

## Title: Do public consultations matter? The case of the Social Services and Wellbeing (Wales) Bill

Dr Axel Kaehne<sup>1</sup>, Helen Taylor<sup>2</sup>

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### Abstract

*Background:* The Welsh Government has embarked on significant legislative projects since devolution. Welsh legislative efforts are however marked by the low scrutinizing capacity of a relatively small legislative chamber and limited civil service ability to prepare legislation. This means that the Welsh Government relies more heavily on input through public consultations prior to parliamentary scrutiny and external expertise. The study investigated the public consultation (stage 1) for the Social Services and Wellbeing (Wales) Bill (2013).<sup>3</sup>

*Aims and Objectives:* This was a pilot study to develop and test a coding matrix to analyse public consultations by devolved governments. The aim was to design and test the coding matrix through a small case study (the Welsh Social Services Bill) and to assess its utility for subsequent large scale comparative studies across devolved governments in the UK.

*Method:* Following a literature review a coding matrix was designed to analyse consultation submissions. We then fed the publicly available data of the Social Service Bill (Wales) consultation (stage 1) in 2012/13 into the matrix. Descriptive statistics were conducted and the content of a sub-sample of purposively selected submissions were analysed in more detail.

*Results:* The public consultation contained 84 submissions from various organisations and private individuals. The results demonstrate that consultation responses come from a wide range of actors, that there is some limited amount of interaction prior to submission between respondents, and that there is a significant amount of 'white noise', submissions that are not related to the topic. The analysis also revealed that a significant number of participants use the consultation as an opportunity to engage in self-advocacy. Organisational analysis of participants also reveals some imbalance of submissions by sector.

*Conclusion:* Public consultations are a useful mechanism to improve legislation prior to parliamentary debate through canvassing stakeholders and our study showed that the consultation provoked a range of responses from a wider variety of stakeholders. There is however some serious doubt whether the chosen technique matched the aims and objective of the consultation. This raises questions about tokenism, the role of external expertise and the ability of devolved governments to use consultations as a core mechanism for citizen and stakeholder engagement.

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<sup>1</sup> Evidence-based Practice Research Centre, Edge Hill University, [axel.kaehne@edgehill.ac.uk](mailto:axel.kaehne@edgehill.ac.uk)

<sup>2</sup> Politics Department, Cardiff University, Cardiff, [TaylorH16@cardiff.ac.uk](mailto:TaylorH16@cardiff.ac.uk)

<sup>3</sup> Consultation document published at <http://www.senedd.assemblywales.org/documents/s16335/SSW%20Consultation%20responses%20booklet.pdf>

## Background

Consultations have become a popular means for policy makers to involve the wider public in a range of decision making processes. Consultations are characterised by pluralism of means, aims and outcomes. Previous research notes that the means of consultation ought to match the intended aims and outcomes. There is now a burgeoning empirical literature on consultations for various purposes that have led to the formulation of some theories of public consultations (Culver and Howe, 2004, Fishkin, 2009, Group, 2012). These theories are mainly located in the fields of public administration or policy making and cover parliamentary consultations, consultations for policy making by central and devolved governments, as well as consultations by public sector organisations such as the NHS. There has however been little empirical work about the consultations in devolved governments, such as Wales, Northern Ireland and Scotland with some exceptions (Murray et al., 2009).

Investigating public consultations organised by devolved governments or devolved assemblies may increase our knowledge about the process of devolution itself, but more importantly, it may tell us more about how devolved legislatures and governments utilise external expertise to inform legislation under conditions of limited internal civil service capacity (ref McAllister). This paper reports the findings of a study of the public consultation for the Social Services and Wellbeing (Wales) Bill (henceforth: Social Services Bill). The consultation was part of stage 1 of legislative scrutiny by the Welsh Assembly. It is therefore unusual insofar as it is part of the legislative process, rather than consultation to inform policy by public sector organisations.

The paper will outline the Welsh background of devolution in the context of the 2011 referendum and the theoretical framework that has developed around legislative capacity in devolved government as a central concern for public engagement. It will then sketch the existing literature on public consultation relating to legislative matters. This will allow contextualising the aim and objective of the study. In the third section, the paper will report the method and findings of the study which will be followed by a discussion and recommendations for future research.

