

Higher Education (Wales) Bill - technical consultation

Response from the Charity Commission for England and Wales

Thank you for inviting the Charity Commission to respond to this consultation.

The Charity Commission is the independent regulator and registrar for charities in England and Wales. We are the regulator for 162,000 registered charities. We also regulate a similar number of charities that do not have to register, but are subject to our jurisdiction.

Some charities are exempt from both registration and regulation by the Commission. Under the Charities Act 2011, most exempt charities now have principal regulators, responsible for promoting compliance with charity law. We can use our powers to assist principal regulators. We therefore have some regulatory oversight of these charities too. The Welsh Government is principal regulator for the governing bodies of foundation and voluntary schools in Wales. It is likely to become the principal regulator for Further Education Corporations in Wales this autumn.

The Commission is the charity regulator for charitable Higher Education Institutions in Wales.

Summary

The technical consultation covers a range of issues, but only a few of these fall within our regulatory remit.

Charitable status

- We welcome the recognition in the consultation paper that existing Higher Education Institutions in Wales are charities.
- We note the Welsh Government's proposal that in future it will be a prerequisite for designation of courses provided by HEIs and other HE providers in Wales to have charitable status. We do not have a specific view on this.
- There are very few circumstances in which a charity can 'lose' its charitable status, and strict conditions would apply. We would be happy to share our experience of this with officials at the Welsh Government, to clarify the circumstances when the issue might arise.

Regulation of HEIs by HEFCW

- We understand that HEFCW's ultimate sanction (indicated at 6.16) would be withdrawal of approval. This seems appropriate to the relationship between the Welsh Government and HEIs. Sanctions involving intervention in the governance of a HEI, an independent charity, would not seem appropriate.
- We would welcome the opportunity to contribute to the development of HEFCW's Financial and Corporate Governance Code.

Charitable Status (4.13 - 4.15)

In our response to the consultation on the FE and HE (Wales) Bill White Paper we highlighted the importance of the charitable status of existing HEIs in Wales. We welcome the recognition in the technical consultation paper of the importance of this issue.

We note the reasons for requiring all HEIs and other providers that wish to have courses designated to be charities, and that if a provider ceased to be a charity HEFCW would withdraw approval of its fee plan.

There are very few circumstances in which an HEI or provider could lose its charitable status. The majority of charities in England and Wales, including existing Welsh HEIs, are required to register with the Charity Commission. This process provides a check that they are established for exclusively charitable purposes. Once registered, a charity can usually only be removed from the register if it ceases to exist. It is extremely rare for a registered charity to be removed from the register on the grounds of a successful appeal that it was wrongly registered in the first place. If a charity ceased to operate for charitable purposes, that would not stop it from being a charity; rather it would be a breach of duty on the part of its charity trustees (governing body) to fulfil its charitable purposes.

There are a few charities that are exempt from registration with the Commission, but these are very specific categories. They are listed in Schedule 3 to the Charities Act 2011, and include FE Corporations. There are different rules for these charities, but (for example) FECs are designated as charities by law, and so must operate as charities.

The only way in which a university or college could 'shed' its charitable status would be for the charity to sell the business to another legal entity as a 'going concern'. This is what the College of Law did; we are not aware of any other cases. The sale would have to be at full market value including 'goodwill' value and 'overage' (allowing for the increase in value of the business when it became for-profit). The business would then be provided by a new (for-profit) legal entity. Parts of the transaction might need our permission. We assume that legal entity could not automatically acquire the degree awarding status or designation of its predecessor, and would need to negotiate these with the Welsh Government. The charity would continue to exist and would probably need a new but related charitable purpose for which to apply the funds it had been paid in the sale. The trustees would need to be able to show how the disposal of the business of the college was in the best interests of the charity and its beneficiaries.

Regulation of HEIs by HEFCW

The consultation proposes strengthening HEFCW's regulatory role with new sanctions. The sanctions specifically mentioned are refusal or withdrawal of approval for a provider's fee plan.

The Welsh Government's relationship with HEIs is contractual. HEIs are independent charities that are funded to provide education to the Welsh Government's requirements and standards.

The consultation paper does not suggest any sanctions involving intervention in the governance of a HEI. We would advise against such intervention, as it could involve HEFCW (or anyone appointed by HEFCW) taking on the functions and responsibilities of charity trustees.

We note that it is proposed to place on HEFCW a duty to prepare and publish a Financial and Corporate Governance Code. We have supported similar sector-led initiatives, for example Good Governance: a code for the voluntary and community sector. The Wales Council for Voluntary Action is one of the members of this collaboration and has produced a version of the Code for Wales (see <http://www.governancecode.org/>).

There are many considerations to take account of in developing codes and standards of governance, such as the extent to which they will be voluntary or mandatory, identifying legal requirements and good practice, and how frameworks for assessment and enforcement are developed. We would be happy to share our experience with HEFCW.

For further information, please contact:

Neal Green
Senior Policy Advisor

Tel: 020 7674 2343

Email: neal.green@charitycommission.gsi.gov.uk

or

Harry Iles
Head of Operations Wales

Tel: 01633 225505

Email: Harry.Iles@charitycommission.gsi.gov.uk

24 JUL 2013



Cardiff
Metropolitan
University

Prifysgol
Metropolitan
Caerdydd

Brendan Murtagh
Legislation Team
Corporate Services Division, Department for Education and Skills
Welsh Government
Freepost NAT 8910
Cathays Park, Cardiff
CF10 3NQ

22 July 2013

Dear Brendan Murtagh,

CONSULTATION ON HIGHER EDUCATION (WALES) BILL

I enclose Cardiff Metropolitan University's response to the above consultation.

I confirm that the University is content for the response to be made public, in keeping with your standard procedures.

Should you wish to discuss the response please contact David Price, Director of Strategy Development: dcprice@cardiffmet.ac.uk; 02920-416106.

Yours sincerely

PROFESSOR ANTONY J CHAPMAN

Vice-Chancellor and Principal:
Professor Antony J Chapman
Western Avenue,
Cardiff, CF5 2YB
Is-Ganghellor a Phrifathro:
Yr Athro Antony J Chapman
Rhodfa'r Gorllewin,
Caerdydd, CF5 2YB

TelephoneFfôn
+44 (0)29 2041 6101
FaxFfacs
+44 (0)29 2041 6910
EmailFbost
ajchapman
@cardiffmet.ac.uk
www.cardiffmet.ac.uk



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RESPONSE OF CARDIFF METROPOLITAN UNIVERSITY TO CONSULTATION ON THE HIGHER EDUCATION (WALES) BILL

INTRODUCTORY COMMENTS

Jurisdictional coverage

Paragraph 2.30 mentions that feedback in response to the White Paper sought clarification on “the geographical scope of the proposals” - by which we assume ‘geographical’ is meant to mean ‘jurisdictional’. Paragraph 2.32 specifies that the proposals “provide for regulatory control over higher education provision supported by Welsh Government backed grants and loans”. Ostensibly that paragraph appears to settle the jurisdictional question, yet key lacunae are apparent in the consultation document:

- a) The document says nothing about regulatory control over HE provision in English, Scottish and N. Irish universities that is supported by Welsh Government backed grants and loans. This is quite remarkable, especially given that the cost of the HE learning grant available to Welsh domiciled students studying outside of Wales is estimated to be circa £50M pa. Whilst recognising that it would not be within the legislative competence of the National Assembly to apply the regulatory controls described in the consultation to HE providers outside of Wales, this does not mean that the Welsh Government should not have any form of oversight or influence on loans and grants associated with Welsh students who study outside of Wales, or indeed the wider interests of such students. This might not be of significance it can be guaranteed regulatory mechanisms elsewhere in the UK will be sufficiently comparable to that applying in Wales, and therefore permit the Welsh Government to assume that that Welsh student interests and its own fiscal interests are appropriately safeguarded. However, is that a wise assumption given the intention of the UK Government to create more of a market place for higher education in England? Overseas governments often set conditions when they fund students who study in UK universities. Perhaps the Welsh Government should think along similar lines?
- b) The document describes the regulatory arrangements for HE providers who acquire automatic designation in a great deal of detail. By contrast the regulatory arrangements that would apply to providers which acquire designation on a case-by-case basis are not described in detail.
- c) Paragraph 5.11 states that fee levels must not exceed the maximum amount specified in regulations. The preceding paragraph reminds us that the current regulations allow for a maximum fee of £9K. The document is not explicit in explaining whether it is the Welsh Government’s intention to continue to legislate over fee levels that apply English, Scottish and Northern Irish students. We see no reason why the Welsh Government should seek to apply fee level limits on any students for which it has no direct fiscal responsibility. To do otherwise might represent an unacceptable constraint of trade and run the of legal challenge, particularly in circumstances in which HEFCW has already conceded that it has no business controlling the cost (to the UK Government) of recruiting English students to study

at Welsh universities and as Welsh universities are able to set fees for overseas students as they see fit.

The consultation describes circumstances in which HEFCW would withdraw its approval of a Fee Plan. This could result in an inequitable situation in which a Welsh university with a 'failing' quality assessment was unable to raise fee from Welsh students (and also other UK students depending on the scope of the sanction). Depending on how regulation is applied elsewhere in the UK, a university that was similarly 'failing' in terms of quality might be able to continue to raise fees from Welsh students. It would not be in the best interest of Welsh students for the Welsh Government to enable a 'failing' university to benefit from Welsh Government backed loans and grants.

Use of charitable status

The proposed requirement that a provider in Wales has charitable status in order to qualify for either automatic designation or case-by-case designation is presumably designed to discourage commercial providers. Whilst that fits with the Welsh Government's policy to not create a market place for higher education in Wales, it could have the unintended consequence of introducing duplication of regulation, and perhaps even regulation that is derivative in nature.

The Charity Commission requires Welsh each university (separately) to demonstrate public benefit. Its current guidelines may not be wholly appropriate for universities and it may well come to view that it needs to be provided with information from universities. Over time the content of Fee Plans may well find its way into university's annual returns to the Charity Commission. This would certainly introduce an element of duplication, but also the potential for HEFCW to 'fail' a university's Fee Plan but for the Charity Commission to 'accept' the university's annual return to it. An interesting legal conundrum might emerge – i.e. how would one handle a situation in which a university had demonstrated sufficient public benefit to retain its charitable status, whilst HEFCW ruled that the university's fee plan hadn't been effective enough? At the very least the Welsh Government should be in close dialogue with the Charity Commission about the implications of its proposals.

Regulation and planning

Some of described regulatory functions are more akin to planning activities. Key areas where the proposals exceed what would usually be understood as regulation include:

- Paragraph 5.26 proposes that HEFCW should have the power to direct a university to spend a specified amount on access and outreach activities. It is questionable whether HEFCW could ever have sufficient detailed knowledge to discharge such a function, or to guarantee that it represents best value for money. Furthermore, the act of instructing a governing body to spend a specific sum of money on a specific activity would be undermining of the former's responsibilities and its autonomy. As a corollary, the issue at stake should not be one of how much is spent on something, but what would be the likely benefit of spending something. Judgement on such matters should remain with governing bodies.

- Paragraph 5.29 proposes that all providers should be subject to the same core content of their plans. This is understood to pave the way for HEFCW's corporate targets to be imposed on all universities. The sector has previously expressed great reservation about this idea (in its response to HEFCW's consultation on 2014/15 Fee Plans). The action of HEFCW both defining the coverage of Fee Plans and extending its regulatory powers in the way suggested in the consultation would run the risk of being regarded as being disproportionate unless:
 - a) The coverage of Fee Plans relates exclusively to Welsh Government backed loans and grants
 - b) HEFCW's targets are confined to delivery matters as they relate to Welsh students
 - c) HEFCW develops transparent criteria for assessing fee plans and their effectiveness, which are published in advance of universities compiling their Fee Plans, and which are applied in an equitable and transparent manner.
- Paragraph 5.29 also specifies that HEFCW should be placed under a duty to take into account the proposed level of fee set out in fee plans. This is getting very close to giving HEFCW the power to set fees (and perhaps it has the practical effect of doing that), thereby undermining the responsibilities of governing bodies. HEFCW's powers should not encompass any involvement in influencing the level at which fees may be set.

Paragraph 6.15 proposes that HEFCW should be able to attend and address meetings of universities' Board of Governors. This is not needed and would serve to undermine the independence of governors. There are already plenty of adequate mechanisms available to HEFCW to communicate with universities.

Application of sanctions

The consultation is silent about the matter of when HEFCW would be able to apply any new regulatory powers (including sanctions) from a practical perspective. It is recommended that legislation should be specific about this matter to protect HEFCW from unrealistic expectation and potential legal challenge. Legal principles would dictate that HEFCW would not be able to apply its powers retrospectively, including in the context of its evaluation of a university performance in delivering a Fee Plan that was agreed with HEFCW prior to new legislation being agreed.

HEFCW

It is questionable whether HEFCW has the capacity, knowledge or experience to deliver the proposed regulatory obligations. It seems certain that considerable investment will be required to update HEFCW's staffing and systems. The cost (and timescale) of doing this should be evaluated prior to the drafting of legislation, and be subject to a transparent value for money evaluation.

Institutional safeguards

The proposals make no reference to important public safeguards that are enshrined in the Further & Higher Education Act 1992, and which currently form the regulatory framework for higher education. It would be regrettable and probably counter-productive to erode this framework. We

would recommend that provisions of the 1992 Act that protect academic, financial and corporate autonomy of universities should be retained in any new legislation.

The proposals similarly are silent about the locus of the power to dissolve Higher Education Corporations (HECs). This matter is being considered elsewhere in the UK, and it would be sensible for the Welsh Government to also consider removing the power of the Welsh Ministers to dissolve HECs or to include appropriate restrictions on its use.

RESPONSES TO CONSULTATION QUESTIONS

Section 4 – A Revised Regulatory System

- 1. In light of the increased regulatory role proposed for HEFCW should amendments be made to the Council's name?**

No, there could be benefits in retaining the current brand identity – for reasons of business continuity and to avoid unnecessary expenditure. The moniker 'HEFCW' would be a name in its own right rather than an acronym (as is the case with QUANTAS, BMW etc).

