

Cyflwynwyd yr ymateb hwn i ymchwiliad y [Pwyllgor Plant, Pobl Ifanc ac Addysg](#) i egwyddorion cyffredinol y [Bil Addysg Drydyddol ac Ymchwil \(Cymru\)](#)

This response was submitted to the [Children, Young People and Education Committee](#) inquiry into the general principles of the [Tertiary Education and Research \(Wales\) Bill](#)

TER 22

Ymateb gan: Prifysgol Caerdydd

Response from: Cardiff University

1. Overview

- 1.1 In responding to the previous Bill, Cardiff University welcomed the broad underlying principles of closer collaboration between Higher Education and Further Education. We did, however, argue that much more needed to be done both within and beyond the legislation to change the narrative to imagine a HE system that is less isolated, more responsive and more deeply partnered with other aspects of society and the economy.
- 1.2 We recognise the strong progress that has been made in some areas as part of the Bill's redrafting. These are set out in brief below to acknowledge the changes which we strongly welcome:
 - **Civic Mission:** We had previously expressed concern about whether the proposed definition of Civic Mission might be too specific and could potentially interfere with universities' charitable objectives – both of these concerns have been addressed. We would still, however, make the point that any duty on Civic Mission needs to be matched by a long-term funding mechanism.
 - **University governance:** The scaling back of some powers, including those on Fee & Access / Access & Opportunity plans, demonstrate that the Welsh Government has listened and responded to the sector's concerns.
 - **Freedom of expression:** The initial draft Bill left open the possibility that Wales may seek to follow the lead of England's Freedom of Speech (Higher Education) Bill, potentially opening up a 'culture war' within Welsh HE. The revised Bill is much clearer, setting out a duty for CTER to protect academic 'freedom of speech', which we would regard as uncontentious and consistent with the current approach in Wales.



THE QUEEN'S
ANNIVERSARY PRIZES
FOR HIGHER AND FURTHER EDUCATION
2015



INVESTORS
IN PEOPLE



UK Quality Assured
Sicrwydd Ansawdd y DU

Registered Charity No. 1136855
Elusen Gofrestredig Rhif. 1136855

- 1.3 Whilst welcoming these areas of progress, there are other areas where we feel the Bill still requires amending in order to bring about the changes set out in 1.1 above, and these are set out in the sections below. We strongly urge the Children, Young People & Education Committee to consider endorsing and amplifying these points as part of your own scrutiny, and would urge you to consider recommending amendments to address the points raised.

2. Strategic duties

- 2.1 Whilst the addition of nine strategic duties to the Bill is a welcome step which addresses some previous concern about a potential lack of direction to the legislation, the proposed duties themselves are arguably limited in both scope and ambition.
- 2.2 For example, we would question whether Duty 3 (*"Encouraging participation in tertiary education"*) is adequate; simply increasing participation is no guarantee of good student outcomes, so we would recommend an amended duty which seeks to measure and improve the impact of education on students.
- 2.3 Likewise, Duty 6 (*"Contributing to a sustainable and innovative economy"*) is presumably designed to cover the research aspirations of providers but fails to articulate the huge importance of universities in particular to shape economic growth. As Universities Wales have noted¹, there should be specific and much more ambitious strategic duty specifically focussed on research and innovation – we would strongly endorse this call.
- 2.4 Wales might usefully follow the lead set by the Scottish Funding Council² in setting out a clear and ambitious strategic framework. Its mission statement, to *"create and sustain a world-leading system of tertiary education, research and innovation that changes lives for the better, enriches society and supports sustainable and inclusive economic growth"*, offers a robust sense of purpose. It has also recently been underscored by a review³ which will kick-start the development of a performance framework for a tertiary education sector. This will see the regulator work collaboratively with the sector, students and key stakeholders to provide greater clarity about expected outcomes for students, research impact, economic and social renewal, and leadership for the climate emergency, equalities and fair work. It would provide the overarching context for a more targeted Outcome Agreement negotiation between the regulator and tertiary education institutions. This feels like a much clearer and more collaborative path to policy development than that envisaged for Wales under the new Bill.

