

**Welsh Government Green Paper:
Consultation on Working Together for Wales
The Public Service Workforce
- Submission from Higher Education Wales**

1. About Higher Education Wales

1.1. 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 and the Director of the Open University in Wales. HEW provides an expert resource on the Welsh Higher Education sector.

2. The consultation

2.1. The Welsh Government published its consultation on 08 May 2012, seeking responses by 31 July 2012 on how Wales could provide world class public services through a valued and engaged workforce.

3. Response: general comments

3.1. Higher Education Wales welcomes this consultation in the context of a series of Welsh Government policy initiatives aimed at reviewing and increasing collaboration between public services at local, regional and national levels (e.g. Beecham Review¹, the Welsh Government's Making the Connections series², and the Simpson Review³).

3.2. We support the overall approach to examine the opportunities for greater leadership in collectively developing our public service and related workforces. Higher Education is not identified by the document as falling in the scope of the proposals. Despite the inclusion of higher education in the description of the public sector workforce in the Welsh Government's 'Strategic Framework'⁴ for the public service workforce in Wales and the past involvement of HEW as a member for the Workforce Partnership Council (WPC), we note that higher education does not form part of that group of organisations listed in s72 Government for Wales Act 2006 and

¹ Beecham, Sir Jeremy. "Beyond Boundaries - Citizen-Centred Local Services for Wales: Review of Local Service Delivery - Report to the Welsh Assembly Government." 2006.

² This includes a range of related publications starting with: Welsh Government. "Making the Connections: Delivering Better Services for Wales." 2004.

³ Simpson, J. "Local, Regional, National: What services are best delivered where? A Report to Carl Sargeant AM, Minister for Social Justice and Local Government." 2011.

⁴ Welsh Government. "Working Together – A Strategic Framework for the Public Service Workforce in Wales." 2010.

that the main focus of the Green Paper, as for the previous proposals of the WPC, appears to be upon local authorities. This is also consistent with the Office of National Statistics (ONS) classification of higher education institutions. It is therefore our assumption that the proposals contained in the Green Paper would not directly apply to higher education and we have not chosen to comment in detail on the issues as they relate to the HE sector. In relation to the specific questions raised in the Green Paper we would like to offer the following comments:

4. Questions 1 to 6: issuing statutory guidance and the role of the Workforce Partnership Council

- 4.1. We welcome the vision of collegial working and strong leadership on shared workforce issues through a high-level group led by Ministers and involving appropriate representation across the public sector and related services. There is considerable potential for public service and related organisations in Wales to work together collaboratively to achieve greater efficiencies and effectiveness, on workforce issues and more generally.
- 4.2. Through HEW's engagement with the Workforce Partnership Council (WPC) and in other contexts (e.g. Public Service (HR) Network in Wales) we have contributed to a range of voluntarily agreed joint guidance on workforce matters, and benefited from a forum for sharing best practice. The Green Paper Annex clarifies that the WPC's current purpose is to advise the Partnership Council which was established by the Government of Wales Act 2006 and brings together Welsh ministers and services designated as local authorities. Although the main focus of Council has reflected this, Higher Education for instance has engaged on a voluntary basis with a range of schemes, such as the latest Employee Assistance Programme joint procurement exercise and would wish to contribute to and benefit from any further guidance and developments originating from this group.
- 4.3. In the development of workforce policy in Higher Education there continues to be a need to balance regional and cross-sector approaches with developments in UK higher education context. The sector has already engaged extensively with national policy development on workforce development issues through organisations as the Universities Human Resource Directors (UHR), Association of University Administrators (AUA) and many others. It works closely with the Trade Unions recognised by individual institutions through various local and national collective bargaining arrangements. In particular, universities in Wales are party to the Collective Agreements at UK level through the Universities and Colleges Employer's Association (UCEA).
- 4.4. We would question whether placing either the constitution of the WPC or its guidance on a more statutory footing, would enable it to continue its collaborative approach as successfully as its current constitution allows or facilitate the adoption

of any guidance that it makes. Working relationships and ease of implementation may well be further complicated by giving the WPC's guidance statutory status. In seeking to take on a greater leadership role, however, there may be advantages to be gained in raising the WPC's visibility - the public information on its constitution, composition and proceedings is currently very limited.

