



Llywodraeth Cymru
Welsh Government

Draft Tertiary Education and Research (Wales) Bill

Responses should be returned by 4 December 2020 to:

PCET Team
Higher Education
Welsh Government
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or completed electronically and sent to:

e-mail: PCETReform@gov.wales

**Consultation
Response Form**

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Civic mission

The Draft Bill (Section 7(4)) defines “civic mission” to mean “action for the purpose of promoting or improving the economic, social, environmental or cultural well-being of Wales (including action that may achieve any of the well-being goals in section 4 of the Well-being of Future Generations (Wales) Act 2015.”

1. Do you agree the approach taken to civic mission in the Draft Bill will be useful to the Commission in discharging its functions?

Yes

No

Neither Yes or No

Please add any additional comments in the box below:

Yes, as we support efforts to improve the economic, social, environmental and cultural well-being of Wales and we recognise the crucial role that tertiary education can play in supporting these efforts. It is also acknowledged that Welsh universities enrol students from other parts of the UK and abroad, which enhances their civic mission beyond borders.

The needs of the learner

Learner Protection

2. The Commission will need to determine the format and contents of Learner Protection Plans in consultation with stakeholders (Section 114(6) and (7)), including how the plans are to be communicated to learners and prospective learners. Do you agree with this approach?

Yes

No

Neither Yes or No

Please add any additional comments in the box below:

Neither Yes nor No. In principle, we support the development of these plans in detailed consultation with stakeholders including tertiary education providers, learners and learner representatives, to ensure that learners can have confidence in their continued education or training. However, we would welcome more specific guidance on Section 114(7) on who exactly should be consulted, and we would particularly welcome a reference to consulting with learners to ensure their voice is heard.

Learner Engagement Code (Section 117)

3. The Commission's aim will be to ensure that the interests of learners are represented, and every learner has the opportunity to participate and give their views. Are you confident that the Learner Engagement Code is likely to be inclusive of all learners, and sufficiently representative of the whole of the Post-16 sector?

Yes

No

Neither Yes or No

Please add any additional comments in the box below:

Yes. We broadly welcome the proposed Learner Engagement Code as it is right to have learner engagement at the heart of the tertiary education system. This does provide an opportunity for significant development on learner engagement in the further education sector, and we hope that the Code can suit the needs of learners in each element of the tertiary system, while avoiding a "one size fits all" approach. Universities currently have student charters and other local initiatives and we would welcome an opportunity to evaluate their impact in advance of development of the Learner Engagement Code, so that any duplication of work can be avoided, and that the whole tertiary sector can benefit from the lessons learned from these existing initiatives. It will be essential for the Learner Engagement Code to be developed in close dialogue with the tertiary sector, and not be too detailed or prescriptive.

The Quality Assurance Agency for Higher Education (QAA) has previously worked in partnership with NUS Wales, HEFCW and Universities Wales by convening and supporting the Welsh Initiative for Student Engagement (WISE). QAA also worked with WISE in discussions on the quality review processes in Wales, and how HEIs can work in partnership with their students in review related activity. QAA would be willing to work with HEIs and students again in the future as the Learner Engagement Code is developed and embedded.

Information, Advice and Guidance

4. The Draft Bill (Section 93) allows the Commission to fund information, advice or guidance for learners in Wales. Are there further considerations that should be taken into account to ensure that all learners receive advice or guidance to support learner pathways, transition and progression to enable them to make a contribution to, and succeed, in a fair and inclusive society and a thriving economy?

Yes

No

Neither Yes or No

Please add any additional comments in the box below:

Yes. We believe that the Commission should seek to learn from good practice in this area from across the UK. QAA has had recent experience in supporting learner pathways and transitions, as the Enhancement Theme model in Scotland, managed by QAA, has recently [had a 3-year project](#) looking at supporting students transition into, through and out of higher education, which Wales may wish to learn from. The Student Transitions Enhancement Theme included numerous events to support the tertiary sector in how they manage student transitions and produced many written resources which can be accessed on the Enhancement Themes website. Further to this, QAA have developed guidance for higher education providers on enterprise and entrepreneurship, which is another facet of the learner journey which should be considered when providing information for learners.

We believe the Commission should consider commissioning the designated quality body in future to undertake work to look at how they can support and enhance the learner's progression and transition experiences. We propose that the bill should include a reference to provisions enabling the designated quality body for learner enhancement purposes.

School sixth form reorganisation proposals

The Commission will have a role in relation to maintained school sixth form reorganisation. The Draft Bill enables the Commission to direct a local authority to bring forward re-organisation proposals, or bring forward its own proposals, in limited circumstances. The limitations on what would trigger such an approach would be consulted on and included in amendments to the statutory School Organisation Code.

- 5. Do you agree that the School Standards and Organisation code is the most appropriate vehicle for setting out the systems and processes and do you have any views on what those triggers should be?

