

FAO: David Melding, AM (Chair)
c/o Gareth Williams (Clerk)
Constitutional and Legislative Affairs Committee

Dear David

HE (Wales) Bill

We wonder if the Constitutional and Legislative Affairs Committee will consider making a Stage 1 report in relation to the HE (Wales) Bill, introduced on 19 May 2014? As anticipated the Bill proposes major changes to the regulatory system for universities in Wales, and is a substantive and complex piece of legislation. At this stage, in advance of reaching a firm view on the contents of the Bill, we would like to make sure – in the interests of all parties – that the Bill benefits from full scrutiny and due process and there are a number of issues which we feel may benefit from your Committee's attention.

In particular,

- The Bill leaves many of the proposals of the Technical consultation to be dealt with through subsequent subordinate legislation, which makes it difficult to fully assess the impact of the Bill and consequent changes particularly in terms of their impact for key issues such as universities' charity status and classification for purposes of national accounting.
- In the light of the above, a key concern is that in the large majority of cases, the negative resolution procedure is proposed which means that the legislation can be passed automatically without consultation or requiring a majority vote. It also means that the legislation cannot be amended, and must be accepted or rejected as a whole.
- The extensive use of regulations also raises issues about the commencement and feasibility of implementation of the Bill, intended to apply for 2016/17. It is clear that the Bill cannot be implemented without the prior exercise of many of these powers. We also note that the transitional arrangements appear to depend in part on what regulations are brought into force in the transitional period.
- In three instances, the Bill incorporates powers to amend either the Act itself or other primary legislation through the means of subsequent regulations (i.e. 'Henry VIII powers'). In the past such powers have been controversial and used with great caution, since changes to primary legislation may be made without the normal oversight of the Assembly.
- The Bill also confers significant new powers on HEFCW which are legislative and judicial in character. This includes, for instance, new statutory powers to issue guidance which is mandatory for institutions to take account of, wide powers to determine and enforce fee plan requirements, and the ability determine and enforce a financial code. We would welcome comments on the use of these.

- We submitted evidence to your Committee's Inquiry on law-making in the 4th Assembly, prior to the introduction of the Bill on 19 May 2014, which raised concerns about the lack of prior consultation on a Draft Bill. We would welcome the committees dealing with this Bill being mindful of the potential need for flexibility in reviewing the Stage 1 timescales in this light.

We are currently preparing a response for the Children & Young People Committee by 18 June 2014, and would be happy to submit further comments at that stage if you would find it helpful.

Best wishes

Ben

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