

## The Designation of Higher Education Courses at Alternative Providers for the Purpose of Student Support Consultation

### 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.

#### 2. Introduction

- 2.1. The following paragraphs contain the response of Universities Wales to the Welsh Government's consultation on the Designation of Higher Education Courses at Alternative Providers for the Purpose of Student Support Consultation, published on 19 January 2015 and requesting responses by 10 April 2015.<sup>1</sup> For previous comments relating to specific course designation proposals see in particular the Universities Wales response to the HE (Wales) Bill consultation in June 2014,<sup>2</sup> and the Technical consultation in August 2013.<sup>3</sup>

#### 3. The case for change

**Question 1** – We have outlined a case for changing the way the Welsh Ministers designate alternative providers of higher education. Do you agree that the case for change is made? Are there any relevant points or drivers of change that we have not considered?

- 3.1. In the consultation document, the Welsh Government identifies the need for new arrangements to the way alternative providers are designated to safeguard the student experience, and to provide greater assurance of the effectiveness of the expenditure of public funds (p.2). The consultation sets out four reasons in particular for introducing change: the changing landscape and growth in alternative providers, the need to provide appropriate regulation for any large HE providers in Wales that do not choose automatic course designation, the new arrangements for regulation of alternative providers in

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<sup>1</sup> The consultation homepage is at: <http://wales.gov.uk/consultations/education/designation-of-higher-education-courses-at-alternative-providers/?skip=1&lang=en>

<sup>2</sup> <http://www.uniswales.ac.uk/wp/media/HEW-response-to-HE-Wales-Bill-2014-consultation.pdf>

<sup>3</sup> <http://www.uniswales.ac.uk/wp/media/2013-August-Higher-Education-Wales-Bill-Technical-Consultation.pdf>

England, and the need to align with Welsh Government strategy for higher education which seeks to ensure that the same regulatory controls are applied to all HE institutions and other providers.

- 3.2. We agree that changes to the arrangements for specific designation need to be made. The key drivers for change that need to be further emphasised from our perspective are the need to maintain public confidence in the quality of higher education provision in Wales, and to align with arrangements for automatic course designation so that there is an effective overall system of regulation of higher education in Wales. The importance of protecting student interests as the system leads to potential change in the higher education sector is also a key consideration.

#### **4. Striking a balance – proportionate regulation and learner choice**

**Question 2** – Our proposals describe a system of regulation that is intended to strike a balance between requiring the same regulation of all providers with proportionality and maintaining reasonable learner choice. Do you feel we have achieved that? If not, which of the proposed criteria would you change? Would you add further criteria; if so, what?

- 4.1. The document draws attention to the Welsh Government's strategy intention that all HE providers and other providers should be subject to the same regulatory controls (p.6). It also highlights the desirability of a 'level playing field' for the two routes to course designation. The Welsh Government considers that a key feature of the proposals is to ensure that regulation is robust and independent of the particular route to designation that a provider chooses (p.17). The proposals, however, outline different regulatory frameworks for providers with automatic course and specific course designation on grounds of proportionality. Specifically, that there is 'a need to ensure regulation 1) is proportionate to the size of the sector and the provision at each provider 2) is proportionate to the cost to the Welsh Government and 3) maintains reasonable learner choice' (p.8).
- 4.2. The paragraphs below comment on the extent to which we feel that the proposals succeed in terms of proportionality, and maintaining learner choice. Before this we attempt to clarify who the specific course designation arrangements could potentially apply to, and to comment on the different contexts relating to alternative providers and universities.

#### **5. Who will the specific course designation arrangements apply to?**

- 5.1. The information in the consultation requires some further clarification and comment and we suggest that the proposals for specific course designation may relate to a potentially wider and larger set of providers than the consultation suggests:

- **Providers of higher education.** This is not clarified in the consultation but will presumably be consistent with the definition adopted in the HE (Wales) Act 2015. This includes any provider which provides courses at a level higher than A-level. That means **higher education institutions** (all of whom are universities in Wales), and **further education institutions**. It also includes **any other institutions** who offer some higher education (whether public or private) may also apply for either automatic or specific course designation.
- **With charitable status.** This is a prerequisite for both automatic and specific course designation. This would include all current universities and further education institutions, but exclude a number of the currently supported alternative providers.