### Welsh Devolution and Welsh Referendum of 2011

It is the purpose of this section to locate the consultation within the legislative process for this particular bill. Consultation techniques, and the quality and character of submissions may arguably be influenced by the place and purpose, as well as the agents of the consultation within the larger legislative process. In the present case, the consultation was part of stage 1 of the scrutiny process as the Bill was introduced to the Assembly. Strictly speaking, at this stage, it is not a governmental consultation but one organised by the Assembly, yet technically, the consultation is framed, formulated, designed and conducted by the civil service that works in close co-operation with the government in tabling the Bill. The analysis of submissions to the consultation equally rests with the civil service, and not with the Assembly. This crossover of tasks in organising consultations on government business is a legacy of the early Assembly rules formulated prior to receiving law making powers through the 2011 referendum which had to take into account that Assembly and Assembly government had a combined function.

The Welsh devolution has produced an enormous amount of literature on the changes to the legislative processes in the wake of the establishment of the Welsh Assembly. Whilst

this literature is of relevance to public consultations and policy making, the Welsh referendum of 2011 significantly altered the legislative landscape and as the legislative process leading to the Social Services Bill (Wales) occurs in this post-2011 context, this paper will discuss mainly post-referendum circumstances.

One concern in the literature that continues to persist since the establishment of the Welsh Assembly in 1999 is that the Assembly and the civil service in Cardiff may not have sufficient capacity to develop high calibre legislation. One aspect of this concern is the ability to scrutinise legislative proposals in the chamber, where roughly a third of Assembly members are part of the government. The argument is that a relatively underpowered civil service and a reduced ability of the chamber to conduct effective scrutiny of legislation increases the need for external capacity in the legislative process. External expertise may be brought to bear on legislative proposal at different stages in the process, yet the fact that the Welsh Assembly relies on expertise and knowledge from a wider spectrum of extra-parliamentary organisations resonates well with claims that Welsh political life is based on a close interest alignment between politicians and the population. This claim was repeatedly made by the designers of the Welsh legislature in the run up to the Assembly referendum in 1999 and has some pseudo-socialist undertones.

The legislative roles of Assembly and government however have substantially changed with the affirmation of legislative powers by the 2011 referendum and the Welsh Government and Assembly have adopted more conventional separation of roles as the Assembly received law-making powers (ref). The issue of scrutinising capacity however remains as the civil service or the number of Assembly Members in Cardiff has not been expanded in line with new powers (ref).

### The literature on public consultations

There are various ways in which the Assembly and the Welsh Government may draw on outside expertise in the legislative process. One way to do this is to conduct public consultations. Existing theories of consultations differentiate between various aims and objectives of consultation, closed or open consultations in terms of participants and several techniques that can be utilised to achieve the perceived aims and objectives. This assumes that governments and parliamentary assemblies are genuinely interested in the involvement of some sections of the public in policy making, an assumption that is not always borne out by empirical analysis (Cheeseman and Smith, 2001). The tension between tokenistic and genuine participation in the legislative process is a key concern of the existing literature and demarcates a central evaluative criterion of empirical studies. It seems to lead into the literature on shared decision making in public services (Thunus and Schoenaers, 2012, Oecd, 2003, Montpetit, 2003, Group, 2012, Jones and Einsiedel, 2011, Hudson, 2014) and the role of professionals in public sector organisations (Cook, Crase et al., 2005), but empirical studies on the role of consultation in the legislative process remain strangely dissociated from this wider debate. Instead, most evaluative research on public consultation in policy making and legislation favours a public administration approach that investigates the effectiveness of various techniques in accomplishing previously defined goals of consultations. Thus, in a sense, the literature on shared decision making and professionalism has remained separate from those studies dealing with consultations in the legislative process.

There are also studies highlighting that consultations remain subject to the overall strictures of the policy making process. Johnston's paper is an example of a consultation that did not happen because the legislation itself was scrapped (Johnston et al., 2013).

Few studies utilise a demonstratively theoretical framework for investigating consultations as part of the policy process. Thunus and Schoenaers is an exception to the rules given that they use a quasi-experimental design allowing the authors to examine the different effects of different consultation techniques (Thunus and Schoenaers, 2012). Their detailed analysis of actors, their viewpoints and the evidence of interaction between the actors highlights different 'logics of action for actors', underlining that consultations encompass actors with different aims and objectives.

Most studies written from a public administration perspective articulate their main concern as one of effectiveness as defined by the aims of the consultation. How can consultations achieve what policy makers intend them to achieve? A plausible criticism of this approach in evaluating public consultation may be that it locates the authority of defining the intended outcomes with those agents organising the consultation, which may lead to delegitimising of those consultation submissions that do not fit into the pre-defined framework. This is an important issue that leads to discussions about the role of professionals in the consultation process as well as analyses of power distribution in it. For van Damme and Brans (Damme and Brans, 2012) this highlights the link between consultation literature and studies on network governance and democratic theories.