- 2. We recognise that a variety of franchising arrangements currently exist in Wales and that these have been developed under the funding system which operated prior to the introduction of new fees and student support arrangements. We are particularly interested in your views as to how franchised provision should be dealt with under the new regulatory framework. In particular:**

(a) Will the proposal for the institution or provider which franchises the course to be the body which is responsible for either applying for a fee plan or requesting case-by-case designation of its courses work in practice?

Franchising organisations are responsible for the quality and standards of provision delivered by franchisees but there are practical limits to their ability to directly influence delivery as responsibility for management and governance lies with franchisees.

(b) Could this proposal result in any delivery issues? If so please identify those issues.

Given the limitations in the powers of franchising organisations there is scope for the action or inaction of a franchisee (over which the franchiser has no control) to impact negatively on the franchisee's fee plan.

In cases where an organisation franchises provision from more than one provider the effect of regulation will be fragmented.

(c) Are there any alternative approaches which you wish to put forward for consideration?

Organisations that franchise provision from others (i.e. franchisees) should be regulated directly by HEFCW through their own fee plan.

Section 5 - Fee Controls and Fair Access

- 3. Do you agree with the proposal that in cases of persistent failure to comply with fee limits that HEFCW should be able to withdraw its approval in respect of an approved plan?**

Yes, providing that fee limits apply only in relation to Welsh & EU domiciled students (i.e. they do not cover students from other parts of the UK and overseas students), and that the content

and purpose of fee plans correspond similarly to matters for which the National Assembly's has fiscal responsibility.

- 4. Do you agree with the proposal to extend HEFCW's relevant authority role in order that it may evaluate the effectiveness of fee plans both individually and across the Welsh higher education sector?**

Yes, subject to fee plan content and targets relating to Welsh domiciled students only.

- 5. Do you agree that transitional protection should be made available for students who have commenced their studies with a regulated provider which subsequently has approval for its fee plan withdrawn or approval of a fee plan is refused upon renewal?**

Yes, as this would help to safeguard student interests.

- 6. Do you agree with the proposal that all institutions and other providers with an approved plan in force should be subject to the same core requirements?**

Yes, as this would be equitable.

- 7. Do you agree with the proposal for HEFCW to be required to take account of the proposed level of fee in determining whether fee plan commitments are sufficient?**

No. HEFCW's evaluation and approved of proposed fee levels, targets and other content needs to be undertaken in an equitable and transparent manner. It is therefore necessary for HEFCW to consult on the criteria that it seeks to use when evaluating and approving fee plan, and to use the resulting criteria in a consistent and equitable fashion. The University perceives potential risks in HEFCW being asked or encouraged to make assessments about fee levels as it is unlikely to be in possession of the requisite knowledge and expertise to make judgements on such matters. Furthermore, HEFCW involvement in setting fee levels could conflict with the responsibility of university governors. In no circumstances should HEFCW have any possible involvement in taking into account the level of fees that would apply to categories of student from for whom and the Welsh Government have no fiscal (i.e. overseas students and non-Welsh UK students).

- 8. Do you agree with the proposed value of £6,000 for the 'threshold' fee amount?**

No. The consultation gives no reasoned explanation for setting the threshold at £6,000. Welsh universities need to set their fees at a level that will enable them to afford the investments necessary to provide a high quality student experience relative to competitor institutions in England and elsewhere in the UK. It would make better sense to reflect this reality, and set the threshold at or near the level of the average fee of English universities. This would imply a level of at least £8,000.

- 9. Do you agree with the range of proposed sanctions to be made available to HEFCW and that HEFCW, as relevant authority should have discretion in their application?**

No. Giving HEFCW latitude to determine whether or not it should apply sanctions runs the risk of inconsistent treatment and legal challenge and should be avoided. Whilst appreciating the purpose of this suggestion (i.e. to avoid the highly difficult task of defining a range of circumstances in which HE providers might fall short of delivering on their fee plans), the practical approach would be for legislation to be framed to ensure that the nature and scope of regulation matches the level of risk. Given that the proposed arrangements would make it

highly difficult if not impossible for a private/for profit provider to acquire automatic designation, and that existing universities and FE college in Wales all have an outstanding record of public service, it would be appropriate for the legislation to take a *de minimis* approach to regulation.

- 10. It is proposed that where HEFCW (as relevant authority) decides to withdraw its approval of a fee plan, the institution or provider affected may apply for a review of that decision to an independent panel / person. Do you consider this review mechanism to be sufficient or is there a need for any additional review or appeal arrangements? If so please specify what such arrangements might entail.**

Yes, with caveats. The appeal process should be carefully constructed to ensure that adequate time is given for HEFCW communicating its intent to withdraw approval of a fee plan. Intent to withdraw approval should remain a confidential matter between HEFCW, the HE provider and the appeals panel/person until such time as the appeal has been completed. Adequate time should be given for appeal – a timeframe of several months could be expected as the process would be likely to involve the compilation of information and meetings, and potentially formal legal representation. An appeal process dependent on the decision of one independent person could be problematic. That person may not have the requisite technical knowledge to reach a secure judgement or may be indisposed at the time of the appeal. A panel would be preferable, with the appointment of its members being ratified by the Commission for Public Appointments.

- 11. Should regulated providers (i.e. those with an approved fee plan in force) whose higher education courses are subject to automatic designation for statutory student support purposes be able to exempt certain courses from automatic designation and the regulatory requirements associated with fee plans?**

Yes, as there will be cases where provision is not supported by Welsh Government backed grants and loans – for example: provision that is targeted exclusively at international audiences; non-accredited provision; CPD provision that is paid for by employers or individuals, transnational education provision.

Section 6 - Quality Assessment

- 12. Do you agree that HEFCW's duty to make provision for assessing the quality of higher education delivered by regulated providers in Wales should extend to all courses of higher education falling within the scope of schedule 6 to the Education Reform Act 1988?**

No, as regulation would then be premised on the notion of a 'course', with the potential consequence that provision which forms part of a qualification or which is awarded credits in its own right could fall under different quality assurance arrangements. Furthermore, the extension of HEFCW's role as a regulatory when operated in conjunction with its responsibility for quality assessment may have particular implications for courses/provision that is accredited by professional bodies. Such bodies are responsible for their awards and apply their own framework for assurance with which HE providers are obliged to comply.

- 13. Do you agree with the proposed approach of making provision for HEFCW to be able to direct regulated providers to provide access to premises, records and documents for the purpose of quality assessment?**

Yes, subject to requests for information being reasonable – i.e. relating solely to the purpose of quality assessment, sufficient notice of requirements, and clarity of needs.

- 14. In order to deal with case of unsatisfactory quality are the actions specified at paragraph 6.15 appropriate and adequate? Are there any other actions which you consider HEFCW should be able to undertake?**

Yes, so long as they were applied in a consistent and transparent fashion.

- 15. Do you consider that the person or person(s) requesting access to premises, records and documents for the purpose of HEFCW's quality assessment duty should be required to produce identification at the request of the institution or other provider which is the subject of the quality assessment?**

Yes, as there are data protection considerations. The individual should also declare that there he/she has no conflict of interest in conducting the assessment.

- 16. In the event of HEFCW revoking a fee plan are the safeguards set out at paragraph 6.18 appropriate and sufficient?**

Yes, subject to an appeal process that allows sufficient time for the HE provider to make representations – see responses to questions in Section 5.

- 17. Do you agree with the proposal that HEFCW be required to submit an annual report to the Welsh Ministers on the discharge of its quality assessment duty?**

No, as the primary assurance mechanism is Institutional Review which is held every 5-6 years. We would be concerned that the need to provide an annual report would create extra and unnecessary 'red tape', as HE providers could be asked to provide additional information in the intervening years.

- 18. Are the proposals in respect of franchised provision workable in practice?**

No, the University advocates franchisees being responsible for their own fee plans – see responses to questions in Section 4.

Section 7 - Financial and Governance Assurance

- 19. Do you agree that HEFCW should be required to consult on the proposed Financial and Corporate Governance Code?**

Yes, if legislation requires HEFCW to approve a code. However, we do not see logic in HEFCW itself being directly involved in developing a code. The point of regulation here should be that HEFCW should be satisfied that each HE provider has adopted and is using an acceptable and appropriate Code, and that any divergence from that code is justified. In practice this means that HE providers would subscribe to the Code established (and periodically updated) by the Committee of University Chairs.

- 20. (a) Do you agree that following HEFCW's consultation on the draft Code that further scrutiny should be provided for?**

No, it is difficult to see any benefit from further scrutiny – knowledge and expertise on this matter is held by HE providers themselves, the Committee of University Chairs and HEFCW.

(b) If 'Yes' then which of the options set out in paragraph 7.12 do you prefer and why?

N/A

21. (a) Do you agree with the parameters of the proposed Code in paragraph 7.11?

No – see respond to question 21d below.

(b) Should the parameters apply equally to all institutions and other providers with an approved plan in force?

Yes, as this would be equitable.

(c) Should these parameters be set out in the proposed Bill with the operational detail of the Code left as a matter for HEFCW to develop?

No, this gives HEFCW too much discretion and it is unclear how HEFCW would use such latitude in respect of the proposals for fee planning arrangements.

(d) Under what circumstances, if any, should HEFCW's consent be required for regulated providers to enter into certain financial transactions?

None, responsibility for risk, and the knowledge and expertise to manage it resides in HE providers, not in HEFCW.

22. Should HEFCW be required to consult on and publish a statement of its intervention policy?

Yes, otherwise it would run the risk of legal challenge should there be any suggestion that HE providers were treated differentially.

23. Do you agree that where HEFCW is satisfied that a regulated provider has demonstrated serious financial mismanagement that HEFCW should be able to withdraw approval of that provider's fee plan whether or not it has issued a direction to that provider to comply with the requirements of the Code?

No, HEFCW should issue a compliance direction thereby affording the HE provider opportunity to avoid dispute and/or to legally challenge the legality of the directive.

24. Are the safeguards set out at paragraph 7.16 appropriate and sufficient?

No. Information on HEFCW's intention (or provisional intention) to issue a direction should be confidential to HEFCW, the HE provider and any appeals mechanism until an appeal has been concluded.

25. Are there other issues not addressed above?

Yes, please see the Introductory Comments provided above.

Also, paragraph 7.19 asks for comments on the arrangements for franchised provision, although a corresponding question is not defined in the questions section. The University proposes that franchisees should be subject to HEFCW's Financial and Corporate Governance Code as they directly receive student fees that are backed by Welsh Government loans and grants. Franchisors do not have management or governance control of franchisees and cannot therefore be responsible for their actions other than in the area of academic quality and standards.

Bil Addysg Uwch (Cymru) 2014: ymgynghoriad technegol

**Ffurflen ymateb i'r
ymgyngoriad**

Eich enw: Dr Dafydd Trystan Davies

Sefydliad (lle bo'n berthnasol): Coleg Cymraeg
Cenedlaethol

e-bost / rhif ffôn: d.trystan@colegcymraeg.ac.uk

Eich cyfeiriad: Y Llwyfan, Heol y Coleg, Caerfyrddin

Dylid anfon ymatebion erbyn **29 Gorffennaf 2013** at:

Brendan Murtagh
Y Tîm Deddfwriaeth
Yr Is-adran Gwasanaethau Corfforaethol
Yr Adran Addysg a Sgiliau
Llywodraeth Cymru
Rhadbost NAT 8910
Parc Cathays
Caerdydd
CF10 3NQ

neu llenwch y ffurflen yn electronig a'i hanfon drwy'r

e-bost: highereducationwalesbill@wales.gsi.gov.uk

Adran 4: System reoleiddio ddiwygiedig

Cwestiwn 1 - Yng ngoleuni'r rôl reoleiddio fwy y bwriedir ei rhoi i Gyngor Cyllido Addysg Uwch Cymru (CCAUC), a ddylid newid enw'r Cyngor?

Dylid

Na ddylid

Rhowch resymau am eich atebion a'ch sylwadau.

Does gennym ddim sylwadau i gynnig ar enw'r corff rheoleiddio.

Cwestiwn 2 - Rydym yn cydnabod bod yna amrywiaeth o drefniadau breinio eisoes yn bodoli yng Nghymru, a bod y rhain wedi'u datblygu o dan y system gyllid a oedd gennym cyn i'r trefniadau newydd o ran ffioedd a chymorth i fyfyrwyr gael eu cyflwyno. Mae gennym ddiddordeb arbennig yn eich barn ynghylch sut dylid delio â threfniadau breinio o dan y fframwaith rheoleiddio newydd. Yn benodol:

- (a) a fydd y cynnig i wneud y sefydliad neu'r darparwr sy'n breinio'r cwrs yn gyfrifol naill ai am wneud cais am gynllun ffioedd neu am wneud cais i ddynodi ei gyrsiau fesul achos yn gweithio'n ymarferol?
- (b) a allai'r cynnig hwn greu problemau cyflenwi? Os felly, nodwch y problemau
- (c) a oes unrhyw ddulliau gweithredu eraill posibl yr ydych am iddynt gael eu hystyried?

Rhowch eich sylwadau.

Dim sylwadau penodol.

Adran 5: Rheolaethau ar ffioedd a mynediad teg

Cwestiwn 3 - A ydych yn cytuno â'r cynnig y dylai CCAUC, mewn achosion o fethiant parhaus i gydymffurfio â'r terfynau ffioedd, allu tynnu'n ôl ei gymeradwyaeth mewn perthynas â chynllun a gymeradwywyd?

Ydw

Rhowch resymau am eich atebion a'ch sylwadau.

Mae'n allweddol fod HEFCW yn medru gweithredu yn gadarn os oes Cynllun ffioedd yn cael ei dorri neu os yw cynllun ffioedd a gyflwynir yn annigonol.

Cwestiwn 4 - A ydych yn cytuno â'r cynnig i ehangu rôl CCAUC, fel yr awdurdod perthnasol, er mwyn iddo allu gwerthuso effeithiolrwydd cynlluniau ffioedd yn unigol ac ar draws sector addysg uwch Cymru?

Ydw

Rhowch resymau am eich atebion a'ch sylwadau.

Mae ymestyn rôl HEFCW yn y cyd-destun yma yn gwbl cydnaws a phriodol.

