



Llywodraeth Cymru  
Welsh Government

# Review of the operation of the Further and Higher Education (Governance and Information) (Wales) Act 2014

July 2016

# Review of the operation of the Further and Higher Education (Governance and Information) (Wales) Act 2014

## Audience

Senior management and governors of further education institutions in Wales.

## Overview

A review of the impact of the Further and Higher Education (Governance and Information) (Wales) Act 2014.

## Action required

None – for information only.

## Further information

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## Related documents

The Further and Higher Education (Governance and Information) (Wales) Act 2014.

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# 1. Context

The Further and Higher Education (Governance and Information) (Wales) Act 2014<sup>1</sup> was passed by the National Assembly for Wales on 3 December 2013 and received Royal Assent on 27 January 2014. The Act places a duty on the Welsh Ministers to conduct a review of its impact with a particular focus on certain of the provisions detailed in the narrative by July 31, 2016.

Extract from the Act narrative: Section 10: Review of operation of Act

‘The Welsh Ministers must, not later than 31 July 2016, review the operation of this Act with a view in particular to assessing its impact on

- (a) The funding of education provided at further education institutions in Wales for students who are above compulsory school age but have not attained the age of 19,
- (b) Welsh language provision at such institutions, and
- (c) Additional learning needs provision at such institutions’

This report fulfils the duties placed on the Welsh Ministers to review the impact of the Act on the elements of provision listed here.

# 2. Introduction

## Purpose of the Act

The Further and Higher Education (Governance and Information) (Wales) Act 2014 (the 2014 Act) was introduced to enhance the autonomy and decision making abilities of further education institutions (FEIs) in Wales. It removed and modified existing legislative controls on further education corporations, giving them greater control over their own governance and dissolution arrangements, recognising that the sector is best placed to determine how the needs of their learners and local communities should be met. It did not change the principal powers of FEIs to provide further, higher and (within some limits) secondary education.

FEIs continue to be subject to various Welsh Government financial and accountancy standards and audits, contract requirements, the quality and effectiveness framework as well as to Estyn inspections.

The Act also included a separate provision for the higher education sector to enable Her Majesty’s Revenue and Customs (HMRC) to share information with the Welsh Ministers (and those they have delegated or transferred functions to) relating to the assessment of eligibility for student grants and loans, by making amendments to section 24 of the Teaching and Higher Education Act 1998.

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<sup>1</sup> [legislation.data.gov.uk/anaw/2014/1/enacted/data.html](http://legislation.data.gov.uk/anaw/2014/1/enacted/data.html)

### **3. Background**

Under the Further and Higher Education Act 1992, (FHEA 1992), FE institutions in Wales are statutory corporations responsible for their own governance arrangements, finance, estates, human resource systems and curriculum portfolios. Since 2006, the Welsh Government's Department for Education and Skills (DfES, formerly DCELLs) has funded each FE institution in Wales directly, providing them with their main source of income. However, since FHEA 1992 FE institutions have also been able to generate their own income through commercial activities and investments having first obtained the consent of Welsh Ministers.

The 2014 Act removed the requirement for FEIs in Wales to obtain the consent of the Welsh Ministers before they can borrow money, form or invest in a company, or become a member of a charitable incorporated organisation for the purposes of conducting an educational institution.

A key consideration which informed the FE provisions contained in the 2014 Act was the decision made by the Office of National Statistics (ONS) to reclassify FEIs as part of central government for the purposes of National Accounts. At the time of their establishment (April 1993), FEIs were classified, for the purpose of National Accounts, as Non Profit Institutions Serving Households (NPISH). In national accounts terms, NPISH forms part of the private sector and this classification does not require college accounts to be consolidated with those of government.

In 2010 the Office of National Statistics (ONS) announced their intention to reclassify FEIs in England and Wales to the general education sector, stating that they had been incorrectly classified since establishment in 1993. The ONS determined that there were sufficient public sector controls over these institutions to conclude that there was public sector control of their corporate policy.

