

**Department for Business Innovation and Skills (BIS) Green Paper
A consultation 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. Universities Wales welcomes this opportunity to comment on the proposals of the Department for Business, Innovation and Skills (BIS) in its Green Paper 'Fulfilling our Potential: Teaching Excellence, Social Mobility and Student Choice', presented to Parliament in November 2015.¹ Our comments should be read in conjunction with the response of Universities UK (UUK) to which we have contributed and deals with issues of UK-wide applicability. The supplementary comments we provide here focus on specific aspects of the proposals which have a particular relevance for Wales.

2.2. Higher education is a devolved subject in Wales so most of the proposals in the Green Paper are automatically applicable to England only. However, the funding delivered through the Research Councils and some broader elements of research policy are reserved matters, and the proposals on these have a UK-wide applicability.² A key issue for us is to ensure that, where a UK-wide approach is retained, Wales continues to have an appropriate level of continuing involvement in the oversight and development of these proposals.

2.3. The proposals will involve significant changes to primary legislation that currently applies to both England and Wales (e.g. the Education Reform Act, and the Further and Higher Education Act 1992). In consequence, any change to this legislation must entail decisions for both England and Wales at the same time.

2.4. In practical terms, the above means that it is not possible for English and Welsh policies to be developed and implemented in isolation. It also means that the timescales for policy decisions and implementation for Wales will largely need to coincide with the BIS timetable. We envisage that the BIS proposals will be implemented through a combination of legislative and non-legislative means. Universities UK have emphasised the need for a

¹ See here for the consultation homepage: <https://www.gov.uk/government/consultations/higher-education-teaching-excellence-social-mobility-and-student-choice>

² See p.7 of the Green Paper.

transparent and open process for implementation. We understand that the Welsh Government will need to bring forward primary legislation through the National Assembly for Wales at the same time as legislation is brought through Parliament, if legislation is introduced to implement these proposals. From the outset we should be clear that close intergovernmental cooperation will be absolutely essential to ensure that implementation (including the two legislative processes) can be coordinated, and that there are not unintended consequences for universities in Wales.

- 2.5. Future arrangements should continue to provide a recognisably UK-wide higher education system, which has the potential to accommodate differences in devolved policy while continuing to enable all constituent nations to draw on the strengths of a world-class HE brand. We welcome the intention that there should be discussion of whether and how devolved administrations can be involved in these proposals.³ It will be essential to ensure that the proposals are fully discussed between governments, and that sufficient time is built into the implementation timetable to enable devolved nations to deal effectively with consequential changes.
- 2.6. Even where proposals apply directly to England only, it is important to recognise that their implementation can have major consequences for Wales. In particular, there will be significant consequences for the UK-wide HE infrastructure, such as Higher Education Funding Council for England (HEFCE), the Student Loans Company (SLC), and the Higher Education Statistical Agency (HESA) et al. which currently have UK-wide responsibilities in a number of areas. For instance, difficulty in implementing Welsh-specific loans policy through the SLC and experience of the Quality Assurance Agency (QAA) retendering exercise point to significant potential practical issues and tensions. We would like to ensure that all appropriate steps are taken to reduce the risk that changes to the UK infrastructure as a result of these proposals could be at the expense of the devolved nations and their ability to pursue the same or indeed their own policy options through UK-owned infrastructure.

3. Teaching Excellence Framework

- 3.1. We welcome the commitment to discussion of this with devolved nations: 'As part of this consultation, we are also discussing with devolved nations on whether and how far to be involved' (p.21, para 16).
- 3.2. Participation by Welsh institutions in the Teaching Excellence Framework (TEF) is seen as necessary on reputational grounds in particular. It is likely that TEF results will be used extensively by league table compilers, and past experience shows that in absence of data, compilers would simply use proxies which may not be favourable for institutions that are not participating. In our view, the risks of Wales not participating are likely to be too high.

³ See p.21, para 16 in relation to the TEF.

We would like to see Wales involved as a partner in the development of the TEF arrangements from the outset, and to work with other UK nations to develop metrics which complement the existing quality assurance arrangements and provide genuine benefits for stakeholders beyond the proposed funding incentives.

