

Higher Education (Wales) Bill 2014: technical consultation

Consultation response form

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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.

Cardiff University has no strong views on the proposal to amend HEFCW's name to reflect its increased regulatory role with the proviso that, if there is a new name, care should be taken that it does not give the impression that Welsh universities have any less autonomy or academic freedom than those in the rest of the UK.

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.

Arrangements for franchised provision do not directly affect Cardiff University but the proposals would appear proportionate and sensible.

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.

Withdrawing approval mid term would be a serious step and it would be important to use such a power in extremis only and that it should be proportionate to the problem identified.

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 X ☐

Please give your reasons for your answer and comments.

We do not see that the case for change has been made. There is no evidence provided that the current controls are ineffective.

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 X ☐

No ☐

Please give your reasons for your answer and comments.

It would seem fair to protect students who, through no fault of their own, have commenced studies with a regulated provider who has since had approval for its fee plan withdrawn and to ensure that they are able to continue their studies.

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 X ☐

No ☐

Please give your reasons for your answer and comments.

It is important that all providers of HE are subject to the same core requirements so that: students can be assured of the quality of provision and the student experience; the Welsh Government can be assured that public funding is being directed to the delivery of appropriate provision; and, there is a level playing field for all providers of HE.

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 X ☐

No ☐

Please give your reasons for your answer and comments.

It is important to take account of the level of fee income in evaluating fee plans. However, we assume this to be the case now and it is not clear why this needs to be specified at this stage.

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

Yes X ☐

No ☐

Please give your reasons for your answer and comments

Setting the threshold fee amount at £6,000 will allow for harmonisation with that used by OFFA in England, thus enabling clearer comparisons to be made between institutions in England and Wales.

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 are not convinced that these sanctions are necessary.

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 ☐

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No

Please give your reasons for your answer and comments.

We think the appeal mechanism set out is appropriate but should be a last resort and should only be necessary when all other mechanisms have been exhausted

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.

It is not clear what the implications of this might be for Cardiff University.

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 X ☐

No ☐

Please give your reasons for your answer and comments.

It is important that all providers of HE are subject to the same quality assessment regulations so that: students can be assured of the quality of provision; the Welsh Government can be assured that public funding is being directed to the delivery of appropriate provision; and, there is a level playing field for all providers of HE.

It is also important that any sector assessment of quality in Wales is comparable with that in the rest of the UK.

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 X ☐

Please give your reasons for your answer and comments.

We would not support this kind of inspection regime and do not believe that any evidence has been provided to support such a move.

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 see no reason to go beyond the powers set out in 6.14.

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 X ☐

No ☐

Please give your reasons for your answer and comments.

Should an inspection be warranted it would be necessary for identification to be produced given that data protection requirements might come into play.

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.

We do not believe the case has been made to extend the powers to revoke a plan.

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 X ☐

No ☐

Please give your reasons for your answer and comments.

Cardiff University has no real concerns about the production of an annual report however it should be acknowledged that the primary assurance mechanism is the institutional review which is held every 5/6 years. There is therefore some concern that institutions will be required to produce additional information in the intervening years and care would need to be taken that requests for information are not overly onerous.

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

Yes X ☐

No ☐

Please give your reasons for your answer and comments.

Arrangements for franchised provision do not directly affect Cardiff University but the proposals would appear proportionate and sensible.

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 X ☐

No ☐

Please give your reasons for your answer and comments.

It is essential that there is detailed consultation on the content of these codes and that the basic autonomy of institutions is recognised.

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

Yes X ☒

No ☐

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

We support the concept of additional scrutiny and believe that this should involve the National Assembly for Wales as well as the Ministers.

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.

We agree with the view that the proposed code should not be too prescriptive and that the particular governance arrangements of each institution be considered. We also believe that care should be taken so that the provisions of the code do not conflict with the requirements of the Charity Commission.

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

Yes X ☒

No ☐

Please give your reasons for your answer and comments.

The parameters should apply equally in the interests of 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 X ☒

No ☐

Please give your reasons for your answer and comments.

We are of the opinion that HEFCW is best placed to develop the operational detail.

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.

We cannot envisage circumstances where existing controls would be insufficient.

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

Yes X ☐

No ☐

Please give your reasons for your answer and comments.

The power to intervene is a significant one and a transparent policy (following consultation) would be essential.

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 X ☐

Please give your reasons for your answer and comments.

We would not support a summary withdrawal of approval without the appropriate notice of intention. Given the powers of the Charity Commission in this regard it is not clear why such an extension of power is being suggested.

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

Yes ☐

No X ☐

Please give your reasons for your answer and comments.

The issue of a provisional decision could have a serious destabilising effect thus reducing the institutions ability to take corrective action.

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.

We welcome the continuation of HEFCW and understand the need to review its operation at this point in time. We would therefore emphasise that our comments pertain to the detail rather than the principles contained in the Bill.

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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Welsh Government

Higher Education (Wales) Bill

**Welsh Government response to the higher education proposals of the
FE and HE (Wales) Bill White Paper and further technical
consultation
29 July 2013**

1. The NASUWT welcomes the opportunity to comment on the technical details of the Welsh Government's legislative proposals in relation to higher education (HE), following the consultation and response to the Further Education and Higher Education (Wales) Bill White Paper.
2. The NASUWT is the largest teachers' union in Wales and the UK representing teachers and school leaders.

GENERAL COMMENTS

3. The NASUWT welcomes the decisions not to take forward the proposals to enable Welsh Ministers to directly fund HE in strategically appropriate circumstances or to place the Further and Higher Education Funding Council for Wales (HEFCW) under a statutory duty to quality assure HE provision.

SPECIFIC COMMENTS

4. The NASUWT offers the observations and comments that follow in relation to the questions posed on the consultation response form.

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 NASUWT sees some merit in changing the name to reflect the move towards a greater regulatory role for HEFCW, but questions the cost implications at a time of austerity.

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:

- (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?
- (e) could this proposal result in any delivery issues? If so please identify those issues
- (f) are there any alternative approaches which you wish to put forward for consideration?

Please give your comments.

The NASUWT believes that care should be taken to ensure that the franchised provision under the new regulatory framework does not limit the development of HE provision in the further education (FE) sector.

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.

The NASUWT agrees with this proposal as it will better enable the enforcement of fee controls. However, the effects on learners and the workforce of an approved plan being withdrawn should be assessed fully before such decisions are made.

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.

The NASUWT sees merit in this proposal as it brings all HE providers, including charities, into the fee plan mechanism.

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.

The NASUWT endorses such transitional protection as students will not have caused the withdrawal or refusal to renew a fee plan and should not, therefore, be penalised as a consequence.

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?

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Yes

No

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Please give your reasons for your answer and comments.

The NASUWT recognises that this proposal will better ensure the quality of provision across the sector.

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

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No

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Please give your reasons for your answer and comments.

The NASUWT maintains that caution would be needed in the exercise of such a requirement to ensure parity of application.

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

Yes

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No

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Please give your reasons for your answer and comments.

The NASUWT notes that the proposed level of the ‘threshold’ fee amount reflects the current maximum student tuition fee support for specifically designated courses. The NASUWT questions whether this level has been determined by accident or design and, if the latter, whether such a link remain in place.

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

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No

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Please give your reasons for your answer and comments.

The NASUWT welcomes the recognition that the principal sanction of refusing the renewal of a fee plan has far-reaching consequences on students and the provider workforce, and acknowledges that the range of sanctions proposed provide a more measured and more appropriate means of encouraging compliance with the fee plan requirements.

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.

The NASUWT maintains that a two-stage approach is needed where HEFCW decides to withdraw approval of a fee plan. The initial review should allow for representations to be made directly to HEFCW before an appeal, if necessary, to an independent panel.

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.

The NASUWT disagrees with this proposal as affording institutions such freedoms could undermine the increased regulatory function of HEFCW and create a two-tier system for the provision of HE courses. The fact that part-time HE courses will continue to remain non-regulated is an ongoing concern in this regard.

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.

The NASUWT endorses this proposal as it should help to create a less competitive and market-facing approach to the provision of HE in Wales. It should also assist in protecting against the development of a two-tier system of provision related to the type of courses and subject choices available.

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 NASUWT maintains that this proposal is necessary to ensure that the principles of openness and transparency are subscribed to by HE providers, in order to ensure that the quality of provision is neither jeopardised nor compromised.

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 NASUWT recognises that the sanction of withdrawing approval of the fee must be available to HEFCW but maintains that provision should be made for appropriate

support and assistance to be given before the exercise of this sanction because of the possible consequences to students and the regulated provider workforce.

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.

The NASUWT acknowledges that this is a sensible and appropriate requirement to place on all visitors to education establishments.

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.

The NASUWT welcomes this proposal in the context of the answer given to questions 3 and 10 but maintains that where the initial review is sought, HEFCW should be under a duty to ensure that the regulated provider has sought the views of the workforce at the point of delivery of HE courses.

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

Yes ☒

No ☐

Please give your reasons for your answer and comments.

The NASUWT agrees with this proposal as it will ensure some democratic accountability in relation to the provision of HE in Wales.

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

Yes ☐

No ☐

Please give your reasons for your answer and comments.

Whilst recognising that the franchisor carries rightly the responsibility for the courses provided, the NASUWT questions the practicality of this approach in being able to ensure a consistent approach across the sector. The NASUWT suggests that it may be more appropriate for the franchisees to be regulated by HEFCW and be designated as regulated providers for the purposes of providing franchised courses.

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.

The NASUWT agrees with this proposal but would expect the trade unions that represent workers involved in the provision of HE to be involved fully in such consultation.

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?

The NASUWT agrees with this proposal as HEFCW should be accountable to the National Assembly for Wales and according to the principles of openness and transparency that apply to education establishments and other regulatory and funding bodies. The NASUWT, therefore, supports the second option referred to in paragraph 7.12 of the consultation document.

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.

The NASUWT acknowledges that the parameters of the proposed Code provide an appropriate mechanism to allow HEFCW to impose requirements on regulated providers and to issue guidance on governance and financial management, to which the providers must have regard, not least, to ensure the quality and equity of the 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.

The NASUWT sees little point in providing a Code if it does not apply to all institutions and other providers of HE courses.

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.

The NASUWT questions how the detail of the Code would be subject to consultation and scrutiny under this proposal.

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.

The NASUWT believes it may be more appropriate for HEFCW to provide a facility for regulated providers to seek advice from HEFCW where it is felt that a financial transaction could cause difficulty in relation to the approval or renewal of the fee plan.

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.

The NASUWT agrees with this proposal but maintains that the consultation must extend to the trade unions representing workers involved in the delivery of HE in Wales.

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.

The NASUWT recognises the need for this provision where the actions of the regulated provider demonstrate a deliberate and/or wilful disregard for the requirements of the Code. However, the withdrawal of approval of a regulated provider's fee plan must be placed in the context of the answers given to questions 3, 10, 14 .and 16.

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.

The NASUWT welcomes the recognition of the need to afford regulated providers the opportunity to make representations to HEFCW before intervention takes place and that a decision to withdraw approval of a fee plan because of serious financial mismanagement should in the first instance be regarded as a provision decision.

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 NASUWT maintains that the needs, rights and entitlements of learners and the workforce involved in the delivery of HE must underpin the role and functions of HEFCW.



Chris Keates

General Secretary

For further information on the Union's response, contact Rex Phillips, Wales Organiser.

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Higher Education (Wales) Bill 2013 Technical Consultation A Response by Higher Education Wales

1. About Higher Education Wales

- 1.1. Higher Education Wales (HEW) represents the interests of Higher Education Institutions (HEIs) in Wales and is a National Council of Universities UK. HEW's Governing Council consists of the Vice-Chancellors of all the HEIs in Wales and the Director of the Open University in Wales.

2. Introduction

- 2.1. The following paragraphs set out HEW's response to the Welsh Government Consultation Document on the Higher Education (Wales) Bill (the 'Consultation Document') which was published on 20 May 2013. The response forms part of a series of responses to related consultations. HEW submitted a joint response with the Chairs of Higher Education Wales (CHEW) to the consultation on the Further and Higher Education (Wales) Bill in September 2012.¹ HEW also submitted evidence to the National Assembly for Wales on the Further and Higher Education (Governance and Information) (Wales) Bill in May and June 2013.² HEW's response to proposals put forward by the Higher Education Funding Council for Wales (HEFCW) on future fee planning arrangements was submitted in March 2013. In relation to HEFCW's role more generally, the HEW response to the HEFCW Corporate Strategy consultation submitted in July 2012 is also relevant to the current consultation.
- 2.2. Before addressing the specific questions raised in the Consultation Document, this response focuses on a number of more general issues of significance.

3. Executive Summary

- 3.1. The following key issues are identified:
- The proposed arrangements are highly complex and raise a number of important issues. On many of these we need further clarification and advice before we can reach a final view, including in particular arrangements for unregulated providers.

