

NUS Wales Response to 'Higher Education (Wales) Bill' Committee Consultation

Overview

The National Union of Students (NUS) Wales welcomes the opportunity to respond to the '**Higher Education (Wales) Bill**' committee consultation. NUS Wales is a confederation of students' unions representing more than 300,000 students in the nation. As the only representative voice for students in Wales, NUS Wales represents students from all affiliated students' unions in both HE and FE sectors, this includes 9 HE institutions and all Welsh FE Colleges.

NUS Wales exists to promote, defend and extend the rights of students and develop and champion strong students' unions. We fight barriers to education; empower students to shape both a quality learning experience and the world around them; as well as supporting influential, democratic and well-resourced students' unions.

As well as campaigning on behalf of our members, NUS Wales provides a range of training to students' unions including training for full-time offices, part-time officers and staff. We provide support to students' unions to ensure they are able to engage positively with the latest policy developments that affect them.

We provide resources and staff support to students' unions to help strengthen them and enable them to become ever-more effective in their operation. We work with partners across Wales including DfES, HEFCW, HEA and QAA to develop efficient and productive representation structures for students.

In Further Education, NUS Wales has engaged and trained student governors in every single Welsh FE College and trained class representatives from the majority of FE Colleges. Furthermore, we are developing a National Society of Apprentices to provide representation for those who study in this setting; this endeavour has the backing of the Welsh Government.

The core values of NUS Wales are democracy, equality and collectivism. We believe that student organisations should be student-led and that education is a benefit to the individual and to society.

Overview

- NUS Wales believes higher education to be a public good
- We believe there is a need for a new regulatory framework to protect the public investment into higher education in Wales, which remains substantial
- Currently policy levers are ineffective and lack a statutory underpinning given the reduced amount of funding being allocated directly by the Higher Education Funding Council for Wales
- We broadly welcome the Higher Education (Wales) Bill and its objectives in establishing a regulatory framework and policy levers not reliant on terms and conditions attached to funding
- However, we have a number of concerns regarding the Bill as it stands, including specific concerns around detail currently left out of primary legislation around case-by-case designation and the provision the Bill makes for subordinate legislation to amend the primary legislation
- We are also unsure fee and access plans as they currently stand being effective as the principle levers of the regulatory framework for reasons outlined below
- The Welsh Government and the higher education sector in Wales have made separate and public commitments to the idea that students are partners in their education¹ and, as such, that institutions, students and students' union should work in partnership
- Given this, we feel the Bill requires a clearer commitment to involving students and their representatives throughout the regulatory framework. This commitment should include notifying an institutions' students' union of directions from HEFCW that relate to their institution. Similarly this commitment should include safeguarding a place for national student representatives on the committee for quality assurance outlined in the Bill and panels related to reviews of enforcement actions.
- The additional 'fee' income from Welsh full-time undergraduate students is public expenditure, and since the introduction of the new fees regime universities have been required to spend a proportion of this income on equality of opportunity and promotion of higher education
- This expenditure does not always directly relate to full-time undergraduate provision as equality of opportunity is broader than full-time undergraduate provision
- This is appropriate as the purpose of this expenditure is to secure equality of opportunity and is a part of higher education's function as a public good in Wales
- NUS Wales looks forward to working with the National Assembly for Wales, the Welsh Government and the higher education sector in Wales in ensuring the development and delivery of a regulatory framework that safeguards higher education as a public good, promotes social justice and delivers for the people of Wales and the Welsh economy.

¹ 'Policy Statement for Higher Education', Welsh Government (2013) and 'Partnership for Higher Education in Wales', Wise Wales (2013)