4.5. From our perspective it would perhaps be most useful for the Group to concentrate on establishing broad principles, developing voluntary guidance, and sharing best practice. Where specific policy proposals, from this group or any other source, appear to Ministers to merit statutory force these are best considered and dealt with in our view under the existing arrangements for law-making on a case by case basis.

5. Questions 7-9: partnership working

5.1. We believe that there are significant gains to be made from further working together as part of a shared collaborative process for delivering the vision set out the Welsh Government's Strategic Framework. Our view is that placing a general legal duty on services to collaborate would add to existing regulatory complexity without necessarily being the most effective means of achieving the Welsh Government's objectives. It would be difficult to define its scope precisely or to rely on it for implementing specific policy proposals. There would also be potential for conflict between different legal obligations which could create uncertainty and lead to a complicated legal process to determine which one was paramount (both further education and higher education have a range of statutory duties in this context).

5.2. It is our view that greater progress would be made through an effective process of collaboration between partners and services on specific proposals with the Welsh Government playing an important role in the leadership and facilitation of that process. This approach appears to be consistent with the Welsh Government's Strategic Framework which expressed its 'commitment to partnership working through promoting the use of partnership fora' in recognition of the different partnership agreements which are already in place between organisations.

5.3. There are also other policy instruments (such as remit conditions attached to Grant-in-Aid) which would perhaps be better suited to providing a general steer to sectors which appropriately reflects their varied nature. Different public services, as the Simpson review highlights, benefit from organisation at different levels on a local, regional or national (or in the case of HE UK-wide) basis. A flexible approach based on principles and voluntary codes will allow the natural tensions between competing approaches to be resolved more effectively and for organisations to learn from each other about best practice – for instance, HEIs across the UK currently have strong arrangements in place for collective procurement.

6. Questions 10-11: a Two-Tier and TUPE code

6.1. The Two-Tier Workforce Code as it appeared in England and the Welsh Code developed by the Workforce Forum both applied directly to local authorities. It is our assumption that the scope of the proposal would be similar in Wales and would not apply directly to the wider set of organisations mentioned in the Welsh Government's Strategic Framework including higher education. We note, however, that in abandoning the Code in England, the UK Government responded to concerns from industry about the impact for service providers, particularly barriers for small organisations, and replaced it with Principles of Good Employment practice. In further considering the potential merits of this proposal it will be important to consider the impact for the wider employment market and economy in Wales which is dependent on a high proportion of small and medium size enterprises.

7. Questions 12-14: regulatory considerations and other comments

7.1. We have outlined above the considerable benefits and opportunities to be gained from a voluntary collaborative approach to improve our public services in Wales. There is a need to clarify both the detail and scope of the intended legislative proposals for us to comment more fully on their implications. It is not clear how the proposals (particularly for Two-Tier and TUPE code) would be implemented in the context of the Welsh Assembly's currently devolved powers and UK employment law. As highlighted by the Higher Education and Further Education Bill (Wales) 2012 the development of statutory provisions directly regulating Welsh FE and HE institutions could lead to serious consequences which both the Welsh Government and the sector would wish to avoid. This includes placing the status of universities as autonomous institutions and their Office of National Statistics (ONS) classification for purposes of public accounts at risk, causing potential conflict with existing legal obligations (e.g. contractual agreements with partners, collective agreements incorporated into contracts of employment, or general statutory duties relating to higher education), and adversely impacting on their well-developed workforce arrangements across the UK sector. We believe, however, that the higher education has an important contribution to make to Wales as a public good and we look forward to exploring how we could achieve the ambitious objectives set out in this paper through the methods we have described above.

HIGHER EDUCATION WALES
30 July 2012