¹ A copy is contained in 'Consultation Responses - Part 1' published by the Welsh Government at: <http://wales.gov.uk/consultations/education/feandhebill/?status=closed&lang=en>

² Copies of the HEW submission and additional evidence are published at: <http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?Ild=6772>

- The regulatory principles and objectives currently lack sufficient clarity for us to be confident that the proposed measures address them appropriately. Further consideration also needs to be given to HEFCW's role as proposed, with a greater emphasis on HEFCW, the Welsh Government and the sector working in partnership.
- The application of different regulatory arrangements for regulated and unregulated providers raises a number of issues which need to be addressed by the Welsh Government. It is essential that the proposals do not lead to divergence in arrangements for quality assurance or regulation across the UK.
- There appears to be potential for conflict in the proposed use of different legislative provisions (including potentially charity law), which may require significant subsequent amendment if implemented.
- In developing new regulatory controls which are not dependent on grant we welcome the Welsh Government's intention that we do not move towards an inspection regime. However we remain concerned at the introduction of a number of additional powers and controls.
- As currently drafted, the proposals appear to put the autonomous status of universities in Wales at risk with potentially very serious consequences. The potential use of fee planning arrangements, in particular, needs to be reviewed to ensure that there is an appropriate level of restriction on discretion and control and that the classification of universities as Non-Profit Institutions Serving Households (NPISH) is not affected.
- At this stage we question the extent to which the proposed framework could provide an operable and long-term solution for the sector. Further consideration should be given to alternative mechanisms which may offer simpler and more effective solutions to the key issues, and may also be less resource intensive for the Welsh Government to pursue.
- We would expect to see a further period of engagement between the sector and Welsh Government/HEFCW before proceeding with these proposals, followed by further consultation on a revised set of proposals after more thorough exploration of the issues and alternatives.

4. Section 4 – A Revised Regulatory System

General comments

4.1. We welcome the Welsh Government's consultation and continuing efforts to work in partnership with the sector to find an appropriate solution for Wales which responds to the changes in fee and funding arrangements across the UK. From our discussions with the Welsh Government, we understand that the proposals are not intended to introduce a radical change in practice, but to reflect the need for radical change in the legal framework to support the exercise of current functions. They are needed in particular to address the

impact of the shift from grant funding to student fees, supported in Wales by fee grant payments via HEFCW, and the challenges of wider regulatory change across the UK.

4.2. We also recognise, however, that these proposals will result in significant legislative change that could have a long-term impact for the sector. The proposed changes are closely linked to funding policy and we are aware that solutions to the student support and funding arrangements in Wales have yet to be determined fully, for part-time and post-graduate funding in particular. In other parts of the UK the likelihood of further changes in the regulatory and funding environment has also been signalled. From our perspective the current proposals raise a number of key issues which need to be addressed in this context which we set out below in addition to providing answers to the specific consultation questions. Universities are a major driver of economic growth and social justice, and a key to the future prosperity of Wales. It is important that we get these proposals right, and we look forward to working through the issues raised below with the Welsh Government as part of the next phase of engagement with the sector and revision of the proposals to ensure that Wales has the best possible framework for its future needs.

4.3. *The regulatory rationale and principles.* The proposals in this Consultation Document involve high-level consideration of the role of regulation and public intervention. Universities are independent autonomous institutions operating in the public interest. In general we would welcome a clearer statement of the principles of regulation as, for instance, transparently articulated in the proposed changes in England by the Regulatory Reform Group which recognises the success of a system of assurance which relies on a balance of public and self-regulation, and commits itself to a principle of proportionate intervention. As recognised in Part A of the Consultation Document (paragraph 2.30), universities have previously identified three broad issues which changes need to focus on: protecting the interests of the learner, protecting the public purse and establishing a level playing field to all providers of higher education. In our comments below, we identify a number of instances where the objectives would benefit from further clarification and where we regard there to be issues of proportionality.

4.4. *Translation and extension of powers.* We welcome from our discussions with the Welsh Government confirmation that the proposals are not intended to introduce a radical change to the role of HEFCW in practice, but to reflect the need for radical change in the legal framework to support the exercise of those functions. The Consultation Document, however, proposes significant new powers for HEFCW in respect of access and inspection to universities in Wales, and potentially at the moment – as we discuss below - in the control of corporate strategy at institutional level. The Welsh Government has argued that a change in the legal basis is required to enable HEFCW to

exercise its current powers in the new funding environment, where a greater proportion of university funding is received through fees supported by fee grant payments. However, the case for extending HEFCW's powers remains unclear. Arguably, given that direct public funding for universities has been significantly reduced and that in legal, accounting and many practical respects fee grant payments are not be regarded as public funding, there is a case for proportionately reducing the powers of public intervention rather than increasing them.

4.5. *Providing appropriate restrictions on regulatory intervention.* We are concerned that extension of the fee planning legislation could lead to a dilution of its original and distinct purpose and allow an alternative system of control which obviates the restrictions and safeguards embedded in the Further and Higher Education Act (FHEA) 1992 which currently form the regulatory framework for administering funding for higher education. In short, the provisions of the Act are clearly designed to protect academic, financial and corporate autonomy. The fee planning legislation does not contain equivalent provisions, and the proposed extension of its use would appear to provide a means of circumventing these protections. We discuss this in more detail in the section on fee plans in particular below.

4.6. By comparison with existing arrangements, the proposed regulatory framework is highly complex. It extends separate legislative provisions designed for distinct purposes and creates additional distinctions in provider status, increasing the variety of different arrangements within the sector. This is an issue in terms of perception of the sector as a single entity. More importantly, there appear to be a number of areas of potential conflict, confusion or apparent gaps in the framework which raise significant questions about how it would operate in practice or cope with potential changes within the sector in future:

- *Parallel operation of fee plan and grant based powers.* The intention (paragraph 4.23) is that HEFCW's statutory functions would apply to regulated providers rather than those in receipt of funding. We understand, however, that the current statutory provisions in relation to the administration of grant would continue and would be required to fund research and other important areas of activity including, at the moment, part-time and postgraduate provision and strategy funding for full-time undergraduate provision. HEFCW would continue to have a duty/powers in respect of those institutions which it funds (including e.g. quality assurance) irrespective of whether the provider was regulated (i.e. accepted fee plan conditions) or unregulated - yet this appears to conflict with the proposal that HEFCW should have a regulatory role only in respect of those accepting fee plan requirements (i.e. regulated providers). Would this not limit the controls it now has over those institutions to which it administers funds but do not fall under fee planning

provisions? Would this mean that HEFCW would have to avoid funding unregulated institutions in order to avoid conflict (including e.g. strategic funding such as the current Public Investment Fund allocations)? The fee plan arrangements do not fully replace current powers reliant on grant, and do not provide a means of recovery of grant except in context of meeting fee plan obligations (including compliance with the fee cap). This also creates potential issues in terms of applying different terms and conditions through the Financial Memorandum and proposed Financial and Governance Code. From our further conversations with the Welsh Government, we understand that the fee plan powers and grant-based powers are seen as having distinct areas of application. We would welcome further clarity and confirmation on how these powers could work together and these issues be avoided.

- *Separate arrangements for regulated/unregulated providers.* We do not support further divergence or potential for divergence within the sector. In particular, we are concerned that in theory two universities in Wales could potentially fall under two different regulatory systems and lines of accountability in respect of governance and quality assurance, depending on choices made solely in respect of full-time undergraduate arrangements. Important details about how the system would apply to unregulated providers are lacking in the consultation and are required before a view can be reached on the feasibility of the system as a whole. For instance, clarity and confirmation are needed on whether unregulated providers would be subject to student number restrictions or fee limits. We are concerned about the ability of unregulated institutions to provide higher education without fee limits. Subject to the market, unregulated providers would, in theory, be able to increase fees up to or beyond the £9,000 maximum. This would appear to be counter to the Welsh Government's commitment to protect students from increased fees. This also leaves potential parity issues between regulated and unregulated providers. Potentially it could lead to a position where regulated institutions receive less income and greater regulatory burden than their unregulated counterparts, contrary to the express intention that the 'regulatory requirements will be proportionate to the benefits derived' (paragraph 4.18). A market which supported higher fees despite the lack of the generous student subsidy could also induce voluntary 'deregulation' of providers as an unintended consequence.
- *Charity regulation.* A number of our members have raised concern that there is potential for conflict between regulatory requirements or duplication of regulation. It could be damaging if the different regulators were to reach different verdicts about the satisfaction of requirements that were substantially the same. Unlike England where the Higher Education Funding Council for England (HEFCE) is the regulator for purposes of charity law, we assume that it is not proposed that HEFCW should be

regulator for higher education in Wales and that universities (or only regulated providers under these proposals?) would continue to be regulated for purposes of charity law by the Charity Commission. The Welsh Government needs to have very close dialogue with the Charity Commission about the implications of its proposals to ensure that conflict is avoided and that, with the increased powers of intervention, there will be no risk to the autonomy or charitable status of institutions. Before we can give support to this proposal, we need further assurances on this matter and would expect further discussion with the Welsh Government following this dialogue.

- *Extension of full-time undergraduate fee-based controls to other areas of activity.* We question the suitability of the controls which depend on choices made in respect of full-time undergraduate provision. Universities' activities are much wider. At this stage it is not clear that it would be helpful, for purposes of funding and student support arrangements, to bring part-time provision within existing fee plan arrangements. Research and many other areas of activity would not be related to fee income – and would presumably necessitate the continuation of current grant-based legislation.

4.7. *Impact on institutional autonomy and NPISH status.* We are concerned that, as the proposals stand at present, the current Office for National Statistics (ONS) classification of universities as Non-Profit Institutions Serving Households (NPISH), rather than as central government, could be placed at risk with serious consequences both for the sector and the Welsh Government. As HEW made clear in its response to the National Assembly for Wales' Inquiry on the Further and Higher Education (Governance and Information) (Wales) Bill,³ in common with our university partners across the UK, our view is that the loss of NPISH status for universities would have a very serious and detrimental impact on the higher education sector:

- The Further and Higher Education Act 1992 is widely regarded as preserving the necessary public safeguards against autonomy of corporate policy and academic independence, which have been a cornerstone of the UK's international reputation for having the best system of higher education in the world. Whilst some divergence between UK administrations is inevitable, an actual or apparent erosion of these safeguards, and/or resulting loss of NPISH status, could give rise to perceptions of a fundamental shift of higher education in Wales in this respect and have a very damaging impact on the international reputation of the Welsh sector.

³ See HEW's Letter to the Children and Young People Committee dated 24 July 2013:

<http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?lId=6772>

- Reclassification would have significant consequences for the Department for Education and Skills (DfES) budget, which in turn would have serious implications for the higher education sector.⁴ This would include the potentially negative impact on the Welsh Government capital budget in particular and requirement for additional accounting and annual return arrangements. Any surpluses or deficits would become Welsh Government funds and would need to be managed within the overall Main Expenditure Group, and the ability of institutions to carry forward surpluses and build reserves for future capital projects would be lost. We also understand that, more generally, the reclassification of the sector as central government would impact in particular on the Public Sector Net Debt and to a lesser extent the Public Sector Current Budget and Public Sector Net Investment.
- There would also be significant ramifications arising from the specific provisions which contributed to a change in status. HEW has considered the potential impact of a change in status for higher education in its responses in relation to proposals for direct grant in the Further and Higher Education (Wales) Bill consultation in September 2012 and in relation to the Welsh Government's Public Service Workforce consultation in July 2012. In addition to the above points, the HEW responses identified a potential impact on contractual agreements with partners, collective agreements incorporated into the contracts of employment, or general statutory duties relating to higher education. Implications for tax and charitable status would also be issues which would need to be considered further in any potential reclassification.

4.8. The ONS classification reflects the degree of public sector control over general corporate policy and a reclassification would result from a significant shift in this respect. The key areas which caused reclassification of the FE sector to central government were, according to the ONS: borrowing restrictions, governance arrangements, and the public sector ability to close or merge institutions. When, in England, these powers were limited to situations where the institution is being mismanaged or performing poorly, the ONS took the view that these remaining powers acted as reserve or step in powers. It noted, however, that if such powers were to be exercised this would result in the public sector taking control of the institution in question.⁵

4.9. We understand that the issues relating to NPISH status, including the power to dissolve Higher Education Corporations, are already being looked at in relation to existing provisions in other parts of the UK as well. We would welcome the Welsh Government working with the UK Government to

⁴ Further and Higher Education (Governance and Information) Wales Bill, Explanatory Memorandum

⁵ Offices for National Statistics, Reclassification of Further Education Corporations and Sixth Form Colleges in England, May 2012.

remove, in particular, the power of dissolution or to include appropriate restrictions on its exercise to avoid the potential for this impacting on the NPISH status of higher education in future. In the meantime, we are concerned that the proposals in the Consultation Document pose an additional risk to NPISH status. We discuss this in more detail in relation to the fee plan section in particular below.