Cwestiwn 5 - A ydych yn cytuno y dylid amddiffyn myfyrwyr sydd wedi dechrau eu hastudiaethau gyda darparwr a reoleiddir sydd wedyn yn colli'r gymeradwyaeth i'w gynllun ffioedd neu y gwrthodir cymeradwyo cynllun ffioedd newydd ar ei gyfer?

Ydw

Rhowch resymau am eich atebion a'ch sylwadau.

Mae gwrthod cynllun ffioedd yn gam pwysig ac yn gorwedd ar eithaf pellach yr hyn y gall ac a ddylai HEFCW ei wneud. Os yw'n digwydd mae angen sicrhau fod buddiannau'r myfyrwyr a gaiff eu heffeithio yn cael eu diogelu.

Cwestiwn 6 - A ydych yn cytuno â'r cynnig y dylai'r un gofynion craidd fod yn berthnasol i bob sefydliad a darparwr arall sydd â chynllun a gymeradwywyd?

Ydw

Rhowch resymau am eich atebion a'ch sylwadau.

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Cwestiwn 7 - A ydych yn cytuno â'r cynnig i'w gwneud yn ofynnol i CCAUC roi ystyriaeth i lefel arfaethedig y ffi wrth benderfynu a yw ymrwymïadau cynlluniau ffioedd yn ddigonol?

Ydw

Rhowch resymau am eich atebion a'ch sylwadau.

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Cwestiwn 8 - A ydych yn cytuno â'r swm arfaethedig o £6,000 fel ffi 'trothwy'?

Ydw

Rhowch resymau am eich atebion a'ch sylwadau.

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Cwestiwn 9 - A ydych yn cytuno ag amrywiaeth y sanctsiynau arfaethedig a fydd ar gael i CCAUC ac y dylai CCAUC, fel yr awdurdod perthnasol, allu eu gweithredu yn ôl ei ddisgresiwn?

Ydw

Rhowch resymau am eich atebion a'ch sylwadau.

Mae ehangu'r ystod o bwerau rheoleiddio sydd gan HEFCW yn gwbl allweddol os am sicrhau llwyddiant y drefn newydd o gynllunio ffioedd. Yn dilyn cyflwyno ffioedd mae'r premia a fu'n cael eu defnyddio gan HEFCW i hybu mynediad i Addysg Uwch a blaenoriaethau eraill priodol polisi cyhoeddus yn ymwneud a chydaddoldeb e.e. myfyrwyr ag anabledd, myfyrwyr yn astudio yn Gymraeg, yn diflannu. Er mwyn sicrhau fod y nodweddion hollbwysig yma yn cael sylw priodol mae angen i'r broses o gynllunio ffioedd ganiatáu i HEFCW rheoleiddio'r ystod cyflawn o ddisgwyliadau a nodir yn y cynllun ffioedd. Mae'n gwbl briodol felly fod HEFCW yn gallu cyfarwyddo Prifysgolion i wario swm penodol (gan adlewyrchu'r cynllun ffioedd) er mwyn annerch blaenoriaethau strategol yng nghyd-destun mynediad a chydaddoldeb. Awgrymwn felly fod angen i'r Mesur terfynol fod hyd yn oed yn fwy eglur am rym HEFCW i weithredu yn y cyd-destun yma. Awgrymwn fod y grym hyn, yn ogystal a'r grymoedd eraill a gyflwynir sydd is-law gwrthod cynllun ffioedd yn debygol o fod yn rymoedd llawer mwy effeithiol wrth ddelio gyda Phrifysgolion. Byddai gwrthod cynllun ffioedd yn arwydd o fethiant difrifol iawn, ond mae rheoleiddio Prifysgolion yn briodol er mwyn cwrdd a blaenoriaethau strategol yn gwbl gydnaws gyda'r mesur arfaethedig a llif polisi cyhoeddus yng Nghymru yn fwy cyffredinol.

Cwestiwn 10 - Y bwriad yw, pan fydd CCAUC (fel yr awdurdod perthnasol) yn penderfynu tynnu'n ôl ei gymeradwyaeth i gynllun ffioedd, y gall y sefydliad neu'r darparwr dan sylw wneud cais am adolygiad o'r penderfyniad hwnnw i banel/person annibynnol. A ydych o'r farn bod y weithdrefn adolygu hon yn ddigonol neu a oes angen trefniadau adolygu neu apelio ychwanegol? Os felly, nodwch sut drefniadau fyddai'n briodol.

Ydw

Mae'r hyn a awgrymir yn ddigonol.

Rhowch resymau am eich atebion a'ch sylwadau.

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Cwestiwn 11 - A ddylai darparwyr a reoleiddir (hy y rheini sydd â chynllun ffioedd a gymeradwywyd) y caiff eu cyrsiau addysg uwch eu dynodi'n awtomatig at ddibenion derbyn cymorth statudol i fyfyrwyr allu eithrio rhai cyrsiau rhag cael eu dynodi'n awtomatig a'r gofynion rheoleiddio sy'n gysylltiedig â chynlluniau ffioedd?

Dylent

Rhowch resymau am eich atebion a'ch sylwadau.

Adran 6: Asesu ansawdd

Cwestiwn 12 – A ydych yn cytuno y dylai dyletswydd CCAUC i wneud darpariaeth ar gyfer asesu ansawdd addysg uwch a ddarperir gan ddarparwyr a reoleiddir yng Nghymru gynnwys pob cwrs addysg uwch sy'n dod o fewn cwrpas atodlen 6 i Ddeddf Diwygio Addysg 1988?

Ydw

Rhowch resymau am eich atebion a'ch sylwadau.

Cwestiwn 13 – A ydych yn cytuno â'r cynnig arfaethedig y dylid gwneud darpariaeth i CCAUC allu cyfarwyddo darparwyr a reoleiddir i roi mynediad i'w safleoedd, eu cofnodion a'u dogfennau at ddibenion asesu ansawdd?

Ydw

Rhowch resymau am eich atebion a'ch sylwadau.

Cwestiwn 14 –A ydy'r camau a nodwyd ym mharagraff 6.15 yn briodol ac yn ddigonol ar gyfer ymdrin ag achos o ansawdd anfodddhaol? A oes yna unrhyw gamau eraill yr ydych o'r farn y dylai CCAUC allu eu cymryd?

Ydynt, Nac Oes

Mae'r hyn a argymhellir yn cynnig sawl opsiwn i HEFCW.

Rhowch resymau am eich atebion a'ch sylwadau.

Cwestiwn 15 – A ydych yn credu y dylai fod gofyn i'r person neu bersonau sy'n gofyn am fynediad i safle, cofnodion a dogfennau at ddibenion dyletswydd asesu ansawdd CCAUC gyflwyno cerdyn adnabod ar gais sefydliad neu ddarparwr arall sy'n cael ei asesu?

Ydw

Rhowch resymau am eich atebion a'ch sylwadau.

Dylai fod yr un rheolau yn berthnasol i HEFCW yn y cyd-destun yma i'r sawl sy'n ymweld a Phrifysgolion i adolygu agweddau eraill e.e. y QAA

Cwestiwn 16 – Pe bai CCAUC yn dirymu cynllun ffioedd, a ydy'r camau diogelu ym mharagraff 6.18 yn briodol ac yn ddigonol?

Ydynt

Rhowch resymau am eich atebion a'ch sylwadau.

Cwestiwn 17 – A ydych yn cytuno â'r cynnig bod gofyn i CCAUC gyflwyno adroddiad blynyddol i Weinidogion Cymru ar y modd y mae wedi arfer ei ddyletswydd mewn perthynas ag asesu ansawdd?

Ydw

Rhowch resymau am eich atebion a'ch sylwadau.

Cwestiwn 18 – A ydy'r cynigion mewn perthynas â threfniadau breinio yn ymarferol?

Nid oed gennym sylwadau penodol ar y materion hyn.

Rhowch resymau am eich atebion a'ch sylwadau.

Adran 7: Sicrwydd ariannol a llywodraethu

Cwestiwn 19 – A ydych yn cytuno y dylai fod yn ofynnol i CCAUC ymgynghori ar y Cod Llywodraethu Ariannol a Chorfforaethol arfaethedig?

Ydw

Rhowch resymau am eich atebion a'ch sylwadau.

Cwestiwn 20 – A ydych yn cytuno y dylid darparu ar gyfer craffu pellach yn dilyn ymgynghoriad CCAUC ar y Cod drafft?

Ydw ☐

Nac ydw ☐

Os 'Ydw', pa un o'r opsiynau a nodir ym mharagraff 7.12 sydd orau gennych a pham?

Does gennym ddim barn penodol ar ymgynghori pellach. Os bernir fod angen cam pellach ar y broses ymgynghorol ystyrir taw'r ail opsiwn yw'r mwyaf addas.

Cwestiwn 21(a) – A ydych yn cytuno â chwmpas y Cod arfaethedig ym mharagraff 7.11?

Ydw

Rhowch resymau am eich atebion a'ch sylwadau.

Cwestiwn 21(b) – A ddylai'r cwmpas fod yr un mor berthnasol i bob sefydliad a darparwr arall sydd â chynllun cymeradwy?

Dylai

Rhowch resymau am eich atebion a'ch sylwadau.

Cwestiwn 21(c) – A ddylid amlinellu'r cwmpas hwn yn y Bil arfaethedig a gadael i CCAUC ddatblygu manylion gweithredol y Cod?

Dylid

Rhowch resymau am eich atebion a'ch sylwadau.

Cwestiwn 21(d) – Ym mha amgylchiadau, os o gwbl, y dylai fod gofyn i ddarparwyr a reoleiddir gael caniatâd CCAUC i ymgymryd â thrafodion ariannol penodol?

Dim sylwadau penodol

Rhowch eich sylwadau.

Cwestiwn 22 – A ddylai fod yn ofynnol i CCAUC ymgynghori ar ddatganiad o'i bolisi ymyrraeth a'i gyhoeddi?

Dylai

Rhowch resymau am eich atebion a'ch sylwadau.

Cwestiwn 23 - Os yw CCAUC yn bendant bod darparwr a reoleiddir wedi dangos camreolaeth ariannol ddifrifol, p'un a roddodd CCAUC gyfarwyddyd i'r darparwr hwnnw gydymffurfio â gofynion y Cod ai peidio, a ydych yn cytuno y dylai CCAUC gael tynnu'n ôl ei gymeradwyaeth i gynllun ffioedd y darparwr?

Ydw

Rhowch resymau am eich atebion a'ch sylwadau.

Cwestiwn 24 – A ydy'r camau diogelu a nodir ym mharagraff 7.16 yn briodol ac yn ddigonol?

Ydynt

Rhowch resymau am eich atebion a'ch sylwadau.

Cwestiwn 25 - Rydym wedi gofyn nifer o gwestiynau penodol. Os oes gennych unrhyw faterion cysylltiedig nad ydyn ni wedi mynd i'r afael â nhw, defnyddiwch y blwch hwn i'w cofnodi.

Carwn bwysleisio fod sicrhau grym addas a phriodol l'r rheoleiddiwr er mwyn sicrhau fod Prifysgolion yn arddel eu cyfrifoldebau fel a'u cytunir mewn cynlluniau ffioedd yn llawn yn hollbwysig. Mae arf gwrthod cynllun ffioedd yn arf eithafol yn nwylo'r rheoleiddiwr ac mae

sicrhau ystod o sancsiynnau priodol ac effeithiol er mwyn sicrhau llwyddiant amcanion polisi cyhoeddus fel rhan o'r Mesur yn allweddol.

Mae'n bosibl y bydd ymatebion i ymgynghoriad yn cael eu cyhoeddi, ar y rhyngwrwyd neu mewn adroddiad. Pe bai'n well gennych i'ch ymateb gael ei gadw'n gyfrinachol, ticiwch y blwch:

☐

Higher Education (Wales) Bill 2014: technical consultation

Consultation response form

Your name: Mrs Lucy Hodson

Organisation (if applicable): Aberystwyth University

e-mail/telephone number:

Your address: Planning Office, Aberystwyth University
Visualisation Building, Penglais, Aberystwyth, SY23
3BF

Responses should be returned by **29 July 2013** to:

Brendan Murtagh
Legislation Team
Corporate Services Division
Department for Education and Skills
Welsh Government
Freepost NAT 8910
Cathays Park
Cardiff
CF10 3NQ

or completed electronically and sent to:

e-mail: highereducationwalesbill@wales.gsi.gov.uk

Section 4: A revised regulatory system

Question 1 – In light of the increased regulatory role proposed for HEFCW should amendments be made to the Council's name?

Yes ☐

No ☐ NO

Please give your reasons for your answer and comments.

HEFCW is an established brand, known in Wales, the UK and overseas. To change it would cause confusion.

Question 2 – We recognise that a variety of franchising arrangements currently exist in Wales and that these have been developed under the funding system which operated prior to the introduction of new fees and student support arrangements. We are particularly interested in your views as to how franchised provision should be dealt with under the new regulatory framework. In particular:

- (a) will the proposal for the institution or provider which franchises the course to be the body which is responsible for either applying for a fee plan or requesting case-by-case designation of its courses work in practice?
- (b) could this proposal result in any delivery issues? If so please identify those issues
- (c) are there any alternative approaches which you wish to put forward for consideration?

Please give your comments.

The institution which franchises the course should be responsible for applying for the fee plan, or requesting case-by-case designation. This proposal does not change current arrangements, and reinforces the duty of the franchisor to assure quality arrangements and financial sustainability of the franchisee. It enables students being taught at relatively small institutions, but franchised to HEIs, to benefit from broad fee plans formulated with the wide range of student needs and expectations in mind.

Section 5: Fee controls and fair access

Question 3 – Do you agree with the proposal that in cases of persistent failure to comply with fee limits HEFCW should be able to withdraw its approval in respect of an approved plan?

Yes ☐

No ☐ NO

Please give your reasons for your answer and comments.

There should be no automatic cut-off. The definition of what constitutes non-compliance with fee limits also needs to be rigorous – higher average fees can be created by variances in student profile/programme choice which, in the current volatile climate, can be beyond an HEI's control or as the direct result of the recruitment behaviour of another HEI, particularly if the HEI is also attempting to deliver other elements of HEFCW's corporate strategy. Lower than expected recruitment of foundation degree level students could result in a smaller overall student population, but a higher average fee. A system of graded penalties would be more appropriate than withdrawal of the fee plan approval. In addition, the consultation uses the term "fee limit" in a vague way – is this average fee? What is the limit which is exceeded – an average, or a total amount?