- 3.3. At the same time, it is not necessary that exactly the same incentive system is implemented in Wales. Fees need not necessarily be linked to TEF in Wales, and we would prefer to see legislative arrangements made (if necessary) to facilitate the Welsh Government to increase fees in line with England but determine its own basis for allowing this (we note that the proposal to allow institutions to increase fees in line with inflation, means that the fees are simply being maintained in real terms). Market pressures also mean that Wales will need to seriously consider fee increases in line with England or alternative sources of additional income to ensure that universities in Wales are resourced at a competitive level. We note that there will be a potential cost to the Wales student support budget from fee increases in England (and expanding provision/student number cap raises) as things stand. Student support and cross-border agreements will need to be reviewed.
- 3.4. Otherwise, most of the comments that we would like to make in relation to the TEF proposals are voiced in the UUK response. We welcome the development of an enhanced framework that focuses on the importance of excellence in teaching and learning in higher education. In principle it would be helpful to develop metrics that cover a wider range of provision and could potentially help to promote transparency and good practice in the sector. If developed successfully, this could also potentially help to promote good practice across a wider range of important aspects of provision than currently covered by quality assurance arrangements alone – such as enhancement (as advocated in Universities Scotland’s response) and providing good value for money for students in return for investment in education.
- 3.5. At the same time, there are clear risks in practice. The TEF system needs to complement rather than detract from the robust and internationally respected quality assurance arrangements already in place. There are clear dangers that the TEF, with its multiple levels, is seen as superseding QA assessments as the primary measure of quality rather than complementing them. The TEF will need to be sophisticated enough to take into account the different missions, contexts and strengths of institution in a diverse sector. The system of incentives also needs to be fair and avoid perverse behaviour and market distortions. The potentially significant costs of a complex system should also be minimised as far as possible.
- 3.6. In particular, we would need to ensure that any differentiation under TEF can be justified i.e. not only should differences be statistically significant and stable between years, but have a practical significance for students, employers and other stakeholders. For instance, the BIS Green Paper points to assessment and feedback satisfaction scores in

the NSS for instance as an area where there is diversity and room for improvement. However, principal components analyses have previously indicated that differences in assessment and feedback have had a relatively low correlation with overall student satisfaction. It could be potentially damaging to introduce unnecessary perceptions of divergence in standards across the HE sector where these are not real. An important consideration should be to ensure that the HE system as a whole is seen to be performing well, where it is genuinely doing so. A point that UUK rightly makes is that we need to be careful to recognise and promote the current strength and consistency of quality in universities across the UK.

- 3.7. The UUK response also highlights significant challenges in developing robust and meaningful data – particularly, if the intention is to cover all levels, modes and types of provision eventually. There are particular issues for devolved nations, relating to differences in data, context and HE systems (including census data, college data inclusion in Scotland, and differences in qualifications). The UK PIs for instance currently exclude/use a different measure for Scotland for instance. Similarly, other proxies used for potential disadvantage in the current HESA indicators, such as state schools, may in part simply reflect the different education systems of the devolved nations. It will be important to ensure that the robust indicators are adopted that can apply across the UK.
- 3.8. An important issue for Wales, assuming that it will be involved with TEF, is that it is adequately represented in the arrangements for overseeing the development and implementation of the TEF. Although TEF assessments may be independent from governments (p.28, para 9), for instance, the outline of the TEF is currently being determined by BIS. By contrast QA arrangements across the UK for instance are developed by the QAA on behalf of the Funding Councils. Further clarity would be needed about the respective roles of government/OfS in determining the features of TEF and directing its future development. The mechanisms for the direction of the development of TEF would need to ensure that the interests of all participating nations are appropriately met.
- 3.9. Similarly, devolved interests would need to be appropriately met in the future development of sector data and UK PIs, and development and priorities of a shared UK infrastructure which deals with the data such as QAA, HESA, QAA etc. We note for instance that BIS is proposing that the OfS has a new power to require 'bodies providing a service connected with the provision of HE to provide relevant data and information to help better target efforts on widening access and success' (ch.4, para 22). It is a little unclear what situations this is intended to apply to at the moment, but it will be clearly important to ensure that HEFCW has the same leverage at its disposal in relation to bodies with UK-wide responsibilities as the proposed OfS may have.
- 3.10. Given the complexity of the data issues and the need for gathering further evidence to inform the development of a robust TEF model, we welcome the incremental approach to