The Welsh Government proposed changes to four key areas to help give FEIs more responsibility to manage their own affairs:

- Greater powers for FEIs to make changes to their Instrument and Articles of Government
- The ability of a college to dissolve itself
- Greater freedom for FEIs to borrow funds
- Reduced intervention by the Welsh Government

In the background information accompanying the laying of the Bill the Welsh Government recognised the maturity of the Further Education sector in Wales, concluding that the sector was 'best placed to determine how the needs of their

learners and local communities should be met'. The Welsh Government's stated policy objective was to allow FEIs the flexibility and freedom to make decisions about the delivery of learning to meet those needs, recognising the need to balance the changes proposed with the need for safeguarding public funds, the public interest and learners.

The 2014 Act aimed to secure a reversal of the ONS reclassification and have the status of FEIs in Wales reinstated to NPISH. Having considered the changes brought about by the 2014 Act the ONS concluded that the changes were sufficient to remove the controls on further education institutions, resulting in their reclassification as of 27 January, 2015.

The ONS decision included one caveat: that in the event of the failure of an institution, and the absence of a potential partner for merger, control would revert to the Welsh Ministers.

## **4. Consultation**

As part of the process of developing secondary legislation under the 2014 Act the Welsh Ministers consulted with the further education sector and the wider community; the responses to this consultation were then used to inform the draft regulations before they were finalised. Consultation took place during the early summer of 2014 with the secondary legislation coming into force in September of that year.

In terms of consultation for this review, the impact or otherwise of the Act has been included as an agenda item for discussion at scheduled planning and funding feedback meetings held with FEI senior curriculum and funding managers. Their anecdotal feedback indicated that there has been no discernable impact on provision in the three areas noted for review; the freedoms afforded by the provisions in the Act having been in the main concerned with governance matters. By freeing governors to govern and distinguishing their role as being distinct from management, governing bodies have been encouraged to consider timely efficiencies thereby helping to improve the efficiency and effectiveness of their institutions in a period of financial stricture. This has gone some way to mitigate any potential effect on the three 'protected' areas of provision noted for review.

In addition, feedback was sought from the recent Clerks/Governance Officers quarterly network meeting which is facilitated by ColegauCymru, the representative body for FE in Wales. The meetings are well attended and provide a reliable barometer for monitoring developments within the FE sector in Wales. In line with the feedback from senior college managers, the consensus of opinion was that the three

areas scoped for review in Section 10(1) of the Act are sufficiently well protected by current government policy to mitigate any potential impact that might be attributed to the provisions contained in the Act.

Consideration has also been given to information gleaned from Welsh Government Lifelong Learning Wales Record (LLWR), FE, Work Based Learning, and community learning data from StatsWales<sup>2</sup>; along with learning provision returns via the planning and funding framework.

## **5. Review of the impact of the Act**

The 2014 Act contains, at section 10, a requirement that the Welsh Ministers must, not later than 31<sup>st</sup> July 2016, review the operation of the Act. In particular the review must consider the Act's impact on:

- (a) The funding of education provided at further education institutions in Wales for students who are above compulsory school age but have not attained the age of 19.<sup>3</sup>
- (b) Welsh language provision at such institutions, (intended to be broader than education through the medium of Welsh, including for example the provision of Welsh language lessons to non Welsh speaking students), and
- (c) Additional learning needs provision at such institutions.

Extracts from the Impact Assessments carried out before laying the Bill:

### Equality Impact Assessment:

- FEIs are required to have equality and diversity policies in place, and to demonstrate, through self-assessment and supporting evidence, that they are implementing the policies, monitoring participation by and support for minority groups, and evaluating their own responsiveness.
- The policy objectives of the Bill comply with the Welsh Government's Welsh Language Scheme. There is no risk that the Bill will have a negative impact on the Welsh Language as it relates to the governance framework of FEIs in Wales. Each FEI in Wales is required to have a Welsh Language Policy and this will not change under the Bill.

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<sup>2</sup> <http://gov.wales/statistics-and-research/>

<sup>3</sup> Reflecting the statutory obligation placed on the Welsh Ministers by section 31 of the Learning and Skills Act

### Welsh Language Impact Assessment:

- The policy objectives listed for the Bill comply with the Welsh Government's Welsh Language scheme. There was felt to be no risk that the legislation would have an impact on the Welsh language as it related to the governance framework of FEIs in Wales.
- Each FEI in Wales is required to have a Welsh language policy which has not changed since the passage of the Bill.
- The proposals for the Bill were set out to increase the autonomy and decision making abilities of FEIs; each of which is a separate legal entity, and would not have any impact on the strategic objective in the Welsh Government's Welsh medium strategy to increase Welsh medium and bilingual provision in further education, work based learning and training.

#### **(a) Impact on funding**

The key legislation concerning post-16 learners is the Learning and Skills Act (LSA) 2000, which provides powers for the planning and funding of post-16 education. The Welsh Ministers have a general duty under the LSA to secure the provision of proper facilities for education and training (for those aged between 16 and 19) and reasonable facilities (for those over the age of 19) for education and training for learners.

In May 2014 the Welsh Government conducted a review of post-16 planning and funding arrangements. The report outlined how a new and simplified framework would operate, by allocating funding to specific programme areas rather than qualifications.

Following the publication of the report DfES implemented a new framework focusing on the quality of the learning offer in terms of the outcome for individual learners. Each programme has a defined purpose and outcome against which it can be monitored and, since the start of the 2014/15 academic year, only eligible programmes have been funded.

The impact of funding cuts: Funding for further education has not been a protected area of government expenditure for Wales and there have been reductions in funding in recent years. In 2012-13 the Welsh Government spent approximately £450 million on further education – £330 million via FEIs, £113 million through local

authority sixth forms, and £7 million through community based and other schemes. By 2015-16 the overall total had been reduced to £400 million.<sup>4</sup>

Recent cuts in funding have led to the creation of a 'perfect storm' for FE provision when combined with falling student numbers. The position in Wales has been somewhat alleviated with the introduction of the Welsh Government's post-16 transformation agenda in 2008 which served to strengthen strategic management, improve efficiency and answer current and future demand for relevant high-quality education and training delivery through mergers/ federation etc.<sup>5</sup>

For 2015-16, the Post-16 FE budget allocation was cut by £14.142 million. In light of this, the decision was made to reduce all post-16 funded provision by 2.6%. In addition, a cut of 50% to all part time provision was necessary (with the exception of Adult Basic Education (ABE), English for Speakers of Other Languages (ESOL) and discrete provision for learners with moderate or profound learning difficulties). The 2016/17 allocations have been maintained at the same levels as 2015/16 but with a small increase of 2 per cent applied to the unit rate of funding.

FEIs started delivering the new framework of learning programmes from September 2014. The Planning cycle starts with the publication of the Ministerial priorities letters to FEIs and LAs<sup>6</sup>. The most recent annual letter to all Principals and Chief Executives in further education from the Minister for Education and Skills highlighted some specific priorities for the 2016/17 academic year, set out 'in the context of the Skills agenda of jobs and growth, financial sustainability, equality and equity and international skills benchmarking'. However, the letter also recognises that the sector will be required to act strategically and collectively in order to maximise the available resources during a difficult economic climate and acknowledges the strong likelihood of continued reductions in public funding over the next few years.

The first priority described in the letter refers to 'Jobs and Growth' highlighting the importance of employer engagement and enterprise, and the sector specialisms developed by several FE institutions. The second priority refers to financial sustainability and alludes to the 2014 Policy Statement on Skills and the supporting Skills Implementation Plan which have been designed to prioritise funding for learners aged 16-24 and to continue support for Higher Apprenticeships. Reflecting a recurrent theme, FEIs are asked to prioritise provision for the 16-19 learning cohort in line with statutory responsibilities.<sup>7</sup>

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<sup>4</sup> [senedd.assembly.wales/welsh-government-budget-2015-16](http://senedd.assembly.wales/welsh-government-budget-2015-16)

<sup>5</sup> See Annex 1; FE provision in Wales

<sup>6</sup> [learning.gov.wales/resources/browse.../ministerial-priority-letters-for-2015-to-2016/](http://learning.gov.wales/resources/browse.../ministerial-priority-letters-for-2015-to-2016/)

<sup>7</sup> section 31 of the Learning and Skills Act 2000

FEIs and LAs submit their provision delivery plans in April. The Planning and Funding Branch then hold meetings with providers to discuss their plans and ensure delivery aligns with Welsh Government policies and priorities.

The learner population: There was a decline in overall learner numbers in post-16 education between 2013/14 and 2014/15 continuing the trend seen since its peak in 2005/06, but with variations between the individual sectors and age groups.<sup>8</sup>

In 2014/15 there were 195,700 distinct learners at FE Institutions, Local Authority Community Learning or Work-based Learning (WBL) providers, 12 per cent fewer than in 2013/14. Between 2013/14 and 2014/15 there was a fall of 12 per cent for those aged 20 and over attending FEIs and of just under 7 per cent in those aged 19 and under. Total numbers at FE institutions fell by 10 per cent, with the reduction driven primarily by falling numbers in part-time learning. 28 per cent of learners were under the age of 19, numbering 41,805.<sup>9</sup>

16-19 enrolments: Two-thirds of 16-19 year old learners attend FE colleges in Wales. The majority of enrolments (77%) at FEIs are for part-time studies. Most learners (71%) are over the age of 19, with 29% aged between 16–19 years.

In assessing whether the Act has had an impact on provision for students above compulsory school age but who have not attained the age of 19, it should be noted that the Welsh Government has a statutory duty to secure the provision of proper facilities for (amongst other things) their education and training. Proposals for cuts to public funding over the two years since the Act came into force have been designed to protect these learners as much as possible. This is reflected in the lower percentage fall in under 19s attending FEIs than for other age specific cohorts. In addition the annual Ministerial Priorities letter serves to remind colleges of their statutory responsibility to prioritise provision for learners aged 16-19.

The provisions contained in the Act did not lead to the funding decisions described; the Welsh Ministers have sought to protect as far as possible the 16-19 cohort from the effect of cuts to funding which have been applied elsewhere.

## **(b) Impact on Welsh language provision**

The Welsh Government's Welsh-medium Education Strategy<sup>10</sup> outlines the vision to increase the number of people of all ages and backgrounds who are fluent in Welsh and able to use the language with their families, in their communities and in the

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<sup>8</sup> <http://gov.wales/statistics-and-research/>

<sup>9</sup> <http://dera.ioe.ac.uk/25872/1/160323-further-education-work-based-learning-community-learning-2014-15-en.pdf>

<sup>10</sup> [wales.gov.uk/docs/dcells/publications/100420welshmediumstrategyen.pdf](http://wales.gov.uk/docs/dcells/publications/100420welshmediumstrategyen.pdf)

workplace. Achieving this vision requires young people to maintain and develop their Welsh language skills in post-16 education and training for use in future employment.

Increasing the number of post-16 learners who study through the medium of Welsh or bilingually is a key means of achieving this goal and the Welsh-medium Education (WME) Strategy has specific targets for the number of post-16 learners within work based learning (WBL) who study through the medium of Welsh.

The new contract for the delivery of work based learning from April 2015 included changes to the contract specification to ensure that Welsh-medium learning is further strengthened within the programme. Providers are required to submit an annually updated Welsh language Action Plan, prior to the start of the contract. The plans include individual targets which are then monitored by officials.

National targets for growth are set out in the WME Strategy, with a commitment to support the 'continuing growth of Welsh-medium education and training in all sectors and age ranges'. It also placed an emphasis on improving provision planning to support Welsh-medium education, and contained five and ten-year targets to monitor progress as the Strategy is implemented.

FE delivered 7% of its learning activities through the medium of Welsh or bilingually by 2015. As a result, the number of post-16 learners studying through the medium of Welsh or bilingually in schools, FEIs, and work-based learning is increasing, albeit at a slow pace in some providers/areas.

Support continues to be available to local authorities and institutions to develop provision through funding provided to the regional consortia; the Welsh Government agreement with Sgiliaith<sup>11</sup> provides practical support and training to FEIs to enable the development of Welsh-medium and bilingual provision; and a Sabbatical Scheme, which delivers Welsh-language and methodology training. Colegau Cymru's Director of Bilingualism assists FEIs with their planning process in support of the sector's Bilingualism Strategy for FE.

The final evaluation report on the Strategy<sup>12</sup> was published in March 2016. It found that the Bilingual Champions project has been successful in supporting the process of planning Welsh-medium provision in the further education sector and has led to an increased focus on supporting the Welsh language in FEIs. It also found that implementing the Learning and Skills (Wales) Measure 2009 has supported the Strategy's aim of strengthening Welsh-medium provision in the 14-19 phase.

The implementation of the Learning and Skills (Wales) Measure 2009 has led to an

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<sup>11</sup> <http://sgiliaith.llandrillo.ac.uk/>

<sup>12</sup> <http://gov.wales/statistics-and-research/welsh-medium-education-strategy/?lang=en>

increase in the choice of Welsh-medium qualifications available, thereby supporting the aims of the Strategy. The evidence shows a continued demand amongst practitioners for support from the Welsh Government and for awarding bodies to provide new qualifications through the medium of Welsh. To coincide with the publication of the evaluation of the Welsh-medium Education Strategy in March, the First Minister and the Minister for Education and Skills published a Written Statement outlining the priorities for the proceeding 12 months<sup>13</sup>.

In conclusion, Welsh-medium and bilingual course provision continues to gradually increase in FEIs in Wales having been initially supported by the Bilingual Champion grant funding. It is evident that the Welsh Government's policy objectives for the development of the Welsh language and for Welsh-medium provision in further education institutions have been instrumental in protecting and enhancing provision and has not been the subject of any discernable impairment that can be attributed to the provisions contained in the Further and Higher Education (Governance and Information) (Wales) Act 2014.

### **(c) Impact on Additional Learning Needs (ALN) provision**

FEIs provide a range of support for learners with ALN to access vocational or general educational programmes alongside their peers. Each institution will have a disability statement, which provides information on services and facilities they provide for people with ALN, and details on who to contact for more information.

The key legislation concerning post-16 learners is the Learning and Skills Act (LSA) 2000, which sets out the planning and funding of post-16 education. The legislation uses the term 'learning difficulties and/or disabilities (LDD) rather than Special Educational Needs (SEN). Section 312(1) of the Education Act 1996 defines that children have Special Educational Needs (SEN) if 'they have a learning difficulty which calls for special educational provision to be made for them'.<sup>14</sup> Arrangements for the LDD (or ALN) of post-16 learners is a complex subject which has been the subject of considerable review in its own right.

The draft Additional Learning Needs and Education Tribunal (Wales) Bill makes provision for a new statutory framework for supporting children and young people with additional learning needs (ALN). This will replace existing legislation surrounding special educational needs (SEN) and the assessment of children and young people with learning difficulties and/or disabilities (LDD) in post-16 education and training.

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<sup>13</sup> <http://gov.wales/topics/educationandskills/publications/guidance/welshmededstrat/?skip=1&lang=en>

<sup>14</sup> (ALN) in Wales; June 2015; Michael Dauncey

The majority of FEIs offer provision for young people with learning difficulties and/ or disabilities (LLDD). This includes discrete provision, typically at entry level or level 1, which helps young people prepare for work or to move onto mainstream learning opportunities, such as vocational programmes which prepare young people for work in their chosen field. FEIs also provide support for LLDD to access vocational or general educational programmes alongside their peers.

Additional Learning Support funding is provided, in addition to FE institutions' main funding allocations, in order to contribute to the additional costs of supporting learners with learning difficulties and/or disabilities. For the FEI sector in Wales, £7.521 million of ring-fenced ALS funding was provided to support learners with LDD in 2015/16. This funding for supporting learners has been maintained in recent years, in spite of a reduction in the overall budget for post-16 learning.

Welsh Government officials have worked with the FE sector to develop a new methodology for distributing ALN funding combining existing budgets into a single funding stream to support learners with learning difficulties and/or disabilities. Existing budgets have also been combined into a single funding stream to support learners with learning difficulties and/or disabilities. This gives FE institutions more flexibility in how they use their funding, allowing support to be targeted to where it is needed most.

The importance of supporting learners with additional learning needs is particularly recognised for those making the transition from school to college. Ensuring there is sufficient suitable provision in place is a priority for the Welsh Government and the annual remit letters for local authorities and FE institutions emphasise the need for both to work together and to engage with special schools and other interested parties in order to widen access for LLDD.

Within the wider FE budget, provision for learners with learning difficulties and those on adult basic education programmes has been protected. This has ensured that the number of available places on discrete courses for LLDD has been maintained.

