

House of Commons Public Bill Committee
Consultation on the Higher Education and Research Bill 2016:
A response by Universities Wales

1. About Universities Wales

- 1.1. Universities Wales represents the interests of universities in Wales and is a National Council of Universities UK. Universities Wales' Governing Council consists of the Vice-Chancellors of all the universities in Wales and the Director of the Open University in Wales.

2. Introduction

- 2.1. We offer the following comments in response to the consultation of the House of Commons Bill Committee¹ on the Higher Education and Research Bill 2016, as introduced to the House of Commons on 19 May 2016.²
- 2.2. The current proposals of the Bill affect universities in Wales in a number of ways. Most obviously, the proposals relating to UK Research and Innovation (UKRI) and the research councils contained in the Bill directly apply to the UK as a whole. A number of other proposals also have a potentially significant indirect impact, e.g. the Office for Students powers in relation to sector agencies that have a UK wide function. Under the current devolution settlement, the issues we raise in relation to these can only be addressed through amendment to the UK legislation.
- 2.3. Additionally, the Bill proposes changes to the legislation that currently applies to both England and Wales, and the process of separation of this legislation raises some issues for Wales. We currently understand that the Welsh Government is not intending to bring forward primary legislation of its own in response to the Bill. This means that, if corresponding changes in Wales are to be introduced at the same time, they will need to be implemented through amendment to the UK Bill.
- 2.4. This response focusses on key issues for Wales, and supplements the responses of Universities UK and Universities Scotland to which we have contributed.

3. Key issues

- 3.1. We highlight the following issues in particular:
- **Governance and operation of UKRI.** We strongly agree with Universities Scotland that the legislation needs to be strengthened to ensure devolved interests are better catered for when exercising UK wide functions. In particular we agree that the legislation must ensure there is appropriate representation and build in appropriate duties not only to consult with devolved administrations but to also have regard to devolved policy. UK research funding should also be appropriately ring-fenced.

¹ See [here](#) for details of the consultation.

² See [here](#) for the Bill, [here](#) for the accompanying Explanatory Notes, and [here](#) for its legislative progress.

- **Higher Education Corporations.** In particular, the lack of any comparable changes to the legislation regarding Higher Education Corporations (HECs) in Wales is a major concern, particularly the power to dissolve a HEC without its consent. It is imperative that this is addressed through amendment to the Bill to avoid very significant risks in particular to the national accounting classification.

3.2. The following paragraphs set out our proposed amendments in relation to these issues.

4. UKRI governance and operation

- 4.1. We strongly endorse the views expressed by Universities Scotland in their submission to the Public Bill Committee, and the nine amendments proposed by Carol Monaghan MP and Roger Mullin MP, numbered as amendments 180 to 188 in the current listings, which we would like to see accepted.
- 4.2. In the past the legislation has relied heavily on the Secretary of State and the Research Councils to act in the interests of the UK as a whole. With the increased divergence as a result of devolution, however, we question whether this will continue to be effective in appropriately reflecting devolved policy and interests. We welcome the UK Government's proposed amendment (NC3) to enable joint working between relevant authorities where this is more efficient or effective. We would like the legislative framework to be strengthened, however, so that it not only facilitates joint working but ensures that interests of devolved nations are catered for appropriately.
- 4.3. In particular we agree with Universities Scotland that the legislation as a minimum must ensure there is appropriate representation on UKRI's Council and on the Councils' boards. The legislation must also include appropriate duties for UKRI and the Secretary of State not only to consult with devolved administrations but also to have due regard to devolved policy.
- 4.4. We also agree with Universities Scotland that it is imperative that the research funding is ring-fenced appropriately. UKRI should not be allowed to vary the allocations between Research England and other UKRI funding, as this means that they could effectively vary funding for devolved nations. Allocations for Research England should be determined by the Secretary of State, and reflected in the Barnett formula.

5. Higher education corporations (HECs)

- 5.1. We note that the role of the Privy Council and statutory provisions for HECs relating to instruments and articles of government continue to apply in relation to Wales. In England, these have been removed and a HEC is free to vary, revoke or replace its instrument/articles, with the sole proviso that it must not undermine its charity status.
- 5.2. In particular, this will help to avoid the risk of reclassification of the HECs in England by the Office for National Statistics (ONS) for purposes of national accounting. A review of the classification is currently overdue (expected in June 2016) and the power to dissolve a corporation was cited as a factor which previously led to reclassification of the FE sector.

5.3. We understand, however, that the Welsh Government does not intend to bring forward legislation of its own to address this at this stage. In our view this leaves universities in Wales unnecessarily exposed to the risk of reclassification.

5.4. As a matter of urgency, we would like:

- **The power to dissolve a higher education corporation (HEC) to be amended for Wales in the Bill in line with the proposals for England so that a HEC can only be dissolved at its request.**

5.5. The amendment would ensure parity between HECs in England and Wales, and between HECs and universities with a Royal Charter which cannot be dissolved in this way.

5.6. We would welcome the Welsh Government reviewing the remaining regulatory arrangements for HECS at a later stage when opportunity permits these to be considered more fully in their specific regulatory context in Wales. These appear to be less likely to affect ONS status in the short term, however.

Universities Wales
13 October 2016