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National Assembly for Wales

Children and Young People Committee

Education (Wales) Bill : Stage 1

Response from : Undeb Cenedlaethol Athrawon Cymru



# Education (Wales) Bill

September 2013

**UCAC** | yr undeb sy'n diogelu athrawon a darlithwyr Cymru

## Evidence from UCAC on the Education (Wales) Bill

The National Union of Welsh Teachers (UCAC) welcomes this opportunity to respond to the Children and Young People Committee's inquiry into the general principles of the Education (Wales) Bill.

UCAC is a labour union that represents 5,000 teachers, school leaders and further and higher education lecturers in all parts of Wales.

### PART 2: THE EDUCATION WORKFORCE

#### General principles

UCAC agrees with the general principles of Part 2 of the Bill. Specifically, we support the Bill's intention to expand the scope of the General Teaching Council to include the wider education workforce, and we are now convinced about the appropriateness of including learning support staff.

However, we would argue that the scope of the new Council should be extended to include teachers and learning support staff at independent schools. Students at such schools should have the right to have teachers who have attained the same standards of teaching and conduct as their peers at maintained schools and further education colleges. Teachers of compulsory school age pupils should all be subject to the same regime.

Youth workers are still cited in the Explanatory Memorandum as a category to be included in the future. Although youth workers are not mentioned on the face of the Bill, we feel that it is appropriate to note our concerns regarding any intention to include them in the future (i) because they are not part of the education workforce per se and (ii) because it will not be easy to define who exactly qualifies as a youth worker, such is the diversity of their workplaces, terms and qualifications.

We support the intention to include work-based learning tutors and learning support staff in the future.

We oppose the intention to allow Welsh Ministers to draw up the code of conduct and practice, and to appoint Council members. We detail this position below.

#### Detailed comments

##### Clause 2: Education Workforce Council

We agree with the intention to maintain the current body and to change its name to the Education Workforce Council.

##### Clause 3: Aims of the Council

We do not disagree with the aims of the Council; they are entirely commendable.

Nevertheless, the remainder of the Bill and the provision for future regulations are concerned only with aim (b), namely to maintain and improve standards of professional conduct.

If the Council in its new guise is to have any hope of realising objective (a), namely to contribute to improving the standards of teaching and the quality of learning, and if that aim is to have any credibility among the workforce, provision *must* be made for professional development – an issue that is entirely absent from the Bill.

It will be vital for the success of the new Council that it has credibility among the registered workforce. The tale of the Institute for Learning (IFL) in England offers up clear lessons on this issue. If the Council operates only as a disciplinary and punitive body, without the ability to offer support and professional development, it will not obtain the respect of the profession. It could be argued that this has been a problem for the current Teaching Council since it lost responsibility for administering Continuous Professional Development funds. It is important to identify the link between the credibility of the organisation and the respect in which it is held on the one hand, and the willingness to pay fees on the other.

##### Clause 4: Functions of the Council

As noted above, the absence of any reference to professional development in this context is striking, and this is a matter of concern to UCAC.

In particular, we welcome function (b), namely activities to promote careers in registrable professions, and the fact that this function will be carried out by a Welsh body that understands the needs and context of

Wales. We have concerns, however, regarding how small the intended budget is for this function: just £100,000 (Explanatory Memorandum, paragraph 303).

#### **Clause 7: Provision of advice by the Council**

7(2)(a): We are not clear about the meaning or intent of this clause. What kind of advice is expected to be provided on this issue?

7(4), 7(5) and 7(7): We oppose these provisions. UCAC believes that the discretion of the Council should be trusted in respect of when and to whom advice should be provided. These clauses suggest either a lack of trust or a bid for control beyond what is appropriate for an independent body. In addition, these provisions will create a disproportionate amount of administrative work for Council and Government staff alike.

#### **Clause 11: Appeals against refusal of registration**

11(1): Although we recognise that this clause reflects current arrangements, we feel that it is appropriate that there should be a right to appeal first against a registration decision to an appeals panel within the Council, before having to resort to the High Court. This would reflect existing arrangements in respect of appeals regarding induction decisions.

#### **Clause 12: Registration fees**

12(1): We note the information and the detailed consideration given in the schedule to the Explanatory Memorandum, and the intention to consult on the fee system in due course. We therefore do not elaborate on this topic here.