1. Is there a need for a Bill for these purposes? Please explain your answer.

- 1.1 We agree there is a need for a Bill for the purposes outlined in the Explanatory Memorandum. Particularly – there is a severe need to ensure robust regulation of institutions that are supported by Welsh Government through statutory student support. This is to safeguard the public investment in Welsh higher education and as such the contribution of Welsh higher education to the public good of Wales
- 1.2 Funding in Wales is now 'student-led', the funding follows the student rather than being allocated by the Higher Education Funding Council for Wales (HEFCW).
- 1.3 However, for Welsh-domiciled students in Wales, who make up just over half of all undergraduates in Wales, a significant proportion of that funding remains from the public purse – an estimated £157million in 2014/15². Similarly, there will remain a further approx. £150million invested in Welsh institutions by HEFCW in 2014/15.
- 1.4 We must also remember that a portion of a student's tuition fee loan is not without its own cost to the public purse. The Resource and Accounting Charge – the amount of outlay on student loans in Wales never expected to be repaid – currently stands at £106million in Wales for 2014/15³.
- 1.5 As such, there is a clear and significant amount of public investment into higher education in Wales and it is essential that the investment is protected through a regulatory framework that enables higher education to deliver as a public good in Wales.
- 1.6 The current regulatory arrangements do not enable this. HEFCW's powers are related to terms and conditions attached to funding. Since the bulk of funding now follows the student, rather than being allocated by HEFCW, HEFCW is unable to utilise these terms and conditions to leverage higher education institutions in Wales.
- 1.7 Although the existing use of fee plans helps alleviate this somewhat, the process is widely perceived to be 'toothless' as the powers available to HEFCW to intervene are limited. For example, not approving a fee plan would mean an institution would only be able to charge £4,000 for its causes. This would be catastrophic for almost any higher education provider in Wales in terms of income.
- 1.8 We also feel that there is a need to ensure that those providers who benefit from Government support have charitable status, as outlined in the objectives. NUS Wales feels this is vitally important at a time where there is a concerted effort in England to effectively create a market for higher education including the deregulation that has enabled for-profit providers to proliferate in England. Ensuring higher education providers in Wales are charitable, stakes a clear commitment by the Welsh Government and National Assembly for Wales to the conception of higher education as a public good, a key tool of social justice and the protection of public investment.

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http://www.hefcw.ac.uk/documents/publications/circulars/circulars_2014/W14%2018HE%20HEFCW%20funding%20allocations%202014_15.pdf

³ <http://www.senedd.assemblywales.org/documents/g1121/Public%20reports%20pack%20Wednesday%2010-Oct-2012%2010.00%20Children%20Young%20People%20and%20Education%20Committee.pdf?T=10>

2 Do you think the Bill, as drafted, delivers the stated objectives as set out in the Explanatory Memorandum? Please explain your answer.

- 2.1 We have concerns regarding the current drafting of the Bill, the timeline for implementation and the tools with which the Bill is expected to be delivered.
- 2.2 As outlined in the answer above, we believe the question of higher education regulation requires an answer and that current policy levers are ineffective in ensuring that higher education in Wales delivers for the public good. The Diamond Review of higher education funding is not due to report until 2016, and any reforms of higher education would be unlikely to come into force until 2019/20. There must be regulatory oversight in the intervening period.
- 2.3 The Bill as drafted does provide to an extent for a process of regulation for institutions in Wales and, to a degree, safeguards the contribution made to the public good arising from the financial subsidy of higher education.
- 2.4 The Bill has strong focus on fair access to higher education, which we support. This is demonstrated by the emphasis on access in Fee and Access Plans and their role in the regulatory framework.
- 2.5 However, section 6, subsection (3) outlines the provisions required to be made under the plan which include the need to take measures to attract applications from prospective students from under-represented groups and measures for retaining these students.
- 2.6 We feel that this focus on attracting applications and retention, coupled with the further detail on this area provided in the explanatory memorandum which focuses around such activity as summer schools and study skills support⁴ does not tackle the crux of widening access.
- 2.7 For example, activity to widen access should not simply be focused on increasing applications to the institution specifically but also about engaging schools and other services in the institutions local area to promote higher education more broadly.
- 2.8 We also know that attainment plays a vital role in the progression of young people onto university. As such, we feel that there is a role that universities are uniquely placed to take up. This would involve working with local education providers through targeted support and research to increase attainment of disadvantaged young people locally. This activity would not currently be covered by the description of required activities in the Bill
- 2.9 Similarly, part-time provision plays a key role in widening access as evidenced by the ["It's About Time"](#) report jointly developed by NUS Wales and the Open University in Wales. The provisions that may be prescribed in the fee plan as outlined in Section 6 would not, for example, clearly enable an institution to support part-time provision as a feature of equality of opportunity through their fee plans.
- 2.10 This also highlights an ongoing difficulty with fee plans, which is a focus on activity rather than outcomes. The timeframe of a fee plan cycle – five to six years for a one year fee plan – means that monitoring and enforcing outcomes is challenging. We believe the focus of fee plans should be on outcomes and the activities that underpin those outcomes – not on the activities themselves.
- 2.11 We do not feel that the legislation as it currently stands provides a whole regulatory system for higher education. A great deal is left to subordinate legislation or regulation by other means – particularly provision for case-by-case designation of courses. This concerns us as it is the case by case designation the offers the biggest risk to higher education in Wales, potentially enabling the cherry-picking of profitable courses by new or smaller providers undermining the ability of existing institutions to offer a comprehensive and sustainable suite of courses. We were keen to see case-by-case designation to be outlined through primary legislation in this Bill, as was originally indicated in the technical consultation.