4.10. *Prerequisites for designation for student support.* The need to make provisions which appropriately regulate which providers may access funding or offer courses eligible for student support is recognised, particularly with the potential for new and alternative providers in future. We understand in particular that, under existing arrangements, funding controls are limited in their application to Welsh higher education providers in Wales. However, the Welsh Government is able to designate courses as eligible for student support for providers both within Wales and elsewhere. In HEW's response to the FE & HE Bill consultation last September, the following points were made about alternative providers:

- The private higher education sector is emerging as a growing force in many parts of the world and presents a range of potential opportunities and challenges. From the overall UK perspective, private providers are broadening the UK offer by providing qualifications to a greater number of students.
- Unlike publicly-funded institutions, the granting of degree awarding powers (DAPs) to private providers is currently restricted to a period of six years, after which time it must be reviewed and can be revoked. At present, no private providers that have DAPs have been subject to the six year Quality Assurance Agency (QAA) review. There is also concern that there is no requirement for private providers to supply government or any agency with information on staff and student numbers or financial information such as turnover or financial capacity. When considering transparency of information, it should be noted that the QAA's reports on publicly-funded institutions are published but the reports on private colleges from British Accreditation⁶ Council inspectors are not, although the College of Law has done so⁷.
- It is important that appropriate measures are in place to ensure high quality. For example, information concerning students' experiences in private institutions is generally absent in the UK, so it is difficult to judge whether the support provided to students at these institutions by the Welsh Government is being used to the advantage and benefit of the student. The Welsh Government has little control over student numbers in

⁶ [British Accreditation Council](#)

⁷ The College of Law is also starting on the six year review process.

terms of private providers operating in Wales and no control over those operating in England. This could cause potential difficulties for the Welsh budget, which in turn could impact on the amount of funding available for the publically-funded Welsh HE sector to meet Welsh Government priorities. There is no obligation for private providers to engage with the twin pillars of Welsh Government policy of social justice and economic development, nor is there a requirement for them to engage in areas such as widening access or Welsh Medium services, for example.

- Both the quality of learning and teaching and the student experience, are important to Wales and we suggest that if all providers of HE, including private providers, were required to adhere to the QAA's Quality Code⁸, the Welsh Government could expect them to take deliberate steps to engage all students, individually and collectively, as partners in the assurance and enhancement of their higher education experience.

4.11. The Consultation Document proposes in particular the use of charitable status as a prerequisite to receive designation for student support. We would question the utility of this mechanism, however, and the extent to which the current proposals fully address these issues. As we understand it, the provision would ensure that any profits made by the charitable organisation would be reinvested for purposes of achieving its charitable objects, and that charitable status is easier to identify than not-for-profit status. Charitable objects/purposes, however, can take a number of forms which may or may not relate to education/higher education. It also does not help to provide parity in important areas of regulation. For instance, universities are subject to freedom of information requirements, the Human Rights Act in exercising their public functions, and an additional range of legislation including EU procurement regulations, application of the Welsh Language Act, and aspects of employment law and equality and diversity legislation. We are unclear at this stage what issues would otherwise be addressed by imposing a charitable status requirement that are not (or could not be) addressed through other means. We believe that the ability to receive statutory student support should depend on holding degree awarding powers and/or university title and the criteria relating to these, and would welcome the Welsh Government further exploring these alternatives.

4.12. *Overall control of the student support budget.* A further key issue is the lack of corresponding controls in place for Welsh-domiciled students studying outside of Wales. Paragraph 2.32 of the Consultation Document states that the scope of regulatory controls covers 'higher education provision supported by Welsh Government backed grants and loans'. The proposals do not provide control of the overall student support budget, or provide a similar

⁸ [QAA Quality Code](#)

level of assurance and protection for the students accessing the support for study in other parts of the UK.

4.13. *The role of HEFCW.* In our previous consultation responses, HEW has expressed its support for an independent Higher Education Funding Council for Wales operating within the bounds of the current statutory framework, and highlighted the considerable value of its expertise, resources, and detailed knowledge of the sector. Our main concern with the current proposals relating to the role of HEFCW is that they do not reflect a partnership approach between HEFCW and the sector or appear to recognise the considerable powers that the Funding Council has under the current statutory framework to achieve objectives through agreement and cooperation. There is more that can be achieved through HEFCW, the Welsh Government and the sector working together particularly in enhancing the profile of universities in Wales on the international scene, and the Welsh Government's recent Policy Statement for HE would appear to provide a good platform for building on this. In 2009 Professor Jones in the second part of his Review concluded that "Wales needs unambiguously to redefine the relationships that govern the direction and management of its higher education system". Increasing its powers of intervention as proposed appears to be moving away from this and we would argue that it is not in any of the parties best interests.

4.14. We would welcome further clarity about HEFCW's capacity and resource levels to deliver these new regulatory obligations. Unlike the Explanatory Memorandum which accompanied the Further and Higher Education (Governance and Information) (Wales) Bill, there is no accompanying study of the value for money/equality impact at this stage. On the face of it, the change in role may require significant additional resource to fulfil the new responsibilities and satisfy expectations adequately. If HEFCW's role significantly changes we assume that this may also have implications for the statutory provisions relating to the composition and governance of HEFCW e.g. Board composition.

4.15. Further comments in relation to the specific questions raised by the Welsh Government are provided below:

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

4.16. No, we do not think that HEFCW's name should be amended. We understand that the proposals are not intended to introduce a radical change to the role of HEFCW in practice, but reflect the need for radical change in the legal framework to support the exercise of those functions (see above, 4.4). We are also aware that the role of HEFCW may in practice develop significantly through changes in approach and focus rather than through

changes in the statutory parameters within which it operates. The high levels of awareness and long-standing reputation associated with HEFCW's current name are also factors to be considered.

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?*

4.17. Similar to the current position, our view is that the rules for course designation should apply according to whether the franchisor is regulated or non-regulated, and a regulated institution which franchises the course should be responsible for applying the fee plan. This does, however, highlight an area of further complexity involved with the dual-system approach: a franchisee may be required to deliver to two different sets of HE regulatory systems/controls in respect of franchise provision.

4.18. In implementing these proposals, consideration may need to be given to transitional arrangements to allow existing partnership contracts/agreements to be reviewed, particularly in respect of financial arrangements.

4.19. Further consideration could be given to the exemption of courses delivered through franchise arrangements, to allow regulated providers case-by-case designation of courses as an alternative to automatic designation (see our response to section 5 - question 9 below).

5. Section 5 - Fee Controls and Fair Access

General comments

5.1. The proposal to extend current fee planning legislation raises a number of significant issues, many of which have been already identified in HEW's response to HEFCW's recent consultation on future fee planning arrangements.

5.2. A key issue is to ensure that the powers available under the fee planning arrangements are appropriately restricted. We are concerned that the current

proposals to extend fee planning may enable the important safeguards contained in the Further and Higher Education Act 1992 to be obviated unless expressly incorporated in the new proposals. In particular, it is essential to protect universities' independent status for national accounting purposes (i.e. NPISH not central government) and for perceptions of the Welsh higher education sector in general including the autonomy of its institutions and international standing as part of the UK-wide university sector.⁹ The exercise of HEFCW's and the Welsh Government's powers in relation to the allocation of funding grant or other payments to universities is currently subject to a number of significant restrictions/safeguards:

- In making payments to institutions, the terms and conditions which the Funding Council sets are restricted in effect to direct grant, loans or other payments made by the Council. It also has to have regard to the desirability of not discouraging institutions from developing other sources of funding. These measures limit the scope of the powers to the extent of legitimate interest for purposes of controlling public finance, and prevent public control of corporate policy/use of income from other sources. A key issue for HEW is the lack of similar boundaries for the scope of the powers and HEFCW's discretion being built in to the new proposals.
- In turn, the terms and conditions that the Welsh Government may set must relate to all institutions or classes of institution and not to particular institutions – i.e. this limits the level of public control over individual corporate policy as required for NPISH status. We are concerned by the extent to which the current proposals could enable control of the policy of individual institutions.
- Further important restrictions, for which there appear to be no equivalents in the new proposals, include that terms and conditions must not relate to particular courses of study, programmes of research or to the criteria for the selection and appointment of academic staff and for the admission of students – i.e. relating to academic independence. The Funding Council also has a duty to have appropriate regard to the denominational character or distinctive characteristics of institutions.
- Before exercising its discretion with respect to the terms and conditions that it may impose under s.66 FHEA 1992, HEFCW has a statutory duty to consult with any particular institution or representative body which appears to the Council to be concerned. As discussed below (see Question 19), unlike the current proposal this is duty which continues to apply beyond its initial approval.

⁹ See further the joint response of Higher Education Wales and the Chairs of Higher Education Wales to White Paper on FE/HE (Wales) Bill, September 2012, pp.5-8.

5.3. As things currently stand, it is unclear how the existing fee plan provisions could be extended to incorporate more general policy control.¹⁰ The Higher Education Act 2004 states that the general requirements of the fee plan must relate to (i) the promotion of equality of opportunity, or (ii) the promotion of higher education. This would include e.g. to take measures to attract applicants from under-represented groups, provide financial assistance to students, and make information available to students on financial assistance etc. The objectives set under the fee plan arrangements must also seemingly relate to the two specific headings identified by the Act. These limits to the fee plan scope are also currently reflected in the Welsh Government's statutory fee plan guidance (as published in HEFCW W12/15HE for 2013/14) which stipulates that 'HEFCW should assess whether an institution's fee plan is appropriate in terms of improvements in promoting HE and equality of opportunity in accessing HE'. It is difficult to see how the extension of fee planning legislation could provide a basis for the wider Financial and Governance Code or be used for enforcing performance against targets unrelated to full-time undergraduate students, as proposed by HEFCW in its recent consultation, without primary legislation and radical change in the purpose of the legislation. In the meantime, care will be needed to ensure that any extension in the use of the fee plans does not exceed the statutory limits.

5.4. In extending the use of the fee plan, there is a danger that the original student-oriented purpose of the fee plan is no longer served adequately. One of the key purposes of the current fee plan provisions was to provide fee paying students and the public with confidence that the increased fee income resulting from the funding changes was being put to appropriate use and that issues of social justice continued to be addressed. Under HEFCW W12/15HE, for instance, institutions are required to 'continue to demonstrate the depth of engagement with the student body, and the steps in place to ensure that students are aware of new fee charges prior to enrolment, and how fee income will be invested in support of the student experience'. The selection of information in the fee plan and the way it is presented should reflect this purpose (the lessons drawn from the development of the Key Information Sets can also be applied in this context¹¹). In particular, institutions are currently required to demonstrate that they are investing a 'reasonable proportion' (in the region of 30%) of new fee income (i.e. income above the basic rate of £4k), in equality of opportunity and promotion of

¹⁰ The content and duration of fee plans are prescribed in particular by the Higher Education Act 2004 (ss.22-41) and the Student Fees (Approved Plans) (Wales) Regulations 2011. The Welsh Government also issued guidance to HEFCW which sets their expectations of the Council's role.

¹¹ See for instance: Understanding the information needs of users of public information about higher education, Enhancing and Developing the National Student Survey, (2010), Report to HEFCE by Oakleigh Consulting and Staffordshire University.
http://www.hefce.ac.uk/media/hefce/content/pubs/2010/rd1210/rd12_10b.pdf

higher education (see HEFCW W12/15HE). From HEFCW's recent consultation,¹² it is clear that the fee planning arrangements would be intended to cover a wide range of indicators that are not related to full-time undergraduates or any additional fees gained from them under the new fee and funding arrangements, and we expressed our view that this would detract from their important role in providing students and the wider public with a clear understanding of the relation between the additional fee income and its consequent investment.

5.5. Further comments in relation to the specific questions raised by the Welsh Government are provided below:

Question 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?*

5.6. No. Although we would support the continuing ability to refuse to approve a new fee plan in extreme cases, we do not see the need for the current levels of control to be extended to enable a plan to be withdrawn mid-period. There is no evidence to suggest that the current power to refuse a new fee plan has been insufficient to exercise an effective maximum fee level or clear reason to assume this would change under the proposed arrangements.

5.7. In practice, 'compliance'/'non-compliance' would also need to be carefully defined. This would include ensuring that there is a level of tolerance that reflects the realistic levels of institutional control over average fee levels which can vary according to changes in cohorts and student profile. We would prefer to see a system of graded penalties which reflects this. We would also resist any automatic triggers in this respect.

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?*

5.8. No. In our view, we need to be very careful about increasing the level of public controls or moving towards an inspection regime along the lines e.g. for schools (see comments below, para 5.13). From the Consultation Document it is not clear that proposed new controls serve a clear purpose or are made necessary by the changes in funding arrangements.

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 is refused upon renewal?*

¹² HEFCW Circular W13/01HE Consultation for high-level proposals for fee planning 2014/15.