5.2. Specific designation arrangements potentially cover the following which are not covered by automatic designation:

- **Providers based outside Wales.** Providers who are not in Wales cannot apply for automatic designation (ss.3&4 HE (Wales) Act 2015 – we understand that s.3 is not to be interpreted as applying to institutions outside Wales). For purposes of the Act, an institution in Wales is an institution whose activities are wholly or principally carried on in Wales (s.57 HE(W)A 2015). However, providers outside Wales can apply for specific designation (see p.7) – and this would apply to most alternative providers supported under current arrangements (see below).
- **Designation of courses delivered outside Wales.** At present arrangements for student support are determined by where a student is ordinarily resident. Most courses currently receiving specific designation from the Welsh Government for purposes of students support are currently delivered outside Wales (see below).
- **Providers who are ineligible for automatic designation because they do not offer courses covered by fee and access plans.** This currently includes, for instance, part-time and postgraduate only providers, although part-time provision may later be brought within fee plan arrangements and specific arrangements have been made for the Open University as a pan-UK institution. (Note that if a provider does receive automatic designation, the regulations of the HE (Wales) Act 2015 would apply to *all* education provision at that provider including part-time, postgraduate, and further education for instance).

## 6. Universities and alternative providers

6.1. The issues in relation to the different groups of provider that may potentially apply for specific designation route is discussed below in relation to the different types of institution that could potentially apply (or be affected by the proposals). This identifies a number of issues which are specific to each.

### **(a) Alternative providers**

- 6.2. The title of the consultation suggests that the specific course designation arrangements will relate primarily to alternative providers which are identified as 'organisations that are not publicly funded and deliver courses of higher education .... also referred to as private or non-public providers' (p.2).
- 6.3. According to the consultation document, in 2013/14 the Welsh Government supported around 340 students at 66 alternative providers (p.4) out of a total of 91 providers who had at least one course designated (p.16). Of the 66 active providers in 2013/14, only 8 providers supported 10 or more students (p.4) and 26 providers (with 110 supported students) were thought to be charities (p.16).
- 6.4. Student Finance Wales maintains a list of courses designated for student support by the Welsh Government. As at time of submitting this response, this listed 77 separate providers whose courses had received specific designation by the Welsh Government.<sup>4</sup> Three of the providers appeared to be registered and to deliver the designated courses in Wales (Centre for Alternative Technology, Newport & District Group Training Association, and the Welsh Evangelical School of Theology). The rest appear to have official registered addresses and deliver the designated courses through campuses outside Wales – the majority in England.
- 6.5. Alternative providers take many forms. Three of the alternative providers who have courses specifically designated by the Welsh Government (and BIS) are universities and have their own degree awarding powers. For instance, the University of Law was granted university title in 2012. This ceased to be a charity and became a for-profit provider when it was taken over by Montagu Private Equity. Regent's University is a not-for-profit institution/registered charity which gained university title in June 2013. BPP University Ltd is a publicly owned company which gained university title in 2013. Each of these validate their own courses.
- 6.6. Courses at all other alternative providers are validated by another organisation. In most cases this is a publicly-funded university in England. In a significant number of instances this is another alternative provider such as Pearson (EdExcel) or one of the three 'private' universities. In most instances the support package provided for Welsh-domiciled students on full-time undergraduate study includes up to £6k tuition fee loans.

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<sup>4</sup> Student Finance Wales, (<http://www.studentfinancewales.co.uk/Practitioners> under Policy Information, Designated Courses). File last modified 12 March 2015. As accessed 17 March 2015. Corporate ownership/group structures are not clear from the list, and registered addresses are not provided, but can in most instances be clearly cross-referenced with the HEFCE register. In some instances the names appear to be inaccurate e.g. Regent's College became Regent's University in 2013.

However, designated courses at six providers are delivered through franchise arrangements – this means that students are entitled to the full support package of grant and loans up to £9k. The main element of support for postgraduate provision is access to the DSA allowance.

