

**CYPE(6)-09-22 - Paper to note 3**

**Jeremy Miles AS/MS**  
Gweinidog y Gymraeg ac Addysg  
Minister for Education and Welsh Language



Llywodraeth Cymru  
Welsh Government

Huw Irranca-Davies MS  
Chair  
Legislation, Justice and Constitution Committee  
Senedd Cymru

29 March 2022

Dear Huw,

### **Tertiary Education and Research (Wales) Bill**

I would like to thank you for your valuable contributions to the general principles debate of the Tertiary Education and Research (Wales) Bill ("the Bill") following publication of your committee's Stage 1 report on the Bill on 2 March 2022.

Further to my letter of 14 March, I have set out responses to the remaining recommendations of the Committee in the Annex to this letter. It has not been possible for me to accept all of the committee's recommendations in full, however, I have carried the principles and underpinning reasoning through as far as possible.

I hope this letter is helpful in setting out responses to the Committee's Report. I will also be writing to the Chairs of the Children, Young People and Education Committee and the Finance Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

I look forward to continuing to work with Members as the Bill progresses through the Senedd process.

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.

**Jeremy Miles AS/MS**  
Gweinidog y Gymraeg ac Addysg  
Minister for Education and Welsh Language

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400

[Gohebiaeth.Jeremy.Miles@llyw.cymru](mailto:Gohebiaeth.Jeremy.Miles@llyw.cymru)  
[Correspondence.Jeremy.Miles@gov.wales](mailto:Correspondence.Jeremy.Miles@gov.wales)

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.

**Recommendation 1. The Minister should use the Stage 1 debate to confirm to the Senedd whether the required consent from the UK Government in relation to section 128 has been received.**

Consent has been received from the UK Government in relation to section 128, the First Minister wrote to the Llywydd confirming this on 1 March.

**Recommendation 3. The Minister should provide the Senedd with draft versions of any regulations that are to be made or laid before the Senedd upon, or shortly following, the commencement of the relevant provision as soon as possible and while the Bill is under consideration by the Senedd at Stage 2 of the Bill to enable more full scrutiny of the relevant powers.**

**I cannot accept this recommendation.** 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.

**Recommendation 5. The Minister should ensure that the explanatory notes to the Bill make it clear that, where lists of examples are used in specific sections, such lists are not exhaustive and should not be interpreted as such.**

**I accept this recommendation** and will ensure the necessary changes are made to the explanatory notes when they are republished after Stage 2. I will also consider whether any amendments are necessary to the Bill to ensure clarity for the reader.

**Recommendation 6. The Minister should use the Stage 1 debate on the general principles of the Bill to provide a commitment that the regulation-making powers in the Bill will not be used to address inconsistencies between Welsh legislation and UK Bills; issues with UK Bills that make provision within devolved areas; or any other concerns regarding UK legislation which deals with tertiary education.**

**I note this recommendation,** the scenarios described is not the intention of the regulation-making powers

**Recommendation 7. The Bill should be amended so that the Welsh Ministers are placed under a duty to consult with the Commission and such other persons as they consider appropriate before publishing a statement under section 11.**

**I do not accept this recommendation.** The high-level, strategic, nature of the priorities we intend to be set out in the statement to be published under section 11 will not, I consider, lend themselves to consultation.

**Recommendation 8. The Bill should be amended to the effect that directions made under section 19 of the Bill are made by an order of the Welsh Ministers that is subject to the negative scrutiny procedure.**

**Recommendation 18. The Bill should be amended to the effect that directions made under section 106 of the Bill are made by order of the Welsh Ministers which is subject to the negative scrutiny procedure.**

**I do not accept these recommendations.** All powers within the Bill have been subject to thorough consideration in respect of the manner in which the power is to be exercised and the appropriate Senedd procedure. In doing so the nature of any existing provision, from which the power has been derived, has been considered, however the historic approach to the original power has not automatically been carried forward if doing so was not necessarily considered appropriate.

The power in sections 19 and 106 enables the giving of directions to the Commission by the Welsh Ministers in relation to specific matters, as set out on the face of the Bill. As such, these directions relate to a single body and specific matters and do not provide for general law-making of a wider nature.

The requirements set out in the Bill in respect of the requirement on the Welsh Ministers to publish the direction, report to the Senedd that a direction has been given and lay of copy of the directions before the Senedd are considered sufficient to ensure the accessibility and transparency of directions given to the Commission under sections 19 and 106.

