

**W16/09HE Consultation: 2017/18 Fee and Access Plan template  
A response by Universities Wales**

## **1. About Universities Wales**

1.1. Universities Wales represents the interests of universities in Wales and is a National Council of Universities UK. Universities Wales' Governing Council consists of the Vice-Chancellors of all the universities in Wales and the Director of the Open University in Wales.<sup>1</sup>

## **2. Introduction**

2.1. The following comments respond to the consultation on 2017/18 fee and access plan template published by the Higher Education Funding Council for Wales (HEFCW) on 17 March 2016, requesting responses by 31 March 2016. Our comments are based on our responses to HEFCW's related consultations on its fee and access plan guidance<sup>2</sup>, and partnership guidance.<sup>3</sup> A copy of our responses can be accessed via the Universities Wales website.<sup>4</sup>

## **3. General comments**

3.1. The current response focuses on a number of key issues. We are, however, expecting individual universities to comment on the template in more detail.

## **4. Question 1: does the template enable the applicant to respond fully to the information requirements as set out in the draft fee and access plan guidance consultation?**

4.1. In general, we think that the template captures the information that HEFCW is likely to initially require to assess an applicant's eligibility, and we assume that HEFCW will require further information where it needs to particularly for new providers. However, we identify a number of points to address in the questions below, including the following key issues which we identified in our response to the consultation on fee and access plan guidance:

- A need, in particular, for further clarification on the application of the regulated institution/external provider distinction in relation to partnership and subsidiary arrangements
- A need to clarify the location criteria

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<sup>1</sup> For further information about Universities Wales see: <http://www.uniswales.ac.uk/>.

<sup>2</sup> HEFCW Circular W16/07HE (see HEFCW's website for the [Circular](#) and [Annex](#)).

<sup>3</sup> HEFCW Circular W16/08HE Guidance on partnership arrangements for provision delivered by external providers on behalf of regulated institutions in Wales (available [here](#)).

<sup>4</sup> <http://www.uniswales.ac.uk/publications/consultation-responses/>

- A need to give further consideration to the annual requirements and submission cycle

4.2. We also welcome HEFCW's clear intention to base the new fee and access plan content requirements as closely as possible on previous fee plan requirements. As discussed under question 4 below, however, the detail of the plan content requirements could (and should) be less prescriptive in our view, and reporting requirements based on those set out in the regulations rather than the Welsh Government guidance which elaborates on them.

**5. Question 2: does the template clearly set out what information is required? If further clarification is required, please explain where this would be helpful and why.**

5.1. No. In our response to the consultation on the fee and access plan guidance we identified the need to review, confirm and clarify a number of different criteria and information requirements which form the basis of the template.

Institution in Wales

5.2. In particular, we identified the need for clarification of the criteria for being an institution in Wales which is treated in Table 2 of the template. We queried the interpretation of the range of activities that could be taken into account (potentially all activities not just teaching), the interpretation of 'principally' in the Act as the 'majority', and the strict adoption of a numerical rule (50% threshold).

5.3. The template confirms that HEFCW is considering the location of activities as the location of all its students (including all levels and modes). However, we have queried whether HEFCW should take into account and capture a wider range of location information in light of our comments on the guidance.

5.4. The template also points to the HESSES definitions set in HEFCW circular W15/20HE for guidance on the location of activities. However, this circular is only a consultation document and expressly proposed a number of changes. An updated reference document is needed, particularly for institutions which are new to the regulated sector.

5.5. It would also be helpful to be more specific about which definitions apply. HESA data uses a number of location indicators, e.g. student term-time address; location of provision e.g. campus location, location of study. HESA also provides location information based on location of employment (i.e. based on the location of the staff activity).

Partnership information

5.6. We agree that HEFCW should require full information on different partnership arrangements (Template p.7 and Excel Tables D1 & D2).

- 5.7. Further guidance may be needed on how to count student numbers on courses provided on behalf of a regulated institution (i.e. by an external provider) or under other partnership arrangements in the regulated institution's student number totals. There will need to be consistency between the way student data for partnership courses is recorded in the template (Table 1) and the treatment of courses delivered through partnership for purposes of the HE (Wales) Act 2015, particularly for different institutions within a group structure.
- 5.8. Further guidance may be needed on the location of partnership provision (Table 3). Is this the location of the partner, the location of study/the course, or the location of the students on the course?
- 5.9. Our response to the HEFCW's partnership consultation highlighted an urgent need to clarify the partnership guidance more generally. The guidance in the template (e.g. pages 8 and 9) is suggesting a test that is potentially different again to those outlined in the Welsh Government guidance, HEFCW fee and access plan guidance and HEFCW partnership guidance. We have previously queried the utility of the guidance based on current categorisations of franchise and validation activity, which may be liable to confuse rather than help. The terminology needs to be consistent within the template ('control' or 'overall control'?). It also needs to be consistent with HEFCW's two sets of guidance.

**6. Question 3: are there any gaps or omissions in the template that should be addressed? Please explain what these are and how they should be addressed.**

- 6.1. Yes. See our response to question 2. The information requirements are likely to need adjustment in light of the development of the Financial Code, and further legislation including the recently laid regulations amending the definitions of qualifying courses and qualifying persons.