Their paper is one of only a few that utilises a sophisticated theoretical framework albeit one to explore the conventional question as to how to achieve good outcomes for policy makers. Their analysis points to three criteria that define the interpretative framework: conditions of openness of the consultation which determines access and entrance of participants (1), the scope of the consultation determining the content of participants' submissions (2), and a model to understand the interaction between respondents that may impact on the quality of the deliberation. The last point has particular relevance to consultations that allow for deliberative processes *between* participants and highlights the need to examine pre-submission interaction. It informs an understanding of consultations as an ongoing deliberative process rather than a one way operation in which external expertise and knowledge is obtained by policy makers.

Whilst van Damme's interpretative framework allows to embed consultations in the wider context of citizen engagement and democratic steering of policy networks, it finds little evidence that consultations are actually enhancing the participatory ability to influence decision making in policy formulation. In other words, van Damme's framework articulates a normative account of public consultation within a democratic polity that contrasts sharply with actual practice.

Van Damme identifies one potential reason for this gulf between ideal and practice. He notes that consultations are generally characterised by a plurality of aims and objectives that are rarely shared between the organisers and participants or common to all potential participants. This allows him to develop an evaluative frame that distinguishes between outcomes judged by content or process elements of the consultation. His analysis focuses on the correlation between the process and management but, as he indicates, this is only one analytical avenue that can be explored. Depending on which element receives special attention or emphasis (and by whom, which indicates power relations between actors), van Damme offers the following interpretative model:

TABLE 1 *Public consultation outcomes*

	Objective results	Subjective results
Content results	Policy enrichment Policy impact	Satisfaction with content
Process results	Social learning Conflict reduction	Satisfaction with process

Source: *Damme J. V. & Brans M. (2012), p.1050.*

Shiple et al. explores a similar vein of ideas in their study on citizen motivation and citizen engagement (Shiple and Utz, 2012). Their paper contextualises the empirical material within the debate on direct democracy and how to exercise control over public goods. Consultations are thus seen as a key component of the deliberative process that ascertains public interests in relation to certain questions over power or resource distributions. A key question that arises from this context is whether or not those who are affected by the issues of the consultations are also motivated to participate and do in fact participate sufficiently. To rephrase that in the scepticism which originates in the effect of professionalism and power relations in policy making, one may ask whether the way in which consultations are conducted inadvertently or wittingly preclude at least some of the affected sections of society. Shiple thus questions the participatory effect of consultations and how it is associated with techniques. Their conclusion that techniques may have a significant impact on whether a consultation is tokenistic or manipulative is well argued and highlights the need for so called deliberate polling (Fishkin et al., 2000, Fishkin, 2009) where consultations allow for interest and opinion formation as part of the consultative process.

Other commentators have highlighted the shortcomings of current interpretative models by pointing at the lack of research that investigates the link between consultation outcomes and policy formulation or legislative amendments (Jones and Einsiedel, 2011). This has important ramifications for any analysis of network influence on policy formulation but also feeds into the analysis of the role of institutional cultures on policy formation. Jones and Einsiedel highlight the fact that consultations by definition purport to widen the range of actors in policy making but that empirical studies have failed to correlate this intention with institutional changes so far. This would indicate the need to measure how consultations impact on the distribution of power in the wider policy making domain. To consider consultation within the narrow administrative confines of functionalist analysis fails to take into account the actual role consultation is thought to play in enhancing citizen involvement as a prerequisite for healthy democracy, a concern that is articulated within the network governance literature as well (Jordan et al., 2005, Marsh and Rhodes, 2002, Marsh and Smith, 2000, Klijn and Skelcher, 2007, Sorensen and Torfing, 2007).

Embedding consultations in the wider democratic process appears to develop some track with researchers. Murray in an analysis of consultations in Northern Ireland between 2000 and 2004 however also note a gap between general enthusiasm for consultations by governments and consultation fatigue by citizens (Murray et al., 2009). The authors are skeptical that increased numbers of consultations contribute automatically to improved access to policy making or improved horizontal governance which is marked by high levels of citizen engagement and participation in decision making. Their study highlights the need to explore further any possible link between various techniques of consultation, their

effects on participation rates and policy making outcomes. The (conceptual and methodological) challenge appears to be to construct a robust association between aims and objectives on one hand and participation and outcomes on the other.

This brief review of the literature allows us to locate our own investigation in the field. The study focused on the nature and content of the submissions to the Assembly consultation on the Social Services Bill (Wales). It therefore had a limited remit yet allowed us to examine some critical questions that have been raised by previous consultation studies and locate them in the relatively new context of devolved government in Wales.

