

Cynulliad Cenedlaethol Cymru | National Assembly for Wales

Y Pwyllgor Plant, Pobl Ifanc ac Addysg | Children, Young People and Education Committee

Craffu ar ôl deddfu ar Ddeddf Addysg Uwch (Cymru) 2015 | Post-legislative scrutiny of the Higher Education (Wales) Act 2015

HEA 08

Ymateb gan: Prifysgol Caerdydd

Response from: Cardiff University

Overview

- i. Cardiff University is an ambitious and innovative university with a bold and strategic vision. Our world-leading research was ranked 5th amongst UK universities in the 2014 Research Excellence Framework for quality and 2nd for impact. We provide an educationally outstanding experience for our students. Driven by creativity and curiosity, we strive to fulfil our social, cultural and economic obligations to Cardiff, Wales, and the world.
- ii. The Higher Education (Wales) Act 2015 sought to amend, repeal and replace some of the functions of the Higher Education Funding Council for Wales (HEFCW). By amending rather than replacing HEFCW, the Act ensured the regulator's organisational knowledge and sectoral expertise were not lost.
- iii. Future legislation in this area, including the proposed Post-compulsory Education, Training and Research (PCTER) Bill, should recognise that arms-length government and a consultative regulator that engages with the sector is the most appropriate system for higher education.
- iv. To that end, the PCTER Bill should formally enshrine the Haldane Principle—that decisions about what to spend research funds on should be made by researchers—in Welsh law. The principle still allows public interest to be protected through the evidencing of national benefit, but also safeguards academic freedom. This has been echoed by the National Assembly's Economy, Infrastructure and Skills Committee recent report following their inquiry into research and innovation in Wales.¹
- v. We are conscious of the budgetary pressures faced by Welsh Government and the Welsh public sector, with such pressures at risk of being exacerbated by Brexit. The principles of accountability and delivering on

¹ National Assembly for Wales; Economy, Infrastructure and Skills Committee, *"Research and Innovation in Wales"*, April 2019

public interest were essential aspects of the Act, and we remain committed to these aims.

- vi. The PCTER Bill should also recognise the international nature of higher education, seeking to ensure that any regulations do not create unnecessary barriers to global cooperation post-Brexit.

Consultation questions

1. Has, or is the Act, achieving its policy objectives, and if not, why not?

- 1.1 As stated by Welsh Government, the Act's primary policy objectives were to:
 - “(a) ensure robust and proportionate regulation of institutions in Wales whose courses are supported by Welsh Government backed higher education grants and loans;
 - (b) safeguard the contribution made to the public good arising from the Welsh Government's financial subsidy of higher education;
 - (c) maintain a strong focus on fair access to higher education; and
 - (d) preserve and protect the institutional autonomy and academic freedom of universities.”²
- 1.2 Accordingly, the Act necessitated that HEFCW introduce Fee and Access Plans, which are required of institutions wishing for their courses to be eligible for access to financial student support.
- 1.3 Overall, the Fee and Access Plans support the Act in delivering on its objectives, in particular (a), (b) and (c). Our Fee and Access Plan provides Cardiff University with the opportunity to clearly set out, in one document, the amount of investment and the activities we undertake to support the Welsh Government's agenda for equality of opportunity and promotion of higher education in a comprehensive process.
- 1.4 The Act also established the need for HEFCW to regulate financial affairs via a Financial Management Code, which took effect from 1 August 2017³. This is an appropriate means of delivering objective (b).
- 1.5 The autonomy and academic freedom of the institution has not been in question since the enactment of the bill, with no adverse effects arising. We therefore see no reason to believe that the Act has failed with regards to objective (d).

² Welsh Government, *Higher Education (Wales) Bill Explanatory Memorandum* (2015) <[http://www.assembly.wales/laid%20documents/pri-ld9758-em%20%20-%20higher%20education%20%20\(wales\)%20bill%20-%20explanatory%20memorandum/pri-ld9758-em-e.pdf](http://www.assembly.wales/laid%20documents/pri-ld9758-em%20%20-%20higher%20education%20%20(wales)%20bill%20-%20explanatory%20memorandum/pri-ld9758-em-e.pdf)> (Accessed: 28 March 2019).

