

THE BIS HIGHER EDUCATION TECHNICAL CONSULTATION:

A response from Higher Education Wales

ABOUT HIGHER EDUCATION WALES

1. Higher Education Wales (HEW) represents the interests of Higher Education Institutions (HEIs) in Wales and is a National Council of Universities UK. HEW's Governing Council consists of the Vice-Chancellors of all the HEIs in Wales. HEW provides an expert resource on the Welsh Higher Education sector.

INTRODUCTION

2. Higher Education Wales welcomes this opportunity to comment on a number of key issues from the perspective of a devolved administration within the UK and the potential cross border impact for universities in Wales and other administrations of the UK. This response follows the responses UUK and HEW to the main consultation on the BIS White Paper which were submitted in September 2011. HEW's response should be considered as a supplement to the submission from the Universities UK, and as such we have not attempted to address the detail of each question but focused on matters of particular relevance.

General comments

3. The BIS White Paper assumes that the Welsh Government will separately determine arrangements for Wales for the matters covered by the technical consultation (see for instance para 4.2.5.). However, the implications of the proposals for the UK higher education sector as a whole need to be considered very carefully.
4. In relation to Degree Awarding Powers and University title in particular, HEW believes that there is a strong case, following the close of the consultation for the BIS technical consultation, for the convention of a formal Joint Ministerial Committee (JMC) of the UK's Higher Education Ministers to consider the ramifications of proposed changes in England for the UK's wider quality assurance and University title system. Such a forum would allow some significant issues in relation to the proposed changes to be explored fully. HEW has previously proposed to the last UK Government that such a JMC should be established in relation to a range of cross border higher education issues. Impending legislation in relation to HE affecting the jurisdiction of England and Wales, in the draft HE Bill, provides us with an important opportunity for such a JMC to contribute to policy as it affects higher education on a cross border basis.

Chapter 1: The introduction of an independent lead regulator

5. The new regulatory role proposed for HEFCE as 'lead regulator' has some parallels with the new role proposed for 'Universities Wales' in the Independent Review of Higher Education Governance in Wales (the McCormick Report¹) which was commissioned to inform the Welsh Government's forthcoming proposals on governance. The introduction of a fee-based system of funding in Wales means that there are similar concerns that, because the proportion of grant paid to institutions has been reduced, that the current controls may be insufficient to provide a credible sanction (cf. para 1.2.2.). A key difference between the proposals in England and the recommendation of the Review in Wales is the explicit inclusion of a strategic as well as regulatory role for the new body in Wales. In part this recognises that the current statutory role of the Higher Education Funding Councils for both Wales and England to 'administer funding'² does not distinguish clearly between regulatory or strategic purposes and the leverage that Councils have deployed through setting terms and conditions of grant have been used for both. The BIS White Paper itself envisages areas of responsibility which are more strategic than regulatory in character and less obviously 'independent' or 'arms-length' in terms of public perception at least e.g. funding of high-cost, strategic and vulnerable subjects.
6. HEW recognises that the role of the Funding Council in England and its powers will set an important precedent for Wales. In extending the Council's powers, BIS may wish to consider whether the Council's new remit has sufficient clarity on the distinction between its regulatory and strategic role to enable it to use its new powers with confidence, and to consider whether those powers should be clearly limited to its regulatory role.

Chapter 2: A single regulatory framework for provider designation for student support and HEFCE teaching grant

7. The BIS proposals rely on the new regulatory body to assess the financial sustainability of designated partners. HEW believes that it is of paramount importance to ensure that the BIS proposals do not increase the risk for students or the reputation of the UK sector as a whole from introducing providers at greater risk of failing in some way or becoming insolvent (para 2.2.14), particularly given that independent providers will not be underwritten. Experience of franchise and validation activities, in Wales as in the UK, have demonstrated the increased risks of provision through small or new partners and the adverse impact on students and the sector's reputation that it can have.

¹ See <http://wales.gov.uk/docs/dcells/publications/110317hegovreviewen.pdf>

² S.62 Further and Higher Education Act 1998.

