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Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref LF/HL/0619/13
Anne Jones AM
Committee Chair
Children and Young People Committee
Cardiff Bay
Cardiff
CF99 1NA

2 July 2013

Dear Anne

CHILDREN AND YOUNG PEOPLE COMMITTEE - STAGE 1 SCRUTINY OF THE FURTHER AND HIGHER EDUCATION (GOVERNANCE AND INFORMATION) (WALES) BILL

I note your letter of 27 June regarding the Further and Higher Education (Governance and Information) (Wales) Bill (the Bill). Firstly, thank you for your best wishes, I am looking forward to working with you and members during the scrutiny of the Bill.

I understand my predecessor advised the Children and Young People Committee that Treasury rules are very clear and that he did not think anything would be changed by a conversation with Treasury. He was very emphatic about that.

I have read the letter from Mike Russell MSP, Scottish Education and Skills Minister, with great interest. To my mind, the content of the letter supports my predecessor's views on Treasury rules. In particular, Scotland have been engaged in 'an extensive period of negotiation with HM Treasury on the basis of ONS' decision', but that Treasury has chosen not to 'mitigate' its decision to not give extra budget cover to FEIs.

The Scottish Government has publicly stated that "to introduce legislation would not be compatible with our policy priorities"; policies which include enhancing Ministerial controls, as set out in the Post 16 Education (Scotland) Bill. It is a decision by the Scottish Government to accept the ONS re-classification and try to mitigate the fiscal implication, looking at the costs and benefits against their policies.

The reclassification of FEIs as public sector bodies for the purpose of national accounts would have a significant negative impact on the Welsh Government's budget. It could also de-incentivise the sector to increase income streams outside of Government funding and

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Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

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manage to FEIs as efficiently as they do now, which would not be of benefit to the learners of Wales. Please see attached at **Annex A** the written evidence to the Finance Committee.

In Wales, partnership working has been the bedrock in delivering government priorities, which I expect to continue into the future. The Transformation programme is, I believe, an excellent example of partnership working, where 20 colleges have been reduced to 12 colleges through mergers that have been achieved on a partnership basis.

Scottish policy is now starting its journey to deliver what we have already achieved in Wales.

In terms of a joint approach with other devolved administrations to HM Treasury, I do not consider this to be a viable option for two reasons. First, we have carefully considered the relevant Treasury guidance but note that the circumstances of the re-classification by the ONS would not trigger a right to compensation for the Welsh Government. This is because the reclassification has arisen from a re-assessment of the existing position rather than any change of circumstances. In effect, the ONS position is that FEIs should always have been classed as General Government and therefore as part of the public sector.

If the decision to reclassify them is not reversed, then FEIs accounts will need to be consolidated within the National Accounts and all transactions by FEIs would need to be included in the DfES departmental budgets. This would discourage good financial management by individual institutions since:

- a. Any surpluses generated by FEIs would lead to under spends in the DfES budget and would need to be managed within the overall position;
- b. Similarly, any deficits generated by FEIs would lead to over spends in the DfES budget which would need to be managed within the overall position; and
- c. FEIs would not be able to retain any surpluses to build reserves to fund future large revenue or capital projects as DfES is not permitted to carry forward any surpluses to match an increase in expenditure in any one year.

Should the Bill not be passed, we would seek to negotiate with HM Treasury to manage the impact of the reclassification as far as possible through transitional arrangements. However, the underlying issues in relation to sound financial management, and the ability to manage funding flexibly and to best effect would remain and as such, this is not our preferred option. This is not based on what civil servants in England have decided, but on our own Welsh Government considerations.

Second, a joint approach from the devolved administrations would be an extensive exercise with no guarantee of a successful outcome.

As requested in your letter of 20 June, I have attached for your information the written evidence submitted to the Finance Committee (**Annex A**).

Finally, in your letter of 20 June, you invited my predecessor to reflect on retaining the legislative powers to control **higher education courses delivered by FEIs without Welsh Ministers' approval**.

Essentially we are removing powers that are not being used. We are not aware of any issue presently that would result in those powers being used. They were very much intended to be used as a last step.

Those FE institutions which are directly funded by HEFCW to deliver full-time HE courses are subject to the **same arrangements as HE institutions** in respect of fee plans, fee caps and student number controls. For example directly funded FE institutions which seek to

charge tuition fees in excess of £4,000 are required to have an approved fee plan in force and to meet the conditions of that plan in the same way as HE institutions in Wales.

Those FE institutions which deliver HE courses under franchise arrangements with HE institutions are subject, via agreements with their partner HE institutions, to the terms and conditions of funding which HEFCW imposes on the HE institution.

Many FE institutions deliver part-time higher education courses. In Wales the fees of part-time higher education courses are not currently regulated and as such are not subject to fee plan requirements. We will be looking at options for the regulation of part-time higher education and when the time is right both FE and HE institutions delivering part-time provision will be subject to the same controls.

We do not foresee any implications associated with the removal of these powers and our intention is that in future FE institutions in Wales delivering higher education courses will be subject to the **same controls as HE institutions**. Those controls are currently the subject of the HE (Wales) Bill Technical Consultation.

On the matter of the ONS and Section 57A of the Further and Higher Education Act 1992, I will copy my response to you once it has been issued.

I hope this letter provides the Committee with the necessary information to aid its scrutiny of the Bill. I look forward to your report and recommendations which I will consider in detail and will respond to outstanding matters during Stage 2 scrutiny.



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