- 6.7. The growing number of students on such courses is one of the key reasons for enhancing regulation with the number of students on courses with specific designation having grown from 245 in 2012/13 to 340 in 2013/15 (p.5). In England the number of students claiming support for courses at alternative providers rose from 7,000 in 2010/11 to 53,000 by 2013/14. The total amount of public money paid to these students, through tuition fee loans and maintenance loans and grants, increased from around £50 million to around £675 million.<sup>5</sup> It is noted that these increases would have been larger, if BIS had not placed a number of restrictions on the numbers recruited at a number of alternative providers. Even with the charity requirement, there remains a potential that provision from alternative providers could become large in future.
- 6.8. In this context it should also be noted that a number of concerns have been raised in relation to the growing provision at alternative providers. The recent National Audit Office (NAO) Report, for instance, investigated a number of concerns and highlighted that, although problems appeared to be concentrated in a small number of providers, there were a number of serious issues that have arisen in relation to alternative providers.<sup>6</sup> Some of the alternative providers which were the subject of this report also feature on the list of institutions with courses designated by the Welsh Government. This includes the Greenwich School of Management where significant number of ineligible EU applicants for student support were identified. It also includes Kaplan Open Learning, Resource Development International Ltd, the SAE Institute, where the report identified drop-out rates between 20% to 30% (compared to the public institution average of 4%). Evidence of potentially inappropriate recruitment practices were also identified at a number of providers (p.17 and Appendix 5). The report highlights the need for additional care in respect of this growing sector at this stage, and the Department for Business, Innovation and Skills (BIS) has recently announced new measures in relation to alternative providers.

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<sup>5</sup> Commons Select Committee, Public Accounts Committee, 24 Feb 2015, Public Accounts Committee publishes report on control over funding for alternative higher education bodies.  
<http://www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/news/report-financial-support-for-students-at-alternative-higher-education-providers/>

<sup>6</sup> NAO, Investigation into financial support for students at alternative higher education providers, December 2014 <http://www.nao.org.uk/report/investigation-financial-support-students-alternative-higher-education-providers-2/>

## **(b) Universities**

- 6.9. The consultation document states that Welsh Government expects that 'large HE providers' will choose to apply for a fee and access plan but this is not mandatory (p.5). The document makes it clear that the designation route for an 'institution or other provider in Wales with charitable status delivering higher education courses' is a matter of choice (p.7).
- 6.10. It is currently assumed that all universities will choose to become regulated providers. This assumption is examined below. However, irrespective of that choice, universities in Wales will continue to be subject to a range of additional regulatory/public requirements and controls. All universities in Wales are charities and regulated by the Charity Commission. In return for receipt of grant funding, universities are subject to terms and conditions set by the Higher Education Funding Council for Wales (HEFCW) (and in turn the Welsh Government) under the Further and Higher Education Act 1992 which includes agreeing to a financial memorandum and quality assurance provisions (exercised through the Quality Assurance Agency). Under fee plan arrangements in relation to full-time undergraduate provision, universities are subject to the provisions of the Higher Education Act 2004 ensuring that issues relating to the widening access and the promotion of higher education are adequately addressed. The act also includes provisions relating to student complaints procedures. As publicly-funded universities they are also subject to a wide range of other public and regulatory requirements. 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.
- 6.11. The distinction between 'alternative providers' and HE providers who are not considered as alternative on the definition provided in the consultation is an increasingly blurry one in other respects. A key driver for the HE (Wales) Bill for instance was the premise that in future universities in Wales may no longer be publicly funded through Funding Council grants. For full-time undergraduate provision this is already essentially the case except for some provision for higher cost subjects. Overall, HEFCW's funding allocations to universities for all activities for 2014/15 amount to an estimated 10-12% of total income and is currently expected to reduce further.