The research question was: what is the nature and content of consultation submissions to the Social Service Bill (Wales) stage 1? Answering this question gave insights to the correlation between consultation technique selected by the organisers, the intended and actual nature of submissions and their content, scope and provided a glimpse of potential impact on policy making. At the intersection of scope, technique (determining access and participation levels) and content of submission (defined or open), the analysis of submitted responses allowed to gauge the effectiveness of citizen engagement in a newly devolved polity. It revealed something about the ability of this particular type of consultation to tap into external expertise and create capacity for knowledge exchanges or shared learning. Interestingly, a careful analysis of the submissions also demonstrated something about arenas of public deliberation and pre-consultation interaction between participants.

There are considerable shortcomings of this approach however that need to be acknowledged. Analysing solely the content and nature of submissions of a given consultation must fail to probe the potential impact of consultations on the subsequent policy formation process. There are in fact few empirical studies that assess the influence consultations had on policy making per se, which remains a blind spot of consultation research. Questions about democratic participation, citizen involvement and network governance in policy formation are central to gauging the effectiveness of consultations. So far, however, detailed studies of the impact of consultative exercises on policy making are rare.

On the other hand, the limits set by the approach in this study still allow to throw a light on a critical element of citizen engagement, which concerns the relationship between participation rates and techniques utilised by consultation organisers. As others noted previously, participation may be influenced by issues such as open/closed consultation design, structured response templates vs. open responses, and targeted vs. non-targeted consultations. What appears to play an important, yet under-theorised, role in this complex of relationships is the effect of organisational resources and capacity that can be brought to bear on consultation responses. Organisations differ from private individuals in their access to resources and response capacity, expertise and knowledge in formulating effective responses, yet institutions or other associations may also intrinsically carry more favour with consultation organisers. The upshot of this is that the voice of individuals is best articulated through a collective interest formation process which in turn may disenfranchise individuals. This has significant ramifications for theories of democratic participation and the role of organisations in interest formation and interest articulation.

## **Method**

The aim of the study was to examine the nature and content of consultation submissions. Analysis of submissions yields only limited information so the objective of the research

was restricted to the questions: What were the characteristics of the consultation participants? What was the extent and content of their response?

An interpretative matrix was designed to capture those aspects of submissions that were likely to reveal information about the issues listed above. The matrix contained an additional comment box to note anything that was not captured by the matrix but may have relevance for further investigation. All submissions (n=84) were analysed and relevant data was captured in the matrix. The data was then fed into simple descriptive statistics. The ten most substantial submissions (by page numbers) adhering to the consultation document structure were selected and submitted to a detailed content analysis. Submissions were published by the Welsh Assembly<sup>4</sup> and the study required no ethical approval because all relevant data was publicly available.

## Findings

The analysis produced some descriptive statistics on the characteristics of the participants, the content and extent of their submissions and some information relating to pre-consultation activities. Results are presented below.

About a fifth of all submissions originated with non-Welsh organisations. That is a substantial number of submissions, yet cross-referencing their content revealed that most of those from non-Welsh organisations related to the single issue campaign of smacking (or parental chastisement), which had no relevance to the Social Services Bill (Wales).

**Table 2 Wales or England based?**

Submission origin	Frequency	Percent
UK/England	16	19.0
Wales	68	81.0
Total	84	100.0

Table 3 and 4 list the submissions by industry and sector respectively. It shows a clear predominance of the voluntary sector in the number of submissions (44%) and a notable absence of commercial and health care providers. Local government organisations made several submissions of substantial size and some of them contained identical phrasing, which indicates pre-consultation interaction.

**Table 3 Submissions by Industry**

Industry	Frequency	Percent
Advocacy/Campaign groups	37	44.0

<sup>4</sup> Consultation document published at <http://www.senedd.assemblywales.org/documents/s16335/SSW%20Consultation%20responses%20booklet.pdf>

Industry	Frequency	Percent
Support groups	4	4.8
Social Care providers	8	9.5
Central Government	1	1.2
Education provider	1	1.2
Health	11	13.1
Housing	3	3.6
Private individual	2	2.4
Local government	10	11.9
Paramedic association	1	1.2
Police	1	1.2
Religious groups	1	1.2
Welsh Government	4	4.8
Total	84	100.0