Question 4 – Do you agree with the proposal to extend HEFCW's relevant authority role in order that it may evaluate the effectiveness of fee plans both individually and across the Welsh higher education sector?

Yes ☐

No ☐ No

Please give your reasons for your answer and comments.

HEFCW already plays a role in helping institutions to evaluate the effectiveness of their fee plans. The completion of the Annual Monitoring Statement enables institutions to assess the impact of their own plans, and the use of Corporate Strategy targets in fee plans ensures that plans relate to a wider sector agenda. Fee plans and the corporate strategy targets already reference a wealth of data collected by the Higher Education Statistics Agency (and the process audited by HEFCW, unlike rest of UK) and readily available for analysis. We consider that this combination of self-reporting coupled with audited and benchmarkable statutory reporting is sufficient to ensure that fee plans respond both to the strategic aims and student needs of particular institutions and to objectives set for the sector and we see no reason for amending this.

We signal here our echoing of HEW's concerns that close control of the delivery of detailed fee plans at the level of each individual institution risks endangering Welsh HEIs' independent status for national accounting purposes (NPISH), i.e. not being reported under "central government".

We also resist, as we believe HEFCW does also, any notion of an “inspectorate” of HE.

Question 5 – Do you agree that transitional protection should be made available for students who have commenced their studies with a regulated provider which subsequently has approval for its fee plan withdrawn or approval of a fee plan refused upon renewal?

Yes

☐ YES

No

Please give your reasons for your answer and comments.

If an institution fails for whatever reason, HEFCW and the rest of the HE sector will have a duty of care towards students who can no longer continue their education at that institution (see the arrangements which were put in place for overseas students once London Met had its UKBA trusted status withdrawn). We do not believe that blanket withdrawal of fee plan approval is an appropriate sanction, or that any institution would deliberately “persistently” fail to comply with the provisions of its fee plan, particularly if those fee plans are drawn up with full consideration of the student voice.

Question 6 – Do you agree with the proposal that all institutions and other providers with an approved plan in force should be subject to the same core requirements?

Yes

☐

No

☐ No

Please give your reasons for your answer and comments.

Where providers have courses designated for the purpose of statutory student support we would agree that they should be subject to the same overall core requirements of access to and promotion of HE, to ensure parity across the system and to ensure that sufficient student fee income is disbursed by all institutions in ways which contribute to the enhancement of the student experience and the furthering of excellent higher education in Wales. However, the balance between the differing sub-elements of the core requirements, especially if using corporate strategy targets, should reflect the different identities of each institution, each institution’s ability to respond to its own constituencies and academic mission and the diversity of the sector as a whole.

Question 7 – Do you agree with the proposal for HEFCW to be required to take account of the proposed level of fee in determining whether fee plan commitments are sufficient?

Yes ☐

No ☐ No

Please give your reasons for your answer and comments.

We consider that the current requirement for all institutions to invest at least 30% of their additional fee income in activity to widen access or enhance the student experience, whatever the level of fee above the threshold amount, is sufficient.

This consultation throws into question the premise of the fee plan. It is an annual commitment to invest in a) access to Higher Education and b) promoting excellent higher education. It is a commitment first and foremost to students who are paying the high fees. The fee plan has never been a statement of institutional strategy and vision by HEIs. HEIs publish long term strategic plans with ambitious, visionary targets, and which include an element of risk. The operational, one-year fee plan, and its operational, relatively short term targets, should be kept distinct from a university's longer term strategic view.

Question 8 – Do you agree with the proposed value of £6,000 for the 'threshold' fee amount?

Yes ☐ YES

No ☐

Please give your reasons for your answer and comments.

This is in line with England – in general we support movements towards ensuring that the two funding and regulatory regimes do not diverge too much.

Question 9 – Do you agree with the range of proposed sanctions to be made available to HEFCW and that HEFCW, as relevant authority, should have discretion in their application?

Yes ☐

No ☐ No

Please give your reasons for your answer and comments.

We have valued the assistance of HEFCW as an arms-length body with long-standing experience and detailed knowledge of the sector. This has ensured that HEFCW is a valuable source of advice and guidance to HEIs in Wales. In the new funding regime we are keen to ensure that HEFCW continues to have a constructive role to play in assisting HEIs to grow and succeed and we consider that the best way forward is through partnership with the sector. We have concerns that the increased sanctions being proposed, and the planned recourse to court injunctions in the event of non-compliance, militate against this, do not reflect a partnership approach and distort the balance between the centre and the individual HEI.

We are concerned by the lack of vision shown in the concept of “spending directions” – as if failure to meet targets which are dependent on so many factors can somehow always be addressed by increased expenditure. The solution may be redeployment of existing resource, for instance, or increasing expenditure in some core academic areas. It is hoped that action to redress any non-achievement of targets will be developed in partnership, drawing on local expertise and knowledge.

Question 10 – It is proposed that where HEFCW (as relevant authority) decides to withdraw its approval of a fee plan, the institution or provider affected may apply for a review of that decision to an independent panel/person. Do you consider this review mechanism to be sufficient or is there a need for any additional review or appeal arrangements? If so, please specify what such arrangements might entail.

Yes ☐

No ☐ NO

Please give your reasons for your answer and comments.

We do not favour this idea and, if imposed, they would require a review mechanism and we would be insisting on further consultation on the configuration of the review panels, given the importance of the decision they will reach. Panels must be configured in a way that is sensitive to the diversity of the sector and institutions must be given every opportunity to make a robust case for their plans. We have valued the opportunity to work in collaboration with the Funding Council to refine previous plans for the benefit of students and Welsh HE alike. We wish to see this partnership approach to the agreement and working out of fee plans continue.

Question 11 – Should regulated providers (i.e. those with an approved fee plan in force) whose higher education courses are subject to automatic designation for statutory student support purposes be able to exempt certain courses from automatic designation and the regulatory requirements associated with fee plans?

Yes ☐ YES

No ☐

Please give your reasons for your answer and comments.

There may be commercial reasons for doing this. We would envisage this would be the same as the concept of the “closed course”, where full time undergraduate degree provision is available for certain groups only, usually a professional group. This would allow regulated providers to compete for business, e.g. from a multi-national corporation, or a large public sector body such as the Police or the NHS, without having to comply with fee plan restrictions with regard to the use of the fees so generated.

Section 6: Quality assessment

Question 12 – Do you agree that HEFCW’s duty to make provision for assessing the quality of higher education delivered by regulated providers in Wales should extend to all courses of higher education falling within the scope of schedule 6 to the Education Reform Act 1988?

Yes ☐

No ☐ NO

Please give your reasons for your answer and comments.

We consider that QAA must continue to be the main body for quality assurance, and that HEFCW’s service level agreement with the QAA should continue. The QAA is fit for purpose and is a recognised brand as a kitemark of quality internationally. In order to ensure that the quality of Welsh HE is recognised, we must retain parity with the rest of the UK in terms of quality assurance and avoid developing a Wales only model.

Question 13 – Do you agree with the proposed approach of making provision for HEFCW to be able to direct regulated providers to provide access to premises, records and documents for the purpose of quality assessment?

Yes ☐

No ☐ NO

Please give your reasons for your answer and comments.

Again, we have concerns that the emphasis here is on regulation, not on the fruitful collaborative working that HEFCW and Welsh HEIs have enjoyed in the past which has helped Welsh HE to grow and flourish. We have concerns that these proposals represent a palpable shift in the relationship between HEFCW and Welsh HEIs which will not be to the benefit of Welsh HE. HEIs already have considerable duties of disclosure to HEFCW and other bodies; these duties are adequate without moving towards an undesirable inspection regime.

Question 14 – In order to deal with cases of unsatisfactory quality are the actions specified at paragraph 6.15 appropriate and adequate? Are there any other actions which you consider HEFCW should be able to undertake?

Yes ☐

No ☐ NO

Please give your reasons for your answer and comments.

We would welcome the continuation of existing powers to deal with unsatisfactory quality but see no basis for and would not support an extension to the existing powers to deal with unsatisfactory quality.

Question 15 – Do you consider that the person or person(s) requesting access to premises, records and documents for the purpose of HEFCW's quality assessment duty should be required to produce identification at the request of the institution or other provider which is the subject of the quality assessment?

Yes ☐ YES

No ☐

Please give your reasons for your answer and comments.

Our students and other stakeholders entrust us with information on the assurance that we will be good stewards of this and observe all necessary measures to protect it. Where interactions are face-to-face, working in partnership with an on-site assessor, this is easier to manage (and is an issue with which institutions already deal in their audit processes). The transfer of any information by electronic means will need to be carefully dealt with to ensure adequate data protection methods. However, we do find the very

premise of this question questionable, and a yes/no option inappropriate in order to be able to comment.

Question 16 – In the event of HEFCW revoking a fee plan are the safeguards set out at paragraph 6.18 appropriate and sufficient?

Yes ☐

No ☐ NO

Please give your reasons for your answer and comments.

We welcome the proposal that any decision to withdraw approval for a fee plan be regarded as provisional. HEIs should always strive to deliver education of the highest quality possible. This is assured through the assistance of the QAA in helping institutions to refine and improve process to deliver quality HE, and through the use of the fee plan to ensure that sufficient investment is made in activities which will enhance the student experience. The withdrawal of fee plan approval must always be a last resort in dealing with non-compliance and we welcome the recommendation that this be provisional in the first instance, so that the institutions has appropriate time to appeal or to put in place measures to improve process sufficiently to reverse the decision to revoke a fee plan.

We propose, rather, a system of penalties which ensure that the public purse does not suffer, but that Institutions are allowed to continue business. High profile failure of any Welsh institution, particularly if it due to regulations which are not applied as strictly in other HEIs in the UK, is not a good advert for Welsh HE.

Question 17 – Do you agree with the proposal that HEFCW be required to submit an annual report to the Welsh Ministers on the discharge of its quality assessment duty?

Yes ☐

No ☐ No

Please give your reasons for your answer and comments.

Reports provided by the QAA as the delivering authority should be sufficient to satisfy Welsh Ministers on quality levels.

Question 18 – Are the proposals in respect of franchised provision workable in practice?

Yes ☐ YES

No ☐

Please give your reasons for your answer and comments.

This is in line with current QAA practice and rightly puts the responsibility on the franchiser for ensuring the quality of the franchisee is sufficient.

Section 7: Financial and governance assurance

Question 19 – Do you agree that HEFCW should be required to consult on the proposed Financial and Corporate Governance Code?

Yes ☐ YES

No ☐

Please give your reasons for your answer and comments.

This requirement is in line with current obligations of HEFCW.

Question 20 – Do you agree that following HEFCW's consultation on the draft Code that further scrutiny should be provided for?

Yes ☐ YES

No ☐

If 'Yes' then which of the options set out in paragraph 7.12 do you prefer and why?

Question 21(a) – Do you agree with the parameters of the proposed Code in paragraph 7.11?

Yes ☐

No ☐

Please give your reasons for your answer and comments.

Any proposed code must be in proportion to the risks of non-compliance, bearing in mind that the sector is already extensively audited, and bound by a wide range of other financial compliance instruments nationally, including HE specific ones in relation to HESA and the SLC. Any extra burden on institutions should be avoided. It is our view that an extra code or great detail is unnecessary.

Question 21(b) – Should the parameters apply equally to all institutions and other providers with an approved plan in force?

Yes ☐ YES

No ☐

Please give your reasons for your answer and comments.

The code used should apply to all providers.

Question 21(c) – Should these parameters be set out in the proposed Bill with the operational detail of the Code left as a matter for HEFCW to develop?

Yes ☐ YES

No ☐

Please give your reasons for your answer and comments.

Yes, but with full consultation with the sector. There is an increasing sense in the sector that currently HEFCW will not make the best decision in the interests of Welsh HE PLC, and it is in danger of creating an insular sector, overburdened with bureaucratic duties with no ability to take positive, risky decisions for fear of missing narrowly defined targets driven by a mostly local agenda.

Question 21(d) – Under what circumstances, if any, should HEFCW’s consent be required for regulated providers to enter into certain financial transactions?

Please give your comments.

This has to be addressed very carefully to avoid jeopardising NPISH status. A review of whether current restrictions are still necessary in the light of new funding arrangements would be helpful. Any such elements of the bill should be tested with the following question “is such regulation helping Higher Education Institutions to act rapidly and flexibly in a highly marketised environment to deliver internationally excellent education and invest in and grow their local economies?”

Question 22 – Should HEFCW be required to consult on and publish a statement of its intervention policy?

Yes ☐ YES

No ☐

Please give your reasons for your answer and comments.

But the intervention policy should be couched very much in terms of HEFCW’s role of providing a mechanism to ensure the high quality and financial sustainability of the Welsh HE sector, so that all students, whether Welsh, cross-border or international, feel reassured and confident about the long term quality, existence and reputation of Welsh HEIs.

Question 23 – Do you agree that where HEFCW is satisfied that a regulated provider has demonstrated serious financial mismanagement that HEFCW should be able to withdraw approval of that provider’s fee plan whether or not it has issued a direction to that provider to comply with the requirements of the Code?

Yes ☐

No ☐ NO

Please give your reasons for your answer and comments.

Withdrawing approval of fee plan is a nuclear option which should not be necessary in a small sector such as Wales. Phased penalties, ensuring that the public purse is not overburdened, are far more appropriate. There is a huge risk of an impact on the Welsh sector as a whole. There are a range of sanctions operating in the public and private sectors, including graded financial penalties, which do not affect business continuity, which could be examined. Withdrawal of fee plan approval is only one out of a wide range of proposals.

Question 24 – Are the safeguards set out at paragraph 7.16 appropriate and sufficient?

Yes ☐

No ☐ NO

Please give your reasons for your answer and comments.

No, the issuing of a provisional decision not yet fully justified, will have a catastrophic effect on an institution's ability to recruit students and to raise research or capital funding. No decision of any kind should be issued unless fully investigated (but see above response to question 23).

Question 25 – 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.

The tone of the consultation is wholly inappropriate and severely undermines the 'trusted status' of HEFCW with the sector and any sense of joint commitment to making Welsh HE the best in the World and a net importer of students and investment into Welsh economy.