Financial information

- 6.2. The financial information obtained should ensure that HEFCW can satisfy itself that the institution will be able to meet the requirements of the Financial Code from the outset. An issue at the moment is that the fee and access plan templates are being developed in advance of the Financial Code, and applications will have to be submitted before the Code is finalised and approved.
- 6.3. It is likely, for instance, that more information on internal organisation/committee structures may be required. The current Memorandum of Accountability and Assurance (MoAA) stipulates that institutions must have a finance committee and audit committee, and that there should be no cross-over in membership. Given the potential for new institutions to have very different corporate structures, it will be important to ensure that appropriate equivalents are in place.

- 6.4. The terms are not always self-explanatory in the template (e.g. viability and sustainability) and reference should be made to current guidance (e.g. the MoAA) for consistency of interpretation.
- 6.5. More generally, it may be worth adding a requirement for the institution to confirm if there any areas in the existing MoAA which would not appear to apply to it (to ensure that satisfactory alternative arrangements are agreed if appropriate), or which it feels it could not comply with. In other words, the template requirements ought to explicitly incorporate the MoAA and its successor (i.e. the Financial Code).
- 6.6. See our response to the guidance consultation for comments on the requirement to provide forecasts for the current year and future for years. In the context of the template, although it will not be ambiguous for current regulated institutions, it may be helpful to clarify whether the financial or academic or other year is meant.

#### Quality information

- 6.7. Similar points could be made in relation to the quality information requirements (Table 7), in that requirements will need to remain aligned with arrangements for quality assurance in Wales as they develop. Universities Wales made a number of comments in response to HEFCW's consultation on quality criteria that point to the need for further development in arrangements.

#### External provider information

- 6.8. The recent amending regulations add the requirement that external providers must also be charities.<sup>5</sup>

### **7. Question 4: should more be done to improve the template not already identified in the responses given to the questions above? If more should be done, please explain the improvements that might be helpful and why.**

- 7.1. It would be helpful to identify more clearly in the template what information is required from existing regulated institutions and new ones only. On page 6 of the template (Table 3), HEFCW indicate that not all boxes may be necessary for an existing regulated institution to complete, but there is limited further indication of what existing regulated institutions do not need to answer.

#### Plan content: Promotion of HE and Equality of Opportunity

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<sup>5</sup> The Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) (Amendment) Regulations 2016 (see [here](#)).

- 7.2. The template attempts to prescribe the content of the response in some detail and we question whether this is the right approach.
- 7.3. This section (p.19 following) would in particular benefit from greater clarity about the nature of HEFCW's template requirements – including the use of 'must' and 'should' in guidance notes 13 to 16 (p.19). According to the 2015 Act, the fee and access plans must include all prescribed information – that is, information requirements set out by the Welsh Government in regulations. Regulations can also set out those matters which HEFCW must take into account in approving or rejecting a plan. Otherwise, HEFCW has a more general duty to take into account any guidance issued by the Welsh Government, but it is ultimately for HEFCW to determine how it does so. The template (and guidance) should carefully distinguish between these.
- 7.4. The template appears to be far more prescriptive in terms of its content than the existing 2004 Act fee plan templates. HEFCW is in danger of taking the Welsh Government's guidance (which appears to provide the list in tables on pp19-21) and turning into a detailed list of mandatory reporting requirements. We do not think that this was what was intended by the Welsh Government – the list appears to have been provided primarily as an aid to interpretation – and we would not expect HEFCW to treat the guidance as a mandatory requirement in any case. If this is the intended approach, it is also not clear on what basis HEFCW can insist upon it. As we understand it, HEFCW does not have an explicit power in the 2015 Act to stipulate plan content requirements, only a duty to take matters into account in approving or rejecting a plan. Unlike fee plans under the HE Act 2004, there is no scope to impose such requirements as HEFCW sees fit as terms and conditions of grant, which means this requires a different approach.
- 7.5. On the other hand, the tables on p.19 and 20 are not very clearly addressing the exact requirements prescribed in the fee and access plan regulations (the list in guidance note 13 appears to be a paraphrase of the prescribed requirements).
- 7.6. It is suggested that the tables on p.19 and 20 should include the 'prescribed requirements', rather than the longer list set out in the Welsh Government guidance. Institutions should be encouraged to cross-reference the Welsh Government guidance and encouraged to group their plans sensibly. However, beyond meeting the prescribed requirements, as confirmed in the Welsh Government's guidance (para 4.21) it should be for the institution to determine the content of the plan.

**8. Question 5: is there any other information that it would be helpful for HEFCW to consider in developing the template further?**

- 8.1. Yes. See our comments on question 2. The information requirements are likely to need further adjustment in light of the development of the Financial Code, and further legislation.

Similarly, we await the Welsh Government's final tranche of guidance to assist in development of the full statement of intervention. As previously commented, the timetable for implementation of the 2015 Act makes it extremely challenging for HEFCW to put in place robust guidance and procedures.

#### Annual requirements

- 8.2. A key comment that we made in response to the guidance consultation was that we would welcome HEFCW reviewing the information requirements, to reduce the potential burden for institutions from repeating the preparation and submission of information annually where unnecessary. Without repeating the detail of those comments here, we recognise that there is likely to be information that needs to be revised and updated on an annual basis. However, on the face of it, some information could be treated differently.
  
- 8.3. HEFCW may wish to review its template accordingly to identify which information genuinely needs to be resubmitted annually. On the other hand, there should be a continuing requirement to report changes or potential changes which could affect the eligibility criteria or indicate a serious breach of the quality and financial requirements. This could perhaps be addressed by reminding institutions of a further requirement to the list in the authorisation section on p.23 of things for the governing body to confirm.

**Universities Wales**

**31 March 2016**