³ HEFCW, Financial Management Code 2017

1.6 It is worth noting that the safeguarding of academic freedom was a sector-wide concern brought to the fore during the white paper and technical consultation process. It is a principle that Cardiff University holds in the highest regard; a university without academic freedom is a university in name only. We believe that future Acts may necessitate a written enshrinement of the Haldane Principle.

1.7 The Act's implications for quality assessment are yet to be fully realised. Further information is provided below.

2. How well are the Act's overall arrangements working in practice, including any actions your organisation has had to take under the Act?

2.1 Cardiff University has a strong relationship with HEFCW. On an operational level we welcome HEFCW's consultation and networking events, in particular those that assist with our Fee and Access Plans and our monitoring of compliance and effectiveness. These events are indicative of the open dialogue in which we engage with HEFCW, which is also conducive to the sharing of ideas and experiences with other institutions.

2.2 HEFCW are operating in a transparent and inclusive manner, and have been open to external scrutiny and advice. For example, the Advance HE Review commissioned by HEFCW made some helpful recommendations in relation to the Fee and Access Plan.

2.3 Similarly, the requirement to publish Fee and Access Plans externally allows institutions to share how their widening participation work has evolved and the reasoning behind their focus on certain under-represented groups.

2.4 At present, the effectiveness of the Act's *overall arrangements* is difficult to evaluate, in particular with regards to quality assessment. The final version of the Quality Assessment Framework (QAF) for HEFCW was published in March 2018. The QAF sets out the mechanisms through which HEFCW will assure itself that the quality of education, or a course of education, provided by or on behalf of regulated institutions meets the needs of those receiving it. As the QAF is fundamental to the workings of the Act, particularly Part 3, it will be essential to evaluate the operation of the QAF in order to assess the Act's overall arrangements.

2.5 It would be beneficial to consider how the Act is integrated consistently through all processes operated via HEFCW, ensuring a joined-up approach to discussions and requests for data. This would avoid duplication of process, administrative burden and a clearer understanding of how the Act was designed to work in practice. It would also enable regulated providers to understand their obligations in a holistic way.

- 2.6 Any subsequent updates to HEFCW'S statement of intervention judging the quality of education provided by or on behalf of a regulated institution is (likely to become) inadequate.
- 2.7 We have comments regarding both Fee and Access Plans and Compliance and Effectiveness Reports, but these are matters of detail rather than principle.
- 2.8 The new format for reporting compliance and effectiveness introduced for 2017/18 is welcome. It set out a clear structure for information required and is no longer limited to progress against targets. The report was more challenging for institutions to complete but provided better insights.
- 2.9 We feel there should be a minimum of 12 weeks between the publication of guidance and final templates by HEFCW (or successor body) and the deadline for submission of the documents by universities. The current interval of 7 weeks or less does not allow institutions to respond properly to changes in the guidance or to involve governing bodies (which may meet infrequently) in the development of the plans.
- 2.10 Also, the Fee and Access Plan Guidance has followed a similar format for a number of years and would benefit from being reviewed, refreshed and reduced, taking into account the Advance HE review recommendations and the new approach and documentation published by the Office for Students in England. Consideration could be given to arguments for a move to longer term planning, potentially on a five-year cycle.

3. Are the costs of the Act, or your organisation's own costs for actions taken under the Act, in-line with what Welsh Government stated they'd be?

- 3.1 We recognise the importance of a robust regulatory framework that is appropriately funded but in the current climate of financial pressures and uncertainty we would encourage a review of the requirements of the Fee & Access Plan as the level of administrative activity required to comply with the Act appears disproportionate to the benefits.