We support the response being made to this consultation by Higher Education Wales and agree with their proposal that there be a further period of engagement between the sector and Welsh Government/HEFCW before implementing these proposals further.

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:

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1 Introduction

- 1.1 This document provides the response from the Higher Education Funding Council for Wales (HEFCW) to the Welsh Government's Higher Education (Wales) Bill Technical Consultation.
- 1.2 HEFCW is a Welsh Government Sponsored Body which was established by the Further and Higher Education Act 1992. Our responsibilities for initial teacher training are covered under the Education (School Teachers' Qualifications) (Wales) Regulations 2004 and the Education Act 2005. HEFCW is responsible for funding higher education in Wales and distributes funds for education, research and related activities at nine higher education institutions, including the teaching activities of the Open University in Wales. We also fund higher education courses at further education colleges. In allocating funding from the Welsh Government to higher education providers, we seek to ensure that the higher education policy priorities of the Welsh Government, including those which are set out in our corporate strategy and associated measures, are met.
- 1.3 This response is in three parts. Firstly, we touch upon a number of general issues to which the consultation gives rise. We follow this by addressing a number of specific issues. Finally, we provide responses (in italics) to the specific questions posed in the consultation document. We have held initial discussions with the relevant Welsh Government officials as this work has developed, for which we are grateful, and look forward to continuing that dialogue in the light of responses to the consultation.

2 General points

- 2.1 The current statutory basis on which HEFCW operates, derived principally from the 1992 Further and Higher Education Act, rests on the provision of funding to higher education providers. The changes to the arrangements for tuition fee support for full-time undergraduate students, introduced from academic year 2012/13, result in a substantial, and increasing, proportion of HEFCW resources being expended on tuition fee grants. These grants have a different legal status to funding, so these changes, and the associated reduction of funding, have implications for our delivery of both our statutory responsibilities and our responsibilities for the delivery of Welsh Government policy priorities for higher education.
- 2.2 The technical consultation is presented explicitly as a response to these challenges and we welcome the fact that a means is being sought to replace the traditional leverage provided by funding. We also welcome the explicit way in which the consultation retains HEFCW at the heart of the higher education

system in Wales. The consultation focuses, though, on our powers, and possible regulatory role and, in doing so, pays less attention to our current role in the delivery of Welsh Government policy. Much of our ability to operate effectively in this context will rely on the fee plan, a mechanism which has limited policy leverage and might have limited capacity to bear the weight of its proposed role in our regulatory responsibilities. We return to this issue in paragraph 3.10 below.

- 2.3 We note the conclusion drawn by the Government that it will not seek to increase its powers to fund higher education providers directly which, for the reasons identified by respondents, we welcome. We also note the intention not to create a statutory responsibility in respect of quality enhancement. Again, we welcome this conclusion: our response to the White Paper indicated that there is already scope for attending to quality enhancement within the current arrangements, indeed much work has been completed across the sector on the current quality enhancement theme, 'Graduates for our Future', and we see no need to extend statutory expectations.

3 Specific points

- 3.1 Whilst the consultation addresses the requirement on providers to limit fees for individual students to specified maxima (currently £9k per annum), only limited reference is made to the necessity to control the overall costs to the public purse of tuition fee grants, either through control of student numbers, or by some other mechanism. Our current arrangements, developed in consultation with the HE sector, only apply to those providers whom we currently fund directly for undergraduate teaching. Whilst the document provides protection for individual students, therefore, further consideration will be required to the means by which we will be able to manage the tuition fee grant (TFG) obligations under the new arrangements, particularly if the number and types of provider might increase. Failure to address this issue will result in inadequate capacity on our part to control the overall costs of the TFG commitments.
- 3.2 The proposed arrangements would potentially extend the nature of engagement we might have with further education colleges in circumstances where they wished to be designated providers. Whilst not objecting to that proposal, we believe that further consideration is required about the way in which those responsibilities would relate to similar responsibilities currently exercised by the Welsh Government.
- 3.3 No controls are proposed in respect of the loans for part-time undergraduate provision. This means that any policy leverage which might accrue from the arrangements proposed in respect of full-time undergraduate provision will not be able to be applied to any institution wishing to offer only part-time provision.
- 3.4 We consider that there are a number of potential difficulties in respect of cross-border arrangements and the application of the proposed controls. Further clarity will be required to specify the relevant control regime for a range of scenarios, such as Welsh providers franchising into England, Welsh institutions with a secondary campus elsewhere in the UK, distance learning provision with students on either side of the border and English-based

providers, either public or private, who wish to operate within Wales. We will be happy to work with officials in exploring these issues.

- 3.5 There is a range of expectations or requirements on HEFCW funded higher education institutions in Wales under the current regime which include subscription to the QAA and HESA. Whilst it might be inappropriate to specify these particular arrangements in detail in legislation, not least because specific requirements can change over time, we consider it essential that HEFCW should be able to specify a range of bodies or services to which institutions should subscribe and that such subscription should be a requirement on all providers
- 3.6 The precise expectations which will be placed on providers who opt for a case-by-case designation have yet to be fully specified, although there would appear to be an expectation of significantly less onerous requirements on such providers, a position which causes us concern. Whilst we appreciate the general desire to ensure that any such regime places demands on providers which are proportional, and we understand that such provision in Wales is currently very limited in scope, we believe the scope for a 'lighter touch' approach in respect of such providers should be extremely limited. Whilst it is proposed that their students should have access to a less generous student support package, such providers will nonetheless be trading on the strengths of the UK higher education brand which is maintained by the quality of provision by universities and other funded providers but also strengthened by the quality and other regulatory arrangements which apply. Those arrangements require significant commitment and expenditure by the sector. Operation of a substantially less onerous regime for those seeking case-by-case designation would place them at a competitive advantage to the established HE sector because they would enjoy the benefits of brand strength without contributing proportionally to maintaining that strength. Furthermore, if subject to a substantially lighter touch in terms of expected contribution to the broader Welsh government policy priorities, such providers would be able to focus on more lucrative elements of HE provision, leaving the burden of less lucrative, but still important, provision to be borne by regulated providers. Finally, we see no justification for establishing a regime which protects the interests of students at such providers less comprehensively than in the established HE sector.
- 3.7 The intended role for HEFCW in respect of the designation process suggests that we will be asked to provide advice to potential applicants. Whilst we appreciate that the ultimate decision in respect of individual designations will rest with Welsh Ministers, we consider that there would be merit in our being asked to co-ordinate the contribution of the various relevant agencies (such as the QAA and HEFCE) in this process and provide a single source of advice to Welsh Ministers in respect of such applications, since we already have relevant expertise and existing operational links with the relevant bodies.
- 3.8 The formulation of the consultation document makes reference only to degrees, except in the section on quality assessment, where the 1988 Education Reform Act definitions of courses of higher education are used. We believe these definitions should apply throughout and could usefully be augmented to include specific reference to foundation degrees which sit at a

lower level in the Credit and Qualifications Framework for Wales, despite the nomenclature of degree. We also consider that there is a risk that the term 'course' which is used in all categories of schedule 6 of the 1988 Education Reform Act has the potential to be interpreted in too limited a fashion such that there is a risk of precluding more flexible forms of provision which are not structured as a traditionally recognisable course. Greater flexibility could usefully be achieved by either removal of the term 'course' or its replacement with the term 'provision'. Such an adjustment would also avoid the risk that the quality assessment arrangements would operate at the level of individual courses whereas we are likely to wish to continue to operate a regime which takes a more holistic, systems approach with a key focus being the extent to which the institution meets the expectations placed on it in the context of its awarding powers.

- 3.9 Currently, provision which is designed and delivered on a bespoke basis for an individual client is not funded by HEFCW: the view historically is that the client should meet the full economic costs of such provision. We were unable to see any distinction in the proposed approach between bespoke provision and that which is generally available. We believe controls equivalent to those currently operated should be included in the new arrangements. We would not wish the establishment of arrangements which resulted in any reduction of employer contributions to meeting the costs of training their workforce.
- 3.10 We note the proposed arrangements for addressing the failure by an institution to meet its obligations under its fee plans. We would welcome greater clarity about precisely how arrangements for reimbursement of tuition fees would work. We would also observe that, given the long lead times between construction of a fee plan by an institution and the point at which we can determine whether commitments have been met, performance is likely to have been affected by a complex interaction of factors such that it is likely to be challenging to establish a clear position where transgressions demonstrably warrant financial penalty. This has implications for the likely effectiveness of fee plans as a basis both for policy leverage and regulation. We would welcome the introduction of sufficient flexibility to facilitate the exploration of possible options in terms of the operation of fee plans, such as possibly extending the maximum period for which a plan can apply beyond the current two year maximum and, in due course, giving consideration to the possibility of integrating processes for production, approval and monitoring of fee plans with other elements of our approaches for strategic engagement with institutions.
- 3.11 We note that the power to direct in respect of fee plans (paragraphs 5.26 and 5.32), which we welcome, appears to restrict direction only to access and outreach activities. We believe that this power should be capable of being applied in respect of all elements of a fee plan.
- 3.12 We are not clear whether the arrangements outlined in respect of quality assessment relate only to full-time undergraduate courses, or whether they are intended to apply to all higher education provision. We strongly advocate that they should apply to all provision, irrespective of the statutory basis under which the arrangements operate. This would avoid inefficient operation of multiple quality assessment arrangements in a context where we would expect an institution to adopt a consistent approach to quality assurance across the

full range of its provision. It would also help to future proof these arrangements in the light of possible broadening of the range of provision which falls under these proposed arrangements.

- 3.13 We consider that, in addition to a right of entry and access to documents, it will be necessary for the quality assessment requirements to include a right to speak to students, staff and other stakeholders of the institution.
- 3.14 We note the intention to provide the means by which Welsh Ministers can provide guidance to us in respect of quality assessment. We are not clear what the nature of such guidance would be such that it avoids the risk of extending Ministerial engagement inappropriately in the context of arms length arrangements.
- 3.15 We believe that it should be sufficient for the Financial and Corporate Governance Code of Practice, which might need differentiated specification for different types of provider, to be approved by HEFCW and then laid before the National Assembly for Wales

4 Responses to Consultation questions.

4.1 Consultation questions: a revised regulatory system

1. In light of the increased regulatory role proposed for HEFCW should amendments be made to the Council's name?
We believe there is not a strong case for changing the Council's name: to do so would incur unnecessary expense and would undermine consistency with arrangements elsewhere in the UK
2. We recognise that a variety of franchising arrangements currently exist in Wales and that these have been developed under the funding system which operated prior to the introduction of new fees and student support arrangements. We are particularly interested in your views as to how franchised provision should be dealt with under the new regulatory framework. In particular:
 - (d) Will the proposal for the institution or provider which franchises the course to be the body which is responsible for either applying for a fee plan or requesting case-by-case designation of its courses work in practice?
We consider this proposal to be appropriate and believe it can work in practice.
 - (e) Could this proposal result in any delivery issues? If so please identify those issues.
We believe there are complexities in respect of cross-border issues which will require further consideration.

- (f) Are there any alternative approaches which you wish to put forward for consideration?

No.

4.2 Consultation questions: fee controls and fair access

1. Do you agree with the proposal that in cases of persistent failure to comply with fee limits that HEFCW should be able to withdraw its approval in respect of an approved plan?

We agree with this proposal.

2. Do you agree with the proposal to extend HEFCW's relevant authority role in order that it may evaluate the effectiveness of fee plans both individually and across the Welsh higher education sector?

We agree with this proposal.

3. Do you agree that transitional protection should be made available for students who have commenced their studies with a regulated provider which subsequently has approval for its fee plan withdrawn or approval of a fee plan is refused upon renewal?

We agree with this proposal.

4. Do you agree with the proposal that all institutions and other providers with an approved plan in force should be subject to the same core requirements?

We agree with this proposal.

5. Do you agree with the proposal for HEFCW to be required to take account of the proposed level of fee in determining whether fee plan commitments are sufficient?

We agree with this proposal.

6. Do you agree with the proposed value of £6,000 for the 'threshold' fee amount?

We don't agree with this proposal. We believe that some providers, particularly those operating on a course by course basis, will be able to focus their offer on provision which is sufficiently cheap to run, and sufficiently high in demand, to make provision at £6,000 viable. If the threshold were to be set at this level, it would allow such providers to operate in a way which would undercut others who were meeting broader policy objectives whilst avoiding any commitment to fee plan expenditure.

7. Do you agree with the range of proposed sanctions to be made available to HEFCW and that HEFCW, as relevant authority should have discretion in their application?

We agree with the range of proposed sanctions and that HEFCW should have discretion in their application. We consider, though, that the option

should be provided to extend our powers of direction beyond the current proposal which only applies to fee income above £6,000.

8. It is proposed that where HEFCW (as relevant authority) decides to withdraw its approval of a fee plan, the institution or provider affected may apply for a review of that decision to an independent panel / person. Do you consider this review mechanism to be sufficient or is there a need for any additional review or appeal arrangements? If so please specify what such arrangements might entail.

We agree with the proposal that providers might apply for a review of a decision to withdraw a fee plan and consider that this review mechanism should be sufficient.

9. Should regulated providers (i.e. those with an approved fee plan in force) whose higher education courses are subject to automatic designation for statutory student support purposes be able to exempt certain courses from automatic designation and the regulatory requirements associated with fee plans?

Whilst we can see that there might be merit in institutions being able to exempt bespoke provision for specific employers from these arrangements, we still consider that such provision should fall within the scope of the proposed arrangements for quality assurance and governance.

4.3 Consultation questions: quality assessment

1. Do you agree that HEFCW's duty to make provision for assessing the quality of higher education delivered by regulated providers in Wales should extend to all courses of higher education falling within the scope of schedule 6 to the Education Reform Act 1988?

We agree with this proposal but please see our comments on schedule 6 in paragraph 3.8 above.

2. Do you agree with the proposed approach of making provision for HEFCW to be able to direct regulated providers to provide access to premises, records and documents for the purpose of quality assessment?

We agree with this proposal but consider that it should be extended to ensure that discussions can be held with staff, students, governors and other appropriate stakeholders, as is currently the expectation.

