

Cynulliad Cenedlaethol Cymru | National Assembly for Wales

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol | Constitutional and Legislative Affairs Committee

Ymchwiliad: Llais cryfach i Gymru: ymgysylltu â San Steffan a'r sefydliadau datganoledig |

Inquiry: A stronger voice for Wales: engaging with Westminster and the devolved institutions

IGP005

Ymateb gan: Prifysgolion Cymru

Response from: 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. On 20 December 2016, the National Assembly for Wales' Constitutional and Legislative Affairs Committee launched its call for evidence on its inquiry into inter-institutional working, 'A stronger voice for Wales: engaging with Westminster and the devolved institutions'.¹ The inquiry is focussing on two strands: constitutional matters and policy matters

2.2. We welcome the opportunity to contribute to this consultation.

Universities need an effective framework for engagement at a Wales and UK level that facilitates the development of appropriate devolved and UK policy in relation to higher education.

2.3. Higher education brings widespread benefits for individuals, communities, and the nation as a whole. It has the capacity to transform the lives of individuals and communities, to catalyse social mobility. Welsh universities are internationally recognised for the high quality of their teaching and attract a high number of students from around the world, extending the experience and horizons of the nation and enriching our cultural heritage. Welsh universities are a leading academic destination for

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world class research, with more than three quarters of the research recently assessed to be 'world leading' or 'internationally excellent'. The transformative effect of higher education also provides the foundation for Wales' long term economic growth. Welsh universities contribute billions of pounds to the nation's economy and create tens of thousands of jobs, generating some 3% of the nation's GDP and earning a significant share of its much-needed export earnings.

2.4. Devolution means that decisions on higher education policy can be made in Wales to take into account Welsh needs. The policy and legislative framework for higher education in Wales has become increasingly distinct in recent years, and offers many potential advantages. Further devolution has enabled Wales to respond to major changes across the UK with its own fee, funding and student support policies, and to support these with major changes to the regulatory framework for higher education in Wales.

2.5. Although higher education is a devolved subject, however, many constitutional and policy arrangements relating to higher education remain UK wide and the reality is that universities compete within an international higher education market with policy influenced by both decisions in Westminster and factors outside the UK. The success of universities in Wales and across the UK, is dependent, not only the successful development of devolved policy but our ability to work with our colleagues across the UK and beyond to rise to the challenges of rapid global expansion of higher education, seen as a key driver of many competing economies. It is essential for our ability to attract students and staff, to secure research opportunities

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and funding, and to forge the partnerships that are necessary for international success.

1 See [here](#).

2.6. We offer the following comments in the hope that it will assist the Committee in its task of identifying best practice for the future.

3. Strand 1: Constitutional matters

3.1. Our experience is that effective inter-governmental and inter-parliamentary arrangements are crucial for good legislative practice. Higher education has been a key area for legislation in Wales and other parts of the UK in recent years, and further legislative change which affects Wales will have to be successfully negotiated.

3.2. Under current devolution arrangements, higher education is a devolved subject, and has been a key area for legislation in Wales since the National Assembly acquired powers to enact its own legislation. The Higher Education (Wales) Act 2015, in particular, introduced major changes to the regulatory framework for higher education in Wales. Much of the key legislative framework for higher education, however, remains enacted as UK legislation. In particular, Education Reform Act 1988 and the Further and Higher Education Act 1992 continue to provide a framework for constitutional and funding arrangements that apply to higher education (with some differences) in both England and Wales. The UK Parliament retains the power to legislate in relation to higher education in Wales, and will continue to do so under the

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Wales Act 2017. Any changes to this common legislative framework affect Wales.

3.3. Notably, for instance, the Higher Education and Research Bill (HERB), which is progressing through the House of Lords at the moment, contains provisions relating to higher education in Wales specifically as well as provisions that apply to England only, and to the UK as a whole. If enacted, it will mean that, for the first time, there are different constitutional arrangements between England and Wales for such matters as arrangements for the grant of university title, degree awarding powers and the role of the Privy Council. The constitutional provisions applying to higher education corporations (i.e. post-1992 universities) will also be different within the UK. Much of this difference is highly desirable from a university perspective, but it presents a significant challenge and burden for Welsh officials who undertake their duties well.