Yes

No

Neither Yes or No

Please add any additional comments in the box below:

Strengthening collaboration

6. Part 3 of the Draft Bill provides functions to fund mainstream school sixth forms, further education, higher education, apprenticeships and adult learning and research and innovation related to educational providers. Do you think there are any further funding or other functions that will enable greater collaboration across the tertiary education sector?

Yes

No

Neither Yes or No

Please add any additional comments in the box below:

Yes, similar to our response to question 4, we believe the Commission could decide to allow the designated quality body to work across the tertiary sector to undertake research and facilitate events for supporting and enhancing the quality of the learning experience. For example, QAA has long had experience of working collaboratively across the HE sector in nations across the UK, using long-term [funded projects to enhance the student experience](#), and more funded activity of this nature in Wales could be of significant benefit to the tertiary sector, particularly as it seeks to learn from the potential benefits of greater collaboration between further and higher education in the years ahead. Previously, HEFCW would provide funding for enhancement initiatives in Wales, which included funding to support the development of the Welsh Initiative for Student Engagement (WISE); support for the development and maintenance of the Credit and Qualifications Framework in Wales (CQFW) and, in partnership with the Higher Education Academy, the development and dissemination of engagement themes in Wales, such as the Future Directions projects and conferences¹.

Further to this, in Scotland, and supported by the Scottish Funding Council for over seventeen years, the Scottish Enhancement Themes have allowed HEIs to collaborate on three-year, wide-scale projects covering areas for enhancement such as employability and graduate attributes; the first year experience; using evidence for enhancement; student transitions; and developing and supporting the curriculum. Scotland has also seen annual projects called "Focus On"¹ which allow the whole sector to work on areas for development that have been identified in institutional reviews, covering topics such as the postgraduate taught experience and using technology in learning and teaching. We believe Wales would greatly benefit from having funding allocated to allow these types of initiatives to support the tertiary education sector.

Welsh Language/Welsh-medium

We would like to know your views on the effects that the establishment of the Commission (Section 8) would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

7. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Please add any comments in the box below:

Welsh Language/Welsh-medium

8. Please also explain if you believe the provision included in the Draft Bill to establish the Commission could be formulated or changed so as to have increased positive effects on opportunities for people to use the Welsh language.

Please add any comments in the box below:

Welsh Language/Welsh-medium

9. What are your views on the duties to be placed on the Commission in relation to Welsh-medium tertiary education?

Please add any comments in the box below:

Registration

10. Do the proposals for Access and Opportunity Plans (Sections 32-41) go far enough in ensuring that the Commission has the powers to drive transformative change in widening access and opportunity in higher education?

Yes

No

Neither Yes or No

Please add any additional comments in the box below:

Registration

11. Will the proposed powers for the Commission to monitor, review, and ensure compliance with registration requirements (Sections 22-26) provide sufficient flexibility for it to regulate proportionately and appropriately?

Yes

No

Neither Yes or No

Please add any additional comments in the box below:

Neither Yes nor No. We have concerns that the wording may provide too much flexibility and could perhaps do with more specificity particularly with regards to quality assurance. While 13(1)(a) in the Bill notes that an initial condition of registration will require the Commission to be satisfied of the quality of the tertiary education on offer, the general and specific ongoing registration conditions do not refer to the requirement of continued high quality education. We would welcome a reference to quality education in the general or ongoing registration conditions, with oversight by the designated quality body.

In addition, more clarity should be given on transitional arrangements for institutions currently regulated by e.g. HEFCW, ensuring that this is seamless and does not cause unnecessary bureaucracy.

Quality

12. The Draft Bill (Sections 42-60) proposes a more aligned and coordinated approach to quality and inspection across tertiary education. Do the proposed arrangements find the right balance between building upon the current arrangements in higher education, further education and training and maintained school sixth forms and working towards a more aligned and coordinated approach across the tertiary education sector?

Yes

No

Neither Yes or No

Please add any additional comments in the box below:

Yes, and we welcome the opportunity that these proposals bring to create a more collaborative and cohesive approach to quality assurance across tertiary education in Wales. The proposed approach allows for separate expert bodies to focus on their particular areas of expertise in higher education and further education, but we welcome the opportunity that these bodies can collaborate further in the future and through the Commission in order to learn from best practice in terms of assuring and enhancing the student experience, and to help facilitate smooth transitions across individual, high-quality elements of the tertiary education system.

We welcome the proposals to allow the Commission to develop quality assurance frameworks. We would like to see 42(4) strengthened however, to ensure that the designated higher education quality body (as proposed in the bill), and students or student representatives are consulted as these quality assurance frameworks are developed. This will help ensure that the future quality frameworks fully reflect the needs and desires of the full tertiary education sector in Wales.