**Table 4 Submissions by sector category**

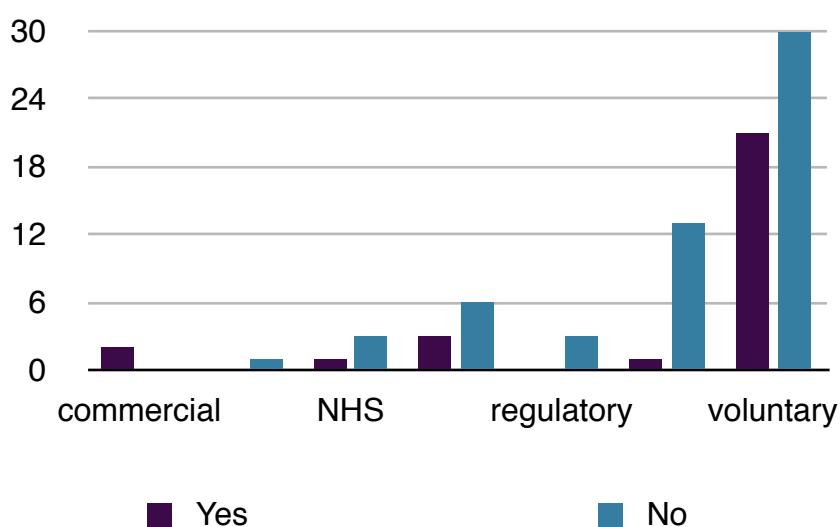
Sector category	Frequency	Percent
Commercial	2	2.4
Private Individual	1	1.2
NHS	4	4.8
Professional Association	9	10.7
Regulatory Body	3	3.6
Statutory	14	16.7
Voluntary Organisation/Charity	51	60.7
Total	84	100.0

Self-advocacy was defined as submissions containing a substantive and clearly demarcated section in submissions dedicated to the work of the organisation. There is some question as to whether self-advocacy in the consultation context contributes anything to the submission itself. The fact that some organisations however chose to add these sections may reflect a concern that recipients are not familiar with the submitting organisation. Alternatively, it may simply be an administrative technique to boost the size of the submission. Most of these self-advocacy sections seemed to be lifted from mission statements or synopsis of aims and objectives of the organisations. Self-advocacy was most often used by voluntary organisations which may demonstrate their need to provide additional information about their work.



**Table 5 Self-advocacy**

Category	Frequency	Percent
Does not contain self-advocacy statements	56	66.7
Contains self-advocacy statements	28	33.3
Total	84	100.0

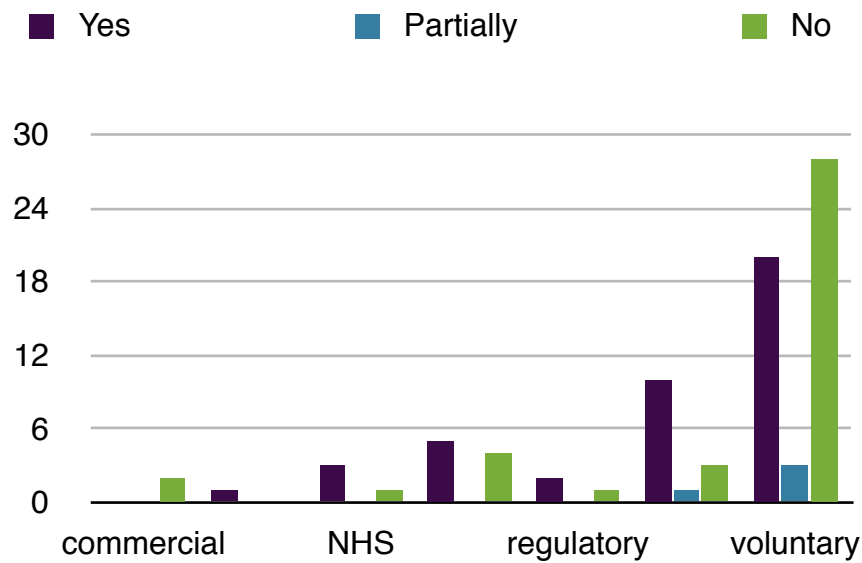
**Graph 2 Self-advocacy by type of organisation**

Analysing the utilisation of the response template revealed some fascinating differences by sector. Compliance with response formats may ease analysis of submissions and, consequently, failure to use it may mitigate against effective and robust interpretation of submission content. It is therefore surprising that most voluntary organisations chose not to use it. Their submissions were often lengthy texts without clear structure. This may be a result of insufficient resources, or inadequate familiarity with consultation techniques and the ‘rules of the game’. It is instructive that all submissions originating with local authorities and NHS with large research and policy capacity utilised the response template.

**Table 6 Utilisation of Response Template**

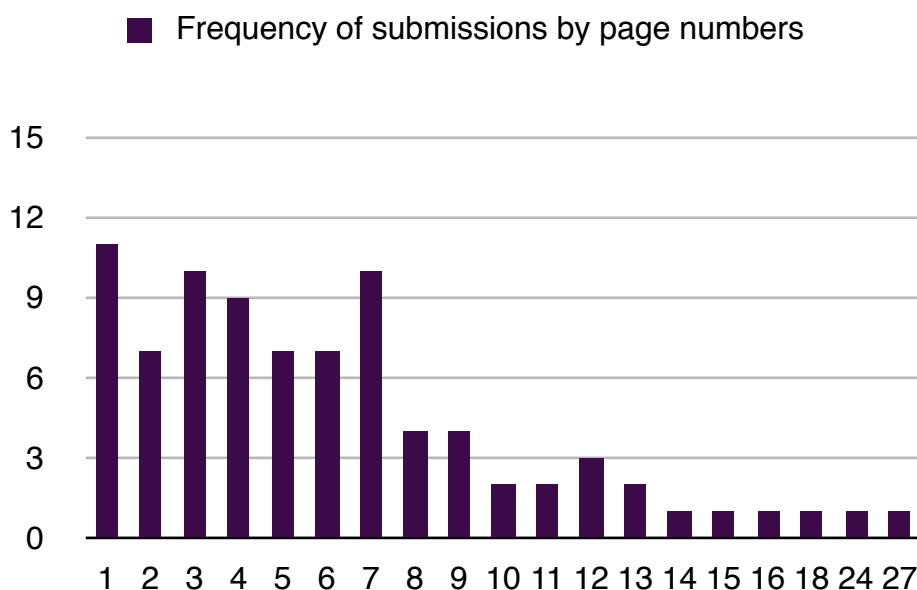
Response Template used	Frequency	Percent
Partially	4	4.8
No	39	46.4
Yes	41	48.8
Total	84	100.0

**Graph 3 Utilisation of Response Template by Sector**



The majority of submissions were between 1 and 7 pages long and it was notable that longer structured submissions came exclusively from large public sector organisations once again. This may reflect their additional capacity and staff resources to engage in policy work and policy discussions and may create differential impact between consultation participants. Similar imbalances have previously been noticed in network governance analyses (Davies, 2005, Davies, 2007, Kaehne, 2014). There were also 16 submissions on smacking or parental chastisement (19%), one of those originated with a commercial organisation, two came from professional associations, and 13 from voluntary organisations.

**Graph 4 Size of submissions by page numbers**



## Discussion

Van Damme's interpretative framework may be usefully employed to structure the discussion section (see Table 1). Van Damme distinguishes between content and process results of public consultation and sub-divides these two categories into objective and subjective aspects. Given the focus of this study on the nature, content and character of the submissions only, study findings concentrate in the objective domain, relating to content exclusively. There may be some indications for potential findings with respect to process issues but no systematic investigation in this category was undertaken.

Van Damme identifies two components of the content/objective domain: policy enrichment and policy impact. Social learning and conflict reduction are part of the process domain. The results of this study are mainly located in the policy enrichment and policy impact category, which theoretically includes the potential impact of public consultation participants on resultant policy or legislation. Any definite measurement of policy impacts of submissions on the final policy output (legislation), however, would require analysis of legislative amendments in relation to policy recommendations and concerns raised through submissions, something that analysis of submissions on their own cannot deliver.

Social learning processes however may still be detected through a close analysis of submissions and the discussion will indicate below where this is the case. As such, a detailed analysis of submissions can yield some information in several domains, even though definite data is mainly located in the contents/objective domain.

The following section will differentiate between three aspects that allow the findings to be clustered for convenience. Policy enrichment, as van Damme articulated it, will be understood as a function of participant, means and motivation. In other words, this section will discuss the who, the how and the why for participation in public consultation as seen through the prism of submissions.

### Who participated

The coding matrix permitted an investigation of submissions with respect to origins (Welsh/English) and industry/sector. An analysis of the origin of submission clearly showed a predominance of Welsh organisations responding to the consultation call. Interestingly, however, there was a substantial number of submissions from English organisations as well. This may reflect an increased importance of the Welsh Assembly and its recently acquired legislative ability. It may also demonstrate that Welsh policy making and influencing Welsh policy is seen as an important part of policy work by organisations outside Wales.

Future research may want to examine whether Welsh devolution has shaped new policy networks and policy making arenas around the Welsh Assembly and whether or not these new arenas may have solidified in the wake of the 2011 referendum. The impact on policy networks is particularly significant in the Welsh context, given that Wales has a relatively small community of policy makers and politicians and hence may lack serious network capacity that ensures sufficient preparation and scrutiny of legislation proposed.