## **7. Comments on proportionality**

- 7.1. As identified above, principles of proportionality – in various guises – are the basis for the different arrangements for specific and automatic course designation. In general, the arrangements for specific designation are intended to be less onerous than for automatic designation, while still providing assurance on essential matters including quality and

financial viability. The principles of proportionality proposed by the Welsh Government (p.8) are discussed below:

### **1) Size of the sector and the provision at each provider**

- 7.2. The difference in regulatory requirements between the automatic and specific course designation routes takes into account the ‘the very small amount of provision delivered by alternative providers, the consequently small amount of benefit derived by those providers and relatively small cost to the Welsh Government’ (p.8).
- 7.3. As explained on page 5 of the consultation, the Welsh Government expects that large HE providers will (in Wales) in will choose to apply for a fee and access plan approval (i.e. automatic course designation).
- 7.4. In general the proposals apply to providers regardless of their size. This includes the requirements for charitable status, quality assurance review requirements, financial viability, and membership of the student complaints scheme. However, the Welsh Government proposes a 50 student threshold in relation to the proposed obligation to require a HESA subscription (p.11).
- 7.5. Alternative providers in Wales who meet the charity and other requirements (e.g. are not part-time or postgraduate only providers) may also choose to become regulated institutions. However, this is not the case of alternative providers based outside Wales who constitute the majority of providers whose courses currently have specific designation.
- 7.6. Despite acknowledging significant growth in the alternative provider sector – both in Wales and England - the proposals appear to be based on the assumption that alternative providers choosing the specific course designation route will continue to be small. We are concerned that this assumption may not hold and that the one-size fits all approach for specific designation, relying on less extensive regulatory requirements and controls than for institutions with automatic designation, will mean greater risks for the HE sector and students alike. This highlights the need to base requirements on different principles than choice of designation route.

### **2) Benefits derived**

- 7.7. Although only briefly mentioned on p.8 of the consultation, this principle that regulation should be proportionate to benefits received by providers has previously been seen as the key principle behind the design of a regulatory system with two different designation routes:

*“The intention is that the extent of regulatory requirements will be proportionate to the benefits derived i.e. more extensive regulation will be required of institutions and*

*other providers which benefit from automatic designation of their courses as their students will have access to the full tuition fee grant and loan package as compared to the more limited support provided in respect of courses subject to specific case-by-case course designation.” (Technical Consultation, para 4.18; see the almost identical text in HE Wales Bill, Revised Explanatory Memorandum para 65).*

- 7.8. The consultation provides little detail on the benefits for students/providers with automatic and specific course designation. Indeed, the consultation document makes it clear that it is not seeking views on the amount of support that the Welsh Ministers make available to students on designated courses (p.4). It is also noted that the HE (Wales) Act 2015 itself does not confer automatic course designation on providers who become regulated institutions and the benefits are as yet uncertain (and liable to potential change in future) for these institutions too – this will also depend on further regulations under s.22 of the Teaching and Higher Education Act 1998.
- 7.9. From the details provided in the consultation there have been no obvious changes in the proposals since the Technical consultation. ‘The amount of support is reviewed annually... Students on courses that have a specific designation are not eligible to apply for a tuition fee grant; students on courses that have an automatic designation are eligible to apply for this grant’ (p.4). This is consistent with the scheme set out in the Technical consultation and Explanatory Memorandum to the HE (Wales) Bill which outlined that students on courses receiving automatic designation would be eligible for tuition fee support of up to £9k in loans and grant, whereas students on courses with specific designation would be eligible for £6k loans only.
- 7.10. One obvious problem with this, which we drew attention to in our response to Technical consultation and HE (Wales) Bill, was the fact that fee grant payments have (up until this point) been made from HEFCW’s budget so that there could be no overall gain for the HE sector as a result of the grant element. The recent Welsh Government decision to remove the budget for fee grant payments from HEFCW may potentially help in future – but only if the Welsh Government does not in effect annually reduce the grant available to HEFCW to distribute to universities in proportion to the increase in fee grant payments to students. The Welsh Government’s Remit Letter and HEFCW’s Headline Steers document, both published on 19 March 2015, appear to confirm that if expenditure on fee grant payments exceeds the maximum amount transferred in 2015/16 this is likely to affect the allocation for the following year.
- 7.11. The consultation confirms that fee controls will not apply to providers choosing specific course designation (p.15), but they will apply to those with automatic designation (s.5 HE(W)A 2015). Particularly, in light of our comments on the net benefit fee grant payments for the current sector, this is a distinct potential advantage for providers seeking the specific course designation route. Should maximum fees be lifted or increased in England, the specific course designation route could suddenly become very attractive to institutions. As argued in our response to the Diamond Review it is clear