3.4. For legislative proposals originating in Westminster, this raises two key issues from our perspective.

3.5. The first issue is that, pre-legislative consultation can be reduced. As we noted in relation to the current Higher Education and Research Bill, for instance, the proposals for Wales could not be clear in the UK Government's White Paper.² The proposed changes for Wales were not identifiable until the Bill itself was laid. Even then the changes, which were not discussed in the accompanying commentary, could only be identified by detailed work tracing the impact of the consequential amendments on other legislation. This made it very difficult for Wales to comment on or contribute to developments for

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Wales, even though the legislative process necessitated that they must be actioned at same time.

3.6. We note that the challenges in the consultation process that this presents for higher education in Wales are not new. Similar shortcomings in the consultation process for legislation relating to higher education in Wales were identified, for instance, in the Richard Commission Report which informed the Government of Wales Act 2006, and the legislation which led to the Higher Education Wales Act 2004.³

3.7. The second issue is that the National Assembly for Wales does not play a direct role in the scrutiny of legislation relating to higher education in Wales that originates in Parliament.

3.8. By convention, the UK government seeks approval of the National Assembly for Wales, and – in accordance with the Assembly's standing orders – this is given in the form of a legislative consent motion. As confirmed by a recent Supreme Court ruling, this is a political imperative, rather than an enforceable legal obligation.⁴

3.9. For practical purposes, the greater challenge is arguably that the Assembly does not get the opportunity to fully scrutinise legislation relating to higher education in Wales as whole, even though it is devolved, and has limited opportunity to contribute to the consideration of specific amendments in Parliament. We raised a number of issues concerning the drafting of amendments to HERB in our response to the LCM consultation, for instance. The CYPEC Report drew attention to these but commented that

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“in the time available, it has not been possible for the Committee to consult more widely or follow up the stated concerns with the Cabinet Secretary.”⁵ Our experience is that Committees of the National Assembly play an important part in the scrutiny of higher education legislation in Wales, and were instrumental to securing improved legislation in the case of the Higher Education Wales Bill by contrast.⁶

3.10. In turn, dealing with two different institutions and governments is more difficult for stakeholders such as universities. This can be the case even when both are being helpful and cooperative – as demonstrated, for instance, in relation to recent Wales Bill, which led to important amendments relating to the classification of universities in the new devolution settlement.

² See the Universities Wales submission, [here](#).

³ Commission on the Powers and Electoral Arrangements of the National Assembly for Wales Spring 2004 (available [here](#)). See in particular ch7 footnote 24 and the evidence of University of Wales College, Newport (available [here](#)).

⁴ Supreme Court, 24 January 2017, R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant) et al.

⁵ Children, Young People and Education Committee: Report on the Legislative Consent Memorandum for the Higher Education and Research Bill – 12 January 2017 (see [here](#)), including Universities Wales’ response.

⁶ See further the Universities Wales response to the Law Commission, 16 October 2015, [here](#).

4. Strand 2: Policy matters

4.1. Policy decisions in England, Northern Ireland, Scotland and Wales, have an impact on each other that merit discussion and careful consideration before major decisions are taken. The need to develop policy with cross

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border ramifications in mind is essential. Whilst each nation may have a different approach, governments should work together to increase understanding of the differences and what each of the policy contexts mean in practice to different groups. UK nations must be able to successfully compete in the global market. For the HE sector in Wales to work to the best of its ability with partners in other UK nations, and across the world, maintaining productive and efficient intergovernmental relations is crucial.

4.2. Even when policy decisions do not directly relate to Wales it is important to recognise that their implementation can have major consequences for other nations. For instance, the policy decisions arising from the UK government's recent White Paper on HE (and HERB) will 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. In particular, difficulty in implementing Welsh-specific loans policy through the SLC points to significant potential practical issues and tensions.

