

**The National Assembly for Wales Children Young People and Education 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 Children Young People and Education Committee (CYPEC) on the Legislative Consent Memorandum (LCM) relating the Higher Education and Research Bill 2016 (HERB), which was laid before the National Assembly for Wales on 17 November 2016.<sup>2</sup>
- 2.2. Since this consultation was launched we note that a revised version of the LCM was published on 1 December 2016.<sup>1</sup> Further amendments to HERB were agreed at the Report Stage of the House of Commons, and we expect further amendments to be laid for the House of Lords to consider in Committee.<sup>2</sup> Our response makes some additional comments in relation to these, in anticipation that these will also be the subject of a subsequent LCM.
- 2.3. For fuller comments on the Bill, see in particular our response to the Public Bill Committee of the House of Commons.<sup>3</sup> This response set out key issues for Wales, supplementing the responses of Universities UK and Universities Scotland.
- 2.4. We offer comments on the provisions in the Bill for which Assembly consent is required by convention as follows.

## **3. Provisions for which consent is required**

### **(A) Rating the quality of, and the standards applied to, higher education**

- 3.1. We welcome that the amendment to Clause 25 of the Bill enables universities in Wales to participate in the Teaching Excellence Framework (TEF) and that the Office for Students (OfS) will be able to assess TEF applications. It is essential that universities are able to participate in TEF on grounds of international reputation and recognition, as we set out in our response to the Welsh Government's consultation.

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<sup>1</sup> See [here](#).

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

<sup>3</sup> See [here](#).

## **(B) Financial Support for Students**

- 3.2. Universities Wales supports the principle behind these amendments to clauses 79 to 81, namely that the Welsh Ministers should have the same powers in relation to Wales.
- 3.3. As originally drafted, the Bill gave the Secretary of State the power (in relation to England) to determine the maximum amount of student loan by reference to matters determined or published by the Secretary of State or other persons. Amendment 109 gave the Welsh Ministers the same powers in relation to Wales. Amendment 243 added similar power to designate HE courses for the purpose of student support by reference to matters determined or published by the OfS or other persons. Additional amendments also allowed suspended student support payments/alternative payments to be cancelled (Amendments 242, 244 and 245).
- 3.4. However, we are concerned about the drafting of Clause 81 as amended. In particular, the power to specify the maximum amount of student loan and the power to designate HE courses for the purpose of student support are both exercisable 'by reference to matters determined or published the Secretary of State or other persons'.
- 3.5. This appears to provide too much latitude. Seemingly, the Welsh Ministers/UK Government could exercise these powers by reference to any person, not just the OfS. They can also refer to matters in any form, whether published or not, not just the OfS register of providers and TEF classifications. The provision as drafted has considerable potential for being used in ways that are not currently intended in future, or may be more appropriate to set out in regulations with the oversight of the National Assembly for Wales. We would prefer the wording of this clause to be tightened to ensure that it corresponds more closely with the specific instances in which the UK and Welsh governments would exercise powers.

## **(C) Amendments to powers to support research**

- 3.6. The amendment purports to clarify that the Secretary of State/Welsh Ministers powers to provide support for research includes providing financial support for research (i.e. grants, loans and other payments) subject to such terms and conditions as they see fit – including those which may require the recipient of support to repay sums, pay interest and provide information.
- 3.7. We query whether this clarifies or extends the powers in relation to universities in England and Wales.
- 3.8. At the moment, core funding for research in Wales is currently provided via HEFCW under the Further and Higher Education Act 1992, which enables the Welsh Ministers to give HEFCW grant on such terms as it sees fit, and for HEFCW in turn to allocate that grant to institutions on such terms as it sees fit. However, the powers of the Welsh Ministers and HEFCW are both subject to a number of important limitations which are designed to protect the academic and institutional autonomy of institutions, and allow institutions to operate at arms-length from government as is required by charitable status and to avoid reclassification as central government for purposes of national accounting classifications.

- 3.9. Competitive funding for specific projects is also provided by the UK Research councils. The current legislation for UK research council funding allows the Secretary of State to set terms and conditions of grant to UKRI but relies on UKRI's powers to enter and negotiate contracts with individual institutions in respect to UK competitive research funding projects.
- 3.10. Otherwise, the Welsh Government and HEFCW have powers to enter agreements directly. We question whether this amendment is required and are concerned that, without further qualification, the amendment may be opening up a route to direct funding without being subject to the important provisions of the 1992 Act which appropriately safeguard institutions.

#### **4. Report stage amendments**

##### **(D) UKRI representation**

- 4.1. A number of amendments which also relate to Wales were laid by the UK Government on 15 November 2016 and agreed in the Report Stage.<sup>4</sup>
- 4.2. In particular, Amendment 35 places a duty on the Secretary of State to 'have regard to the desirability' of UKRI membership including "at least one person with relevant experience in relation to at least one of Wales, Scotland and Northern Ireland" i.e. a representative from one of the devolved nations.
- 4.3. We recognise and appreciate that this appears to be designed to address concerns expressed by the responses of Universities Wales and Universities Scotland. However, this amendment is wholly insufficient in our view. As a minimum each nation should be represented, and it should be mandatory.
- 4.4. Amendment 21, by contrast, provides that there must be at least one person with experience of representing or promoting the interests of students (i.e. a student representative).
- 4.5. As expressed in our response to the Public Bill Committee, the legislation needs to be strengthened to ensure devolved interests are better catered for when exercising UK wide functions. 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.
- 4.6. We strongly endorsed the views expressed by Universities Scotland in their submission to the Public Bill Committee, and the nine amendments proposed by the Scottish National Party (amendments 180 to 188). These were not agreed in the Commons. However, we understand that further amendments addressing these areas will be tabled on the behalf of Universities Scotland for consideration by the Lords. We ask that the Welsh Government and National Assembly support these.

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<sup>4</sup> See [here](#).

## **5. Further issues**

- 5.1. A key further issue we raised in our submission to the Public Bill Committee was the need for a further amendment to only allow the dissolution of a higher education corporation (HEC) in Wales at its request, in line with the changes in England.
- 5.2. We understand 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 HECs in Wales unnecessarily exposed to the risk of reclassification 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 would like to draw this issue to the attention of the Committee, in the hope that we can encourage the issue to be addressed.

**Universities Wales**  
**7 December 2016**