**Recommendation 9. The Minister should use the Stage 1 debate on the general principles to clarify why registration is necessary and why, if it is possible to regulate other tertiary education providers through terms and conditions of funding, it is not possible to regulate higher education providers in the same way.**

The register is necessary in respect of higher education providers, which now receive only a small proportion of their funding in the form of recurrent grants to which terms and conditions can be applied, and instead a majority of their public funding from student support.

If the register were removed from the Bill then the Commission would be unable to effectively regulate higher education providers because of this predominate reliance on student support, rather than Commission grants, and the Bill would fail to achieve a number of its key objectives.

The register also enables providers to be appropriately and proportionately regulated regardless of the sources of their funding and the relative balance of these different sources of funding.

In addition, the register creates the option of bringing all tertiary education providers into a common and coherent system of regulation in the long-term. This is not an immediate priority in the context of setting up the Commission and ensuring proper regulation of providers in receipt of student support, and so is not current government policy. However, this is a matter which we are open to exploring further with the sector through consultation and engagement.

**Recommendation 10. Should section 23 remain in the Bill, the Bill should be amended to the effect that the categories of registration referred to by the Minister for the purpose of section 23 should be set out on the face of the Bill. The Bill should also be amended to provide for a regulation-making power to enable further categories (or changes to categories) to be specified in regulations that are subject to the affirmative procedure.**

**I do not accept this recommendation.** As set out in the response to recommendation 3 it is my intention to ensure we work with stakeholders to co-construct the regulations necessary to support the implementation of the Bill. Whilst I am clear in my policy intention, as set out in the statement of policy intent, I wish to see that reviewed and refined through engagement and dialogue with stakeholders.

**Recommendation 12. The Bill should be amended to the effect that regulations made under sections 39 and 41 are subject to the negative scrutiny procedure.**

**I accept this recommendation,** having considered these provisions further I agree it is appropriate that they be subject to the negative Senedd procedure and I will bring forward an amendment to this effect

**Recommendation 13. Given the Minister's explanation regarding the level of detail that may be included in a statement made under section 70 of the Bill, we believe the Bill should be amended so as to require such statements to be laid before the Senedd.**

**I accept this recommendation** and will explore options for bringing forward an amendment to provide for the statement to be laid before the Senedd, I do not consider it appropriate for the statement to be subject to a Senedd procedure

**Recommendation 15. The Bill should be amended to the effect that regulations made under section 78(1)(c) and 78(2) are subject to the affirmative scrutiny procedure.**

**I accept this recommendation,** having considered these provisions further I agree it is appropriate that they be subject to the affirmative Senedd procedure and I will bring forward an amendment to this effect

**Recommendation 16. The Bill should be amended to the effect that regulations made under section 105(1) are subject to the affirmative scrutiny procedure.**

**I note this recommendation,** although I am exploring an amendment in response to CYPE recommendation 30 in respect of this provision.

**Recommendation 19. The Bill should be amended so that requirements in relation to approved Welsh apprenticeships, for the purpose of Part 4 of the Bill, are prescribed in regulations that are subject to the negative scrutiny procedure.**

**I do not accept this recommendation.** In respect of the apprenticeship specification, it has been the intention for some years to use the earliest primary legislative opportunity to correct provision in the Apprenticeships, Skills, Children and Learning Act 2009, which deals with the specification of apprenticeship standards.

This Act replicated for Wales the procedures for England (those provisions were repealed for England in 2015) despite there being a different regulatory structure in Wales. This meant

that there was an order-making function which was unnecessary in the Welsh context as it related to approving actions of a non-government body which did not exist in Wales.

The specification is, in effect, a long list of very detailed qualifications and grade criteria. It is of a technical nature and its development depends on specialist sector knowledge. Qualifications are fast moving and what should be included in the list can change often.

This is a technical and detailed administrative action of the Executive which often needs to be updated quickly in order to ensure that it is always up-to date. Added procedural burdens result in delays to the finalisation/updating process. That is not in the best interests of apprentices.

I do not consider that the interests of good administration are served by maintaining an unnecessarily cumbersome process which denies agility and places barriers to ensuring that the apprenticeships system is responsive to the needs of Wales, is kept as up-to-date and is fit for purpose at all times.

**Recommendation 22. If preserving the existing power in section 128(2) of the Education Reform Act 1988 through section 135 of the Bill is merely desirable and not essential to the implementation of the Bill, the Bill should be amended to the effect that the power in section 128(2) of the 1998 Act is repealed, rather than expanded upon.**

**I note this recommendation**, although I am exploring an amendment in response to CYPE recommendation 34 in respect of this provision.