5.9. Yes, we view the protection of students as extremely important. However, we would welcome further clarification about how this might operate in practice, particularly in relation to the potential impact on continuing duties and contracts between the university and students and potentially other parties (including sponsors, businesses and employers, and partners) and how the transition arrangements would be funded.

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?*

5.10. In our view it is essential that the same core requirements should be in place, and be seen to be in place, for all providers of higher education across the UK. This should apply to those with an approved fee plan and other providers.

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?*

5.11. We agree that expectations should reflect the level of income received through fee plans and the extent to which this is genuinely additional, particularly where this is effectively substituting for direct grant (see also our comments elsewhere in relation to the unrestricted fee levels for unregulated providers e.g. paragraphs 4.6, 5.12 and 5.15-16). We understand that HEFCW already take the proposed fee level into account in their evaluation, however, and further statutory provision may be unnecessary or unhelpful in this respect.

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

5.12. Yes, subject to our general comments about implementing these proposals. In the past, fee plan requirements have been intended to apply only to the additional income accessed as a result of the fee plan agreement. Under the proposed arrangements, their function in this respect is less clear and there is no limit on the fee income for unregulated providers – both of which we have highlighted as issues. The £6,000 threshold is consistent, however, with the level of tuition fee support available to students undertaking courses with unregulated providers.

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?*

5.13. As identified above, there appears to be little basis for extending the current range of controls, and we are concerned at the impact of moving towards an inspection regime. Across the UK and Europe more widely it is recognised that different approaches to regulation are appropriate for schools and higher education, and it is important for Wales that universities remain subject to the robust peer review mechanisms which have led to the UK being seen as having the most sought after quality system in the world. In certain instances, there is potential for mismatch between the powers/sanctions proposed and the issues they are intended to remedy. Would a spending direction be appropriate for failure to achieve fee plan targets, even where funding has been spent in their pursuit, for instance? In line with general principles of good regulation¹³, we would like to ensure that any new regulatory controls serve a clear purpose and are proportionate, and that alternatives are pursued wherever possible.

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.*

5.14. If we continue to pursue these proposals which still require further consideration, we agree that there needs to be a robust and transparent independent appeals mechanism. Our members have not identified any specific issues with the proposed mechanism at this stage, but would look forward to further discussion in development of its detail.

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?*

5.15. This is potentially a critical feature of the regulatory system and further clarification of what would be envisaged by this is needed. One possibility, for instance, is that this could be used to allow regulated institutions to extend certain areas of provision outside of the student number controls and fee level restrictions on the same basis as unregulated providers, i.e. there would be no fee level restrictions and students would be able to access tuition fee support in the form of a loan only up to £6K. We could see some potential advantage to this in addressing some of the issues created by regulated/unregulated provider distinction. This could allow greater parity

¹³ See for instance see the Higher Education Better Regulation Group:
<http://www.hebetterregulation.ac.uk/HEConcordat/Pages/default.aspx>

between regulated/unregulated providers to access unrestricted fee income. It would not fully address issues of parity between providers, however, while introducing undesirable further heterogeneity within the sector.

- 5.16. From further discussion of the proposals, however, our understanding is that the envisaged exemption would place provision outside of the student support regulation altogether, i.e. there would be no access even to the £6K loan for students. We are uncertain at this stage what that would mean for the regulatory framework to be applied to such provision, and this does not help to address the issues of income parity identified above. We understand that this would be limited in application to certain types of provision which are considered appropriate for exemption for student support. It is essential that further clarity is provided in relation to this.

6. Section 6 - Quality Assessment

General comments

- 6.1. In our view, it is imperative that the same system for quality assurance is applied to all providers of higher education (e.g. regulated/non-regulated, public/private) and remains in all important respects the same across the UK. The existing UK-wide quality assurance arrangements have gained world-wide respect and, as part of that UK-wide system, Wales continues to attract one of the highest proportions of international students of any country, providing a significant boost to the economy in Wales and a richness to the culture of our universities. It is vital that this continues.
- 6.2. In relation to the proposed changes, we are concerned by the proposed separation of responsibility for HE quality assurance, for non-regulated and regulated providers in Wales. This creates the potential for actual or apparent divergence within the sector. In practice, HEFCW currently discharges its duty to make arrangements for assessing the quality of provision it funds through a service level agreement with the QAA. The Welsh Government may choose to do the same - and we note the work on the potential use of bilateral agreements by the Higher Education Better Regulation Group which may also help to harmonise arrangements appropriately in this context. We would prefer a system, however, that ensures that a single quality assurance system is applied.
- 6.3. We welcome the Welsh Government's intention that the revisions to HEFCW's duty should not significantly alter the quality assurance requirements applied to universities (paragraph 6.7). We are not yet convinced, however, that a diminution in direct funding necessitates an extension of the powers as proposed. In addition to the arguments outlined above about the level of funding available for leveraging policy, it should be

recognised that the consequences of a judgment of unsatisfactory quality has far reaching and damaging impact for institutions in its own right.

6.4. There are also a number of potential issues which remain unclear at this stage. Under current arrangements, HEFCW has a statutory duty for quality assurance arrangements for all institutions which it funds. HEFCW would potentially be able (and be under a duty) to fund institutions for HE eligible activities whether or not the providers are 'regulated' as defined in the Consultation Document (for instance strategic funding to support high-cost or strategically important subjects). This would appear to provide conflicting duties for quality assurance (inter alia) for unregulated providers (which may include universities). In establishing a framework for the longer term this is an issue – at the moment there are no exclusive part-time and postgraduate specialist institutions based in Wales only, but both would be unregulated providers funded by HEFCW unless these areas are also brought within the fee planning framework. Also, we would query whether the fee planning legislation is sufficiently flexible to accommodate special cases which are currently accommodated through the Financial Memorandum. If part-time provision is brought within the fee planning framework, for instance, there may be issues about how it could accommodate funding of institutions which a pan-UK basis (e.g. Open University in Wales).

6.5. The Consultation Document clarifies that there would be no parallel sanction to HEFCW's current power to impose financial penalties in the form of recovery/withholding of grant paid (para 5.19) at least, presumably, under the aegis of the fee plan legislation. Further clarity is needed over whether these powers could be applied in combination or intended to operate in parallel for distinct purposes in separate circumstances only. For instance, would the available remedies for quality assurance issues include financial remedies where there was also grant funding and if so to what extent would these apply?

6.6. Further comments in relation to the specific questions raised by the Welsh Government are provided below:

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?*

6.7. No. The duty should extend to all higher education provision which is wider than both the courses covered by current student support regulation and the courses identified under Schedule 6 of the ERA 1988. Under existing arrangements, for instance, the Funding Council funds higher education level provision which may form part of a qualification or be awarded credits in its

own right. We would not wish the situation to arise where this falls under different quality assurance arrangements.

- 6.8. There is also an issue about extending the quality assurance duty in respect of professional courses. Professional bodies would remain responsible for their professional awards and would continue to apply their own framework for assurance which universities must comply with.

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?*

- 6.9. No. The specific powers to obtain information and send in inspectors are new and would be unique to Wales. In line with our general comments to this section, no clear case has been made for the need for this in respect of universities and previous history would suggest that this is not required. We would regard a move towards an inspection system, such as used for schools, as inappropriate for higher education and this would be a significant difference in the levels of regulatory control for universities in Wales and other parts of the UK (see further 5.13 above). We would not support this for Welsh universities.

- 6.10. The consultation does not identify what powers would be put into place for the Welsh Government in respect of their QA role in relation to unregulated providers. We would welcome further clarification of any potential issues in relation to alternative providers.

Question 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?*

- 6.11. No. We would welcome the continuation of existing powers to deal with unsatisfactory quality, as outlined in 6.14, but see no basis for and would not support an extension to the existing powers to deal with unsatisfactory quality as outlined in 6.15.

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 .*

- 6.12. Yes, subject to our general comments above about the extension of HEFCW's powers in this respect. Our view is that increased powers of access and inspection are unnecessary. If the proposed new powers are

implemented, however, we would support this especially given data protection requirements.

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

6.13.No. We have argued above that it is unnecessary to extend HEFCW's powers to withdraw approval of a fee plan. If it is extended, we would welcome the proposals to strengthen the process for reviewing HEFCW's decisions accordingly, both in respect of making a decision provisional and in introducing independent review, as set out in paragraph 6.18. However, these are very much instruments of last resort and we would question whether these safeguards are sufficiently flexible.

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?*

6.14.Yes, on balance. The reality is that the primary assurance mechanism is the institutional review which is held every 5-6 years (subject to the current HEFCW Institutional Review consultation) and there is a concern that annual reporting could increase the information reporting burden on HEFCW and institutions unnecessarily. However, provided that in determining the scope of the reporting requirements it is ensured that reporting requirements are minimised, an annual report to Ministers could potentially provide further public reassurance without causing institutions significant difficulty.

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

6.15.Yes. The current QAA practice places responsibility on the franchisor for ensuring the quality of the franchisee is sufficient and we would expect this to continue to be workable under the proposed arrangements for franchising universities. For franchisees, however, the proposals may introduce increased complexity and potential for conflict between different sets of requirements and lines of accountability where multiple franchise arrangements are in place and provision is franchised by a regulated provider, a regulated provider with exemptions, or an unregulated provider (whose quality assurance requirements are determined by the Welsh Government rather than HEFCW).

7. Section 7 - Financial and Governance Assurance

General comments

7.1. Our comments in this section are closely related to our comments on fee planning in general (see our general comments on Section 5 above). In particular, at this stage it is not easy to see how the Financial Governance assurance arrangements could be accommodated within existing fee plan arrangements and the Consultation Document makes clear that the existing statutory framework would need to be amended to accommodate the new proposals (paragraph 7.6). In general, we welcome an appropriate degree of latitude for HEFCW to implement proposals in this sphere and would seek to avoid a narrowly prescriptive approach. At the same time, the Consultation Document proposes considerable discretion on the part of HEFCW with few clear restraints other than in terms of process of consultation which raises concerns surrounding the potential for corporate control and impact on NPISH status. We are unclear how far this could accommodate the recent proposals for changes to fee planning arrangements including the use of corporate strategy targets for instance. We would welcome further clarity about the nature of the proposed changes and how the Financial and Corporate Governance Code could operate alongside or instead of a Financial Memorandum. Responses from our members highlighted the need to agree exactly how this would be determined and what it would cover before legislation is put in place.

7.2. Further comments in relation to the specific questions raised by the Welsh Government are provided below:

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

7.3. Yes. Before exercising its discretion to impose terms and conditions under the current statutory framework (s.66 FHEA 1992), HEFCW is required to consult with any particular institution or representative body which appears to the Council to be concerned. This should continue to apply under any new statutory framework and would mean that HEFCW should be required to consult and follow the scrutiny process not just for the initial development of the Code but for any change that is proposed.

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

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

7.4. Yes. On balance, if implemented, we would like to see a requirement for HEFCW to submit its Code for external scrutiny and to take into account the outcomes. However, further consideration needs to be given to the implications of the National Assembly for Wales or the Welsh Government in approving the Code. Under current statutory framework, there are a number

of restrictions on the terms and conditions that the Welsh Government could impose on HEFCW, and we would expect this to continue to be the same.

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

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

(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?*

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

7.5. If the legal vehicle for regulating institutions is changed to fee-plan legislation as proposed, we believe that the current parameters for setting terms and conditions on financial and governance assurance should remain unchanged for universities. The continuing operation in parallel of the Financial Memorandum and grant-based powers under current legislation is an issue and may cause conflict between differing legal powers/duties. We would like to see a single set of terms and conditions for all universities and potentially all providers: the parameters should apply to all regulated providers and unregulated providers in receipt of funding.

7.6. An extension of the current parameters for determining financial and governance assurance arrangements without identical statutory restrictions in their exercise may impact on the NPISH status of universities. Careful consideration needs to be given to the restrictions to be put in place to avoid this.

7.7. There may be further scope for reviewing whether the current restrictions on universities in respect of certain transactions are necessary, however, particularly in light of ONS guidance on status/classification. It is less clear to us what restrictions should be in place for providers other than universities e.g. regulated private providers who hold degree awarding powers but not university title, where historically there have been no restrictions in place.

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

7.8. Yes, if we move forward with these proposals. The consequences of intervention could have a significant impact on reputation, financial sustainability, partnership with other organisations and stakeholders, and ultimately students. A clear and transparent policy should be developed in consultation with the sector and published.

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?

7.9. No, we would not support an extension of HEFCW's powers in this respect which we view as unnecessary. We would additionally not support any withdrawal without notice on grounds that this may seriously compromise an institution's ability to provide higher education for its students.

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

7.10.No. In addition to the points raised above, we would add that a provisional decision should not be used as this could have a serious detrimental impact on the institution before a final decision is reached.