3. In order to deal with cases of unsatisfactory quality are the actions specified at paragraph 6.15 appropriate and adequate? Are there any other actions which you consider HEFCW should be able to undertake?

We consider the specified actions to be broadly appropriate and adequate but would observe that we would not normally expect to produce action plans ourselves; rather, we would expect to be able to require providers to produce an action plan which we can consider for approval. We also believe that the power to attend and address meetings of governing bodies should not be limited to matters relating to quality, but should extend to apply in respect of

matters relating to financial sustainability and governance, including providing advice (but not direction) relating to strategic planning.

4. Do you consider that the person or person(s) requesting access to premises, records and documents for the purpose of HEFCW's quality assessment duty should be required to produce identification at the request of the institution or other provider which is the subject of the quality assessment?

We agree with this proposal.

5. In the event of HEFCW revoking a fee plan are the safeguards set out at paragraph 6.18 appropriate and sufficient?

We consider that the safeguards are appropriate and sufficient.

6. Do you agree with the proposal that HEFCW be required to submit an annual report to the Welsh Ministers on the discharge of its quality assessment duty?

We already address quality assurance in our annual assurance statement to the Welsh government and are content to continue this practice.

7. Are the proposals in respect of franchised provision workable in practice?

We believe that they are and that they underscore the benefits of HE in FE being delivered through franchising arrangements.

4.4 Consultation questions: financial and governance assurance

1. Do you agree that HEFCW should be required to consult on the proposed Financial and Corporate Governance Code?

We agree with this proposal.

2. (a) Do you agree that following HEFCW's consultation on the draft Code that further scrutiny should be provided for?

We don't consider this to be necessary.

(b) If 'Yes' then which of the options set out in paragraph 7.12 do you prefer and why?

If it were considered necessary, we prefer the third option, i.e. approval by HEFCW followed by submission for laying before the National Assembly for Wales.

3. (a) Do you agree with the parameters of the proposed Code in paragraph 7.11?

We broadly agree with these parameters but consider that it would be beneficial to make explicit the fact that 'management' of the provider encompasses strategic planning.

(b) Should the parameters apply equally to all institutions and other providers with an approved plan in force?

We believe that they should.

(c) Should these parameters be set out in the proposed Bill with the operational detail of the Code left as a matter for HEFCW to develop?

We consider that this would be appropriate.

(d) Under what circumstances, if any, should HEFCW's consent be required for regulated providers to enter into certain financial transactions?

We believe there is merit in requiring HEFCW consent in respect of substantial long term borrowing and, in specified circumstances, short term borrowing, as is currently the case, with the detail to be defined in the Code.

4. Should HEFCW be required to consult on and publish a statement of its intervention policy?

We consider this to be appropriate.

5. Do you agree that where HEFCW is satisfied that a regulated provider has demonstrated serious financial mismanagement that HEFCW should be able to withdraw approval of that provider's fee plan whether or not it has issued a direction to that provider to comply with the requirements of the Code?

We believe this to be appropriate but consider that the provision should also be available in respect of failures of quality and governance.

6. Are the safeguards set out at paragraph 7.16 appropriate and sufficient?

We believe they are.

5 Conclusion

- 5.1 As indicated above, we broadly welcome the intentions behind the proposed measures which are the subject of this consultation. We have outlined in this response a number of areas where we feel there is a need either for greater clarity or for further consideration. We would very much be willing to work with officials in exploring these issues more fully over the coming months.

Higher Education (Wales) Bill 2014: technical consultation

Consultation response form

Your name: Julian Ellis

Organisation (if applicable): Quality Assurance Agency for
Higher Education (QAA)

e-mail/telephone number: 01452 557127

Your address: Southgate House, Southgate Street,
Gloucester, GL1 1UB

Responses should be returned by **29 July 2013** to:

Brendan Murtagh
Legislation Team
Corporate Services Division
Department for Education and Skills
Welsh Government
Freepost NAT 8910
Cathays Park
Cardiff
CF10 3NQ

or completed electronically and sent to:

e-mail: highereducationwalesbill@wales.gsi.gov.uk

Contextual Note

QAA has restricted its comments to those areas directly relating to its work and areas of responsibility, namely: Section 4 a revised regulatory system; and Section 6 regarding Quality assessment.

Section 4: A revised regulatory system

Question 1 – In light of the increased regulatory role proposed for HEFCW should amendments be made to the Council's name?

Yes ☐

No ☒

Please give your reasons for your answer and comments.

We do not have a strong view on this matter and can see that it may be unnecessary to change HEFCW's name due to its current reputation and public profile.

Question 2 – We recognise that a variety of franchising arrangements currently exist in Wales and that these have been developed under the funding system which operated prior to the introduction of new fees and student support arrangements. We are particularly interested in your views as to how franchised provision should be dealt with under the new regulatory framework. In particular:

- (a) will the proposal for the institution or provider which franchises the course to be the body which is responsible for either applying for a fee plan or requesting case-by-case designation of its courses work in practice?
- (b) could this proposal result in any delivery issues? If so please identify those issues
- (c) are there any alternative approaches which you wish to put forward for consideration?

Please give your comments.

QAA's UK Quality Code makes it explicit that responsibility for academic quality and standards rests with the awarding body:

The fundamental principle underpinning all arrangements for delivering learning opportunities with others is that the degree-awarding body has ultimate responsibility for academic standards and the quality of learning opportunities, regardless of where these opportunities are delivered and who provides them.

This principle does not mean that FE providers with franchise HE provision could not apply for course designation through the fee plan in their own right.

With regards question (b) while there may be some complexities with regards cross-border provision this again, with regards the management of quality and standards, can be addressed through the principle of ultimate responsibility resting with the awarding body.

We do not have any alternative approaches to put forward for consideration.

Section 5: Fee controls and fair access

No comment

Section 6: Quality assessment

Question 12 – Do you agree that HEFCW’s duty to make provision for assessing the quality of higher education delivered by regulated providers in Wales should extend to all courses of higher education falling within the scope of schedule 6 to the Education Reform Act 1988?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

We believe that all providers of higher education, whether in receipt of public funds or not, should be part of a common framework and subject to comparable external quality review.

Question 13 – Do you agree with the proposed approach of making provision for HEFCW to be able to direct regulated providers to provide access to premises, records and documents for the purpose of quality assessment?

Yes ☐

No ☐

Please give your reasons for your answer and comments.

We believe that such powers are likely to be unnecessary and that the reputational damage of not engaging with HEFCW and QAA would be a sufficient lever to ensure cooperation. However, as a last resort and in circumstances where cooperation cannot be achieved then such powers may be appropriate.

Question 14 – In order to deal with cases of unsatisfactory quality are the actions specified at paragraph 6.15 appropriate and adequate? Are there any other actions which you consider HEFCW should be able to undertake?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

It is not clear from the drafting whether it is HEFCW or the regulated provider subject to the unsatisfactory policy which raises the action plan. Normally, responsibility for quality and standards rests with the provider or the providers awarding body. As a consequence it is normally the provider which draws up the action plan based on the recommendations of any review or investigation by QAA or HEFCW.

Question 15 – Do you consider that the person or person(s) requesting access to premises, records and documents for the purpose of HEFCW’s quality assessment duty should be required to produce identification at the request of the institution or other provider which is the subject of the quality assessment?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

We agree with this proposal with the caveat noted in Question 13.

Question 16 – In the event of HEFCW revoking a fee plan are the safeguards set out at paragraph 6.18 appropriate and sufficient?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

Provision for an independent review panel will help ensure fairness and equity in the process for what are likely to be very significant issues for the provider and therefore we consider the safeguards appropriate and sufficient.

Question 17 – Do you agree with the proposal that HEFCW be required to submit an annual report to the Welsh Ministers on the discharge of its quality assessment duty?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

QAA already reports and publishes its annual report to HEFCW and we are content to continue on this basis.

Question 18 – Are the proposals in respect of franchised provision workable in practice?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

The franchisee as the awarding body is responsible for academic quality and standards of its awards. The proposal supports this principle and is supported by QAA. It also reinforces the benefits of HE in FE being delivered through franchised arrangements.

Section 7: Financial and governance assurance

No comment

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:

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Higher Education (Wales) Bill 2014: technical consultation

Consultation response form

Your name: Trevor Mayes

Organisation (if applicable):

e-mail/telephone number: trevormayes1@gmail.com

Your address: 3 Tan y Castell
Llwynygroes
Tregaron SY25 6QB

Responses should be returned by **29 July 2013** to:

Brendan Murtagh
Legislation Team
Corporate Services Division
Department for Education and Skills
Welsh Government
Freepost NAT 8910
Cathays Park
Cardiff
CF10 3NQ

or completed electronically and sent to:

e-mail: highereducationwalesbill@wales.gsi.gov.uk

Section 4: A revised regulatory system

Question 1 – In light of the increased regulatory role proposed for HEFCW should amendments be made to the Council's name?

Yes ☐

No ☒

Please give your reasons for your answer and comments.

The reason being that it is widely accepted that funding and regulation do not mix as there is an inherent conflict of interest. There needs to be a separation of these functions with regulation and sanctions subject to independent and public scrutiny and complaint via an independent group or commission.

Question 2 – We recognise that a variety of franchising arrangements currently exist in Wales and that these have been developed under the funding system which operated prior to the introduction of new fees and student support arrangements. We are particularly interested in your views as to how franchised provision should be dealt with under the new regulatory framework. In particular:

- (a) will the proposal for the institution or provider which franchises the course to be the body which is responsible for either applying for a fee plan or requesting case-by-case designation of its courses work in practice?
- (b) could this proposal result in any delivery issues? If so please identify those issues
- (c) are there any alternative approaches which you wish to put forward for consideration?

Please give your comments.

The provider should be responsible for either a fee plan or case by case basis. It should be for an independent group or commission to ensure that such things as adherence to articles of governance and Royal Charter before approval.

Section 5: Fee controls and fair access

Question 3 – Do you agree with the proposal that in cases of persistent failure to comply with fee limits HEFCW should be able to withdraw its approval in respect of an approved plan?

Yes ☐

No ☒

Please give your reasons for your answer and comments.

No it should be for an independent group or Commission to make this decision.

Question 4 – Do you agree with the proposal to extend HEFCW's relevant authority role in order that it may evaluate the effectiveness of fee plans both individually and across the Welsh higher education sector?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

HEFCW should evaluate across the HE sector

Question 5 – Do you agree that transitional protection should be made available for students who have commenced their studies with a regulated provider which subsequently has approval for its fee plan withdrawn or approval of a fee plan refused upon renewal?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

Given the huge financial commitment with very few safeguards that would be unacceptable in any other kind of financial investment Students should be given protection to the point of being designated vulnerable consumers. Not just for transitional arrangements

Question 6 – Do you agree with the proposal that all institutions and other providers with an approved plan in force should be subject to the same core requirements?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

There needs to be consistency

Question 7 – Do you agree with the proposal for HEFCW to be required to take account of the proposed level of fee in determining whether fee plan commitments are sufficient?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

Students need value for money

Question 8 – Do you agree with the proposed value of £6,000 for the 'threshold' fee amount?

Yes ☐

No ☐

Please give your reasons for your answer and comments.

Question 9 – Do you agree with the range of proposed sanctions to be made available to HEFCW and that HEFCW, as relevant authority, should have discretion in their application?

Yes ☐

No ☒

Please give your reasons for your answer and comments.

Discretion in the application of sanctions should be separate from funding and monitored and enforce by a separate independent body.

Question 10 – It is proposed that where HEFCW (as relevant authority) decides to withdraw its approval of a fee plan, the institution or provider affected may apply for a review of that decision to an independent panel/person. Do you consider this review mechanism to be sufficient or is there a need for any additional review or appeal arrangements? If so, please specify what such arrangements might entail.

Yes ☐

No ☒

Please give your reasons for your answer and comments.

There should always be an independent review process of any decision unfortunately this does not include student complaints.

Question 11 – Should regulated providers (i.e. those with an approved fee plan in force) whose higher education courses are subject to automatic designation for statutory student support purposes be able to exempt certain courses from automatic designation and the regulatory requirements associated with fee plans?

Yes ☐

No ☒

Please give your reasons for your answer and comments.

All statutory student support services should be independently monitored and audited.

Section 6: Quality assessment

Question 12 – Do you agree that HEFCW’s duty to make provision for assessing the quality of higher education delivered by regulated providers in Wales should extend to all courses of higher education falling within the scope of schedule 6 to the Education Reform Act 1988?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

All courses of higher education should be subject to the same regulation but not by HEFCW.

Question 13 – Do you agree with the proposed approach of making provision for HEFCW to be able to direct regulated providers to provide access to premises, records and documents for the purpose of quality assessment?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

The regulator should be able to direct to provide access

Question 14 – In order to deal with cases of unsatisfactory quality are the actions specified at paragraph 6.15 appropriate and adequate? Are there any other actions which you consider HEFCW should be able to undertake?

Yes ☐

No ☒

Please give your reasons for your answer and comments.

The student complaints scheme is open to abuse of falsifying letters of completion without any form of verification. Arrangements for whistleblowers are inadequate and articles of government and Royal Charters can be breached with impunity. There is a culture of discrediting those who complain. The Cause for Concern process administered by the Quality Assurance Agency has no powers of intervention or enforcement as the QAA is a registered charity. There is a need for statutory regulation, registration of staff and a commission to ensure establishments play it by the rules.

Question 15 – Do you consider that the person or person(s) requesting access to premises, records and documents for the purpose of HEFCW’s quality assessment duty should be required to produce identification at the request of the institution or other provider which is the subject of the quality assessment?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

ID is always necessary

Question 16 – In the event of HEFCW revoking a fee plan are the safeguards set out at paragraph 6.18 appropriate and sufficient?

Yes ☐

No ☒

Please give your reasons for your answer and comments.

There should always be a right of review or appeal and this should include student complaints

Question 17 – Do you agree with the proposal that HEFCW be required to submit an annual report to the Welsh Ministers on the discharge of its quality assessment duty?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

This report should be open to public scrutiny and complaint.

Question 18 – Are the proposals in respect of franchised provision workable in practice?

Yes ☐

No ☐

Please give your reasons for your answer and comments.