development and implementation proposed by BIS. We would like to see the timetable for the second year/phase of implementation revised along the lines proposed by UUK, however. This would help in particular in ensuring that inter-governmental arrangements for each nation can be coordinated without detriment to the UK-wide higher education system.

3.11. As a supplementary comment, we note that the future funding of the regulatory infrastructure for higher education is a common issue for all constituent UK nations and the devolved nations are likely to watch any precedent set by England closely. The proposal that institutions should bear the cost of the TEF assessment process would need to be worked through carefully. Our view is that this model would work best where there is subscription for optional services, rather than for funding regulatory functions. There are arguably potential issues about the conflict of interest where a body is able to impose charges for its services (i.e. self-benefit), and – contrary to the spirit of the free market principles it is meant to support- this proposal would increase potential barriers to new entrants. The government propose scaling charges on the basis of student numbers to address the last issue – but this could also mean that institutions with the least risk are paying for institutions with the greatest risk/need for regulatory intervention. If these proposals were to amount to statutory power to impose charges for regulatory activity, there could also be implications for charity status and the national accounting classification of institutions.

4. The higher education sector

- 4.1. BIS proposals relating to the higher education sector would have profound consequences for Wales, even if they are not directly applicable. While the UUK response contains most comments we would wish to make on the proposals, we would like to highlight in particular our concerns from a devolved perspective.
- 4.2. The relaxation of entry rules for new/alternative providers is unlikely to be welcomed by the Welsh Government who have expressly stated their opposition to marketisation in Wales and introduced a charity requirement for HE providers seeking to become regulated institutions for purposes of the HE (Wales) Act 2015. Charity status may also be a requirement for accessing public student support through specific course designation procedures in future, subject to the outcomes of last year's consultation. Similarly, the prospect of Office for Students (OfS) rather than the Privy Council having a role for universities in Wales is unlikely to be a satisfactory arrangement for Wales, and we assume that Wales would need to make its own arrangements in that respect.
- 4.3. The proposed changes to Degree Awarding Powers (DAPs) and University Title (UT) arrangements will have consequences for the whole of the UK. We see it as very important for all constituent nations to have criteria that are consistent across the UK. There are significant risks in the BIS proposals from our perspective. The ability to award

degrees has to be limited to only those institutions that can be sure will maintain and promote confidence in the HE system. There is a danger that university title, the single-most internationally recognised designation in HE, becomes devoid of practical meaning and its value eroded. We would suggest that initial action should focus on retaining degree awarding criteria that ensure greater institutional stability in the sector on grounds that this is best for students and stakeholders in the long term. We regard it as very important that the changes proposed for England do not force devolved nations to adopt criteria and separate arrangements that are no longer compatible.

