(1)) and preparing guidance for registered providers about those ongoing registration conditions (s.33) is required. These are activities I anticipate the Commission taking forward as soon as practicable following its establishment.

Quality framework and Learner Engagement Code

The Bill includes other provisions in respect of which the Commission will have a central role in developing the core components necessary to support implementation. These include the Learner Engagement Code and the Quality framework, it is my intention that these activities be taken forward by the Commission imminently following its establishment. I also intend to issue statutory guidance to support the Commission in the implementation of these provisions. The intention is to start issuing the draft guidance, which is being co-developed with stakeholders, for consultation towards the end of this calendar year or early 2023.

Apprenticeships

Turning to apprenticeships and the new Wales specific arrangements provided for by the Bill, the implementation of which will require the bringing together of the existing arrangements managed by the Welsh Government, in relation to standard and higher degrees, and HEFCW in relation to degree apprenticeships.

In respect of the Welsh Government arrangements, a procurement exercise was recently undertaken for the delivery of apprenticeships at levels 2 to 5 with this contract beginning on 1 August 2021 and running for four years (with an option to extend for further two years).

A programme of work will commence imminently to develop a plan for the implementation of these provisions

Transitional arrangements

As the Committee will be able to see from the above details, the implementation of some provisions will extend beyond the closure of HEFCW, as such the implementation work will include the identification and development of the necessary transitional provisions to enable the continuation of relevant existing functions, between the closure of HEFCW and the point at which all provisions are fully implemented.

Whilst this response has focused on the proposed approach to the legislative implementation plan, a significant body of work is also in hand to develop and implement the necessary arrangements in respect of finance, corporate and communication systems and processes in time for the establishment of the Commission.

I anticipate being able to provide a fuller picture in respect of the implementation plan for the Bill during Stage 2 of the Bill's scrutiny.

Sixth Forms

Finally, I am conscious that stakeholders have raised concerns regarding the use of the word "rationalisation" within the amendments to the School Standards and Organisation (Wales) Act 2013 (the 2013 Act) as provided for by paragraph 26 of Schedule 4 to the Bill.

I would like to reiterate that "rationalise" or "rationalisation" is not intended to suggest closure or reduction, rather it is intended to suggest bringing better order to things, ensuring that sixth form provision is sensible and coherent. The term reflects the language used in the 2013 Act (and before that in the School Standards and Framework Act 1998).

These powers for the Commission do not replace the powers of local authorities, who will continue to bring forward proposals.

The duty on the Welsh Ministers to consult on the draft of the Code (or revised Code) on school organisation remains, and the Commission, when exercising these functions, must act in accordance with any relevant requirements in the Code and have regard to any relevant guidelines in it.

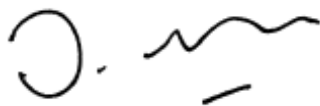
The amendments remove the automatic requirement for approval by the Welsh Ministers of school organisation proposals affecting maintained school sixth form education, but instead where a local authority has determined to approve, reject or implement such proposals and there was an objection to those proposals, the Commission will have the power to refer the proposals to the Welsh Ministers, who must then decide them.

The amendments also take away the Welsh Ministers' powers to make proposals to restructure local authority maintained school sixth form education, instead giving the Commission equivalent powers (new Chapter 3A of Part 3 on school organisation).

Those powers involve the Commission being able to direct, in certain circumstances, and in accordance with the Code, a local authority or a governing body of a foundation or voluntary school to bring forward proposals about local authority maintained school sixth form education. The Commission will have power to make its own proposals following a direction by it if the time for the local authority or governing body to make proposals has expired or they have published proposals. In the event of objections to proposals from the Commission, the matter has to be decided by the Welsh Ministers.

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

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a series of wavy lines and a short horizontal stroke at the end.

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