¹ Universities Wales (2021) [Evidence to Children & Young People Committee scrutiny of Tertiary Education & Research \(Wales\) Bill](#), Senedd website (accessed 3 December 2021): para 6.5.

² Scottish Funding Council (2019) [Scottish Funding Council Strategic Framework 2019-2022](#), Edinburgh: Scottish Funding Council.

³ Scottish Funding Council (2021) [Coherent Provision and Sustainability: a review of tertiary education and research](#), Edinburgh: Scottish Funding Council.

3. Research

3.1 In responding to the draft Bill in 2020, Cardiff University argued robustly that all recommendations of the 2018 Reid review⁴ should be implemented in full before the establishment of CTER as an act of good faith over the place of R&I within the new setup. This is an area over which we remain extremely concerned at the lack of progress in the revised Bill. The economic effects of the COVID-19 pandemic and of Brexit make it essential that the Welsh Government implements the outstanding, accepted recommendations of the Reid review, namely:

- Maintain quality related (QR) research funding to preserve academic autonomy.
- Increase HEFCW's innovation and engagement to £25m (it is currently £15m⁵).
- Create a £30m Future of Wales Fund, rewarding institutions that attract investment into Wales.
- Establish a £35m St David's Investment Fund including innovation competitions and hubs.

The last Senedd's Economy, Infrastructure & Skills Committee supported the implementation of these recommendations as a matter of urgency in its legacy report⁶. At present, we estimate that the Welsh Government is still c. £63m per year short of fulfilling its accepted Reid commitments, and this has a significant impact on university innovation in Wales. Universities are more important for R&D in Wales compared to the UK; in the last twenty years, HE expenditure on research has twice overtaken the private sector in Wales (this has not happened at the UK level).^{7,8} Recent evidence⁹ suggests the pandemic is disrupting universities' ability to collaborate with business; the impact is likely to be particularly acute in Wales where such collaboration is strongly needed¹⁰. For Wales to retain a strong and competitive HE research sector, it is imperative that the Welsh Government makes good on its commitment to implement Reid's recommendations, and that it does so prior to the establishment of any new Commission to oversee research – without it, the Commission will not have the tools to do its job effectively, and Welsh universities will be unable to deliver the innovation step-change Wales needs.

3.2 Elsewhere, there has been some welcome progress in terms of the governance of CTER's research committee, with the Commission now given power to appoint members rather than members being appointed by ministers. However,

⁴ Reid, G. (2018) [Review of Government Funded Research and Innovation in Wales](#), Wales: Welsh Government.

⁵ HEFCW (2021) [HEFCW's Funding Allocations 2021/22](#), Caerphilly: HEFCW.

⁶ Economy, Infrastructure & Skills Committee (2021) [Long-term recovery from COVID-19](#), Cardiff: Senedd Cymru.

⁷ StatsWales (2020) [Research and development expenditure in Wales by expenditure type and year](#), Cardiff: Welsh Government.

⁸ ONS (2020) [Research and development expenditure](#), Newport: ONS.

⁹ Ulrichsen, T. (2021) [Innovating During a Crisis: the effects of the COVID-19 pandemic on how universities contribute to innovation](#), London: National Centre for Universities & Business / University Commercialisation & Innovation Policy Exchange Unit.

¹⁰ Bristow, G. & Healy, A. (2020) [Evidence submitted to the Welsh Affairs Committee Inquiry into the impact of COVID-19 on the Welsh economy](#), UK Parliament website.

the Chair of the Research Wales Committee would still be a ministerial appointment; we would question whether this is necessary or desirable for a truly independent Commission.

- 3.3 On a related point, under the Bill as drafted, Welsh Government would gain powers to specify areas of research when setting the terms and conditions of funding for the Commission. To give the research sector consistent messaging, we believe any direction should reflect the five priorities for research, development and innovation set out by the First Minister in November 2021¹¹. Furthermore, as HEFCW has argued¹², clarity is needed around which areas of research will be funded by Welsh Government and which will be funded by the new Commission, so there is no confusion or conflict of responsibilities. Universities themselves also need to have the freedom within this setup to take their own decisions as well about research priorities¹³.