In section 46 of the draft bill, we welcome the proposals for quality assessment of higher education conducted at intervals specified in proposed regulations. We believe the bill would be further strengthened by making reference in 46(5) to the European Standards and Guidelines, particularly ESG Standard 1.10, which states "Institutions should undergo external quality assurance in line with the ESG on a cyclical basis." This could strengthen Wales' European credentials.

We generally support the proposals in Schedule 3 to create a designated body to perform assessment functions for higher education in Wales, although there are areas where we would welcome more clarification in a future iteration of the bill. As we have indicated in responses relating to other areas of the draft bill, we would like to see more specific requirements for the consultation of students in the process. The consultation process when identifying a designated body will be imperative in ensuring that a body is selected that the sector has trust and confidence in, so there is greater likelihood of collaboration, transparency and openness.

Schedule 3 also does not indicate for how long a designation period may last for, or if there is to be a procedure for renewal of the designation. We would welcome clarity on this. We believe the processes for removal of designation as outlined in the draft bill appear to be robust, and in order to allow for comparability and continuity of quality assessment in the long-term for Wales, we would welcome clarity in the Bill stating that the designation would remain in place unless there was a point in which removal was felt warranted by the Welsh Government.

We would also welcome clarification in the bill around the scope of function of the designated body, so that it has the ability to carry out wide-ranging enhancement activities that can support the entire tertiary education sector in collaboration with other stakeholders. The body should not just be there to carry out cyclical reviews, but should be there to provide an enhancement-led approach that can develop an excellent student experience for Wales, with events, publications and projects to support the enhancement of learning and teaching and the student experience.

While the draft bill does well to facilitate further collaboration and partnership working across the tertiary education sector in Wales, we would also welcome moves for the draft bill to make further mention of the importance of UK and international expertise when identifying a potential designated body to oversee quality. Higher education in Wales does not stand alone, and it will be important for the Commission to recognise the importance of UK and international comparisons and collaborations when identifying the quality body, so Wales can be world-leading in the future. We believe there will be benefits in learning from and consulting with quality assurance agencies that operate in tertiary education systems, such as Quality and Qualifications Ireland (QQI) and the Hong Kong Council for Accreditation of Academic and Vocational Qualifications (HKCAAVQ). QAA has a good working relationship with agencies like these across the globe, through its continued membership of networks such as the European Association for Quality Assurance in Higher Education (ENQA) and the International Network for Quality Assurance Agencies in Higher Education (INQAAHE), and would be able to support the development of a new approach for Wales with the support of these international partnerships and experiences.

We also note the proposal for the Commission to maintain a register of tertiary education providers in Wales, and we welcome that there will be conditions relating to the quality of education provided in this register.

Research and Innovation

13. Should the Commission's functions in relation to research and innovation (Sections 95-97) be broadened beyond just registered tertiary education providers?

Yes

No

Neither Yes or No

Please add any additional comments in the box below:

Apprenticeships

14. The Commission will be responsible for apprenticeship frameworks (Sections 104-107) and the Welsh Ministers will be responsible for the preparation and issuing of core requirements in the Welsh Apprenticeship Specification (WAS) (Sections 101-103). Do you agree with this balance of powers?

Yes

No

Neither Yes or No

Please add any additional comments in the box below:

Neither Yes nor No, as we believe it will be important for the Commission to have a central role of supporting and overseeing apprenticeships in Wales. However, we believe the legislation could do more to recognise the complexity of the landscape, and provide clarity over responsibilities over degree level apprenticeships (also known as higher education apprenticeships).

The Welsh Government's document on the statement of policy intent for secondary legislation seems to indicate that quality of apprenticeships will be a matter for the Chief Inspector, although on page 19 it does note there will be powers to amend or clarify the remit in response to unforeseen changes in the organisation, structure, or funding of education and training in Wales concerning the quality assurance and inspection of higher apprenticeships, including degree apprenticeships. We would like to see clarification, to indicate that the designated quality body for higher education in Wales will have involvement in the quality assurance of degree-level or higher education apprenticeships, with there also being scope for collaboration and partnership working via the Commission to ensure smooth operation of quality processes across apprenticeships of all levels.

Apprenticeships

15. Does the Draft Bill (Part 4) provide adequate strategic drivers to develop and maintain the integrity of apprenticeships in Wales, ensuring they meet industry requirements?

Yes

No

Neither Yes or No

Please add any additional comments in the box below:

See response to Question 14.

The needs of the economy and employers

16. The Commission has a duty to have regard to “the reasonable requirements of industry, commerce, finance, the professions and other employers regarding tertiary education and research and innovation” (Section 2(1)(b)). In your opinion, does this duty go far enough and do you think it will have a meaningful impact based on its current formulation?