⁴ P. 31, Explanatory Memorandum for the 'Higher Education (Wales) Bill'

- 2.12 What is also concerning in relation to the lack of detail regarding case-by-case designation is that the legislation does not outline what extent those with case-by-case designation would have to adhere to quality assurance processes or other mechanisms that protect public investment in higher education.

3 Are the sections of the Bill as drafted appropriate to bring about the purposes described above? If not, what changes need to be made to the Bill?

- 3.1 The Bill as it stands leaves unanswered questions relating to the overall regulatory framework for higher education in Wales. As outlined in answers above – the lack of detail on case-by-case regulation is troubling, particularly the ambiguity regarding how it relates to the new functions of the Higher Education Funding Council for Wales including quality assurance.
- 3.2 Similarly, point 112 in the explanatory memorandum outlines that although the majority of part-time courses will be covered by the quality assurance duty provided in the Bill, there will be part-time courses that fall outside of this duty. The memorandum rightly points out that HEFCW will still be funders of such courses and so can prescribe terms and conditions through funding. While this is a short term solution, we do not feel this is the lasting settlement you would expect a new regulatory framework for higher education to provide.
- 3.3 We also feel there is ambiguity regarding the eligibility criteria for institutions wishing to apply for automatic designation. Sections 2 and 3 suggest that the only criteria for any provider to be regarded as an institution for purposes as designation are to be a provider of higher education and a registered charity.
- 3.4 There are a number of points throughout the Bill where we feel amendments to include student representatives in terms of notices regarding approval, monitoring and withdrawal of fee plans.
- 3.5 For example, in section 25 we feel it would be appropriate to prescribe that at least one of the members of the committee outlined in subsection (3) is a national student representative. This is line with current arrangements with NUS Wales' membership of HEFCW's Quality Assurance and Enhancement Sub Group.
- 3.6 As discussed our previous answers and below, we are also concerned about various subsections throughout the Bill that make provision for subordinate legislation to amend primary legislation.
- 3.7 We have been unable to determine to what extent the Bill details the link between the purpose and process of being an automatically designated institution and this being for the purposes of statutory student support as outlined in the explanatory memorandum. For clarity, it may be appropriate to make this relationship more explicit on the face of the Bill.

4 How will the Bill change what organisations do currently and what impact will such changes have, if any?

- 4.1 This Bill would have a notable effect on the operations of the Higher Education Funding Council for Wales, higher education providers, students' unions and sector bodies including ourselves. It would fundamentally alter the role of HEFCW and its relationship with providers, presumably requiring a restructure of HEFCW's programme of work.
- 4.2 There would be a far greater emphasis on the fee planning process and as such universities would have to commit more time and resource to meeting the new legislative requirements. The implementation of more effective policy levers would also have implications for university planning processes as it is likely that greater consideration and resource would have to be given to the policy priorities of Government

- 4.3 Students' unions currently have a key role in negotiating fee plans with their institutions. The greater importance placed on fee plans following the implementation of this Bill would mean that greater resource and focus would be placed on this process by students' unions.
- 4.4 These changes would of course have resource implication for students' unions and therefore it may be necessary to amend sector guidance around the funding of students' unions accordingly
- 4.5 The opening up of automatic designation to a range of providers, beyond the current higher education institutions, would potentially lead to other organisations seeking automatic designation and as such adhering to fee planning requirements. It is possible that current further education institutions may pursue this. As such, these changes could have long term implications for the higher education topography of Wales and the number and types of institution providing higher education.