4. Independence of the new Commission

- 4.1 We argued previously that there was a need for further redrafting of the draft Bill to make clear the Commission's operation as an arms-length body. As drafted, the Bill would have given ministers powers over a swathe of issues which ought to lie within the purview of CTER. These included a power to modify CTER's strategy without the Commission's consent or any input from the FE and HE sectors. This remains a concern in the current Bill, and is something we believe undermines significantly the new Commission's independence, which is a fundamental concern.
- 4.2 More positively, we are reassured to see that the Bill does now require ministers and CTER to have regard to the importance of protecting the academic freedom of HE providers in Wales. Academic freedom is defined as (but not limited to) the freedom of providers to determine the:
- contents of particular HE courses and the how they are taught, supervised or assessed,
 - criteria for admission of students to HE courses and to apply those criteria in particular cases, and
 - criteria for the selection and appointment of academic staff and to apply those criteria in particular cases.

This is a significant and positive development which may help to address earlier concerns in relation to institutional autonomy and academic freedom. We would still, however, urge for the definition to also explicitly include the freedom for providers to determine the pursuit and focus of research and the methodologies employed to carry it out.

¹¹ Welsh Government (2021) [Written Statement: five priorities for research, development and innovation](#), Welsh Government website (accessed 3 December 2021).

¹² Higher Education Funding Council for Wales (2021) [Response to the Children, Young People & Education Committee inquiry into the general principles of the Tertiary Education and Research \(Wales\) Bill](#), Senedd website.

¹³ European Universities Association (2021) [University Autonomy in Europe](#), university-autonomy.eu website (accessed 19 November 2021).

5. Lack of detail / registration conditions

- 5.1 We stated that the original draft Bill left far too many powers within regulations and argued that any future changes to such major legislation should come before the Senedd rather than being decided by ministerial fiat.
- 5.2 In this respect, progress has been minimal. For example, Section 141 of the revised Bill contains significant Henry VIII powers allowing ministers to amend primary legislation through regulations. We share Universities Wales' concerns¹⁴ about this lack of detail in the Bill about many of its basic features including what the basic categories of registration will look like, to whom they will apply and what requirements they will contain. It would have been a reasonable expectation for these details to have been placed on the face of the Bill itself or in accompanying draft regulations. Instead, many important policy decisions appear to be left to future regulation, making it difficult to assess the workability of proposals.
- 5.3 More generally on the point of registration conditions, there is potential for a significant extra burden to be created, as well as for unintended consequences. Without clarity on the registration requirements and process, or of the ongoing regulatory processes, there remains a risk of an additional workload being created for institutions. The current arrangements for managing entry and maintaining standards in the sector have been very effective in Wales. Maintaining the regulation requirements at a proportionate level of burden for institutions (and the regulatory body) is urged.
- 5.4 Specifically, there is concern over Section 27 of the Bill, as it would allow the Commission to impose specific registration conditions for particular institutions on any matter that it sees fit, and at any time, subject only to a notification procedure. This leaves huge latitude for unexpected and disproportionate powers to be meted upon institutions at will. There is also the potential for unfair or unequal treatment of different providers.
- 5.5 Furthermore, when registering new providers, we recommend the retention of the requirement from the Higher Education (Wales) Act 2015 that designated Higher Education providers in Wales have to be charities. Including this would match existing requirements, but in doing so would act as an important check and balance.

6. Concern over the wider legislative context

¹⁴ Universities Wales (2021) [Evidence to Children & Young People Committee scrutiny of Tertiary Education & Research \(Wales\) Bill](#), Senedd website (accessed 3 December 2021): para 5.2.