As a result of Welsh Government policy to protect ALN provision the passing of the 2014 Act has had no discernable impact on Additional Learning Needs provision at FE Institutions in Wales. In addition, the funding for supporting learners has been maintained in recent years in spite of a reduction in the overall budget for post-16 learning.

## 6. Conclusion

In practice, the Welsh Government already has in place robust mechanisms that safeguard the proper delivery of provision noted in section 10 of the 2014 Act: i.e. 16-19 provision, Additional Learning Needs, and Welsh medium and bilingual learning in further education.

It would be fair to say that the environment facing FEIs in Wales has been highly challenging in recent years. Nevertheless there are some opportunities – not least those offered by the 2014 Act – to diversify and develop new income streams as well as the potential for realising efficiency savings by reducing complexity. The FE sector in Wales has become very adept at continuously changing and redefining itself in order to meet the economic and educational needs of the communities it serves. It is one of the sectors' key strengths to adapt successfully to any new requirements demanded of it.

For example, while colleges have reported substantial cuts to Welsh for Adults learning, mainly for adult and part time learners, Welsh Language provision in general has increased over the years and in some cases take up is growing. However much of this increase in take-up is due to the Welsh/Bilingual Champions and the new Welsh Language Standards along with the work of the Welsh Language commissioner.

Financial constraints have encouraged the development of co-investment policy; FEIs have been asked to consider alternative funding streams and especially commercial investment. As a result FEIs generally are reducing their reliance on government funding.

The Programme for Government adopted by the previous administration, and the policies which have been developed as a result have served to safeguard the three elements that this review was tasked to consider while at the same time helping to steer post-16 developments, i.e. policies continue to safeguard provision for 16-19 year olds, ensure that Welsh Language provision is protected and developed, and that learners with additional need continue to be supported so that the best opportunities can be made available to all learners in Wales.

As a result of freeing FE governance and management from bureaucratic and administrative burdens the 2014 Act has allowed governors and managers to concentrate on protecting and developing provision; enabling colleges to determine how the needs of their learners and local communities can be best met, while at the same time fulfilling their responsibilities to maintain provision in line with government priorities.

## **Annex 1**

### **Further Education provision in Wales**

Further Education Corporations were established in Wales in April 1993 by the Further and Higher Education Act 1992 the Act also included a power to designate other providers as Institutions in the further education sector. FE institutions in Wales have been through a period of change recently which has led to a number of mergers and collaborative arrangements and an increasingly regionalised approach to delivery. As a result, the number of FEIs has decreased from 25 to 14 in recent years, with a number of inter-sector mergers between FE and HE institutions also taking place.

As of **1 April 2016** there are 14 further education institutions in Wales funded by Welsh Government to provide education and training to students aged 16 and above. These institutions are spread across Wales and vary significantly in size and scope of operation reflecting their different locations and institutional histories.

#### **FE corporations**

- Bridgend College
- Cardiff and Vale College (Barry College merged with Coleg Glan Hafren in August 2011)
- Coleg Gwent (Created from five colleges - Usk, Newport, Cross Keys, Ebbw Vale and Pontypool colleges)
- Coleg y Cymoedd (Includes Pontypridd and Rhondda Colleges (1995) and Aberdare College (2003); Ystrad Mynach College August 2013)
- Coleg Cambria (Deeside College merged with Coleg Llysfasi (August 2010) the Welsh College of Horticulture (August 2009) and Yale College, August 2012)
- Gower College Swansea (Swansea College merged with Gorseinon College in August 2010)
- Grŵp Llandrillo Menai (Coleg Llandrillo merged with Coleg Meirion Dwyfor (2010) and Coleg Menai in April 2012)
- Neath Port Talbot Group (Created from the merger of Afan College and Neath College in 1999, and Coleg Powys in August 2013)
- Pembrokeshire College

#### **Designated FE institutions**

- St. David's Catholic College
- YMCA/ WEA Cymru Community College (following merger of WEA South and WEA North Coleg Harlech January 2014, and YMCA, August 2015)

- Coleg Sir Gâr (became part of University of Wales Trinity St Davids, August 2013)
- Coleg Ceredigion (became part of University of Wales Trinity St. Davids, January 2014)
- Merthyr Tydfil College (ceased to be a FEI when it merged with the University of Glamorgan in May 2006 but became a designated institution in August 2015).