

c/o Sarah Bartlett, Deputy Clerk  
Children & Young People Committee  
Legislation Office  
National Assembly for Wales  
Cardiff Bay, CF99 1NA.

7 July 2014

Dear Sarah

### **HE (Wales) Bill – quality assurance for part-time provision**

As requested further to our witness session on 25 June 2014, we provide a note in this letter on the quality assurance arrangements in the Bill as they apply in respect of part-time students and provision. Please note that this sets out our current understanding of the Bill, but the Committee may be better placed than us to clarify and confirm any issues requiring strict legal advice or interpretation.

### **Quality assurance arrangements**

Currently, under s.70 of the Further and Higher Education Act 1992, the Higher Education Funding Council for Wales (HEFCW) has a duty to secure that provision is made for assessing the quality of education provided in institutions for whose activities they provide, or are considering providing, financial support. We understand that the Bill, subject to full implementation, will change the current quality assurance arrangements as follows:

- The Bill will change the Further and Higher Education Act 1992 so that the current duty to assess quality of education under s.70 would only apply to the Higher Education Funding Council for England (Schedule Part 1, clause 2).
- Instead, the Bill will provide a new duty for HEFCW to assess the quality of education provided by a 'regulated institution' (i.e. an institution with an approved fee plan) (s.17).
- It is not currently clear how the Welsh Government intends to provide quality assurance in respect of providers whose courses are designated on a case-by-case basis or other unregulated providers. In absence of further legislation, however, HEFCW would not have a

duty to assess the quality of education of these institutions even if it funds or considers funding them.

### Implications for part-time providers

What does the Bill mean for quality assurance arrangements in relation to institutions in Wales who provide part-time higher education? As confirmed in the Explanatory Memorandum (para. 112):

- If an institution does become a regulated institution with an approved fee and access plan, HEFCW would have a duty to assess the quality of all education provided by or on behalf of that institution including part-time provision. This would be subject to two main exceptions:
  - a) HEFCW's duty would not apply to courses provided by an external provider under arrangements with a regulated institution that were made before HEFCW's new duty commences (s.17(4)). We note that the majority of franchised out provision in Wales is currently part-time.
  - b) As discussed in Committee, HEFCW's duty would no longer extend to part-time (or any other) provision outside Wales unless it is part of a course that is provided principally in Wales (s.17(2)).
- However, if an institution does not become a regulated institution, HEFCW would not be under a statutory duty to assess the quality of education provided by that institution (or on its behalf) even if HEFCW provides it with funding.

Becoming a regulated institution depends on successful application for an approved fee and access plan which sets fee limits in relation to qualifying courses and is subject to general provisions. The Bill has been designed to allow undergraduate part-time courses to be brought within the scope of the fee and access plans, subject to fee regulation being introduced (Explanatory Memorandum, para. 75), but we understand it is not the Welsh Government's intention to do so immediately. Postgraduate part-time (and full-time) courses are expressly excluded (s.7(6)) from the list of 'qualifying courses'.

The unique position of The Open University, as a provider of part-time higher education only and operating across all four nations of the United Kingdom, is reflected in the Bill.

As raised in our response, the Bill raises potential issues relating to the quality assurance arrangements for part-time and other specialist providers whose courses may not come under fee plan arrangements. The Explanatory Memorandum states that, where the provider offers courses on a part-time only basis, HEFCW could maintain quality assessment arrangements through terms and conditions of funding 'because HEFCW will continue to pay some recurrent funding to institutions for part-time courses for the foreseeable future' (para. 112). However, we note that:

- HEFCW would be under no statutory duty to do so.
- The new duties and powers in relation to quality assurance would not apply. HEFCW's regulation would be reliant on the terms and extent of grant funding, despite the Welsh Government seeing the need to avoid this as being a major reason for introducing the Bill (see Explanatory Memorandum para.51).
- This could lead to divergence of quality assurance arrangements in the sector for different institutions offering part-time higher education in Wales.

Finally, we note that the Bill itself does not alter student support arrangements for part-time students and courses (or any other students). In absence of further regulations, we presume that the existing student support arrangements (pursuant to s.22 of the Teaching and Higher Education Act 1998) would continue to apply, irrespective of whether an institution is a 'regulated institution' or not. The Explanatory Memorandum confirms that, 'for the time being' any institutions which offer part-time courses only would not need to have a fee and access plan in force in order for their courses to be automatically designated for the purposes of student support (para. 75).

Yours sincerely

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