

Public consultations do not currently enable all stakeholders to effectively contribute to the legislative process

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By Democratic Audit UK

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*In a recent study, **Helen Taylor** and **Axel Kaehne** looked at responses to the Social Services and Well-being (Wales) Bill to consider how effective the public consultation process is at incorporating wider expertise into the legislative process. The findings highlighted a number of issues relating to both the nature of responses and the way in which they were sought. The authors argue that if the government values participation from a broad range of organisations and citizens, additional efforts are required to promote effective inclusion.*



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Do consultation responses matter? When governments ask for citizens' input into legislative and policy changes, do they really want information from experts? Or is it a tokenistic gesture in the name of participatory democracy? This article will provide an overview of a piece of [research](#) into the nature of consultation responses to a particular piece of legislation created by the Welsh Government and National Assembly for Wales. We will argue that the nature of responses, as well as the way in which responses were asked for, can be seen to undermine the impact of third sector groups within the legislative process.

Politics in Wales is heralded as being very different to the 'adversarial' politics which is to be found in Westminster. The devolved democratic systems in Wales are less than 20 years old, and the ability to make primary legislation has only been in place since 2011. Furthermore, the Welsh Labour Party has been continually in power (sometimes in coalition) since the beginning of devolution. The Party's governing philosophy largely informs governance structures within Wales, with the Welsh Government consistently using language that emphasises participation, inclusion, and consensus over competition, special interests and hierarchical relationships.

Additionally, concerns have been raised around the capacity of the National Assembly for Wales to adequately scrutinise decision-making, particularly in the context of powers over (some) primary legislation. There are only 60 Assembly Members (AMs) and the role of scrutiny is predominately seen as a function of the available AMs who do

not occupy governmental roles. There are currently 12 Ministers or Deputy Ministers within the Welsh Government, lowering the number of AMs available for scrutiny to 48. Twenty areas of policy are devolved to the National Assembly including health, education, social services, and housing.

The use of public consultations, particularly as a mechanism for participation, can be seen therefore to fit into this broad political context. Firstly, it is supposed to enable engagement with citizens and for this engagement to be incorporated into political decision-making. Secondly, consultations can also be seen as a means by which to increase scrutiny capacity within a limited legislature. Analysing public consultations, therefore, can be a means by which to test these claims about increased scrutiny and the nature of democracy in Wales.

Our research looked at the public consultation responses to Stage 1 of the Social Services and Wellbeing (Wales) Bill. The legislation focussed on introducing a 'person-centred approach' to social services in Wales and became law in April 2014. Previous research analysed the content, structure, and nature of consultation responses in order to understand the role that these responses played within the legislative process for this Bill. We used Van Damme and Bran's (2011) [theoretical framework](#) to analyse the responses to the public consultation which allowed us to examine the ability of stakeholders to access the consultation, the scope of the consultation determining the content of responses, and the potential deliberation between participants pre-submission.

Our findings highlighted a number of issues within the consultation responses which can be framed as two main conclusions. The first refers to the way in which organisations structure their responses. The second refers to the way the consultation process is designed and organised by the National Assembly. Both can be seen to undermine the ability of organisations to impact on the policy-making process in Wales.

When analysing the content and structure of consultation responses, two clear issues became apparent. First, there was a large level of 'self-advocacy' within responses, defined as submissions containing a substantive and clearly demarcated section dedicated to the work of the organisation. About a third (33 percent) of submissions contained this type of content, which often went hand in hand with requests to be invited to give further evidence. It is questionable whether this type of content contributed anything to the submission itself, and most sections of self-advocacy seemed to be lifted from mission statements. This practice could be seen to suggest that a large number of organisations do not think that the National Assembly or Welsh Government are familiar with their work in a specialist area. Alternatively, this inclusion of self-advocacy could be an administrative technique to boost the size of submission.

The second issue is that almost half (46 per cent) of responses did not comply with the set response template provided. Most voluntary organisations chose not to use the set structure, tending towards lengthy responses without clear structure. This could be seen as a lack of sufficient resources to focus on this type of work, or an inadequate familiarity with consultation techniques and the 'rules of the game'. Returning to questions of impact, this is significant. If third sector organisations are unable to respond adequately to consultations in terms of content and structure, their input into the policy-making process is likely to be limited. This piece of legislation in particular was centred around the provision of services to vulnerable people, with the third sector playing a crucial role in this. It is problematic, therefore, if organisations directly involved in the implementation of legislation are unable to engage sufficiently in the legislative process.

It is clear how the issue around structure can also be understood as part of the second conclusion regarding the design of the consultation process. If such a large number of responses did not follow the given response format it can be questioned whether this is an appropriate structure to garner engagement from organisations through public consultations. The analysis of submissions in terms of sector revealed some considerable asymmetry of participation. There was a near complete absence of commercial and individual contributors to the consultation, which is surprising as the legislation regarded the provision of social services within a mixed economy in care services in Wales. The lack of responses from the commercial sector may indicate either that commercial organisations may not have the policy capacity to participate in a consultation, that they were not cognisant of the consultation, or that they genuinely felt that the piece of legislation was of little concern to their core business

strategy.

Although only an analysis of one piece of legislation within a devolved nation, the findings from our study can be seen to provide useful insights into the legislative consultation process. Our research highlighted the lack of 'proper' responses from third sector organisations as well as a complete lack of responses from a major group of stakeholders, i.e. businesses. This raises questions about the suitability of the current design of the consultation process and whether it enables all stakeholders to fully (and adequately) contribute to the legislative process. If the Welsh Government do indeed value inclusion and participation from a broad range of organisations and citizens in the legislative process additional efforts are required to ensure that all stakeholders fully understand the process, how they can contribute effectively, and the impact they could have. Without this, the consultation process could be perceived as a tokenistic measure of participation without giving stakeholders the real ability to influence the policy-making process.

This article is based on the authors' recent Public Policy and Administration article "Do public consultations work? The case of the Social Services and Well-being (Wales) Bill". Read the full article [here](#).

The post represents the views of the authors and not those of Democratic Audit UK. Please read our [comments policy](#) before posting.

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Axel Kaehne was educated at Berlin (Germany) and Aberdeen University and settled in South Wales in 1996. He took up a position of Research Fellow at the School of Medicine, Cardiff University at 2005 and joined Edge Hill University as a Senior Research Fellow in April 2013. He is also Senior Research Fellow at the Alder Hey Children's Hospital NHS Foundation Trust and currently Chair of GORWEL, the Welsh Foundation for Innovation in Public Affairs (www.gorwel.co).