However, we feel that we must make one observation. Regarding the intention to ensure that the Council is financially self-sufficient, we draw the Committee's attention to the extremely high figures noted in paragraph 307 of the Explanatory Memorandum in relation to the cost of hearings. We understand that cases of this kind involve legal costs, but we hold the very firm view that these costs could (and should) be reduced. If the number of cases doubles amid a doubling of the number of registered individuals, these levels of expenditure will not be sustainable. In addition, we ask whether the current staffing and office levels of the Council are expected to be sufficient, or whether they will need to be expanded.

12(2)(b): UCAC believes that it could be noted on the face of the Bill who will decide on the registration fees, and that this issue does not need to be left to regulations. We would not foresee a need to change the specified system; on the contrary, establishing this principle in legislation would provide a sense of certainty and robustness. We would favour a system where the Council would make recommendations based on a business case, and the Welsh Ministers would make a final decision.

#### **Clause 23: Appraisal of registered persons**

23(5) This clause is a cause for concern. Should it refer to powers that already exist in relation to teachers' pay (in the School Teachers' Pay and Conditions Document), that would be acceptable. There are also arrangements that allow an evaluation of the work of a further education lecturer to be used to make a decision on pay (namely, arrangements for "crossing the threshold" from the main scale to the upper scale).

However, UCAC would vehemently oppose any extension of performance-related pay for teachers, lecturers, and any other cohort of the education workforce. We are concerned that the clause in question, and the lack of discussion in the Explanatory Memorandum, leaves open that possibility – even if it is subject to a consultation on the regulations.

UCAC's firm view is that it is not possible to establish a performance-related pay system that is transparent and fair to teachers due to the nature of the job. We remind the Committee of the viewpoint expressed by the former Minister for education, Leighton Andrews:

"I have grave concerns over introducing a system whereby a teacher's potential pay rise is based upon their perceived performance compared with other teachers in the same school. This could lead to dissatisfaction and a reduction in cooperation between colleagues, as well as introducing unnecessary new problems for head teachers... I consider it essential to recruit the highest possible calibre of entrant into the teaching profession in Wales. Those who decide to enter and remain in the teaching profession in preference to other occupations are unlikely to do so based only on relative pay. However, I suspect that this will not be helped by the removal of pay spine points with pay rises based purely on annual performance relative to other teachers within the same school."

**Clause 24: Code of conduct and practice**

24(1): We strongly oppose this clause, which gives responsibility for drawing up the code of conduct and practice to the Welsh Ministers. The Teaching Council has shouldered this responsibility in the past, and we can see no argument for transferring the responsibility now to the Welsh Ministers. The Council will be representing the education workforce and acting on its behalf; it will have the expertise, the experience and peer credibility necessary to carry out this function.

**Clause 26: Disciplinary functions**

26(1): UCAC has long-term experience of working on disciplinary matters, including in the context of inquiries and hearings before the Teaching Council. We have concerns about the ambiguous wording of the current legislation and regulations, and these concerns remain apparent in the context of the Education Bill.

Schools, and governing bodies specifically, have a duty to deal with disciplinary issues within their own systems. Indeed, the Welsh Government published new guidelines in this area in January (Disciplinary and dismissal procedures for school staff – revised guidance for governing bodies; Welsh Government circular, No. 002/2013). Further education colleges have their own disciplinary and dismissal policies.

Only the most serious cases should reach the Council. If an issue has been investigated locally by the governing body, and the staff member has been exonerated, or a warning has been administered, there is no need for the issue to be referred to the Council.

The same principles apply in relation to cases of professional incompetence and capability processes.

The only reasons for taking a case forward to the Council would be:

- (i) if it was a *serious* case of professional misconduct/incompetence
- (ii) if there was evidence of anomalies relating to the administration of disciplinary/capability processes

If every case of this kind came before the Council, its workload would be completely unsustainable. In addition, any local processes would be a waste of time, energy and resources.

And yet, at present, the Council has a duty to investigate *any* case that is referred to it, and we know that this certainly includes cases that have been settled locally in an entirely acceptable way.

It is true to say that there is confusion about these issues among parents, governing bodies and even local authority staff. This Bill provides an opportunity to establish and communicate clear principles. UCAC would be very happy to provide further evidence about this specific issue, if that would be of any use to the Committee.

26(3)(b)(ii): We welcome this provision greatly. There is no point resorting to an expensive public hearing when a staff member has agreed that he or she does not want to remain registered following capability/disciplinary processes. This is a provision that will avert unnecessary stress for education workforce staff, and will constitute wiser use of Council resources.

General point: we notice that there are no provisions in this section for private/*in camera* hearings. Provisions of this kind are pivotal, especially in cases that involve staff with health problems, including mental health problems, where the stress of public hearings could have a detrimental impact on their health. Another category where hearings of this kind would be integral is when the evidence submitted could allow the public to identify a specific pupil, or specific pupils, while the details of the case are being presented, even though the pupil/s is/are not named. Is it anticipated that these provisions will be included in the regulations?

**Clause 29: Conditional registration orders**

29(4)(b): We are not convinced that an order “without limit of time” is justified. Despite our broad-ranging experience in this area, we have not managed to identify one example of a situation where that would be appropriate. Would the Committee or the Minister be able to provide an example?

**Clause 30: Suspension orders**

30(5)(b): As stated above, we are not convinced that an order “without limit of time” is justified.

### **Clause 32: Appeals against disciplinary orders**

32(1): Although we recognise that this clause reflects current arrangements, we feel that that it is appropriate that there should be a right to appeal first against a decision regarding a disciplinary order to an appeals panel within the Council, before having to resort to the High Court.

### **Clauses 36, 37 and 38:**

36(2) and 37(2): These clauses are linked to the points raised above in relation to Clause 26 – disciplinary functions, and the need to formalise the role of local processes.

This is a particular problem in relation to agencies. At present, unlike schools and further education colleges, they are not required to implement disciplinary or capability processes. This means that issues are referred directly to the Council, including issues that would usually have been investigated and settled locally. This therefore increases the Council's workload. It also has negative implications for teachers, because agencies can stop using their services suddenly, leaving them without work or pay for an extended period, and with no opportunity to clear their names until the Council's processes are implemented, which can happen over a prolonged period.

### **Schedule 1**

#### **Clause 3: Membership**

3(2): We oppose the clause that allows Welsh Ministers to appoint Council members. This is a significant negative change in the Bill. At present, 12 members are elected from the workforce, and by the workforce; nine are appointed by the National Assembly for Wales (*not* by the Welsh Ministers) on the basis of nominations from relevant bodies; and four are appointed directly by the National Assembly (*not* by the Welsh Ministers).

The Council is an independent body that works in the name of, and on behalf of, the education workforce. It is funded by the fees that are paid by the workforce. The notion that the Welsh Ministers would appoint its members is illogical and unwise. It is vital for the Council's credibility that any perception of political influence on the appointments process is avoided; also, the workforce needs to feel a sense of ownership for the Council.

3(3)(b): We do not agree that it should be possible to appoint members who have “recently been” registered persons; in principle, Council members should be registered persons in order to ensure a live and current understanding of the education sector. By the end of their term on the Council, someone who had “recently been” a registered person may have been out of the education workforce for more than five years. That is not acceptable.

## **PART 3: PERSONS WITH LEARNING DIFFICULTIES**

### **General principles**

We agree with the general principles of this section of the Bill in terms of (i) Independent schools providing special education; and (ii) Post-16 education and training.

### **Detailed observations**

Regarding post-16 education and training, we would want to be sure that the transfer of responsibilities to local authorities would go hand in hand with the transfer of sufficient resources to carry out responsibilities effectively.

We know that the expertise needed to undertake this work resides within the local authorities, but we suspect that not enough people will possess this expertise to cope with the new requirements. We foresee that an amount matching what Careers Wales received for the same work would be necessary. Questions arise around how this amount would be shared among the 22 authorities, and around whether there would be a role for the regional consortia.

## **PART 4: MISCELLANEOUS PROVISION**

### **General principles**

We agree with the general principles of this section of the Bill regarding (i) Term and holiday dates and times of school sessions (ii) Her Majesty's Inspectorate of Education and Training in Wales.

## Detailed observations

In terms of term and holiday dates, we agree with the logic propounded in the Explanatory Memorandum regarding the costs for families. We would like to add that there are also valid educational reasons for standardisation. In the wake of the 14-19 Learning Pathways and the Learning and Skills (Wales) Measure 2009, collaboration between educational institutions is increasingly common, both in relation to schools and further education colleges. This collaboration often happens on a cross-boundary basis, particularly in the Welsh-medium sector, where the nearest suitable partner is often in another local authority. Inconsistency in respect of term dates makes this collaboration significantly more difficult, and we know of one example of collaboration where three weeks of joint lessons were lost because the terms dates of neighbouring authorities were not aligned.

We emphasise that an adequate *educational* reason will be required if the Minister wishes to make an exception to the standardised dates; however, we note that a consultation will have to be undertaken in a case of this kind, and we accept that that offers protection.





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