Section 7: Financial and governance assurance

Question 19 – Do you agree that HEFCW should be required to consult on the proposed Financial and Corporate Governance Code?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

HEFCW has failed to consult on mergers and hidden reports from the public, a practice that would end in court if the establishments were in the private sector. There also needs to be training in governance and the concept of public service and standards

Question 20 – Do you agree that following HEFCW’s consultation on the draft Code that further scrutiny should be provided for?

Yes ☒

No ☐

If ‘Yes’ then which of the options set out in paragraph 7.12 do you prefer and why?

There are no options available to deal with the reality of the concealment regarding maladministration in order to preserve reputations at the expense of those they are there to serve.

Question 21(a) – Do you agree with the parameters of the proposed Code in paragraph 7.11?

Yes ☐

No ☒

Please give your reasons for your answer and comments.

See answer 20

Question 21(b) – Should the parameters apply equally to all institutions and other providers with an approved plan in force?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

There needs to be consistency

Question 21(c) – Should these parameters be set out in the proposed Bill with the operational detail of the Code left as a matter for HEFCW to develop?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

These parameters are inadequate in dealing with the scope of maladministration, if left up to HEFCW nothing will ever happen or if it does, it will be damage limitation rather than effective resolution

Question 21(d) – Under what circumstances, if any, should HEFCW's consent be required for regulated providers to enter into certain financial transactions?

Please give your comments.

Question 22 – Should HEFCW be required to consult on and publish a statement of its intervention policy?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

HEFCW also needs to be accountable for its failure to act appropriately

Question 23 – Do you agree that where HEFCW is satisfied that a regulated provider has demonstrated serious financial mismanagement that HEFCW should be able to withdraw approval of that provider's fee plan whether or not it has issued a direction to that provider to comply with the requirements of the Code?

Yes ☐

No ☐

Please give your reasons for your answer and comments.

Cannot give a yes or no as this criteria should be extended to maladministration concerning student complaints and breaches of articles of government in which case these institutions should close down as they should not be allowed to continue to trade as charity companies.

Question 24 – Are the safeguards set out at paragraph 7.16 appropriate and sufficient?

Yes ☐

No ☒

Please give your reasons for your answer and comments.

There is a disconnect between what HEFCW publically claims to be able to do and what it actually does. The only safeguard is public independent scrutiny of HEFCW

Question 25 – 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 see the attached letter to the Education Minister to put my response into context.

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:

☐

Higher Education (Wales) Bill 2014: technical consultation

Consultation response form

Your name Simon Dunn

Organisation (if applicable): UNISON Cymru Wales

e-mail/telephone number: s.dunn@unison.co.uk

Your address: UNISON House, Custom House Street,
Cardiff CF10 1AP

Responses should be returned by **29 July 2013** to:

Brendan Murtagh
Legislation Team
Corporate Services Division
Department for Education and Skills
Welsh Government
Freepost NAT 8910
Cathays Park
Cardiff
CF10 3NQ

or completed electronically and sent to:

e-mail: highereducationwalesbill@wales.gsi.gov.uk

Section 4: A revised regulatory system

Question 1 – In light of the increased regulatory role proposed for HEFCW should amendments be made to the Council's name?

Yes ☐

No ☒

Please give your reasons for your answer and comments.

UNISON Cymru Wales do not feel there is any need to change the HEFCW's name in light of new regulatory powers proposed. A name change to include the Council's new regulatory role would create unnecessary costs and we do not see it as important or essential.

Question 2 – We recognise that a variety of franchising arrangements currently exist in Wales and that these have been developed under the funding system which operated prior to the introduction of new fees and student support arrangements. We are particularly interested in your views as to how franchised provision should be dealt with under the new regulatory framework. In particular:

- (a) will the proposal for the institution or provider which franchises the course to be the body which is responsible for either applying for a fee plan or requesting case-by-case designation of its courses work in practice?
- (b) could this proposal result in any delivery issues? If so please identify those issues
- (c) are there any alternative approaches which you wish to put forward for consideration?

Please give your comments.

UNISON Cymru Wales welcome the changes proposed, whereby institutions or other providers will be required to confirm that they have charitable status for both automatic and case-by-case designation arrangements. This will help ensure that financial subsidies, in the form of statutory student fee loans or grants received, are not used to benefit shareholders of for-profit institutions and other providers.

Section 5: Fee controls and fair access

Question 3 – Do you agree with the proposal that in cases of persistent failure to comply with fee limits HEFCW should be able to withdraw its approval in respect of an approved plan?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

UNISON Cymru Wales agree with the proposals that HEFCW should be able to withdraw its approvals in respect of an approved plan in cases of persistent failure. We welcome any proposals and regulations which would help ensure the quality and reputation of HE provision in Wales is maintained.

Question 4 – Do you agree with the proposal to extend HEFCW's relevant authority role in order that it may evaluate the effectiveness of fee plans both individually and across the Welsh higher education sector?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

Extending HEFCW's relevant authority role so that it can evaluate the effectiveness of fee plans both individually and across the Welsh higher education sector is welcomed. It will help in the development of good practice guidance on fee plan activities and investments. Continually monitoring and evaluating fee plans both individually and across the Welsh higher education sector, can only help to enhance and improve the systems in place for the future.

Question 5 – Do you agree that transitional protection should be made available for students who have commenced their studies with a regulated provider which subsequently has approval for its fee plan withdrawn or approval of a fee plan refused upon renewal?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

UNISON Cymru Wales welcome the protection measures proposed which would allow students who have commenced their higher education courses to continue to receive student support to complete their studies in the event that an institution's approval for its fee plan is withdrawn or approval of a fee plan is refused upon renewal. It would not be not fair for students to lose out on funding because of an institutions failure.

Question 6 – Do you agree with the proposal that all institutions and other providers with an approved plan in force should be subject to the same core requirements?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

Ensuing institutions and other providers are subject to the same core requirements guarantees a balanced and fair system, which we welcome. It will also help to ensure that the high standard of HE provision in Wales can be maintained.

Question 7 – Do you agree with the proposal for HEFCW to be required to take account of the proposed level of fee in determining whether fee plan commitments are sufficient?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

Taking a proportionate approach when approving and subsequently enforcing fee plans for institutions that wish to charge fees above the threshold amount will help the HEFCW determine whether the amount of above 'threshold' fee income specified by applicants in their fee plans is sufficient. It should also make it easier for the HEFCW to make a decision on whether or not to approve the fee plan.

Question 8 – Do you agree with the proposed value of £6,000 for the 'threshold' fee amount?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

UNISON Cymru Wales agree with the higher threshold amount proposed of £6,000 in helping to balance the existing requirements on HEFCW-funded institutions with the wider application of fee plans to all institutions and other providers who may wish for their higher education courses to be automatically designated. However, we are concerned that the proposals do not cover part-time higher education courses, where the fees are not currently regulated. We would like to see part-time course be included within the revised regulatory framework as soon as possible

Question 9 – Do you agree with the range of proposed sanctions to be made available to HEFCW and that HEFCW, as relevant authority, should have discretion in their application?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

We believe that all the sanctions proposed for HEFCW will help to ensure that the high standard and reputation of HE provision is maintained in Wales and agree with the protection measures for students that are also included. We believe that HEFCW should use its discretion as to which sanction or course of action should be taken.

Question 10 – It is proposed that where HEFCW (as relevant authority) decides to withdraw its approval of a fee plan, the institution or provider affected may apply for a review of that decision to an independent panel/person. Do you consider this review mechanism to be sufficient or is there a need for any additional review or appeal arrangements? If so, please specify what such arrangements might entail.

Yes ☒

No ☐

Please give your reasons for your answer and comments.

We consider all the review mechanisms to be appropriate and believe that, in order to ensure fairness, decisions must be able to be appealed.

Question 11 – Should regulated providers (i.e. those with an approved fee plan in force) whose higher education courses are subject to automatic designation for statutory student support purposes be able to exempt certain courses from automatic designation and the regulatory requirements associated with fee plans?

Yes ☐

No ☒

UNISON Cymru Wales do not see why it is fair that regulated providers whose higher education courses are subject to automatic designation would be able to exempt certain courses from automatic designation and the regulatory requirements associated with fee plans. We believe the HE sector in Wales should be one of fairness with all institutions on an equal footing. As we have explained in Question 8 we are concerned that the proposals do not cover part-time higher education courses, and we would like to see part-time courses be included within the revised regulatory framework as soon as possible. There is a need to avoid the potential of a two-tier HE system.

Please give your reasons for your answer and comments.

Question 12 – Do you agree that HEFCW's duty to make provision for assessing the quality of higher education delivered by regulated providers in Wales should extend to all courses of higher education falling within the scope of schedule 6 to the Education Reform Act 1988?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

UNISON Cymru Wales believes it is important for HEFCW's revised assessment duty to be extended to all courses of higher education falling within the scope of schedule 6 to the Education Reform Act 1988.

The extension will help to ensure that all institutions and courses are on an equal footing which is important to maintain the high standard and reputation of HE in Wales.

Question 13 – Do you agree with the proposed approach of making provision for HEFCW to be able to direct regulated providers to provide access to premises, records and documents for the purpose of quality assessment?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

It is important for provisions to be in place that allow the HEFCW access to premises and records and documents for the purposes of quality assessment. This will not only help to ensure that institutions comply with the regulatory rules of the HEFCW but also UNISON Cymru Wales believe quality of HE in Wales must be an absolute priority for the HEFCW and therefore any proposals which help ensure quality can be maintained is welcomed.

Question 14 – In order to deal with cases of unsatisfactory quality are the actions specified at paragraph 6.15 appropriate and adequate? Are there any other actions which you consider HEFCW should be able to undertake?

Yes ☐

No ☒

Please give your reasons for your answer and comments.

UNISON Cymru Wales welcome the new functions proposed on the HEFCW concerning the actions which HEFCW may take in order to address unsatisfactory quality and believe it should use its discretion as to which appropriate course of action to take, on a case by case basis. However, we believe that they could perhaps go further. In cases of poor quality it should be HEFCW's duty to support the institution in helping them to address unsatisfactory quality.

Question 15 – Do you consider that the person or person(s) requesting access to premises, records and documents for the purpose of HEFCW's quality assessment duty should be required to produce identification at the request of the institution or other provider which is the subject of the quality assessment?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

Producing identification is an absolute necessity when a person or persons requests access to premises, records and documents. It goes without saying and the HEFCW must also be expected to do so when carrying out its role.

Question 16 – In the event of HEFCW revoking a fee plan are the safeguards set out at paragraph 6.18 appropriate and sufficient?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

UNISON Cymru Wales believes the safeguards set out in paragraph 6.18 are appropriate. However we also believe that engagement with staff, and not just managers of institutions, is important. A decision made by HEFCW will affect all staff of an institution and therefore they (through their representatives) should be involved.

Question 17 – Do you agree with the proposal that HEFCW be required to submit an annual report to the Welsh Ministers on the discharge of its quality assessment duty?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

It is important for HEFCW to submit an annual report to Welsh Ministers to help inform Ministers of unsatisfactory quality cases and to show the work the HEFCW has carried out and the actions it has taken. In its regulatory role, HEFCW has a duty to make public the work it carries out in the interests of openness and transparency, which all Government organisations and bodies must adhere to.

Question 18 – Are the proposals in respect of franchised provision workable in practice?

Yes ☐

No ☒

Please give your reasons for your answer and comments.

Although the proposals on quality assessment in respect of franchised provision are likely workable in practice, UNISON Cymru Wales have concerns that under the proposals the onus on inspection is still on the franchisor. With the probable growth of HE in FE it should result in the requirement of FE to be subject to inspections when they run franchised provision. This will encourage FE institutions to properly consider the needs of the staff in maintaining the quality of the HE provision, rather than as they do now for the most part, expect their staff to deliver HE on FE terms and conditions.

Section 7: Financial and governance assurance

Question 19 – Do you agree that HEFCW should be required to consult on the proposed Financial and Corporate Governance Code?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

We believe it is important for us and other interested parties to have the opportunity to comment on the proposed Financial and Corporate Governance Code and for all views to be considered.

Question 20 – Do you agree that following HEFCW's consultation on the draft Code that further scrutiny should be provided for?

Yes ☒

No ☐

If 'Yes' then which of the options set out in paragraph 7.12 do you prefer and why?

Given the new regulatory framework, UNISON Cymru Wales agree that an additional stage of scrutiny should be provided for before the code is finalised. In the interests of openness and transparency we feel that the Code should be laid before the Welsh Assembly for approval. Further, UNISON Cymru/Wales recommend the code be scrutinised by the relevant Welsh Assembly committee, with an opportunity for recommendations to be considered by HEFCW prior to the post-consultation version being laid.

Question 21(a) – Do you agree with the parameters of the proposed Code in paragraph 7.11?

Yes ☐

No ☒

Please give your reasons for your answer and comments.

UNISON Cymru Wales believe that the parameters of the proposed Code are broadly satisfactory. We especially welcome the provision of information to HEFCW relating to the financial health, organisation and management of a regulated provider. We argue that the code should also require the institutional governance arrangements to consider, monitor, and report on the application of all HEFCW guidance.

Question 21(b) – Should the parameters apply equally to all institutions and other providers with an approved plan in force?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

It is very important for parameters to apply equally to all institutions. UNISON Cymru Wales believe the HE sector in Wales should be one of fairness with all institutions on an equal footing. Equality helps to maintain the high standard of HE provision in Wales and helps prevent any room for a two-tiered HE system which would be detrimental to the sector.

Question 21(c) – Should these parameters be set out in the proposed Bill with the operational detail of the Code left as a matter for HEFCW to develop?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

It is important that the HEFCW has the ability to revise the Code if changes are necessary and if it has resulted in unforeseen circumstances, preventing the HEFCW from effectively carrying out its role. However, the HEFCW should make public any proposed changes in the interests of openness and transparency.

Question 21(d) – Under what circumstances, if any, should HEFCW's consent be required for regulated providers to enter into certain financial transactions?

Please give your comments.

In the interests of openness and transparency it is important that regulated providers should make public any plans to enter into certain financial transactions. If a transaction does not look to be in the interests of the HE sector or institution but to something else then it would be for HEFCW to monitor and step in.

Question 22 – Should HEFCW be required to consult on and publish a statement of its intervention policy?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

We believe it is important for us and other interested parties to have the opportunity to comment on the HEFCW's proposed intervention policy to ensure that all views can be considered and taken into account.