A narrowing of participation for Welsh legislation consultation along national lines may mean that consultations forfeit essential expertise and knowledge that is located in the other home nations. Alternatively, it may make contributions to consultations more relevant as they are embedded in the Welsh policy and practice context.

The analysis of submissions in terms of the industry and sector origins revealed some considerable asymmetry of participation with respect to policy actors. Examining the authorship of submissions by sector and industry also gives insights into depth and scope of the policy debate in Wales. There was a striking near complete absence of commercial and individual contributors to the consultation. A cross-comparison with other consultations on legislation may reveal that it is normal for these types of consultation, but the predominance of voluntary organisations/charities is notable insofar as Wales operates a mixed economy in care services. The lack of responses from the commercial sector may indicate either that commercial organisations may not have the policy formulating capacity to participate in consultations, or that they genuinely feel that the Social Services Bill was of little concern to their core business strategy.

Charities and voluntary organisations constituted the main segment of respondents in the consultation, but there was also a (weak) association between the length of submissions and the type of organisation. Third sector organisations were more likely to submit smaller, and less structured responses, whilst statutory organisations would almost exclusively utilise the response template.

Health care organisations were also noted by their relative absence. This may reflect the fact that the Welsh Government has so far failed to formulate a coherent strategy to integrate health and social care, and deliberately presented distinct bills in health and social services respectively. The Welsh Government's approach to differentiate legislation in health and social services may thus on the one hand reflect the continuing fragmentation of care services, whilst also exacerbating the silo character of care services, a longstanding issue in both England and Wales (Darzi and Howitt, 2012, Hudson and Henwood, 2002, Rummery and Coleman, 2003, Snape, 2003, Snape and Taylor, 2003, WAG, 2006, Association, 2012). The absence of health care organisations amongst consultation participants mirrors this fragmented policy and legislative approach.

### How they responded

The main aspect of the content and structure of responses relates to compliance with the response format that was given by the Welsh Government. There is substantial discussion in the literature about the merits and disadvantages of a structured public consultation, mainly discussed under the auspices of consultation technique in public administration (Shipley and Utz, 2012). The research demonstrates that the choice of technique strongly influences the range of potential respondents, as well as the extent to which they may or may not exert influence over the process. It also appears to have had an effect on the satisfaction of participants and commissioners.

In this study, there was a high level of non-compliance with the consultation response format. Almost half of all submissions (46%) did not utilise the consultation template. This may mitigate against their potential impact in the consultation process. Those submissions that failed to use the response template were generally formulated and presented as a free flowing text which appeared difficult to summarise. These submissions would require significant efforts from civil service to condense them in consultation findings.

It was also noteworthy that charities and voluntary organisations preferred non-compliant response formats which may decrease their impact on policy formulation in this consultation. The low number of template compliant responses raises the question whether the selected technique was in fact suitable for this type of consultation. This is a

question that can only be answered in connection with the allocated resources and civil service capacity available to interpret the consultation responses. It may be that the consultation in this instance was simply too tightly framed and structured. Closely structuring consultation formats may have the advantage to allow quick analysis of responses but in those cases where the majority of responses does not utilise the response template, an inordinate amount of steering may lead to a narrowing of the range of actors potentially participants.

Whilst this question can only be answered by measuring the impact of participants on the final output, there was some evidence that some actors were consulting each other prior to their submissions. This took two forms. First, some participants would submit identically phrased responses. This may indicate pre-submission interaction between participants and co-ordination of responses. In some cases, however, submissions were not co-ordinated as such but participants used a pre-formulated templates for submissions. The largest contingent of these responses concerned the issue of smacking. Almost a fifth of all submissions focused on smacking (lobbying for a total ban of smacking) which was clearly outside the remit of the consultation.

### Why they participated

An analysis of the content of submissions reveals a surprising amount about the motivation of participants in the consultation. There is first the large number of organisations (including some individuals) who were submitting to lobby for the ban of smacking. This revealed a striking misunderstanding of the remit of the consultation, given that smacking (and parental chastisement legislation) is not a prerogative for the Welsh Assembly. Consequently, the Welsh Government dismissed calls to regulate or ban smacking.