that the fee grant payments to Welsh students are primarily addressing the issue of student debt rather than promoting wider access or sustaining recruitment levels. From the evidence in England, we could expect providers to be able to charge higher fee levels to £9k and beyond with support for students in the form of loans only. Similarly, if the maximum fee levels are reduced to £6k in England it is likely that market forces would require institutions in Wales to follow suit: it is hard to see any potential benefit that would arise to the institutions in recruitment terms from the different student support packages in this instance. This makes the assumptions underlying these regulatory proposals very vulnerable to changes in fee and funding arrangements in England in particular, and we query how robust these arrangements may prove in practice.

7.12. Similarly, the consultation confirms that the intention is that student number controls will not be applied to providers with specific course designation (p.15), whereas they currently apply to universities. The clear risk of this policy is that this limits opportunity for students at universities in Wales and pushes them to study across the border and with alternative providers.

7.13. There will also be no fair access requirements for providers with specific designation (p.15), whereas a provider with automatic designation will be subject to prescribed provisions which may include expenditure requirements and financial assistance. Under current fee plan arrangements a substantial amount of university funding is already ring-fenced for specific priorities relating to widening access and the promotion of higher education.

7.14. From this analysis it is not clear that the twin-route regulatory system will provide regulation that is proportionate to the benefits received by institutions. The Welsh Government will need to carefully consider how the system will provide sufficient incentive for institutions to become regulated institutions and the comparative support packages available. In our view the system may work on present arrangements (given our comments on the transfer of budget for fee grant) and it remains our assumption that the Welsh Government will ensure that universities will wish to opt for automatic designation. It is not obvious from the consultation, however, that this will be so or that the Welsh Government has identified a means of ensuring that the proposed system will remain sustainable and robust in the face of future changes across the border.

### **3) Cost to the Welsh Government**

7.15. The consultation identifies the cost to government as one of the three factors that have influenced the development of the proposed policy (p.8). It also highlights that the new designation arrangements will be more expensive for the public sector to administer (p.14).

7.16. In our view the cost to the government is a relevant consideration and the Welsh Government is right to seek ways of reducing administrative costs for itself, HEFCW and providers.

7.17. However, consideration of costs to the Welsh Government cannot be prioritised at the expense of maintaining the reputation of the HE sector and safeguarding the interests of students. The additional costs of appropriate safeguards and protections arising from these proposals would need to be met.

7.18. The role of HEFCW is also not clear in this consultation. The Explanatory Memo accompanying the HE (Wales) Bill for instance (para 72) envisaged that HEFCW would provide information and advice to prospective applicants (prior to an application for approval of a fee and access plan). The intention was that HEFCW would act as a first point of contact for such applicants and might provide information and advice regarding the requirements with which institutions must comply following approval of a fee and access plan. The aim would be to ensure that all applicants are fully aware of their obligations prior to becoming a regulated institution.

7.19. More generally, we query whether the current proposals are sufficient to control costs to the Welsh Government. The proposals indicate that student number controls are not intended to be introduced (even though these have been implemented in respect of alternative providers in England).

7.20. These proposals also need to be viewed in the light of the Welsh Government's intention that they should form part of a single system for higher education when taken together with the provisions of the HE (Wales) Act 2015 (see p.7). One part of the overall system which is not referred to in the consultation document is arrangements for student support in respect of publicly-funded providers in the rest of UK. Publicly funded providers in the rest of the UK are automatically designated for purposes of student support at present. These providers are also not regulated under the HE (Wales) Act 2015.

#### **4) Risk**

7.21. Conspicuously, one of the principles not highlighted in the consultation is the need for regulation that is proportionate to the levels of risk – although it is to some extent reflected in the proposals for maintaining specific designation (p.13). This of course, is one of the key considerations shaping the current development of quality assurance and financial assurance arrangements across the UK including Wales. The need for the sector to maintain its current reputation for high-quality higher education is absolutely essential. Any damage to this reputation will have a major impact not just on universities but for the Welsh economy.