4.3. Recent funding and student support changes in England, for instance, have necessitated major reforms in fees, funding and student support in Wales. Given the need for separate legislative processes, the key process issue is to ensure that other nations have time to respond in a way that enables devolved arrangements to be put in place without significant time delays or compromise to the process of scrutiny that would adversely impact on students or institutions.

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4.4. Particular consideration should be given to the development of research policy as it relates to Wales. “Research Councils’ are expressly excluded from the devolved subjects in the current legislation (and will be reserved under the Wales Act 2017). At the same time, other aspects of research policy are devolved. A key part of the current proposals of HERB, for instance, is to strengthen the UK research arrangements by subsuming the current Research Councils within a new over-arching body called UK Research and Innovation (UKRI). The dual-funding system will continue to operate as it is at the moment with core funding and general research policy a matter for individual nations, and UK competitive funding and policy dealt with through UKRI (although details of how the budgetary aspects of this will currently operate for Wales remain unclear).

4.5. A key issue we highlighted is that the current proposals for UKRI in HERB rely on a traditional model for determining and delivering UK policy. We have questioned whether this is effective in meeting national interests, given the stage of devolution that has now been reached. Universities in Wales have supported a number of amendments put forward to address issues in relation to the membership of UKRI, consultation and policy development. 7 These have not been accepted as yet, although further opportunities to consider amendments remain. If these amendments are not accepted, it will be all the more important that the current internal processes and structures for engagement of UKRI are strengthened. We should say that we fully support UK Research Councils (RCs). Indeed, given the status of the grants they award, they are essential if we are to retain and attract research staff. For this reason and others, hypothecation or further devolution of RCs

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simply would not work. However, we need to ensure that they are informed and led from policy across the UK.

7 See Universities Wales response to the House of Commons Public Bill Committee, 17 October 2016, [here](#).

4.6. Another major area of UK policy that will have a particular impact on Wales is the negotiations regarding the exit of the European Union and the arrangements that will take its place. As discussed in more detail in our submission to the External Affairs and Additional Legislation Committee,⁸ the mobility of staff and students and the European Structural and Investment Funds play a crucial role in supporting universities, and in turn the national economy in Wales. As the third largest recipient of structural funds in the last round, universities are very exposed to the withdrawal of this funding. It is crucial that this funding for infrastructure and capacity-building is maintained, regardless of whether this comes from the EU or national budgets through Barnett. It will clearly be vital for universities, as for the nation more generally, that Wales has an effective voice in the process of negotiating terms both within the UK and internationally.

5. Some possible ways forward

5.1. In addition to potentially strengthening the legislative process, it will be important to ensure that the protocols for engagement with Westminster are effective and implemented. The memorandum of understanding between the UK Government and the devolved administrations sets out the principles for current engagement. The memorandum, which currently dates from 2013, covers communication, consultation, the exchange of information and other

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matters. Any modification of the arrangements should take into account the following:

- Effective communications relating to the different policy contexts, for example how the different fees and funding regimes in the different UK nations operate, is critical.
- A more structured approach to intergovernmental relations, with regular meetings between ministers responsible for HE from the UK Government and devolved governments would be welcomed – to ensure all relevant parties are aware of developments under discussion, and the potential impact of these.
- A greater clarity at the UK Government level about the interaction between devolved and non-devolved policy areas and the impact on universities;
- Future processes for engagement at governmental and institutional level must ensure that policy developments of one nation are not at the expense of another and that this engagement allows Wales to pursue its own policy options through UK-owned infrastructure.
- In particular, there is potential to examine the terms and conditions of grant to UKRI, or the development of service level agreements to ensure that issues of representation and devolved policy interest are dealt with effectively.

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- The end result of the above should result in transparent legislative and policy implications for devolved/other nations, and allow timely consultation on them.

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8 See [here](#).