There was also a significant amount of self-advocacy content in the submissions by third sector organisations, which may reflect concerns about insufficient access to the policy formation process. There is some evidence in the submissions that statutory organisations and their representatives were involved in the policy process leading up to the Social Service Bill. This may indicate a lack of access to legislators and the Welsh Government by voluntary and charitable organisations. Again, this would have implications about the ability of the Welsh Assembly and Government to tap into external expertise in preparing legislation. Enhancing the policy network capacity and use of external expertise would depend on drawing a sufficient number of participants from a range of professional backgrounds into the policy formation process. Consultations are only one part of a longer policy and legislative process and the effectiveness of policy formation and the nature, scope and range of policy networks can only be adequately measured across all components of this process. Lack of presence in public consultation responses however may indicate either problems of access in the wider context of policy formulation or withdrawal of some actors from the process altogether.

The research raises questions around public consultations and participatory democracy as well as how to effectively engage external expertise in devolved governments with limited internal policy capacity. The first issue relates to network governance, citizen engagement and policy formation, while the latter is an often articulated concern in public administration studies.

### *Network governance and citizen engagement*

The study found that the public consultation for the Social Services Bill (Wales) achieved good participation from organisations in the voluntary sector. There are however some doubts as to whether these organisations use the consultation in the most effective way to make their voices heard. Much of this has to do with the way in which the consultation technique was designed to gear responses to specific issues, whilst many third sector organisations were interested in raising issues outside the remit of the consultation. The response template did not lend itself to unstructured responses and it would be a critical aspect to investigate in future studies whether or not non-compliance with the response template diminished the impact these responses ultimately had on final legislative proposals.

The study also demonstrated that there was a lack of engagement with a range of stakeholders in the social services field. In particular, commercial organisations and individuals failed to respond in significant numbers. This may indicate the predominance of organised interests, echoing the organised character of modern participatory democracy, and has implications for the role of individual stakeholders in policy formation processes. It may be due to differential access to resources by organisations, specifically public sector organisations, to policy response capacity. It may however also reflect a chronic level of deliberate disengagement from some stakeholders in the policy and legislative formation process.

The Welsh context in this respect may exacerbate disengagement by those who failed to contribute to the public consultation. Whilst technically, social service provision is operating in a mixed economy, and individual budgets and direct payments are taking root, individual service users or commercial providers of care appear to be significantly under-represented in the policy formation process. The Welsh Government has long discouraged some of the more flexible individualised care provision through commercial organisations and personal allocation of social care budgets and the absence of the relevant stakeholders in the policy making process may be a legacy of this strategy. Future research may explore if the Welsh Government's engagement strategy through public consultations is adversely influenced by this wider policy context.

#### *Public administration and consultation techniques*

The study showed that there are considerable doubts that the chosen technique of this public consultation maximised the number and quality of responses at this early stage in the legislative process. There was a significant number of submissions that were unstructured and did not use the response template. The public administration literature points out some difficulties in synthesising this type of information and future research needs to explore any potential association between limited analysis resources in the Welsh context and how to conduct public consultations efficiently. Different techniques may also usefully correspond to different stages of the legislative or policy formation stage, a potential association that needs to be evidenced by future research.

The issue of selecting the most appropriate technique has implications for participation rates but also for motivational issues and harnessing external expertise within devolved governments with relatively small capacity. In the public administration literature this aspect is discussed as one of 'tokenism' but the phrasing suggests more complex issues around governance of policy making communities and the effective involvement of stakeholders in the process. As the Welsh Government repeatedly makes strong claims to govern through and for the Welsh public, stakeholder inclusion through participation in the

legislative process has particular relevance and becomes a key benchmark to assess Welsh Government policy formation leading to legislation and governance.

## **Conclusion**

Public consultations are a useful mechanism to improve legislation prior to parliamentary debate through canvassing stakeholders and our study showed that the consultation provoked a range of responses from a wider variety of stakeholders. There is however some serious doubt whether the chosen technique matched the aims and objective of the consultation. This raises questions about tokenism, the role of external expertise and the ability of devolved governments to use consultations as a core mechanism for citizen and stakeholder engagement.

The study favoured an approach that, at first glance, has significant shortcomings. Its focus on the consultation submissions must fail to have interrogative authority for any analysis of the impact of consultation on finalised legislation. However, a straightforward examination of submissions does reveal striking factors that may contribute to meaningful engagement of stakeholders through this mechanism. It can say something about the range of organisations participating, the type, extent and content of submissions, as well as the probability of obtaining important views and enhancing expertise and knowledge as part of the legislative process. It may also give indications about the effectiveness of those techniques most suitable to legislative processes. An organisational snapshot by sector throws some light on the extent to which legislative consultations are responded to by organisations. This has significant implications for the form and shape of democratic participation and citizen involvement, a theme that still awaits detailed exploration in the context of public consultation.

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