- 6.1 The Bill has been developed, and will be scrutinised, against the backdrop of a fast-changing HE and research landscape. Whilst this makes the new Bill even more important so that Wales keeps pace with the external environment, it also adds several layers of complexity which need to be adequately incorporated.
- 6.2 Specifically, the UK Government is expected to announce a series of post-16 education reforms in England in response to the Augar Review. Clearly these will have a knock-on impact for Wales, even if England's plans are not expected to be quite as far-reaching as initially thought. Alongside this, the UK Government has also brought forward both the Skills & Post-16 Education Bill and the Freedom of Speech Bill – both of which are England-only but will also have ramifications for Wales. Finally, a Bill to set up the proposed new Advanced Research & Invention Agency will also fundamentally reshape the research and innovation landscape at a UK level. We share the concerns expressed¹⁵ by Universities Wales that the TER-Bill may not be sufficiently equipped to deal with these developments at this stage, and that the new Commission needs to be given both the powers and the independence to chart a future course for Wales on these issues without Ministerial interference.
- 6.3 It is also not yet clear how the UK Government's Internal Market Act applies to universities or how far the Bill's provisions are fully compatible with it. Regulatory requirements that are already in force are not affected by the Act, so existing arrangements for universities in Wales remain unaltered, but any substantive change to them will mean that the Internal Market Act applies. Proceeding with the Bill before the position of universities has been clarified by the UK Government through regulations, and before the legislation has been future-proofed against the Act, could involve very considerable risks relating to the regulation of HE in Wales.

7. Conclusions and recommendations

- 7.1 Whilst reiterating Cardiff University's support for many of the Bill's ambitions, and for the principles which underpin it, we urge the Committee and/or the Welsh Government to consider bringing forward amendments / commitments to address the following issues outlined in our evidence above:
- 7.2 **Strengthen the Bill's strategic duties.** This should include – but is not limited to – a duty which seeks to drive focus on the outcomes of education for students, and the development of a specific and much more ambitious duty focussed on research and innovation.
- 7.3 **Deliver on the Reid review prior to the Bill's implementation.** It is imperative that the Welsh Government commits to delivering in full all recommendations of

¹⁵ Universities Wales (2021) [Evidence to Children & Young People Committee scrutiny of Tertiary Education & Research \(Wales\) Bill](#), Senedd website (accessed 3 December 2021): Section 16.

the 2018 Reid review prior to the establishment of CTER as an act of good faith over the place of R&I within the new tertiary education and research landscape.

7.4 **Safeguard the Commission's independence.** In order to ensure that the new Commission is genuinely independent and free from Ministerial interference, we urge that:

- The Chair of the Research Wales Committee be appointed by the Commission rather than by ministers.
- The power to modify the new Commission's strategy without the its consent is removed from ministers.
- The new Commission be equipped with the relevant powers and the independence to deal with the rapidly-changing external policy environment (particularly changes to HE and research legislation in England) without ministerial interference.
- The definition within the Bill for academic freedom be extended so that it explicitly covers the freedom of providers to determine the pursuit and focus of research and the methodologies employed to carry it out.

7.5 **Provide clarity over areas of potential concern.** To prevent any confusion or conflict post-implementation, the following areas should be clarified and, where necessary, amended in the Bill:

- Explain which areas of research will be funded by Welsh Government and which will be funded by the new Commission.
- Elucidate on the registration requirements and process, or of the ongoing regulatory processes, to minimise the risk of an additional workload being created for institutions.
- Set out the Welsh Government's legal advice over any implications of the Internal Market Act on the Bill.

7.6 **Prevent overreach of the new Commission on registration conditions.**

Section 27 of the Bill should be amended, as it currently would allow the Commission to impose specific registration conditions for particular institutions on any matter that it sees fit, and at any time, subject only to a notification procedure. This is neither proportionate nor desirable.

7.7 **Ensure that all providers are charities.** We strongly recommend the retention of the requirement from the Higher Education (Wales) Act 2015 that designated Higher Education providers in Wales have to be charities. Including this would match existing requirements, but in doing so would act as an important check and balance against private providers who may not add value to the sector.