Question 25 – *Do you have any related issues which we have not addressed?*

7.11.In the light of our above comments, we believe that further clarification and dialogue between the sector, the Welsh Government and the Funding Council is needed before we can give support to the proposals set out in the Consultation Document. We understand that these initial proposals are the start of the process of engagement, and we would expect the Welsh Government to consult on revised proposals as the result of further exploration of the issues and engagement with the sector. At this stage we recommend that further consideration is given to transitional arrangements that would allow immediate issues to be addressed while allowing the Welsh Government, HEFCW and the sector to work on a long-term solution. We would welcome greater clarity about the alternative approaches which the Welsh Government has considered and reasons for so far rejecting them. In the light of recent developments, however, we believe that further consideration should be given to alternative approaches, including for instance:

- *Continuation of the current statutory framework.* One option, which would in our view be preferable in the short term at least, is to continue to operate within the current statutory framework – and it is notable that England has recently announced their intention to do precisely that in their new Operating Framework. HEFCW is currently able to impose terms and conditions of grant through the Financial Memorandum subject to such terms and conditions as it sees fit with a number of important restrictions. Under current fee plan arrangements, HEFCW may also refuse to renew a new fee plan for failure to comply with fee limits. In both instances the financial remedies available to HEFCW are limited in

their exercise to direct funding through grant, which the Welsh Government has identified as a key issue driving the current proposals. Despite a significant reduction in direct funding, however, there remain substantial levels of direct grant. Remedies in respect to the recovery of grant currently apply to the whole grant potentially and teaching grant is not specifically ring-fenced for use on teaching. To provide some perspective on this, for instance, the levels of recurrent grant for 2013/14 appear to range between around 7% to 20% of total income/turnover across the sector with all but one institution above 10%, although HEFCW may be able provide more recent turnover figures.¹⁴ If non-recurrent grant from HEFCW is included the percentages are higher. The exceptional and unprecedented scale of the funding adjustments applied in 2008 to London Metropolitan University for over-claimed grant was applied at a rate of around 12% of turnover over three years and was sufficient to place the institution into a high-risk financial category. 10% of turnover is the maximum penalty that the Office of Fair Trading can impose on a business for a serious breach of law including those with aggravating circumstances. It is highly likely, in our view, that the level of financial leverage remaining to the Council would continue to act as a sufficient deterrent, and that any over spending from the public purse could be recovered.

- *Designation of courses for statutory student support.* A second option, which also initially appears to address the Welsh Government's priorities, is to explore the potential to use the power to withdraw designation of courses for statutory student support as a key control mechanism. In England, for instance, the Government has proposed this as the main mechanism for regulating alternative providers. At the moment, courses at universities are automatically designated. One possibility is that HEFCW is delegated the power to assign or withdraw course designation for purposes of statutory student support under the same conditions/restrictions that are currently in place to withdraw grant, loans or other payments to institutions. This would provide indirect financial sanctions/remedies that are limited to the levels of current fee grant payment whilst reflecting the fact that this income is not direct grant. On the face of it, this provides a potentially neater and less technically complicated approach which may help to address a number of key issues, including limiting the potential use of powers to their current scope/proportionate regulation, avoiding issues about NPISH status, and avoiding divergence in legislation between Wales and the rest of the UK.
- *Collaboration and working in partnership.* It is in the best interests of universities that rigorous assurance mechanisms are in place, and the ability for institutions and the Welsh Government to work through

¹⁴ See HEFCW Circular W13/09HE for grant allocations.

agreement should also not be overlooked – the work of the Higher Education Better Regulation Group, for instance, points to the potential use of bi-lateral agreements (potentially covering sanctions as well) as a flexible vehicle to provide appropriate levels of regulatory consistency and assurance.

- *Other options.* More generally, we would welcome the Welsh Government working further with the UK government to develop a solution that is sufficiently robust and flexible to allow policy differences within a recognisably UK-wide regulatory framework that preserves our international reputation. This would potentially allow change of all relevant legislation to be considered without issue in respect to devolved areas of legislative competence. Further options to be considered, for instance, could potentially include legislative provision to impose financial penalties, or relate to the treatment of income supported by fee grant, provided that the use of these could be appropriately restricted to avoid similar issues relating to NPISH status and related issues. Pursuing these options with the UK Government may present a less resource-intensive and more cost effective option for the Welsh Government and also lead to a longer term solution across the UK sector.

8. Conclusion

- 8.1. We confirm that the HEW consultation response is a public document and that the Welsh Government may make a copy available on the internet or in a report. We look forward to engaging with the Welsh Government and HEFCW in the further development of the proposals.

Higher Education Wales
July 2013

Higher Education (Wales) Bill 2014: technical consultation

Consultation response form

Your name:

Organisation (if applicable): Glyndŵr University

e-mail/telephone number: 01978 293125

Your address: Glyndŵr University, Plas Coch, Mold Road,
Wrexham LL11 2AW

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

Introduction

- 1 Glyndwr University is pleased to respond to the technical consultation on the proposed HE (Wales) Bill 2014.
- 2 The University is based in Wrexham with sites at St Asaph, Northop, Broughton and London. It has approximately 10,000 students, including a large number studying on a part-time basis. It is one of the UK's leading widening participation universities and as a result decided on a socially responsible tuition fee rate for 2012 which was significantly the lowest in Wales.
- 3 In responding to this technical consultation the University is aware that the nature of the questions does not allow comment on the fundamental issues underlying the proposals, but rather it requires comments on minor matters of procedure such as the need for HEFCW staff to provide identification on requiring information from universities.
- 4 The consultation ignores the far more significant issue of the real role of the Funding Council in the years to come. The changing political landscape as the educational systems in Wales and England continue to diverge could provide Welsh universities with a significant competitive advantage. A small country, with a small number of universities and potentially close links with government could be the ideal way of becoming the small smart country envisaged at the start of devolution. Instead the sector is becoming more closely monitored and tightly regulated than ever before, at the expense of innovation and enterprise. The Ministerial statement on Higher Education emphasised the need for universities to be freed to allow the development of the entrepreneurial spirit, but the current proposals seem to take a step back.
- 5 It is acknowledged that the Welsh Government is restricted in what it can do with the Funding Council as a result of the legislation which established the Assembly. However other bodies in the same legal position (the Welsh National Board for Nursing, Midwifery and Health Visiting and the Countryside Council for Wales) have both been reformed, despite the legislative restrictions. The University urges the Welsh Government in deciding on the future of the Funding Council to consider how it can help the university sector improve the social and economic life of Wales rather than trying to find a new role for the Funding Council.

Section 4: A revised regulatory system

- 6 When the National Assembly was established it was specifically not given the powers to reform the Higher Education Funding Council for Wales, unlike its FE equivalent, except insofar as to add to its responsibilities (Section 28 and Schedule 4 Government of Wales Act 1998).
- 7 Since then the whole system for financing Higher Education across the UK has changed fundamentally and as a result the role and function of the Funding Council have become anomalous. The Higher Education Funding Council for Wales does not fund Higher Education in Wales.

- 8 As its abolition is not possible the Welsh Government is seeking new roles and functions for it and there is a danger that functions will be created for the sake of keeping the Council going rather than fulfilling a valuable role in the Welsh HE sector.
- 9 The previous consultation on the HE and FE White Paper brought forward proposals that duplicated the role already appropriately filled by the QAA.
- 10 Proposals have been further developed although it now appears that the main role of the Funding Council is to enforce government policy on the sector. It has to be asked therefore whether such a role is appropriate for an organisation that is supposed to operate at an arm's length from government. It would be a more accurate reflection of its role were the Council to be subsumed within the Government. However this option presents a number of problems including the possible impact on government liabilities, a disincentive towards enterprise and the legal impediments contained in s28.
- 11 The proposed role in relation to the fee plan looks like an instrument designed to provide a role to the Funding Council and enforce government policy, rather than answering a specific need from within the sector.
- 12 The proposals contained in this document provide a regulatory framework that is unrelated to the issues facing the sector and the sanctions proposed to accompany its implementation. They seem rather to be answering the question of what to do with the Funding Council in view of the legal constraints laid on the Government jurisdiction. Glyndŵr University would have welcomed a wider discussion on the proposed role of the Council and how such a vision could be achieved.
- 13 The original consultation on a Further and Higher Education White Paper was required because of a reclassification of public sector expenditure by the Office for National Statistics. This meant that the powers that the Government had over the FE sector were such that circumstances could arise in which the sector as a whole, or significant parts of it, would need to be regarded as being public sector expenditure. This would cause significant accounting difficulties and would expose the Welsh Government to all the financial liabilities of the sector. The advice of the ONS is that once these powers have been used the Government would be assuming financial responsibility for the sector. The proposals contained in the current consultation would therefore give rise to the same situation in the Higher Education sector. This would expose the Government to the same significant risks merely in order to find a role for the Funding Council.
- 14 The University also argues that it is inappropriate that the cost of funding Welsh domiciled students studying in England should come from the budget allocated to Higher Education in Wales.

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

- 15 The role of the Funding Council has changed significantly over the past few years. It no longer has the principal responsibility for funding Welsh universities but rather the implementation of government policy within the

sector. A new name might better reflect the role of the Council is today's Wales. However it is not thought that such clarity would be worth the additional expense the change would incur.

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?**

- 16 The rules for course designation should apply according to whether the franchisor is regulated or non-regulated and a regulated institution which franchises the course should be responsible for applying the fee plan. Consideration may need to be given to transitional arrangements to allow existing partnership contracts / agreements to be reviewed.

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?

- 17 There is a fundamental problem with the power of HEFCW to withdraw its approval in respect of an approved fee plan. This power has been described as the “nuclear option” and in many ways this is an appropriate description. Either the Funding Council never uses the power, in which case it is pointless, or it does use the power, which will introduce considerable uncertainty and instability into the sector.
- 18 Despite the arrangements described in question 5 it is unlikely that the Funding Council or the sector would be able to cope with the consequences of the withdrawal of approval of its fee plan as it would almost inevitably lead to the closure of the relevant education provider.
- 19 The implications on the international reputation of the sector would be severe and in a highly competitive world market anything that introduces a degree of uncertainty would be highly damaging.

- 20 The consultation has not shown any evidence of a need to extend the Council's existing powers to allow withdrawal of approval for an approved plan mid-way through its implementation period.

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?

- 21 As mentioned earlier in this response, the emphasis of the consultation document is, as a result of the legislative restrictions on the National Assembly, on expanding the powers of the Funding Council. It is suggested that notwithstanding s28, this is an ideal opportunity to reconsider fully what the role of the Funding Council should be.
- 22 It is felt that the tendency over recent years has been to make the Funding Council into an inspecting rather than a funding body. It has to be asked therefore why Welsh universities need an additional level of inspection than universities elsewhere in the UK.
- 23 It is felt that the current level of inspection from the QAA, the Home Office and professional bodies, as well as the internal and external scrutiny at every university means that Welsh universities are extremely closely scrutinised and inspected. Any further layer would not bring with it any advantage to the learner, employers, other stakeholders and ultimately the taxpayer. Instead it would further exacerbate the drain on resources as they are devoted to backroom bureaucracy.

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?

- 24 The need for transitional protection further undermines the stability and international reputation of the sector. However, the interests of learners need to be safeguarded and so such transitional arrangement are required.

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?

- 25 Learners are usually not fully aware of the implications of the legal differences between the various educational establishments. A system which ensures common requirements would therefore be of great benefit to students.

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?

- 26 The fee level is an important factor in determining the University's overall income and its ability to meet its proposed commitments. However it is only one factor and so the consideration of the fee level in isolation of

other institutional sources of income would provide the Funding Council with an incomplete picture, but one on which the Funding Council would decide the future of the university.

- 27 The University believes that those best placed to determine whether the commitments contained in the fee plan are sufficient are the University's governors.

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

- 28 As a matter of principle if the Funding Council is to approve the fee plans of educational providers it should apply to all providers and not have an arbitrary figure imposed.

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?

- 29 The Welsh Higher Education sector is already highly controlled by the government through the Funding Council. This has restricted the ability of the universities to innovate and has produced a high level of bureaucracy as a result. The sanctions proposed in the consultation would be effective in further controlling the sector but this would be at the expense of the sector's competitiveness and its ability to meet the needs of employers.

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.

- 30 The University has already stated its opposition to the creation of an organisation to undertake activities that are not needed. It also therefore objects to the use of sanctions to enforce those activities. If the Funding Council is to be given these powers and if they are also to be given powers to sanction providers for non-compliance with the Funding Council's wishes it would be essential that there would be some kind of independent review mechanism as a check and balance on the administrative powers of the Council.

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?

- 31 This proposal would ensure that the regulated providers are not at a disadvantage against private providers. It would however also introduce further uncertainty into the sector.

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?

- 32 There is currently a variety of mechanisms for assessing quality within the sector with, for example, professional bodies requiring their own quality assessment framework. This is usually reconciled with the universities’ own systems.