Yes

No

Neither Yes or No

Please add any additional comments in the box below:

Yes, and we support the engagement of broader elements of society in the development of tertiary education and training. Collaboration amongst the sectors should be encouraged to create more opportunities for learners. However, institutional autonomy is also important, and we note the recognition of academic freedom of institutions in 2(1)(g).

Funding

A focus on outcomes:

17. The Draft Bill (section 79) provides for an approach to funding based on Outcome Agreements. This will allow the Commission, through its funding decisions and negotiations with funded bodies, to contribute to the achievement of the Welsh Ministers' strategic priorities for tertiary education and research. Please see the Explanatory Memorandum for details of the policy intention underpinning outcome agreements (paragraphs 3.56 -3.58 and 3.145 – 3.147 refer). Does this approach strike the right balance between strategic funding priorities and the needs of individual learning providers?

Yes

No

Neither Yes or No

Please add any additional comments in the box below:

Yes, but on the proviso that there is proportionality as regards the bureaucratic burden. It will be important for there to be a certain degree of flexibility with providers when it comes to the process, as while intended goals can be ambitious, it is important that providers are not penalised for having ambition in their Outcome Agreement, but not being able to complete all of their ambitious targets. Well-designed outcome agreements, backed by agreed long-term goals and defined medium-term priorities, which set out ambitions over more than one year provide a flexible, structured – yet responsive – way to co-ordinate progress at national level while respecting the autonomy and character of individual providers within the system.

We welcome the language used in the draft legislation which says an outcome agreement “may” be required. The COVID-19 pandemic has shown that degrees of flexibility may be required when it comes to finding arrangements at certain points, and any system with outcome agreements should allow for flexibility to adapt to changing circumstances when required.

Regulatory Impact Assessment

18. The financial implications of the Draft Bill are set out in Part 2 of the Draft Explanatory Memorandum. Please consider whether you think our costings need to take account of anything else?

Please add any comments in the box below:

Yes. While the explanatory memorandum does state that the designated quality body for higher education will have the power to charge higher education providers fees, as is the current arrangement between higher education providers and QAA, there does not seem to be an indication of opportunities for more direct or targeted funding to be provided by the Commission to the quality body to support enhancement activity for the sector. For example, HEFCW previously allocated funding to QAA in Wales for enhancement activity from 1997 until 2016, and in Scotland, QAA continues to receive support from the Scottish Funding Council in order to operate specific enhancement activities, such as the Enhancement Themes, and the annual Enhancement Conference, which have been of great use to the sector as they work to enhance their student experience. Conversations with stakeholders in Wales have indicated that they would like to see a greater enhancement-led approach to quality of higher education in Wales, and funding provided by the Commission to facilitate this would have a significant positive impact.

Regulatory Impact Assessment

19. We would like you to consider the possible costs and benefits to specific bodies, institutions, organisations or individuals as a result of the Draft Bill. Please provide any comments or evidence here:

Please add any comments in the box below:

Yes, further to our answer to Question 18, further funding from the Commission to the designated quality body for higher education could allow for an expansion of activity dedicated to enhancing the quality of provision in Wales. Currently, QAA has limited capacity for work beyond reviews, further funding could see an expansion of this allowing for more targeted enhancement activity in the sector, such as sector-driven Welsh Enhancement Themes and Enhancement Conferences for the Welsh sector. Additional funding would also help facilitate greater collaboration between further and higher education in terms of quality assurance and enhancement, leading to opportunities for more consistent high-quality education across the tertiary sector, and an improved student experience.

New Normal

20. Do you think the pandemic causes particular issues for anything we propose in the Draft Bill?

Yes

No

Neither Yes or No

Please add any additional comments in the box below:

Yes and no. It seems that these proposals can work for a tertiary education sector that is flexible and able to provide teaching online when necessary. What the pandemic has shown is that there must always be room for flexibility in provision (providing it remains high quality), with flexibility in funding as well. The Welsh Government and the Commission in the future must be able to provide emergency funding at short notice should another crisis emerge in the future.

PCET Reform

21. The Bill is a legislative vehicle to create a new body; the Commission for Tertiary Education and Research. Are there any additional levers that can be used to establish the cultural change needed to deliver the aims of the PCET reform agenda?

Yes

No

Neither Yes or No

Please add any additional comments in the box below:

Yes. We believe that the designated quality body for higher education could have a role in facilitating more collaboration across the higher education sector through enhancement-led activities and events, which could focus not only on how to enhance the quality of learning and teaching, but also on how to ensure an excellent student experience. Further, collaboration between Estyn and the designated quality body could focus on smooth transitions across the tertiary education sector, and a broad understanding of the numerous pathways that are available for learners to take. It could share best practice across sectors, help to break down barriers, and facilitate activity such as joint training for staff, or thematic reviews on issues of cross-sectoral interest. Resources from the Commission to support these approaches would be welcome.

22. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

Please add any comments in the box below:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: