



THE LEARNED SOCIETY OF WALES
CYMDEITHAS DDYSGEDIG CYMRU

CELEBRATING SCHOLARSHIP AND SERVING THE NATION
DATHLU YSGOLHEICTOD A GWASANAETHU'R GENEDL

The Learned Society of Wales
The University Registry
King Edward VII Avenue
Cathays Park
Cardiff CF10 3NS

☎ 029 2037 6951

✉ president@lsw.wales.ac.uk
www.learnedsocietywales.ac.uk

From the Office of the President
Sir Emyr Jones Parry GCMG FInstP PLSW

Ms Sarah Bartlett
Deputy Clerk
The Children, Young People and Education Committee
The National Assembly for Wales
Cardiff Bay
Cardiff CF99 1NA

19 June 2014

Ref: LSW/EJP/2014

Dear Ms Bartlett

**Children, Young People and Education Committee of the National Assembly for Wales –
Committee Consultation: the Higher Education (Wales) Bill**

Further to the invitation to submit written evidence on the general principles of the Higher Education (Wales) Bill which was issued by the Chair of the Committee, Ann Jones AM, on 21 May, I am pleased to provide herewith the initial response of the Learned Society of Wales, submitted in the name of the Council of the Society. The Society would welcome the opportunity to provide further evidence during one of the Committee's planned oral evidence sessions.

It is appropriate that substantive issues affecting higher education in Wales should be dealt with by primary legislation. The Society recognises the importance of addressing the accountability and regulation of the sector, particularly when the funding of universities is being transformed and individual institutions face an increasingly competitive environment. As institutions they are accountable to staff and students, to their communities and beyond, to government for those public funds which they receive, and must meet the requirements of the law.

The Explanatory Memorandum to the Bill sets the preservation of institutional autonomy and academic freedom as one of its primary purposes. We agree. The autonomy of our universities has been and remains one of the great strengths of higher education in Wales and across the United Kingdom. The Society has previously argued strongly in support of the maintenance of this autonomy, writing in its response to the consultation on the Government's July 2012 White Paper on the Further and Higher Education (Wales) Bill, WG14745 (<http://learnedsocietywales.ac.uk/sites/default/files/White%20Paper%20F%20%26%20H%20Education%20Bill%20Consultation%20-%20Learned%20Society%20of%20Wales%20Comments.pdf>):

We firmly believe that universities must operate at arms length from Government with regard to what and how they teach and research [and that] ... the principles of non-interference and university autonomy should be written into forthcoming legislation.

*Royal Patron – HRH The Prince of Wales
Noddwr Brenhinol – EUB Tywysog Cymru*

You are welcome to correspond with the Society in either Welsh or English ♦ Mae yna groeso i chi ohebu â'r Gymdeithas yn y Gymraeg neu'r Saesneg

While such autonomy cannot be wholly unfettered, the line between ensuring an appropriate and proportionate level of accountability and jeopardising the autonomy of our universities can be a fine one. The Bill as currently drafted will provide the Government with much greater powers to regulate – indeed, perhaps, to micro-manage - the affairs of our universities. HEFCW is given various enforcement powers and an obligation to report to, and accept guidance (i.e. instructions) from the Welsh Government on the exercise of those powers. Is this appropriate and does it change fundamentally the role of a funding council? This is a particularly relevant question given that public funding as a proportion of overall university income has fallen significantly in recent years.

This is an example of a basic theme underlying our approach to the Bill. Many of its aspirations are widely shared. But are the proposals proportionate and do they reflect fully the interests, roles and responsibilities respectively of government, HEFCW, and the universities? What is the impact on partnership and what needs legislation?

Other questions arise in the Bill.

Provisions on financial management are necessary and many exist only. What is the value added by the Bill and are its provisions proportionate and consistent with autonomy?

Language on the new regulatory framework applies this to ‘all providers ... which seek automatic designation of their higher education courses for the purposes of student support’. Is that a blanket approval for an institution or is it approval extending into the detail of individual courses offered? Where does this leave the QAA and is there an aim to establish a similar organisation within Wales?

The shift away from direct government funding has implications for sustainability and reliability of funding for individual institutions. Fee plans are part of the existing approval of fee levels. They impose a requirement to support a range of activities, not all of which are core activities, and from which the fee paying students may not always benefit. How does that sit with universities’ ability and freedom to deliver sustainable futures for their institutions?

The Bill itself does not appear to threaten the charitable status of higher education; indeed that status is an objective of the Bill. It will be important that subsidiary legislation does not affect that position. We note that the Bill does not fully implement all the provisions of the Technical consultation of June 2013. This raises the issue of subsequent legislative provision.

The Society also wishes to comment in particular in response to the question posed in the invitation letter, *What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (ie statutory instruments, including regulations, orders and directions)?* The inclusion in the Bill of the power subsequently to define and make amendments to existing provisions through subordinate legislation and regulations makes it difficult to assess the impact of the Bill. This is of considerable concern to the Society and we consider that it is contrary to the proper exercise of democracy. We have already, in our response to the Constitutional Affairs Committee’s Inquiry into *Making Laws in the Fourth Assembly* commented in general terms on the practice of reserving powers to government to amend legislation in this way:

The practice of reserving powers to government to amend what appears on the face of a primary enactment by means of subordinate legislation – so-called ‘Henry VIII powers’ – is a particular cause of concern in this regard. If a correct choice has been made initially with regard to what democratic principle requires to appear on the face of an enactment, any suggestion that what appears there can thereafter be changed without a similar level of scrutiny deserves to be treated with suspicion. There have been some bad examples of this in bills before the Fourth Assembly, notably the Education Bill and the Social Services and Well-Being Bill, both lengthy and large-scale enactments. The latter, as enacted, would appear to allow the meaning of key concepts in the law to be changed by regulations, despite the clear criticism made at Stage One that this ‘flexibility and future-proofing’ was being bought ‘at the expense of having a clear understanding of what the Bill will deliver’ (CLAC Report, ¶ 61).

These concerns apply equally in the case of the Higher Education (Wales) Bill.

This response is being submitted by email to the address given in the invitation letter (CYPCommittee@wales.gov.uk) and a hard copy follows by post. I would welcome confirmation of receipt of this letter.

Yours sincerely

A handwritten signature in black ink, reading "Emyr Jones Parry". The signature is written in a cursive, slightly slanted style.

Sir Emyr Jones Parry
President and Chair of Council