5 What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?

- 5.1 The most significant barrier to implementation will be timescales. Given the long lead-in period to the development and sign-off of fee plans, HEFCW would have to publish fee plan guidance for 2016/17 fee plans in April 2015 and as such likely pre-empt regulatory detail around the approval of fee plans that may be subject to change.
- 5.2 Related to this, the large amount of regulation that is yet to be determined and is not present in this Bill or explanatory memorandum suggests that there would be lengthy and most likely contested process of development of subordinate legislation prior to the provisions of the Bill being able to come into force
- 5.3 Given the recent need to legislate in further education to secure the protection of further education institutions' NPISH status, it would be appropriate to consider whether the provisions that this Bill would make would constitute any threat to higher education institutions' NPISH status.
- 5.4 That said – there are notable differences between higher and further education institutions. Welsh Government, prior to the Further Education Bill, had far greater control over further education institutions' governance arrangements and their financial arrangements including freedom to borrow.
- 5.5 The Government has had in recent memory the same level of control over higher education institutions and the changes to regulation outlined in the Bill would not alter what the Office of National Statistics considered to be the key drivers for reclassification in the further education context.
- 5.6 As touched on in previous answers – fee plans in general are a barrier to implementing the provision of the Bill. Their effectiveness is limited by the disproportionate cycle of a plan to the length of a plan (approximately 6 years to 1 year). Similarly, this timeframe has made it very difficult for students and students' unions to effectively feed into and monitor plans given the yearly turnover of students and elected student representatives
- 5.7 For fee plans to be effective and to support the development of a distinct Welsh student experience, they must be developed in a partnership with students and students' unions. Therefore, for the Bill to be implemented effectively, thought must be given to either how the Bill or the subordinate regulation will shape fee plans into a more effective tool that involves students as true partners in their education and institutions.
- 5.8 To support this, we would recommend an amendment to the Bill that makes the requirement for students' union involvement in the development of fee plans a statutory obligation.

6 Do you have any views on the way in which the Bill falls within the legislative competence of the National Assembly for Wales?

6.1 We understand this Bill to fall within the legislative competence of the National Assembly for Wales

7 What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (ie statutory instruments, including regulations, orders and directions)?

In answering this question, you may wish to consider Section 5 of the Explanatory Memorandum, which contains a table summarising the powers delegated to Welsh Ministers in the Bill to make orders and regulations, etc.

- 7.1 NUS Wales has substantial concerns regarding the powers in the Bill for Welsh Ministers to make subordinate legislation. The scope of subordinate legislation includes when designation may be withdrawn, the threshold above which an institution must outline how they will spend a proportion of fee income in the furtherance of the plan objectives, the functions of HEFCW in determining whether to approve or reject a plan, the circumstances where HEFCW may give a direction to institutions and the process of appeal/review of a decision by HEFCW.
- 7.2 The original technical consultation for this Bill suggested that the threshold at which point an institution must outline how they will spend the proportion of fee income in the furtherance of the plan objective would be raised from the current £4,000 to £6,000. We strongly oppose this threshold and are concerned by the absence of any figure in either the Bill or explanatory memorandum. Such a threshold should be set in consultation with stakeholders.
- 7.3 We are also concerned that there is provision within the Bill to enable regulations to amend primary legislation; such a provision would enable primary legislation to be amended without the scrutiny normally afforded. Given the sensitive nature of the regulations in question, and the impact that they would have on the higher education sector in Wales, we feel that in some cases affirmative or super-affirmative procedure would be appropriate.
- 7.4 For example, Section 13 outlines that regulations may make provision for HEFCW to direct institutions to take 'steps' that are currently unspecified. Subsection (3) of that section is, similarly, one of the points in the Bill that makes provision for regulations to amend or apply any provision made by the Bill.

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Contact: Kieron Rees

Tel: 07813 921439

Kieron.Rees@nus-wales.org.uk