4. Has the Act achieved value for money?

- 4.1 We would defer to the Welsh Government to make this assessment with regards to the Act and its entire remit.
- 4.2 However, in terms of public benefit we are able to indicate that our positive impact on the Welsh economy has continued its upward trajectory since enactment. London Economics, one of Europe's leading specialist policy and economics consultancies, has calculated Cardiff University's annual economic impact for three academic years, showing it steadily increasing:

- in 2012/13 it was estimated to be £2.04 billion in Wales;⁴
- in 2014/15 it grew to be £2.2 billion in Wales and;⁵
- in 2016/17 it grew again to be £2.37 billion in Wales⁶

4.3 We would not wish to emphatically declare correlation equalling causation, but the most recent data indicates no adverse effect to economic benefit.

5. Have there been any unintended or negative consequences arising from the Act?

- 5.1 As identified in our response to question 2, the constituent parts of the Act have been implemented at different times making it difficult to evaluate the holistic workings intended. We would suggest that any further revisions and accompanying consultations are considered holistically rather than in separate parts.
- 5.2 The requirement to insert reference to the Act within all collaborative arrangements has been problematic due to the timings of reviews with partnerships. The Fee and Access Plan requires confirmation that the clause has been added into all partnership agreements with a Yes/No comment. For Welsh partnerships this has caused minimal action as it is a requirement of all regulated institutions. Difficulties have arisen in explaining the purpose of the clause with regulated/external providers outside of Wales, with further difficulties experienced for international partnerships with educational provision. Further work is needed in this area to ensure that the requirements of the Act are carefully managed through the information required in the Fee and Access plan to ensure consistency.
- 5.3 Cardiff University has had to seek independent legal advice on the requirements of this clause as many international partnerships are uncomfortable with it being added to any institutional agreement. This adds an additional burden when trying to foster long lasting relationships in a competitive educational environment. This additional burden does not exist for our Russell Group colleagues.
- 5.4 International partnerships are central to the higher education mission, and will be increasingly important post-Brexit. Indeed, we have a number of international partnerships with institutions across the world, including: the

⁴ M. Halterbeck and G. Conlon, *The economic and social impact of Cardiff University*, (London: London Economics, 2015), <<https://londoneconomics.co.uk/wp-content/uploads/2015/10/LE-Economic-and-social-impact-of-CU-Full-Report-October-2015.pdf>> (Accessed: 28 March 2019).

⁵ M. Halterbeck and G. Conlon, *The economic and social impact of Cardiff University: 2014-15 update*, (London: London Economics, 2016), <https://www.cardiff.ac.uk/_data/assets/pdf_file/0018/520515/The-economic-and-social-impact-of-Cardiff-University-2014-15-update.pdf> (Accessed: 28 March 2019).

⁶ M. Halterbeck and G. Conlon, *The economic and social impact of Cardiff University in 2016-17*, (London: London Economics, 2018), <http://www.cardiff.ac.uk/_data/assets/pdf_file/0004/521788/LE-Economic-and-social-impact-of-CU-2016-17-update-11-10-2018-FINAL.pdf> (Accessed: 28 March 2019).

Katholieke Universiteit (KU) Leuven in Belgium; Xiamen University in China; the University of Namibia (UNAM) and; the University of Campinas (Unicamp) in São Paulo, Brazil.⁷

5.5 Most recently we have signed a partnership agreement with the University of Bremen in Germany in order to strengthen our European relations before Brexit.⁸ The ‘Bremen-Cardiff Alliance’ was signed on 8 March 2019 and facilitates the development of joint research activities and new forms of academic cooperation between the institutions.

5.6 Further clarification is needed on subsection 17(2) of the Act:

“For the purposes of subsection (1), education provided outside Wales is to be treated as provided in Wales if it is provided as part of a course that is provided principally in Wales.”⁹

5.7 Clarification is needed on what constitutes ‘a course that is provided principally in Wales’. It would be helpful to have further guidance on upper/lower limits of provision in order to be treated as provided in Wales.