- 7.22. An expansion in provision through alternative providers, as highlighted above, currently appears to involve clear risks.
- 7.23. We query whether in principle the arrangements have addressed this sufficiently. The system currently appears likely to put the greatest regulatory safeguards in place in relation to the providers in the lowest category of risk, and fewest regulatory safeguards in place in relation to a sector with clearly identified risks.
- 7.24. It is noted in particular that the consultation does not discuss what regulatory powers or controls could or would be put in place in respect alternative providers. We assume that this could be very different for providers in Wales and providers outside of Wales (the majority are currently based in England).

## **8. Comments on learner choice**

- 8.1. In the Technical Consultation in 2013, the Welsh Government stated:

*“Having taken account of the responses to the White Paper consultation the Welsh Government has concluded that it is necessary to balance the provision of a wide range of study opportunities available to students ordinarily resident in Wales with the potentially significant costs incurred from a demand-led budget. A key consideration in ensuring the sustainability of public expenditure on student support is the public benefit from the subsidy derived from the Welsh Government backed tuition fee loans.” (para 4.12).*

- 8.2. The consultation document itself identifies the need to maintain ‘reasonable learner choice’ as one of the three considerations that have informed policy development (p.8). Its discussion of the need and rationale for extending student support to alternative providers on a case-by-case basis is, however, very limited.
- 8.3. In its discussion of impact (p.16) the consultation identifies that the introduction of the charity status requirement would reduce institutional choice for learners, but queried whether it would reduce subject choice. It concluded that ‘in some of these areas there is arguably a wide range of provision available in the public university sector although this may not be the case for all provision’.
- 8.4. We would have liked to have seen a more developed case presented for providing student support to students who wish to study at alternative providers, the majority of who are based and deliver their courses outside of Wales. Where alternative providers genuinely offer new opportunities for students to access high-quality higher education this is to be welcomed. However, it is not clear what the alternative provider sector is offering that would not be offered by the institutions subject to the greater regulation and protection of the HE (Wales) Act 2015. In general, it is also not clear that the benefit in

terms of learner choice outweighs the need for the same level of regulatory requirements as placed on regulated institutions.

- 8.5. We note that the amount of support that may be awarded does not form part of this consultation, but given the potential identified for there to be significant student support we believe that the priorities in use of funding/student finance support in this area need to be reviewed carefully. We query whether restrictions e.g. on grounds of charity status, however, are best serving the principle that support should be given where a comparable choice is not available in the regulated institution sector (see further our comments on charity status below).

## **9. Further comments on criteria for specific designation**

- 9.1. In the following paragraphs we discuss the proposed criteria for designation (set out in pages 9 -11 of the consultation).

### **(a) Charitable status**

- 9.2. The consultation proposes that charitable status should be a prerequisite for receipt of student support. This is in line with previous indications of the proposals for specific course designation, and the rationale for this is expressed clearly for instance in the Technical consultation:

*“The Welsh Government considers that all higher education institutions and other providers which benefit from a degree of financial subsidy in the form of statutory student fee loans or grants should be expected to make a contribution to the wider public good. A means of ensuring that such subsidy is not used to benefit shareholders of for-profit institutions and other providers is to require that all such bodies seeking designation of their courses from the Welsh Government have charitable status.” (Technical consultation para 4.14)*

- 9.3. Currently, all chartered universities and institutions conducted by higher education corporations or further education corporations in Wales are charities.<sup>7</sup> This means that the criterion does not directly affect universities in Wales. We recognise the desirability of the principle that motivates this criterion. However, the reservations we expressed in the Technical consultation essentially remain. In response to the Technical consultation Universities Wales commented:

*“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*

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<sup>7</sup> As confirmed for instance in the HE (Wales) Bill Revised Explanatory Memorandum, para. 63.