Question 23 – Do you agree that where HEFCW is satisfied that a regulated provider has demonstrated serious financial mismanagement that HEFCW should be able to withdraw approval of that provider's fee plan whether or not it has issued a direction to that provider to comply with the requirements of the Code?

Yes ☐

No ☒

Please give your reasons for your answer and comments.

UNISON Cymru Wales believe that an institution should always receive a warning and time to improve before the HEFCW can withdraw approval of a provider's fee plan. It should be the HEFCW's duty to support an institution in helping them to address any unsatisfactory quality or financial mismanagement.

Question 24 – Are the safeguards set out at paragraph 7.16 appropriate and sufficient?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

UNISON Cymru Wales believe the safeguards set out are sufficient and have no further comment.

Question 25 – 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.

UNISON Cymru Wales' concerns are:

the proposals do not cover part-time higher education courses, where the fees for those courses are not currently regulated. We would like to see part-time course be included within the revised regulatory framework as soon as possible. It is important that the Welsh Government honours its commitment that "part-time higher education continues to be a priority for the Welsh Government"

Para 4.14 should be built upon, namely HE institutions benefit from significant financial subsidy from the public, and should be expected to contribute to the wider public good. This should include a requirement to pay the Living Wage to directly employed staff. The wider public good would be served by ensuring employees receive a reasonable wage, that will benefit the individual, their families and the local community/economy. Further, there will be a reduced reliance on state benefits as a subsidy for poverty pay. The requirement to pay the Living Wage should be built into HE Institution's procurement policies for services, for example catering and cleaning.

Higher Education (Wales) Bill 2014: technical consultation

Consultation response form

Your name: Penny Lewis

Organisation (if applicable): Estyn

e-mail/telephone number: 02920 446 446

Your address:

Estyn, Anchor Court, Keen Road, Cardiff, CF24 5JW

Responses should be returned by **29 July 2013** to:

Brendan Murtagh
Legislation Team
Corporate Services Division
Department for Education and Skills
Welsh Government
Freepost NAT 8910
Cathays Park
Cardiff
CF10 3NQ

or completed electronically and sent to:

e-mail: highereducationwalesbill@wales.gsi.gov.uk

Section 4: A revised regulatory system

Question 1 – In light of the increased regulatory role proposed for HEFCW should amendments be made to the Council's name?

Yes ☐

No ☒

Please give your reasons for your answer and comments.

The Higher Education Funding Council in Wales is a recognised name. Under the proposals the courses it will be funding are higher education courses. It already takes into account quality assurance outcomes delivered through third parties, such as the QAA and Estyn (in relation to certain programmes and courses).

Question 2 – We recognise that a variety of franchising arrangements currently exist in Wales and that these have been developed under the funding system which operated prior to the introduction of new fees and student support arrangements. We are particularly interested in your views as to how franchised provision should be dealt with under the new regulatory framework. In particular:

- (a) will the proposal for the institution or provider which franchises the course to be the body which is responsible for either applying for a fee plan or requesting case-by-case designation of its courses work in practice?
- (b) could this proposal result in any delivery issues? If so please identify those issues
- (c) are there any alternative approaches which you wish to put forward for consideration?

Please give your comments.

a,b and c) Estyn cannot comment in detail on the unintended outcomes which may arise as a result in the change of arrangements. However, from Estyn's point of view, the strategic drive to link funding and quality is sound.

Section 5: Fee controls and fair access

Question 3 – Do you agree with the proposal that in cases of persistent failure to comply with fee limits HEFCW should be able to withdraw its approval in respect of an approved plan?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

We agree that courses that are not appropriately quality assured should not be funded as it is poor value for money for both the taxpayer and the student.

Question 4 – Do you agree with the proposal to extend HEFCW's relevant authority role in order that it may evaluate the effectiveness of fee plans both individually and across the Welsh higher education sector?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

There should be a clear linkage between quality and funding. HEFCW is in our view best placed to do this.

Question 5 – Do you agree that transitional protection should be made available for students who have commenced their studies with a regulated provider which subsequently has approval for its fee plan withdrawn or approval of a fee plan refused upon renewal?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

It would not be appropriate to withdraw funding from students who have started their studies with funding. In most cases, students will have carefully planned their eligibility for study on the basis of whether or not there is funding. This is particularly true for mature students for whom there are quite often many barriers to study. Withdrawal part way through may jeopardise their ability to complete the course successfully giving poor value for the taxpayer and student.

Question 6 – Do you agree with the proposal that all institutions and other providers with an approved plan in force should be subject to the same core requirements?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

If the intention is to ensure high quality across all providers, this has to be the case.

Question 7 – Do you agree with the proposal for HEFCW to be required to take account of the proposed level of fee in determining whether fee plan commitments are sufficient?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

This is essential to ensure that fees are appropriately costed to provide value for money.

Question 8 – Do you agree with the proposed value of £6,000 for the ‘threshold’ fee amount?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

Question 9 – Do you agree with the range of proposed sanctions to be made available to HEFCW and that HEFCW, as relevant authority, should have discretion in their application?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

Yes, as the overseeing body HEFCW must have a range of sanctions in place to ensure quality and value for money for the taxpayer and the learner.

Question 10 – It is proposed that where HEFCW (as relevant authority) decides to withdraw its approval of a fee plan, the institution or provider affected may apply for a review of that decision to an independent panel/person. Do you consider this review mechanism to be sufficient or is there a need for any additional review or appeal arrangements? If so, please specify what such arrangements might entail.

Yes ☒

No ☐

Please give your reasons for your answer and comments.

In ensuring fair access and accountability, it is important that there is an appeal process to an independent panel/person. This should be sufficient. Adding additional panels or people only prolongs issues and leads to uncertainty for the provider and students. We would suggest that the only other procedure might be to allow reference to an ombudsman to comment of regularity of procedures

Question 11 – Should regulated providers (i.e. those with an approved fee plan in force) whose higher education courses are subject to automatic designation for statutory student support purposes be able to exempt certain courses from automatic designation and the regulatory requirements associated with fee plans?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

There may be circumstances in which it is not appropriate for certain courses to be subject to automatic designation for statutory student support. However, there should be a mechanism in place which informs HEFCW of why providers consider a particular course to be outside this boundary.

Section 6: Quality assessment

Question 12 – Do you agree that HEFCW's duty to make provision for assessing the quality of higher education delivered by regulated providers in Wales should extend to all courses of higher education falling within the scope of schedule 6 to the Education Reform Act 1988?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

It is important that HEFCW are assured that the quality of courses and the outcomes in order to be able to make informed decisions about their funding.

Question 13 – Do you agree with the proposed approach of making provision for HEFCW to be able to direct regulated providers to provide access to premises, records and documents for the purpose of quality assessment?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

This is important in cases where HEFCW feels it is important to check information. It may be that HEFCW will not want to do this itself, but wishes to nominate a third party, such as the QAA or Estyn to be able to access documentation to provide an opinion about quality. Therefore, wording should be put in the regulations to allow for this eventuality.

Question 14 – In order to deal with cases of unsatisfactory quality are the actions specified at paragraph 6.15 appropriate and adequate? Are there any other actions which you consider HEFCW should be able to undertake?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

We judge that the actions listed are appropriate and adequate. However, as well as taking these actions, there will need to be a clear focus on how students enrolled and mid-way on the course are not disadvantaged but can complete their studies appropriately and in a timely way.

Question 15 – Do you consider that the person or person(s) requesting access to premises, records and documents for the purpose of HEFCW's quality assessment duty should be required to produce identification at the request of the institution or other provider which is the subject of the quality assessment?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

Yes. The provider should receive in advance a list of the people who will be carrying out this function. The people carrying out the function should be provided by the appropriate body with identification which can be checked with HEFCW as necessary.

Question 16 – In the event of HEFCW revoking a fee plan are the safeguards set out at paragraph 6.18 appropriate and sufficient?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

Yes, this is reasonable to enable to the provider to improve the provision and to enable students to continue with their course, subject to regular monitoring and support from HEFCW or a third party it designates to carry out the role, such as QAA or Estyn.

Question 17 – Do you agree with the proposal that HEFCW be required to submit an annual report to the Welsh Ministers on the discharge of its quality assessment duty?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

This will inform ministers and allow them to gain a clear understanding of quality and any issues.

Question 18 – Are the proposals in respect of franchised provision workable in practice?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

In strategic terms, Estyn considers that they are. However, we are not in a position to comment on operational matters and any unintended outcomes.

Section 7: Financial and governance assurance

Question 19 – Do you agree that HEFCW should be required to consult on the proposed Financial and Corporate Governance Code?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

Yes. This will provide interested parties to become familiar with proposals and comment prior to their being applied.

Question 20 – Do you agree that following HEFCW’s consultation on the draft Code that further scrutiny should be provided for?

Yes ☒

No ☐

If ‘Yes’ then which of the options set out in paragraph 7.12 do you prefer and why?

We would suggest the second option as the appropriate use of funding and quality assurance is of import to Wales as a nation.

Question 21(a) – Do you agree with the parameters of the proposed Code in paragraph 7.11?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

Yes. It is important that HEFCW can access full information to be able to make fully informed decisions regarding funding and quality of provision.

Question 21(b) – Should the parameters apply equally to all institutions and other providers with an approved plan in force?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

Question 21(c) – Should these parameters be set out in the proposed Bill with the operational detail of the Code left as a matter for HEFCW to develop?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

Question 21(d) – Under what circumstances, if any, should HEFCW's consent be required for regulated providers to enter into certain financial transactions?

Please give your comments.

Question 22 – Should HEFCW be required to consult on and publish a statement of its intervention policy?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

Yes. This ensures that all parties are clear about the circumstances in which intervention will be applied. In order to take account of issues which cannot be seen at this stage, the intervention policy should contain rubrics that allow HEFCW to intervene at their discretion if they believe there are difficulties.

Question 23 – Do you agree that where HEFCW is satisfied that a regulated provider has demonstrated serious financial mismanagement that HEFCW should be able to withdraw approval of that provider's fee plan whether or not it has issued a direction to that provider to comply with the requirements of the Code?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

Yes. In the case of confirmed serious financial mismanagement it is important that HEFCW are in a position to act to maintain public confidence.

Question 24 – Are the safeguards set out at paragraph 7.16 appropriate and sufficient?

Yes ☒

No ☐

Please give your reasons for your answer and comments.

Question 25 – 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.

No further comments

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:

☐

From: Andrew Boggs [mailto:Andrew.Boggs@universitiesuk.ac.uk]
Sent: 29 July 2013 15:02
To: highereducationwalesbill
Subject: Submission from HEBRG

Good afternoon,

Please accept the Higher Education Better Regulation Group's response to the *Higher Education (Wales) Bill: Technical consultation* below with attached supporting document.

Please contact me if you have any questions or concerns.

Sincerely,

Andrew Boggs

Andrew M. Boggs, Policy Adviser, Higher Education Better Regulation Group (HEBRG)
Direct Tel [+44 \(0\)20 7419 5501](tel:+442074195501) Email andrew.boggs@universitiesuk.ac.uk
Follow us on Twitter <http://twitter.com/HEBRG>

Woburn House, 20 Tavistock Square, London WC1H 9HQ
Switchboard tel [+44 \(0\)20 7419 4111](tel:+442074194111) Email info@hebetterregulation.ac.uk
Web <http://www.hebetterregulation.ac.uk>

Contextual Note

The Higher Education Better Regulation Group (HEBRG) was established in 2010 with a UK-wide remit to promote a positive approach to regulation and build on the principles of good regulation. HEBRG promotes good practice in higher education regulatory policy, undertakes research and reacts to the changing regulatory environment and its emerging demands, in order to improve the student experience and strengthen the UK HE sector. HEBRG reviews the impact of new regulation and plays a role in ensuring that regulation is applied consistently and appropriately to both new and existing providers. HEBRG has an independent chair, Sir Tim Wilson, and 23 members representing higher education providers, regulators, funding bodies, sector agencies and government departments.

Response

HEBRG notes that the Welsh Government's response to the *HE proposals of the FE and HE (Wales) Bill White Paper*, as set out in the consultation document, will allow providers to seek automatic designation of their HE courses, and opt for either a) a regulated framework with an overarching duty to HEFCW (and, in some cases, for example quality assurance, devolved to bodies such as the QAA), or b) an unregulated framework operating via case by case designation, and with an overarching duty to the Welsh Government. HEBRG supports a harmonised regulatory framework which captures the entire HE sector, as far as this may be possible.

As reflected in our response to the *BIS consultation on applying student number controls to alternative providers with designated courses in England* (January 2013), the English HE sector regulatory environment is evolving to 1) reflect the student-centred flow of funding, and 2) include new, 'alternative' providers. While the context in Wales is different, and fundamentally does not reflect a free market system, Wales does play a key role within a wider UK-wide framework, and a regulatory system which includes alternative providers should take this into account. HEBRG strongly believes that not including alternative providers in all sector requirements might suggest two tiers of HE programmes in Wales (and, multiple tiers across the UK), one tier (for alternative providers) that is less transparent than the other. We strongly advise that any new regulatory approach applied (or available)

exclusively to alternative providers be designed with an ultimate aim to harmonise regulatory frameworks into one regulatory framework for HE. This will increase transparency of accountability (be it quality assurance, financial, or governance) and increase the possibility of enjoying a strong, integrated HE sector. A future framework may be risk-based and flexible, if it is guided by the principles of proportionality, effectiveness, and equitability.

HEBRG supports greater consistency between the HEFCW-supported and alternative provider segments of the Welsh HE sector in the short term, as this may make convergence of regulatory frameworks easier in the medium-term. We are supporting the creation of standards of accountability agreements for the English higher education sector which apply to both the HEFCE-supported higher education providers and alternative higher education providers operating in England. We recommend that the Welsh government consider approach for the Welsh higher education sector. The proposed approach may be suitably flexible so that agreements reflect the relative risk and health profiles of individual institutions, in addition to individual institutional missions, while building consistency across all Welsh higher education institutions. We attached a draft copy of the document we are developing for your consideration. Please note that this document has not been finalised and is still under development. We would be pleased to help support the Welsh government in developing a similar document for Wales.