8. The policy of relaxing requirements for new providers is not currently favoured by higher education institutions in Wales, and the introduction of private providers presents a host of issues more generally.³ Should England adopt this approach, more stringent criteria than simple financial sustainability should be required and ideally should be limited to institutions that can demonstrate pre-eminence, stability and permanence in their particular field (compare the criteria for awarding Royal Charter below).

Chapter 3: The adoption of a single gateway for entry to the higher education sector

9. Higher Education Wales believes that there should be a single system and set of criteria for degree awarding powers and university title for the whole of the UK. Given that in Wales current proposals would make HEFCW's remit a strategic as well as a regulatory body, it is regarded as an important safeguard of institutional autonomy to ensure that the Privy Council's role is retained.

Chapter 4: Reforms to Degree Awarding Powers (DAPs) and University Title (UT) criteria

10. Currently the criteria for Taught Degree Awarding Powers (TDAPs) and University title are consistent across the UK. Recent proposals for England may change this position significantly were Scotland, Wales and Northern Ireland not to adopt a similar set of criteria in law through their own devolved procedures, though it is worth noting that, at present, the only substantive changes being proposed in this area are for England. Were there to emerge significant changes to the criteria for awarding degrees between the four parts of the UK this may well have a longer term impact on the external perception of quality criteria in the UK. Our primary concern would be to ensure that any proposed changes in requirements for TDAPs or University title are driven by considerations relating to quality and not market considerations.
11. Given the impact for the UK sector as a whole the proposals to reduce the criterion of 4,000 FTE to 1,000 FTE for degree awarding powers are of concern. In addition to concerns from the perspective of differing perceptions of what a University constitutes between different parts of the UK, the potential impact of introducing less financially/institutionally sustainable providers is a key risk (see above). From HEW's perspective the emphasis must be on prevention of quality issues or closure of provision on grounds of sustainability from arising in the first place - the award of degree powers on a temporary basis for instance may operate as a deterrent and sanction for providers but, should problems occur, will do little to address the impact for students and the sector's reputation.

³ Higher Education Policy Institute, *Private Providers in UK Higher Education: Some policy options*, by Professor Robin Middlehurst and John Fielden, 05 May 2011.

12. One concrete issue would be whether a new university headquartered in England recognised under any changed rules for England only, may be able to physically set up a higher education provision base in Wales. Were such an entity able to teach university courses in Wales using English DAPs that differed to those that applied to HEIs headquartered in Wales, the confusion about which criteria applied in Wales would be significant. Clearly such matters need considerable thought and discussion.
13. The paramount importance of high quality provision should also guide consideration of the **proposed 'risk based' approach to QA** in England. Though this approach has been welcomed by many in the university sector as being more proportionate and targeted than the current system, the devil will doubtless be in some of the more detailed proposals which we will be consulted on in due course by the QAA. HEW will also seek to communicate with HEFCW and, as appropriate, the Welsh Government, which holds QA responsibilities for Welsh HEIs, on this detail.

Chapter 5: Simplifying the process for changing corporate status

14. Recent discussions in Wales have highlighted some important consequences arising from differences in legal status in the higher education sector. The Secretary of State (in England) or Welsh Government (for Wales), for instance, have statutory powers to dissolve higher education corporations,⁴ whereas there is no equivalent power in respect of institutions incorporated by Royal Charter. In pursuing its policy of sector reconfiguration the Welsh Government has expressly considered the use of these powers.⁵ The grant of Royal Charters, which for historical reasons formed the basis of many pre-1992 Universities, is now normally reserved for bodies that work in the public interest (such as professional institutions and charities) and which can demonstrate pre-eminence, stability and permanence in their particular field⁶.
15. HEW considers it important that the complexity of different legal statuses within the HE sector is not unduly increased by the introduction of any fundamental differences in arrangements for England and Wales. A UK wide perspective should also be taken on how to protect institutional autonomy appropriately for all higher education institutions at the same time as safeguarding the public investment which has contributed to a significant proportion of their assets.

HIGHER EDUCATION WALES

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⁴ S.128 Education Reform Act 1988.

⁵ Written Statement of the Welsh Assembly Government, *The Future Shape of Higher Education in Wales*, 13 July 2011.

⁶ <http://privycouncil.independent.gov.uk/royal-charters/>