*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. “ (para 4.11)*

- 9.4. On balance our view is that the charitable status criterion should be used for specific course designation to maintain consistency with the HE (Wales) Act 2015.
- 9.5. The Consultation document estimates that 38 out of 91 alternative providers (or 26 out of 66 providers whose students accessed support in 2013/4) were charities, and that this criteria would reduce the number students eligible for support by around a third (31%). Looking at the Student Finance list of alternative providers we can see that the charitable status criterion would exclude for instance the University of Law and BPP University Ltd, two of the three alternative providers who gained university title and degree awarding powers. If the purpose of allowing support to students to study at alternative providers was to give them support in accessing higher education which has been subject to strict quality assessment procedures, it is not clear that the charity requirement is targeting the right providers.
- 9.6. Higher education is the charitable object which confers the public benefit. If a policy best supports access to higher education it is not clear why charitable status should be a consideration.
- 9.7. If it was felt important that public support should previously be given to students to enable them to choose to study at these alternative providers it is not clear what has changed.
- 9.8. The arrangements for specific designation must cater for potential loss of charity status, including adequate protection for students. It is noted that the University of Law for instance was a charity up until 2012.

**(b) Quality of provision**

- 9.9. We agree that it is essential that there should be rigorous and robust quality assurance arrangements for all providers of higher education, whether receiving automatic or specific designation.
- 9.10. The consultation confirms that a successful QAA review will be a prerequisite for designation, and that arrangements in Wales are likely to be informed by the approach adopted in England, so that an applicant may potentially seek designation from both administrations based on a single assessment (p.10).
- 9.11. It is noted, however, that BIS current arrangements are primarily for English providers providing in England. There appears to be a serious issue that needs further discussion about how the Welsh Government would regulate providers in England and ensure that the quality assurance standards and arrangements were adhered to. The difficulty of regulating institutions based outside Wales may be even more difficult if there is a different quality body dealing with both England and Wales.
- 9.12. It is noted that the Welsh Government is considering giving HEFCW the responsibility for carrying out regulatory functions in respect of providers with specific course designation (p.14). One of the issues with the current proposals is that there will be different bodies responsible for quality assurance arrangements for HE providers in Wales – potentially including for public universities. HEFCW would have responsibility for regulated institutions, and the Welsh Government for those seeking specific course designation.
- 9.13. However, it is noted that in future – as a result of the HE (Wales) Act 2015 - HEFCW will only have powers to assess the quality of education of regulated institutions, and only their provision in Wales. The key ground for not extending the provisions of the new Act to provision outside Wales was legislative competence, which points to the difficulty that the Welsh Government may have in extending regulatory powers in respect of alternative providers in England or providing HEFCW with powers to do so. HEFCW will be unable to assess the quality of provision at non-regulated institutions.
- 9.14. The Welsh Government outlines its intention to rely on the regulatory controls in place for providers in other countries. For institutions operating on a pan-UK basis we welcome the intention to ensure that there are not unnecessary barriers due to applying multiple regulations, and the unique position of pan-UK providers such as the Open University (which is catered for in the HE (Wales) Act 2015) will also need careful consideration, particularly if and when part-time provision does come under the scope of the fee planning system.
- 9.15. Looking at the proposed regulatory system for HE as a whole, however, there appear to be significant gaps in quality assurance arrangements in particular. Unlike current arrangements under the Further and Higher Education Act (FHEA) 1992, there appear to be no regulatory duties or powers in place to assess the quality of provision of regulated

institutions delivered outside Wales. Similarly, part-time and postgraduate only providers who would be ineligible to become regulated institutions, would not be subject to HEFCW's new duties and powers in relation to quality assurance, which were introduced on the basis that reliance on the terms and conditions of HEFCW grant were insufficient to protect the interests of the sector and students in future. There is, in the face of it, no good reason that quality assurance arrangements should be different for these two groups of providers – and under current arrangements they would be treated the same. Despite the increased risks in relation to alternative providers, the current consultation proposes no new regulatory controls in respect of alternative/non-regulated providers. The prospect of introducing them in respect of institutions outside Wales appears to be subject to issues of legislative competence.

### **(c) Financial viability**

9.16. We agree that financial viability should be an essential criterion, and is necessary to protect the interests of students and their investment.

9.17. The consultation indicates that the criterion will be 'similar' to the one introduced in England. We would welcome details on this criterion so that we can comment further on this.

