

## **Consultation on the Higher Education (Wales) Bill**

### **A Response by the Chairs of Higher Education Wales (CHEW)**

1. CHEW is the collective body of the Chairs of all universities in Wales. Its members have substantial experience in business, public service and academe, in Wales and beyond. They serve their institutions on a voluntary and unpaid basis.
2. This note was agreed following a meeting of CHEW at which the majority of member institutions was represented. It is based in part on the recent response of HEW, as well as on our own reading of the Bill.
3. We fully accept the need for regulatory mechanisms for the sector, and wish to help ensure that these should be well-formulated. We hope that the shared aspiration is for a regulatory regime as light in touch as is consistent with establishing the necessary safeguards. For that reason, we consider it important that legislation is proportionate to the task in hand, provides for appropriate accountability without unnecessarily adding to administrative burdens, and in particular contains the specific assurances on autonomy and charitable status set out in the Explanatory Memorandum.
4. The Bill is a complex piece of legislation. The wide-ranging Diamond review continues apace and its deliberations are likely to impact on the matters relating to the Bill. Yet the review will not be available until 2016. There would be reputational risk for the sector were every effort not to be expended to arrive at the best possible regulatory legislation without subsequent amendment.
5. The autonomy and independence of higher education institutions in Wales are crucial to their standing throughout the world, as the Memorandum to the Bill acknowledges, but we feel that the present Bill will potentially adversely impact on this.
6. We are aware of the earlier consultation phases, but we note that some issues have not been carried through to the draft Bill. Are these to be introduced subsequently or are they no longer favoured? As a matter of principle if they are still considered relevant then they should be on the face of the Bill. There are other points in the Bill which were not consulted on earlier.
7. Because the Bill in its present form is not comprehensive, there is much scope for subsequent implementation through mechanisms not subject to the same full legislative scrutiny. The use of a negative resolution procedure in this regard would, in our view, be inappropriate, and we hope that this proposed way forward can be reconsidered.
8. We have been made aware of a possible legal uncertainty affecting members of our governing bodies regarding their responsibilities as trustees under charity law, and the requirements of them under the Bill. We therefore request that a clause be added to the Bill which ensures that governors will be faced with no conflict in discharging their

- charity trusteeship responsibilities. Without such explicit reassurance it may be difficult to persuade governors to volunteer in the future in the Welsh sector.
9. Also of concern to us is the doubt which appears to exist regarding the Office for National Statistics (ONS) classification of Welsh universities, especially the higher education corporations. The reputational risk to Welsh higher education, were it to be regarded as part of the public sector would be very great, and we therefore ask for reassurance on this point as the Bill proceeds.
  10. Returning to the question of the proportionality, the 1992 Act restricts the UK funding councils to setting terms and conditions to income for which they are responsible. A relatively broad interpretation of 'promotion of higher education' is currently being applied in Wales whereby fee plans relate to both equality of opportunity and the promotion of higher education. It is envisaged that Higher Education Funding Council for Wales (HEFCW) could use the Bill to widen that interpretation further, to encompass, for example, the universities' commercial activity and fees paid by non-Welsh domiciled students. The extension of HEFCW's powers in that way, and into such matters as overseas student recruitment, the delivery of continuing professional development and collaborative research activity, would mark an unwelcome intervention in the universities' commercial activities and represent a subversion of the principle that regulatory control and direct Funding Council influence should extend only as far as public funding.
  11. We recognise that quality assurance is crucial for an increasingly competitive sector. We consider that the present arrangements through the Quality Assurance Agency (QAA) work well and should be maintained. Overlapping this with another system could well be disadvantageous to the reputation of Welsh higher education.
  12. As Chairs of Welsh universities, we are, with our governing bodies, committed to the success not only of our own institutions, but also that of the sector as a whole. Wales needs a strong university sector if we are to contribute to what we all want for it in terms of economic, social and cultural well-being. We therefore advocate a further period for consultation and clarification on the Bill, during which all parties – the sector, HEFCW, and government - might work together to secure the best possible legislative framework for Wales. We would, of course, be happy to play a part in such a process.

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