5.8 Further clarification is also needed on subsections 17 (3) and 21 (2) of the Act:

“In this Act, references to an external provider are references to a person who—

(a) is not a regulated institution, but

(b) is responsible for providing all or part of a course of education on behalf of a regulated institution.”¹⁰

“The governing body of an external provider must ensure that a person exercising a function by virtue of section 17 or 20(2) is provided with such information, assistance and access to the external provider’s facilities as the person reasonably requires for the purpose of exercising the function (including for the purpose of exercising any power under section 22).”¹¹

5.9 Clarification is needed on whether these subsections refer to international partners where the Act has limited if no jurisdiction. Given that we have incurred extra financial burdens in this area, it would be helpful to have an additional point(s) relating to guidance with international partners.

⁷ Cardiff University, *International partnerships*, 2019, <<https://www.cardiff.ac.uk/international/international-partnerships>> (Accessed: 28 March 2019).

⁸ Cardiff University, *Cardiff and Bremen universities sign partnership*, 2019, <<https://www.cardiff.ac.uk/news/view/1465661-cardiff-and-bremen-universities-sign-partnership>> (Accessed: 28 March 2019).

⁹ *Higher Education (Wales) Act 2015* (anaw 1) (legislation from the National Assembly for Wales) <<http://www.legislation.gov.uk/anaw/2015/1/section/17/enacted>> (Accessed: 28 March 2019).

¹⁰ *Higher Education (Wales) Act*, 2015, p. 10.

¹¹ *Ibid*, p. 11.

- 5.10 The meaning in the Act of ‘equality of opportunity and promotion of higher education’ is unclear.¹² For example, it is not clear as to whether this related to raising aspirations, civic mission or engagement activities. Furthermore, clarity is needed as to whether this is limited to children/young people, or if the intention is for broader promotion.
- 5.11 The most obvious interpretation of the legislation and its explanatory notes is that this is a single area of activity aimed at increasing the participation, retention and success of students from under-represented groups.
- 5.12 However, HEFCW’s interpretation is that these are two separate areas of activity, one of which (equality of opportunity) applies to under-represented groups and the other of which (promotion of higher education) does not. Under this second interpretation it is not clear what ‘promotion of higher education’ means and what it should include. This risks leading to lengthy, wide-ranging and unfocused Plans. The equivalent legislation in England refers only to equality of opportunity.

6. Are there any lessons to be learned from the Act and how it is working in practice that may be relevant to the proposed Post-compulsory Education, Training and Research (PCTER) Bill?

- 6.1 To restate the basic position, Welsh Government’s 2018 consultation on the ‘Tertiary Education and Research Commission for Wales’ made clear that the PCTER Bill’s fundamental purpose will be to bring together all post-16 education, training and research.¹³
- 6.2 To achieve this change, a single regulator (since named the Commission for Tertiary Education and Research [CTER]) will be created to have oversight of a large swathe of PCTER providers. The Welsh Government should consider how legislation can ensure positive relations with the new regulatory authority as well as the large range of providers it will be regulating.
- 6.3 As outlined above, there is institutional knowledge and a strong understanding of the higher education sector at HEFCW. The PCTER Bill should be careful to avoid displacing HEFCW’s expertise and the valuable relationships that have been nurtured over time. To do so would be to the significant detriment of Welsh universities.
- 6.4 To safeguard the unique value of higher education, the PCTER Bill should explicitly include a commitment to the Haldane Principle, which maintains that decisions on research funding should be made by researchers or that

¹² Ibid, p. 5.

¹³ Welsh Government, *Public Good and a Prosperous Wales – the next steps* (2018) <<https://gov.wales/sites/default/files/consultations/2018-04/180423-tertiary-education-and-research-commission-for-wales-consultation-document.pdf>> (Accessed: 28 March 2019).