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?

- 33 The university sector has an excellent quality assurance scheme at present with the QAA. Any further system which would apply only to Wales would increase the bureaucracy in Wales and divert important resources in Welsh educational providers away from front line delivery into back room administration. There would be no additional benefits of such a system.
- 34 Universities already feel that the sector has adopted an inspection culture far too deeply. Each additional layer reduces the efficiency of the universities and provides a diminishing benefit. A further layer, especially one which would apply solely to Welsh universities would severely disadvantage the sector in Wales, allowing greater penetration into the Welsh market by English universities.

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?

- 35 The University disagrees with the proposal as explained in answer to question 13.

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?

- 36 The University disagrees with the proposal as explained in answer to 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?

- 37 The University disagrees with the proposal as explained in answer to question 13.

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?

- 38 The Funding Council needs to be publicly answerable and an annual report to the Welsh Ministers is a good way for this to be enforced. However the University is concerned that such an annual report would require the Welsh universities to provide even greater level of detail to the Funding Council, and in doing so divert further resources into backroom administration rather than the teaching and research the universities should be concentrating on.

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

- 39 Yes. The current QAA practice places responsibility on the franchisor for ensuring the quality of the franchisee is sufficient and this could continue to be workable under the proposed arrangements for franchising universities. For franchisees, however, the proposals may introduce increased complexity and potential for conflict between different sets of requirements and lines of accountability where multiple franchise arrangements are in place and provision is franchised by a regulated provider, a regulated provider with exemptions, or an unregulated provider (whose quality assurance requirements are determined by the Welsh Government rather than HEFCW).

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?

- 40 The Code needs to be grounded in the realities of the sector and this is only possible if a consultation exercise has been undertaken.

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

- 41 The second option is to be favoured as it would allow Welsh Ministers and the National Assembly to scrutinise the proposals. Such proposals need the widest possible scrutiny and approval from various bodies.

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

- 42 This is the most important part of the current proposals and were it to be enacted it would create a mechanism to allow the Funding Council to intervene more regularly to enforce government policy. As explained earlier this would have the impact of assigning all university expenditure as public sector spending and increasing the liability on the Welsh Government for all the transactions of the individual universities. If the Government wishes to control the sector to the extent it is suggesting it should do so openly, with the consequences outlined above.

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

- 43 All providers need to be treated in an equal way.

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?

- 44 Allowing the proposals to be developed by HEFCW would provide an opportunity for wider consultation on the contents. Having their parameters set out in legislation would however also provide a useful framework for the subsequent discussions.

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

- 45 Universities and other educational providers are independent organisations, even if they provide an important public service. The institutions should therefore be allowed to develop their own financial strategies and implement them without reference to the Funding Council.
- 46 As detailed above any change in the Funding Council's powers would mean that the whole sector is classified as public sector with all the accounting and liability implications that that would bring.

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

- 47 Such a publication is of great interest to the universities. It would need to be based on practice within the sector and so should be consulted upon.

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?

- 48 The University opposes the extension in the Funding Council's powers outlined by this section. It would set a dangerous precedent whereby universities could have perfectly acceptable fee plans overturned because

of unrelated issues and would therefore introduce an unnecessary and damaging uncertainty into the sector.

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

- 49 The proposed safeguards lack any real independence. The decision would remain with HEFCW and would not be open to external scrutiny or independent verification.
- 50 An annual report from the Funding Council to Welsh ministers would not provide any safeguard and could be a damaging instrument as the report would be based on the Funding Council's own view and would not make allowance for the different interpretation or explanation offered by the university in question.
- 51 There could also potentially be a gap of almost two years between a decision being made and the submission and publication of a report to Ministers.

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.

- 52 The University would welcome a fundamental re-examination of the proposed role of the Funding Council. It believes its functions at present and the proposals contained in the consultation differ substantially from those of the Funding Council at the time of the Government of Wales Act. Yet the consultation surrounds issues of detail rather than of principle.
- 53 Were such a re-examination to take place, the University would favour the Funding Council adopting a new innovative role as an independent arbiter between universities and between universities and the Government rather than being either an instrument of government policy or duplicating the role played by other bodies such as the QAA.

Response to the Welsh Government's consultation on the Higher Education (Wales) Bill

July 2013

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Introduction

1. ColegauCymru welcomes the opportunity to the Welsh Government's consultation on the Higher Education (Wales) Bill. This submission summarises ColegauCymru's response to the issues raised in the consultation paper.
2. ColegauCymru represents the 19¹ further education (FE) colleges and institutions in Wales.² In 2011/12, there were 214,850 individual students attending college and 229,615 enrolments.³ There are over 7,000 students pursuing courses at level 4 and above at colleges in Wales, most of whom study part time.
3. ColegauCymru judges that the consultation paper sets out a well considered set of proposals in relation to HEFCW's powers on fee controls and course quality for full time students. In the main the proposals meet with our agreement. We do state some concerns in relation to the duplication that a governance Code issued by HEFCW may have on designated FE colleges who already follow prescribed regulations and agreements from the Department of Education and Skills (DfES) in relation to finance and governance.
4. We are happy for this consultation response to be quoted and cited by the Welsh Government and for it to be shared with external bodies such as HEFCW.

Answers to consultation questions

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

We see no pressing need for the name of the Council to be changed. As their proposed regulatory powers will relate in part to the funding of students in higher education, the retained name would not be a complete misnomer.

¹ The 19 include Coleg Harlech/WEAN; WEA South; YMCA Community College; and Merthyr Tydfil College, University of Glamorgan.

² In this paper the terms 'FE college' and 'college' are used to cover FE colleges and FE institutions.

³ *Further Education, Work-Based Learning and Community Learning in Wales 2011/12 SDR 48/2013*, Welsh Government, March 2013.

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?*
-

As is noted in the consultation document, franchising between colleges and universities currently does not operate on a consistent basis across Wales. There are a variety of ways in which HE courses are franchised, such as in relation to curriculum design. The proposals outlined in paras. 4.27-4.31 seem to us to be the most rational way to operate within the new fees and funding regime. Automatic designation for those franchisors with fee plans seems to be the closest possible analogy to the current regime. We stress that these proposals should relate only to full time HE programmes.

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, we judge that this is a necessary power for HEFCW to hold.

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, this is a reasonable and proportionate proposed measure.

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, such powers would be necessary to protect the interest of those students.

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, though we would hope that the proportionate approach outlined in paras. 5.29-5.30 would be fully taken on board in this approach. Proportionality in relation to the design and implementation of fee plans for smaller regulated providers will be crucial.

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, this is a key point. Proportionality should be a central organising principle in the design of HEFCW's fee plan guidance and in their judgments on fee plan implementation.

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

This amount seems reasonable and preferable to the current lower fee level of £4,000.

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?*

In principle the range of sanctions specified appears reasonable.

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.*

An appeal process to an independent panel would be sufficient. HEFCW may wish to put in place a first stage 'internal' appeal with its Council members before it is referred to an external independent panel.

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, in circumstances to be agreed with HEFCW. This may help in relation to strategically important courses the demand for which is uncertain or where the costs of provision may be very high.

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?*

No, we hold that QCF qualifications at level 4 and above which are currently directly funded by DfES (including HNDs/HNCs) should continue to be the responsibility of DfES and Estyn - and that no additional layer of regulation by HEFCW should obtain. We understand that these qualifications will continue to be funded by DfES.

HEFCW's remit should extend only to qualifications it directly funds or qualifications that are covered by the 'Framework for Higher Education' (FHE) maintained by the QAA.

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, though only in relation to FHE qualifications (see above). Such a power should be exercised responsibly and proportionately.

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?*

The measures outlined in 6.15 seem adequate and appropriate if used reasonably and proportionately.

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.

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

Yes, generally. This will, no doubt, be subject to further elaboration.

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, though there should be the flexibility for this to be a joint HEFCW/QAA report if appropriate given that the QAA currently discharges much of the quality assessment work on behalf of HEFCW.

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

As quality, in the *final* analysis, is the formal responsibility of the franchisor (awarding body) there is a logic to making the franchisor comply with the new quality assessment regime. This again has an analogy with the current quality assurance system whereby the QAA (on behalf of HEFCW) quality assures the degree awarding HEI rather than the franchisee.

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

Yes.

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

No, we believe that the Council should be able to set the Code itself without the further process outlined in 7.12. The Council should continue to operate on the basis of the 'arms-length principle' and 7.12 would appear to stray too close to breaching this principle. Informal consultation between HEFCW and the Welsh Government would doubtless occur prior to the publication of the code in any case. This should be sufficient.

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

Yes, subject to the answer to question 21 (b) below.

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

No, the parameters of the Code should vary significantly to recognise those 'regulated providers' who already receive recurrent grant from DfES and who therefore have in place Financial Memoranda with the Welsh Government for those education services. This particularly applies to designated FE colleges in Wales. Colleges therefore already have to comply with existing requirements in relation to financial management and governance. It would not make sense to require colleges to comply with a different code that was not fully consistent with existing DfES governance and financial requirements. The HEFCW Code could explicitly take into account those extant requirements in its Code specifications relating to designated FE colleges.

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.

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

In relation to designated FE colleges who may become regulated providers, we do not believe that it is necessary for HEFCW to be given such prior consent power as financial monitoring and control already takes place through DfES, as we state above.

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

Yes.

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?*

In extremis this may be necessary, but the common law would clearly require HEFCW to have proportionate cause to take such immediate action.

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

Broadly speaking, yes.

Higher Education (Wales) Bill 2014: technical consultation

Consultation response form

Your name: Faye Hannah

Organisation (if applicable): Creative Skillset Cymru

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Creative Skillset Cymru is the Sector Skills Council (SSC) for the creative industries in Wales. Our industries comprise TV, radio, advertising, interactive content design, animation, visual effects, content for digital games, facilities, photo imaging, publishing, fashion and textiles.

Creative Skillset Cymru represents the creative industries in Wales on skills issues, listening to them, then anticipating and leading the response to the challenges they face. We share our industries' ambition for them to remain key drivers of economic growth and to be world-beating. We work with the creative industries to identify and signpost the highest quality, most relevant training and qualifications for creative careers. We help businesses, supporting skills development for creative competitiveness and discovering and promoting the brightest and best talent.

Creative Skillset is one of the first SSCs that prioritized engagement with higher education as key to its industries. The film industry decided to establish through Creative Skillset 'centres of excellence' for the teaching and development of film related skills and talent. The television industry has opted to accredit courses within higher education institutions that demonstrate excellence in teaching provision and have strong links with the industry.

Response summary

Creative Skillset Cymru, the Sector Skills Council for the Creative Industries wishes to contribute to the Higher Education (Wales) Bill 2014: Technical Consultation by responding to Q 25 regarding any further related issues.

As Creative Skillset Cymru are the industry and employer driven body for the creative industries in Wales, we welcome the opportunity to raise as part of this bill, the importance of quality industry accreditation for higher education courses in Wales in a fee structured environment, where increasing employability is key. This is particularly relevant to the Creative Industries which are one of the Welsh Government's priority sectors for economic growth.

Creative Skillset Cymru proposes the following key points for consideration in specific reference to the creative industries in Wales:

- Creative Skillset has already developed a robust system for assessing the industry relevance of courses in higher education. As a result, Creative Skillset is in a strong position to offer expertise and experience in establishing such arrangements and using industry accreditation systems to increase employer engagement, investment and support. Course quality, employer relevance and

the highest industry standards form the core part of our assessment and accreditation process carried out by industry professionals.

- The Creative Skillset accreditation process (marketed as “The Creative Skillset Tick”) has been kite marking industry focused higher education courses since 2005. To date we have 11 ‘ticked’ higher education courses in Wales (listed below). In England, Creative Skillset has expanded accredited provision from 30 courses, to in excess of 150 courses within a two year period (thanks in part to Growth Investment Fund support) and of the 12,400 courses relevant to the creative industries available in England, Creative Skillset has accredited 243 courses overall. It is Creative Skillset’s intention in Wales to grow the network of industry accredited courses across Wales for higher and further education.
- The Creative Skillset Tick accreditation has proven to be a vital tool for prospective students to utilise when determining which creative courses are industry standard and approved by industry. The link between accreditation and employability in the creative industries has also been established.
- Creative Skillset Cymru is currently piloting the Creative Provision programme supported by the Welsh Government’s Sector Priority Fund Pilot 2 (SPFP2). The pilot programme was set up in response to a need voiced by employers for a mechanism to help improve the industry relevance of courses within further and higher education institutions. The aim is to facilitate and strengthen organised links between colleges, the industry and Creative Skillset to ensure that the industry gets the new entrant talent it needs for the future. Leading industry experts will be employed as mentors to provide specialist advice and guidance on course content and delivery. Selected courses will take part in a tailored development programme to discover how their provision could be enhanced to meet the needs of industry; facilitating the aptitude of creative and digital media educators to meet the challenges of today’s rapidly changing media and digital industry.