- 4.4. The extension of validation arrangements without stringent regulation may be of some concern for Wales. In particular, cross-border arrangements for regulation will need to be addressed from the outset – as highlighted by recent issues about the Cardiff Campus of the West London Vocational Training College, validated by Pearson.
- 4.5. BIS are proposing to relax a number of market entry requirements for new providers, but strengthen contingency arrangements covering continuity or provision and financial recompense. It is unclear whether these proposals would sufficiently address the issue of institutional stability, and we think the risks to the sector contained in the proposals for fast-track arrangements are underestimated. HE qualifications are an investment and continue to be used throughout a lifetime (not a typical consumer product) and their value/recognition can be connected to the status and reputation of the provider. Stability of the institutions in the sector could be viewed as very important for students. It is also important for institutions in Wales that there is no damage to the reputation of the UK sector due these arrangements.
- 4.6. The Green Paper's proposals relating to the creation of OfS involving the mergers of HEFCE and OFFA (and possibly other restructurings) is a matter which, for the most part, is for England and not for our comment. However, it is noted that a number of HEFCE's current statutory and other functions are not discussed in the BIS Green Paper, and where these involve UK-wide functions (such as the NSS) we would welcome greater clarity over what is proposed and discussion to ensure appropriate arrangements are made with the devolved administrations. Practical issues to consider would in particular include the development of a UK register for providers - we still have UK wide application processes and institutional information is essential for students.
- 4.7. We would support the further deregulation of higher education as proposed. BIS explicitly acknowledges that HE providers are essentially private organisations – and this is equally true for universities in Wales which are autonomous charitable bodies that currently receive even less grant funding than their counterparts in England. In particular, we see it as essential that the changes to Higher Education Corporations (HECs) should apply to Wales as well as England. For purposes of national accounting, universities are currently classified as not-for-profit institutions serving households (i.e. private, non-market institutions). We understand that the ONS is currently reviewing the classification of

universities, and has previously highlighted issues with the similar legislation that applied to Further Education Corporations (FECs) which led to their reclassification. To avoid major consequences for universities and the government, a reclassification of HECs needs to be avoided.

- 4.8. Given the major shift in recent years, a potential issue to consider is whether HE providers should still be subject to so many requirements which normally apply to public bodies. We would welcome the removal of FOI requirements in Wales as in England. This question also opens up the possibility that a much wider range of sector requirements could be reviewed (including much EU employment law and data protection legislation).
- 4.9. Careful consideration will need to be given to alternative arrangements for Wales, if the role of the Privy Council in relation to approving changes to governing documents is removed. Clearly, it would not be an acceptable position for the OfS to take on this function for institutions from Wales (or other devolved nations). We continue to hold the view that the role of the Privy Council should to continue to apply across the UK and not be dismantled. We welcome the review of potential ways to reduce unnecessary burden for the Privy Council and providers particularly for minor variations. However, our view is that we should avoid separate arrangements across the constituent UK nations.

5. Research landscape and funding

- 5.1. The main comments we would like in relation to these proposals are set out in the UUK response. In particular, we would like to reiterate the need to retain an effective dual support system to maintain a world leading research base in Wales and the UK. It is clear that core QR funding and competitive research funding serve different and complementary purposes. Core funding, for instance, underpins research capacity and infrastructure and is particularly important for blue-sky research; competitive funding can be particularly successful in encouraging research for specific purposes and close-to-market innovation. Both are needed in successful research and innovation system.
- 5.2. At this stage the options for Wales in the light of the Green Paper and the consequences for Wales are a little unclear and need to be explored further. For instance, will core funding for research continue to be devolved under the new arrangements, and reflected in the funding settlement for Wales through the Barnett formula irrespective of whether it lies with OfS or the Research Councils? Research Council funding has previously been treated as UK funding, so increases have not previously been reflected in the Welsh budget. The BIS proposals discuss provisions for a separate ring-fenced funding stream for QR. In addition to addressing the practical challenges of this, as discussed in the UUK response, arrangements would presumably need to ensure that the funding stream is treated separately in terms of the Barnett consequential to avoid a reduction to the Welsh budget.

- 5.3. As recognised by the Nurse Review,⁴ it will be important that core research funding for universities in Wales continues to address the distinct national research priorities and specific context of Wales. Whatever arrangement results from these proposals, Wales will need to be able to access a fair share of both core and competitive funding. This means that there will need to be appropriate representation from devolved nations in the governing arrangements for the targeting and award of UK funding. The intention is to retain discipline specific leaders⁵ – but this may not reflect Welsh research priorities very well.
- 5.4. We also note that for Wales, the option of assigning Research UK/the Research Councils with the responsibility for allocating QR funding is potentially problematic as this would take core funding for research outside of the legislative competence of the National Assembly for Wales/Welsh Government (unlike current arrangements with HEFCW).

Universities Wales
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⁴ Chapter 3.

⁵ See p.71, para 11.