“decisions should be made as close as possible to the researchers actually carrying out the research”.¹⁴

- 6.5 Indeed, UK Government enshrined the principle in its own Higher Education Act 2017, doing so to specifically ensure no political interference in research.^{15 16}
- 6.6 The Haldane Principle does not preclude public benefit from being delivered and we are keenly aware of the need for universities to fulfil their civic missions to the communities of which they are part. Similarly, we would understand frustrations from those outside the HE sector that a combined Commission would be regulating providers (i.e. sixth forms, further education and higher education) in different ways.
- 6.7 However, we are a research-intensive university and Wales’s only member of the Russell Group. The specific value of a university is the application of scientific methods and insights delivered by such methods. Aligning the PCTER sector should not mean a flattening out of the respective strengths of providers.
- 6.8 We would be very concerned if the regulatory frameworks of HE or FE would be transposed onto one another without appropriate consultation and consideration of the impact(s).
- 6.9 There is also a balance to be struck between support and scrutiny, as well as ensuring opportunities for dialogue that could be enshrined in the legislation, or secondary legislative instruments.
- 6.10 We would also like to reiterate that the PCTER Bill should acknowledge the importance of international cooperation for higher education and should not include any barriers to such cooperation.
- 6.11 International activity is neither to the detriment of the Welsh economy nor are its particular benefits replicable within national borders. International collaborations are vital for the strength of universities, with the leading edge of science, research and innovation found at the international level. International research also allows for the sharing of resources not readily available within a single nation.¹⁷
- 6.12 An international outlook is also of considerable benefit to the Welsh economy. A 2017 report by Viewforth Consulting for Universities Wales

¹⁴ P. Nurse, ‘Address of the President, Sir Paul Nurse, Given at the Anniversary Meeting on 30 November 2011’, *Notes and Records of the Royal Society of London*, 66(1) (2012), 89-93 (p. 91).

¹⁵ *Higher Education and Research Act 2017*, c. 29.(London: The Stationery Office, 2017)

<<http://www.legislation.gov.uk/ukpga/2017/29/section/103/enacted>> (Accessed: 28 March 2019).

¹⁶ P. Ghosh, *Minister to enshrine protection for research independence*, 2017, <<https://www.bbc.co.uk/news/science-environment-39078281>> (Accessed: 29 March 2019).

¹⁷ J. Adams and K. A. Gurney, *The Implications of International Research Collaboration for UK Universities*, (London: Digital Science, 2016), <<https://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/International/implications-research-digital-collaboration-uk-universities.pdf>> (Accessed: 29 March 2019)

evidenced the positive effect on the Welsh economy created by international students. Analysing the economic impact on Wales of the 22,190 international students studying at the eight universities in Wales during 2015/16, it showed the students and their visitors generated:

- £487m of export earnings (equivalent to 3.7% of all 2015 Welsh exports);
- £716m of Welsh output and;
- £372m of Welsh Gross Value Added (GVA).¹⁸

6.13 Similarly, a 2018 report by London Economics for the Higher Education Policy Institute and Kaplan International Pathways showed that the international students in Wales's Assembly/UK Parliament constituencies provided a net benefit of £900.7m to the UK economy, with the 3,225 international students of the four Cardiff and Penarth constituencies contributing £244.7m alone.¹⁹

7. Are there any lessons to be learned from how this Act was prepared in 2014/15 (formulated, consulted on, drafted etc.)?

7.1 No comments to add to those above.

¹⁸ U. Kelly and I. McNicoll, *The Economic Impact of International Students in Wales*, (Cardiff: Universities Wales, 2017), <<http://uniswales.ac.uk/media/Unis-Wales-international-student-research.pdf>> (Accessed: 29 March 2019).

¹⁹ G. Conlon, M. Halterbeck and J. Julius, *The costs and benefits of international students by parliamentary constituency*, (London: London Economics, 2018), <<https://www.hepi.ac.uk/wp-content/uploads/2018/01/Economic-benefits-of-international-students-by-constituency-Final-11-01-2018.pdf>> (Accessed: 29 March 2019).