For any enquiries regarding this response please contact: **Faye Hannah Creative Skillset Cymru HE/FE lead for Wales on 02920 452 828, fayeh@creativeskillset.org**

The Creative Skillset Ticked Courses in Wales :

South Wales, University of	BA Advertising Design
South Wales, University of	BA (Hons) Animation
South Wales, University of	BA (Hons) Animation Direction and Production
South Wales, University of	BA (Hons) Computer Animation
South Wales, University of	BA (Hons) Computer Animation
South Wales, University of	BA (Hons) Documentary Film and Television
South Wales, University of	BA (Hons) Film and Television Set Design
South Wales, University of	BA (Hons) Film and Video
South Wales, University of	BA (Hons) Visual Effects and Motion Graphics
South Wales, University of	MA Film Producing
Swansea Metropolitan University	BSc (Hons) Visual Effects

Open University in Wales Response to Welsh Government Consultation Higher Education (Wales) Bill: Technical Consultation

About The Open University in Wales

1. The Open University was established in 1969, with its first students enrolling in 1971. It is a world-leader in providing innovative and flexible distance learning opportunities at higher education (HE) level. It is open to people, places, methods and ideas. It promotes educational opportunity and social justice by providing high-quality university education to all who wish to realise their ambitions and fulfil their potential.
2. Nearly nine thousand students from virtually every community in Wales are currently studying with The Open University, enrolled on over eleven thousand modules. We are the nation's leading provider of part-time higher education. More than three out of four Open University students are in employment while they study and with an open admissions policy, no qualifications are necessary to study at degree level - over a third of our undergraduate students in Wales join us without standard university entry level qualifications.
3. In 2012, for the eighth successive year, The Open University was top in Wales for 'overall student satisfaction' in the National Student Survey. As a world leader in education technology, our vast 'open content' portfolio includes free study units on OpenLearn (including many Wales-related materials), substantial content on YouTube and on iTunesU, the latter having recorded nearly 60 million downloads.
4. **The Open University is a pan-UK provider of higher education and so is subject to regulation in all the UK nations. In order to remove the possibility of duplicate regulation, The Open University is subject to a funding memorandum with the Higher Education Funding Council in England (HEFCE) and funding agreements with the Higher Education Funding Council in Wales, the Scottish Funding Council and the Department of Employment and Learning in Northern Ireland. These funding agreements rely on HEFCE to undertake the monitoring and assurance in respect of financial and governance matters.**

Introduction

5. The Open University is the largest provider of part-time higher education in Wales. Although the consultation document makes it clear that the proposals set out within it do not currently apply to part-time it nevertheless anticipates that part-time may come under the scope of this legislation in the future. With that in mind we are responding to this consultation to highlight any concerns, unintended consequences and issues for consideration that may arise as and when part-time higher education comes under the remit of this legislation. We

would, of course, welcome further dialogue with Welsh Government and HEFCW in advance of this taking place.

6. Below we have responded to the consultation questions that are relevant to us in the context of the application of this legislation to part-time higher education in the future.

Response to consultation questions

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?

7. We do not have a strong view on whether HEFCW's name should be amended in light of the increased regulatory role. Whilst the thrust of the new legislation places most emphasis on regulation rather than funding, for the foreseeable future the institutional learning and teaching grant will continue to be made in respect of part-time provision. We believe that the immediate priority should be ensuring that the functions of the Council are correct and that it has the necessary powers to undertake these functions now and in the future. We also believe that it would not be appropriate to undertake a potentially costly rebranding exercise in the current economic climate.

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?

8. If an organisation is franchising provision to another organisation we believe that it makes sense for that lead organisation to be responsible for the fee plan or course designation. It may also be desirable for the lead organisation to consult the organisation(s) that it plans to franchise courses to in the development of the fee plan where appropriate.

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 that HEFCW should be able to withdraw its approval in respect of an approved plan?

9. We understand that HEFCW needs to ensure that institutions are meeting the objectives in any fee plans and complying with fee limits and believe that it is important for it to do so. However, we would want to ensure that where any

concerns do arise in respect of fee plans and fee limits HEFCW will engage in extended dialogue with institutions to address these issues and take this into account in the development of future fee plans. Withdrawal of approval should be a last resort and come after comprehensive discussions with the institution concerned.

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?

10. We support the 'arm's length' principle for the funding of higher education and if institutions are in receipt of Government funding it is appropriate for HEFCW - rather than the Government directly - to have powers to ensure that Welsh Government priorities are met.

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 is refused upon renewal?

11. Yes we believe that transitional protection should be provided for these students as they should not be disadvantaged as a result of a regulated provider having fee plan approval withdrawn or refused upon renewal.

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?

12. Whilst institutions are in receipt of Government funding we believe that it is appropriate for HEFCW to have powers to ensure that Welsh Government priorities are met and this should apply to all kinds of provider. This will require some core standards across institutions and providers but they should also be enabled to build on their individual strengths and this may require some flexibility especially as and when this legislation is applied to part-time higher education. Requirements within fee plans need to focus on meeting the needs of students and potential students and these may differ in relation to full-time and part-time courses and between institutions. For full-time fee plans, HEFCW has discretion to determine the specific balance of individual fee plan components in the light of each institution's circumstances. We think that needs to be at least replicated in the future part-time system, especially in The OU's experience with a diverse student body, a unique open access provision and operating in a distance learning context. We are particularly concerned to ensure that the main expectations and requirements are not applied disproportionately to those institutions that charge lower fees and thus have smaller margins to apply to fee plan objectives. This applies in particular to the area of widening access; lower fees are in themselves likely to promote widening access. Whilst some core requirements may be helpful we would be keen to engage in further discussion with HEFCW as to what these could be in respect of part-time higher education in due course.

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?

13. Yes, subject to the points raised in our answer to the previous question.

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

14. The consultation document states that the proposals will not, at present, apply to part-time higher education and part-time fees are currently subject to a different funding regime to full-time fees. We would, therefore, welcome discussion with Welsh Government and HEFCW on the appropriate ‘threshold’ fee amount for part-time before the new legislation is applied to part-time in the future.

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?

15. Whilst institutions are in receipt of Government funding it is appropriate for HEFCW to ensure delivery of Welsh Government priorities and this includes the use of appropriate yet proportionate sanctions. However, we do not agree with the proposed power of HEFCW to issue “a direction requiring a regulated provider which fails to comply with the general provisions of its approved plan to spend a specified amount of its fee income on activities supporting equality of opportunity to access higher education”. This puts HEFCW in the position of managing directly the affairs of an independent institution; and furthermore the sanction apparently seeks to direct inputs rather than encouraging outputs. We believe that that the application of discretion in regard to sanctions is necessary but would wish to ensure that application of this discretion is fair and transparent. With that in mind we support the proposal set out in Section 5.40 to give HEFCW the power to make public an assessment of any institution which the Council considers not to have made sufficient progress against its fee plan.

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.

16. We believe that it is appropriate for institutions or providers to be able to apply for a review of a decision in respect of a fee plan. We believe this should be undertaken by an independent person / panel and that the process should be clear, simple and transparent. The review process should be proportionate and should not be onerous or expensive for institutions or providers to undertake.

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?

17. The Open University does not currently envisage a need to exempt certain courses from automatic designation should the legislation apply to part-time

higher education in future. However, we believe that the ability to exempt courses may be a useful provision for institutions and therefore support its inclusion in these proposals.

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?

18. Yes.

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?

19. Yes.

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?

20. Yes we believe the actions specified are appropriate and adequate. We do not think that there are other actions that HEFCW would need to be enabled to undertake.

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?

21. Yes

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

22. Yes

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?

23. Yes

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

24. Yes, although we would suggest comparisons are made with provision for quality assessment of HE in FE in other UK nations. We note the mixed response to the White Paper consultation question on whether quality assessment should extend to providers who offer courses which are designated for the purposes of student support operating in Wales. We expect that similar considerations should be taken into account in reaching a conclusion on the

proposals for franchised provision in the light of changes to the arrangements for designation of courses for the purposes of student support.

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?

25. Yes. The draft Code will impact on the way in which institutions work and invocation of the proposed sanctions could have significant influence over the future of an institution or provider. It is therefore only fair and proportionate that institutions and providers are consulted on the development of the Code in order to promote its practical application in a way that is proportionate and does not involve unnecessary cost or unintended consequences.

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

26. No. We support the 'arm's length' principle of HE funding and governance and do not wish to see these taken directly into the domain of the Government or the National Assembly.

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

27. None of these - see above.

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

28. Yes. Strictly, "accounts" form part of institutions' financial statements and so the words "and accounts" are superfluous in the first bullet point.

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

29. Yes but with one exception. Any institutions or providers that are subject to equivalent regulation in another part of the United Kingdom for the provision of higher education and where another part of the United Kingdom forms the majority of the institution's or provider's business should be excluded from the parameters applying to institutions or providers operating solely within Wales. This is necessary to ensure that providers operating on a pan-UK basis are not subject to multiple regulations in similar but slightly different terms, which would result in unnecessary compliance costs and possibly result in an institution or provider being forced to fail to comply with one regulator simply because regulations in different part of the UK were different. Please see paragraph 4 on page 1 of this response that sets out the status of the Open University in this regard.

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?

30. Yes. It is always better for legislation to set out principles and for regulators to set, after consultation, operational details as it is easier then to adjust the operational details as circumstances change in the future.

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

31. Only in the most extreme circumstances should HEFCW's consent be required, e.g. where the institution or provider is taking on loans at such a level that they could impact on the institution's or provider's ability to deliver higher education and remain financially sustainable. A threshold for this could be where the annual servicing costs of all loans at the date of the latest loan exceeds, say, 5% of total income.

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

32. Yes. Interventions could have a significant impact on an institution's or provider's ability to deliver higher education or, in extreme cases, remain in business and therefore it is only right that HEFCW should consult on and publish a statement of its intervention policy.

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?

33. No. Such action could have a significant impact on an institution's or provider's ability to deliver higher education or, in extreme cases, remain in business and therefore it is only right that HEFCW should issue a direction to comply with the requirements of the Code. Indeed, the impact on students studying at the institution or provider would need to be taken into account so that if as a result of withdrawal of approval of that provider's fee plan it were to go out of business there would be time to ensure that students could continue their studies at an alternative provider.

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

34. Yes. Indeed, the safeguards set out in paragraph 7.16 would address the serious concerns expressed in the preceding paragraph.

Question 25: Further Comments

35. The Open University is a pan-UK provider of higher education and so is subject to regulation in all the UK nations. In order to remove the possibility of duplicate regulation, The Open University is subject to a funding memorandum with the higher Education Funding Council in England (HEFCE) and funding agreements with the Higher Education Funding Council in Wales, the Scottish Funding Council and the Department of Employment and Learning in Northern Ireland. These funding agreements rely on HEFCE to undertake the monitoring and assurance in respect of financial and governance matters

July 2013

Contact: Michelle Matheron Tel: 029 2026 2708 Email:
Michelle.Matheron@open.ac.uk

From: LEWIS M.P. [mailto:M.P.Lewis@swansea.ac.uk]

Sent: 29 July 2013 11:49

To: highereducationwalesbill

Subject: HE (Wales) Bill - Technical Consultation - Response from Swansea University

Dear Mr Murtagh,

Following discussions with a number of senior colleagues, I am able to confirm that Swansea University broadly supports the detailed response submitted by HEW, in particular the call for a further period of engagement before more steps are taken towards implementation. The proposals set out in the Bill, if implemented, may have significant and unintended consequences and would benefit from further discussion.

I should be grateful if you would arrange for the above comments to be fed into the responses to the consultation exercise.

Yours sincerely,

Martin Lewis

Dr Martin Lewis

Director of Governance Services | Cyfarwyddwr Gwasanaethau Llywodraethu

Vice-Chancellor's Office | Swyddfa'r Is-Ganghellor

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SWYDDFA'R IS-GANGHELLOR
VICE-CHANCELLOR'S OFFICE

JGH/SB

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



29 July 2013

Dear Mr Murtagh,

Higher Education (Wales) Bill 2013 - technical consultation

As Vice-Chancellor of Bangor University I would like to endorse the response provided by Higher Education Wales to the technical consultation on the Higher Education (Wales) Bill 2013.

Yours sincerely,

Professor John G. Hughes PhD FBCS FLSW
Vice-Chancellor

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Higher Education (Wales) Bill 2014: technical consultation

**Consultation
response form**

Your name: NUS Wales

Organisation (if applicable):

e-mail/telephone number: 07813 921439

Your address: NUS Wales, 2nd Floor,
Cambrian Buildings, Mount Stuart Square, Cardiff Bay
CF10 5FL

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
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or completed electronically and sent to:

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

NUS Wales Response to 'Higher Education (Wales) Bill 2014: technical consultation.'

Overview

The National Union of Students (NUS) Wales welcomes the opportunity to respond to the '**Higher Education (Wales) Bill 2014: technical consultation**'. NUS Wales is a confederation of students' unions representing more than 300,000 students in the nation. As the only representative voice for students in Wales, NUS Wales represents students from all affiliated students' unions in both HE and FE sectors, this includes 9 HE institutions and all Welsh FE Colleges.

NUS Wales exists to promote, defend and extend the rights of students and develop and champion strong students' unions. We fight barriers to education; empower students to shape both a quality learning experience and the world around them; as well as supporting influential, democratic and well-resourced students' unions.

As well as campaigning on behalf of our members, NUS Wales provides a range of training to students' unions including training for full-time offices, part-time officers and staff. We provide support to students' unions to ensure they are able to engage positively with the latest policy developments that affect them.

We provide resources and staff support to students' unions to help strengthen them and enable them to become ever-more effective in their operation. We work with partners across Wales including DfES, HEFCW, HEA and QAA to develop efficient and productive representation structures for students.

In Further Education, NUS Wales has engaged and trained student governors in every single Welsh FE College and trained class representatives from the majority of FE Colleges. Furthermore, we are developing a National Society of Apprentices to provide representation for those who study in this setting; this endeavour has the backing of the Welsh Government.

The core values of NUS Wales are democracy, equality and collectivism. We believe that student organisations should be student-led and that education is a benefit to the individual and to society.

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

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No

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Please give your reasons for your answer and comments.

Sector 'jargon' and acronyms often make it difficult for students to engage in sector-wide discussions. Changing these terms would make it more difficult for students and potentially cause confusion. As such, we do not feel there should be amendments to the Council's name or if there are, that they should retain the acronym HEFCW.

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.

2a. We are concerned about how best to ensure a representative student voice across franchise courses. The fee plan requires institutions to identify how to engage with the depth and breadth of the student body, and given the level of fees charged we consider this demonstration of engagement to be vitally important.

However, in practice, we fear that in franchise arrangements only the franchisor's student voice will be considered in the development of the fee plan and not the students at the franchisee.

This is especially pertinent when you consider that a lot of franchisees are unlikely to have student representation structures as developed as those in higher education institutions. For example, few further education institutions have students' unions, and many of those that do exist are under-developed. This would mean that the franchisee could not provide a student voice similar to that expected in students' unions in HEIs by

HEFCW, including the expectation that a students' union should be empowered to support, represent and advise all students¹.

Given that the Welsh Government currently has no clear direction in strengthening and developing the student voice in further education outside of the learner voice survey, some thought must be given on how best to ensure that students are fully represented in the new regulatory arrangements for franchised provision and treated *equally*.

1

http://www.hefcw.ac.uk/documents/publications/circulars/circulars_2012/W12%2009HE%20Student%20Union%20Funding.pdf

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

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No

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Please give your reasons for your answer and comments.

We consider it important that HEFCW is able to safeguard students and prospective students. As such, we agree with the proposal that HEFCW is able to sanction those who persistently fail to comply with fee limits.

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

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No

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Please give your reasons for your answer and comments.

We agree with this proposal. We consider it important that widening access, and other policy priorities, continue to be promoted by the Welsh higher education sector, despite the shift to student-led funding, and that the use of public money on education as a public good is ensured.

We would also like to highlight that we greatly and wholeheartedly welcome the proposal in this consultation to limit statutory student support to providers who have charitable status – this sends a clear message that Wales commits to higher education as a public good and rejects the student-as-consumer model.

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

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No

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Please give your reasons for your answer and comments.

We fully agree that transitional protection should be made available for students who have commenced their studies with a provider that subsequently has its fee plan withdrawn. It is vitally important that students are protected and enabled to complete their studies.

Similarly, should a warning letter be issued to an institution before a sanction or before the withdrawal of a fee plan, we feel it is important that the institution's students' union should also receive the letter so that they are fully informed of any potential risks or challenges facing their students. This would enable the students' union to be well-placed to support their students and, where necessary, to seek national support for their students.

We would also strongly advocate that students' unions were involved in any appeals process. It is students who would be impacted by the revocation of a fee plan and as such they should be involved at every point of the process.

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

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No

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Please give your reasons for your answer and comments.

We agree that all institutions and other providers with an approved plan in force should be subject to the same core requirements. This will promote a level of consistency across Welsh higher education and ensure that Welsh Government policy is prioritised across the sector.

In terms of the core requirements, we believe that the risk of inconsistent student representation across regulated providers would be surmounted through **the addition of an independent students' union or association as a core requirement.**

We believe students who study a higher education course should have an equitable experience regardless of where they study. Given that the new regulatory framework may see a range of providers outside of the traditional HEIs seek to become regulatory providers, it is important that all students who study a higher education course are given meaningful representation, as outlined in HEFCW's students' union funding guidance.

For example, the institutions are expected to 'clearly illustrate the depth and breadth of engagement with the student body and how the student voice contributes to governance'² in their fee plans. Should any FE colleges apply to become a regulated provider, it is uncertain to what extent they could do this given the underdeveloped student representation structures in further education – demonstrated by the small number of FE sabbaticals in Wales³.

Where there may be new providers who wish to move into higher education, this would be even more concerning as there would likely be very little existing student representation in their structures and developing these structures would be challenging.

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

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No

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Please give your reasons for your answer and comments.

We recognise that there are a number of reasons why it may be preferable to take into account the level of fee when determining whether fee plan commitments are sufficient. However, we would welcome clarification in the ways that the fee level will be taken into account. For example, will there simply be a threshold fee amount? Or will the proposed fee level impact HEFCW's account of the fee plan commitments in other ways? Will providers with lower fees be able to be less ambitious in their fee plan targets?

²

http://www.hefcw.ac.uk/documents/publications/circulars/circulars_2013/W13%2011HE%20Fee%20Plan%20Guidance%202014_15.pdf

³ Two at the time of writing – Bridgend College and Coleg Gwent

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.

Currently any institution that charges over £4,000 is required to outline how they will spend a proportion of that additional fee income in their fee plan. We feel that although it is proposed that all providers will have to complete a fee plan to be a regulated provider, having a threshold of £6,000 would be, when compared to current arrangements, a less robust way of monitoring and directing expenditure of additional fee income.

We do not feel that there has been sufficient justification for what is effectively the raising of the point at which additional fee expenditure needs to be accounted for. We also feel that the consultation does not make it clear what *proportion* of additional fee income would need to be accounted for and whether the responsibility for determining this would lie with HEFCW.

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 agree with the range of sanctions proposed. However, we would like to reiterate that we feel it is important that copies of any letters sent to the regulated provider specifying action to be taken or providing a warning should be sent to the institution’s students’ union to ensure they can meet the needs of their student body and ensure their students’ interests and welfare.

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

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No

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Please give your reasons for your answer and comments.

We think that it is important, given the severity and impact of HEFCW withdrawing its approval of a fee plan, that there is a process of independent review. We feel there needs to be clarification regarding exactly what this independent process looks like, to ensure that it is rigorous and fair. We do not feel the current proposals provide enough information regarding how the independent review would function and what the scope and powers of the reviewer(s) would be.

Given the tremendous impact that such a decision would have upon students, we feel strongly that any independent review panel should include external student representation. Should external student representation not be included on an independent panel, this would not be in the spirit of partnership currently laid out as a policy priority of the Welsh Government in the 'Policy Statement for Higher Education'.

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.

We feel that the consultation document does not make a case as to why exemptions would be necessary. The question also makes no references to any safeguards or checks and balances which would allow courses could be exempted. As such, exempting certain courses of a regulated provider from the regulatory requirements could potentially enable regulated providers to pick and choose which courses, and by extension which students, were to benefit from the assurances and provisos of the core requirements for regulated providers.

Before we could support such a move, we would need a clear explanation of why certain courses should be exempt from the regulatory requirements.

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 agree that HEFCW's duty to make provision for assessing the quality of HE delivered by regulated providers should be extended as proposed. It is important that all higher education students have full confidence in their courses and extending HEFCW's duty in terms of assessment helps ensure this is the case.

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

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No

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Please give your reasons for your answer and comments.

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

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No

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Please give your reasons for your answer and comments.

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

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No

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Please give your reasons for your answer and comments.

This would be an appropriate safeguard.

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.

We feel the safeguards as set out in 6.18 currently lack detail. We welcome that the decision would be reviewed independently, although we believe this should be by a panel as it is unlikely that any individual would be well placed to carry out such a review on their own. However, given the severity of a fee plan being revoked and the impact that this would have on students, we think it should be made absolutely clear, and consulted on, what process should be followed.

Given the emphasis on working in partnership with students in Wales in the Welsh Government's 'Policy Statement on Higher Education' and the upcoming Partnership Statement from HEFCW, HEW and NUS Wales, we also feel it is important that student representatives, in this case likely to be national representatives, are utilised in the review panel. Quality processes in Wales use student reviewers. In this case, as the revocation would be down to a failure by the provider to provide satisfactory quality, it would be entirely appropriate that student representatives are involved in the independent review process.

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.

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

Yes ☐

No ☐

Please give your reasons for your answer and comments.

As outlined in our response to question 2, we have concerns regarding how the franchisor will ensure that the depth and breadth of their student body, including those on franchised courses, are able to feed into their franchisor's fee plan.

Furthermore, as institutional review considers the quality of the learning opportunities made available to students, we have concerns about the extent to which the students at the franchisee will be able to access the benefits brought to students through the franchisor's fee plan and paid for by the students' increased fees. For example, where additional fee income is used to improve academic support services, it is important that the franchisor makes every effort to ensure that these services are available to all students, including those on franchised courses.

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.

Given the wide-ranging implications and impact of the proposed Financial and Corporate Governance Code, we consider it absolutely vital that HEFCW should be required to consult on it, particularly as this will enable students to be fully involved in the development of the code. Similarly, we believe that the code should be reviewed regularly to ensure it is fit for purpose.

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 do feel that further scrutiny following consultation would be appropriate. Provided the timescale for implementation did not make it an unviable option, we would prefer the second option set out in paragraph 7.12 - that HEFCW submit the Code to Welsh Ministers who in turn would lay it before the National Assembly for Wales. This would ensure that the code was subject to a wide-ranging level of scrutiny prior to implementation.

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.

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

Yes

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No

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Please give your reasons for your answer and comments.

We feel strongly that the parameters should apply equally to all institutions with an approved plan in force and, hence, all regulated providers. We would be very concerned about the possible impact of regulated providers being exempt from some parameters as a result of, for example, setting a fee limit below the proposed threshold.

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

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No

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Please give your reasons for your answer and comments.

We believe the operational detail of the Code should be left as a matter for HEFCW to develop in partnership with the sector.

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

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No

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Please give your reasons for your answer and comments.

We fully believe that HEFCW should be required to consult on and publish a statement of its intervention policy. Transparency is vital in this instance to ensure that any interventions can be fairly judged and, where necessary, challenged.

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

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No

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Please give your reasons for your answer and comments.

While we agree with this in cases of serious financial mismanagement, we also think such a policy would make it vitally important that:

- i. The Code was developed in consultation with the sector
- ii. The intervention policy was developed in consultation with the sector and published
- iii. Students and students' unions were kept abreast of developments pertaining to their institution at every possible opportunity
- iv. There was an effort to clearly define what constitutes serious financial mismanagement to ensure that such a measure was as objective as possible

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

Yes

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No

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Please give your reasons for your answer and comments.

We would like to reiterate our previous points regarding safeguarding including:

- i. There needs to be further clarification of the process by which a decision can be reviewed by an independent panel or person
- ii. We strongly advocate that students' unions be kept fully abreast of developments relating to their institutions and that a duty to keep students' unions informed be included in the bill

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.

We have been fortunate in Wales to have a student engagement and partnership agenda that has included some of the most forward-thinking approaches in the UK. Unfortunately, this has been somewhat limited to higher education institutions. Given the potential of the proposals in this consultation to enable a range of providers to become regulated providers and so gain the benefits that statutory student support brings, it is important that we do not inadvertently create a two-tiered higher education system.

Unless we are careful to safeguard the current student representation structures and extend these effective structures, including the promotion of students' unions, to all providers of higher education, a two-tiered system is exactly what we risk. Some students would receive the full benefits of a developed students' union including welfare advice, academic support, sports and activities, representation and wellbeing services, and other students would have their voice decidedly limited.

We are also concerned that despite extending the implementation of fee plans to all regulated providers regardless of fee limit, to the best of our understanding part-time study is still not covered in these regulations. We fail to understand the reasoning for this given a full-time course with a fee equivalent to a current part-time course would, under the proposals, be covered by the fee plan. We welcome the acknowledgement that part-time study may be brought into this regulatory framework in the future, but feel that the longer part-time study is left behind, the harder it will become for Wales to place itself as the home of flexible part-time provision that meets the varied needs of its population.

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:

☐

July 2013

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