### **(d) Membership of the students complaints scheme**

9.18. We understand that the Consumer Rights Bill is currently at the stage of ping-pong in Parliament, but the amendment enabling the Welsh Ministers to extend the complaints scheme in the Higher Education Act 2004 to both regulated and alternative providers has so far been agreed. We have previously commented that the HE (Wales) Act 2015 does not automatically bring regulated institutions within the student complaints arrangements. We believe that it is very important for all HE providers to be subject to these provisions and welcome this move. We question, however, whether this is sufficient and whether alternative providers should also be required to have and support some form of student representation.

## **10. Designation criteria**

**Question 3** – Do you agree with our proposal to be able to consider 'other facts material to the delegation [sic] decision'? What are the sorts of things that you would anticipate the Welsh Ministers taking into account under this criterion?

10.1. Any factors material to a designation decision need to be transparent and applied consistently.

10.2. We agree that a wider range of factors are important in a decision to provide public support for courses of higher education. As discussed above, a range of concerns with

provision and funding of alternative providers need to be addressed. The comparative lack of regulatory controls on the part of the higher education sector which appears to require them most is a concern. Provision at alternative providers must ultimately contribute to opportunities to access high-quality higher education, not detract from it or endanger the reputation of the sector as a whole.

10.3. The consultation refers to current BIS criteria and guidance. It is noted that BIS have recently announced stricter measures in relation to alternative providers. This includes include requiring directors of alternative providers to pass a 'fit and proper person' test, all non-degree awarding powers institutions to be re-designated every year rather than remaining designated indefinitely and creating a Rapid Response Investigatory Team to quickly investigate any serious concerns that may arise at institutions.<sup>8</sup> BIS is also currently consulting on measures to improve the likelihood that students at alternative providers will succeed in their courses, complete their qualifications, and go on to benefit from their higher education experience. This includes strengthening English language requirements at alternative providers, ensuring that better information for prospective students is provided; and relating the number of students providers can recruit to provider performance.<sup>9</sup>

10.4. The consultation suggests that this could extend to the type of institution that could be eligible for support (referring to the Welsh Minister's current powers in relation to the Educational Maintenance Allowance to recognise 'any other educational institution which the Welsh Ministers consider appropriate' p.11). In general, however, we believe criterion relating to institutional eligibility should be stipulated in regulations and not left to ministerial discretion. There are clear dangers of an approach in which criteria are flexible and not clearly defined as they are likely to lead to an inconsistent approach and be more susceptible to challenge.

## 11. Maintaining specific designation

**Question 4** – Do you agree with our proposals related to maintaining a specific designation? Specifically, what do you think the frequency of reviews should be to establish whether an alternative provider continues to meet the designation criteria? Do you agree with our proposal to consider designations lapsed after two years?

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<sup>8</sup> BIS, 29 Jan 2015: Tougher quality measures for higher education alternative providers <https://www.gov.uk/government/news/tougher-quality-measures-for-higher-education-alternative-providers>

<sup>9</sup> *BIS consultation*, Alternative Providers of Higher Education: Improving Quality and Value For Money. The consultation ends on 27 March 2015. <https://bisgovuk.citizenspace.com/fe/alternative-providers-he>



11.1. We agree that providers should continue to meet the criteria on which a decision to approve course designation was based. The proposals would require providers to notify the Welsh Government of any material changes. In light of NAO report, we agree that the Welsh Government should make routine checks of information including regular periodic reviews. There is scope to vary these according to provider using a risk-based approach, such as taking into account previous track-record and other regulatory safeguards e.g. whether the provider is a publicly-funded (i.e. subject to the regulatory requirements of the FHEA 1992). We agree that designations (at least for the foreseeable future) should not be made for an indefinite period.

## 12. Information requirements

**Question 5** – Do you agree with our proposal to work with the UK Government to agree information sharing that would help minimise the administrative burden on providers and the Welsh Government?

12.1. We agree that the Welsh Government should work with the UK Government to agree information sharing. The consultation outlines the need for adequate public information (p.11).

12.2. We note in particular the need for an accurate public register of courses with specific designation. The Higher Education Funding Council for England (HEFCE) currently maintains one for England. We have noted the publication of the Student Finance Wales above – this currently appears to contain some minor inaccuracy.<sup>10</sup> From the information available on the websites, and the registers it can be difficult to determine important information about the provider such as their ownership and group structures, the location of course delivery, and charity status. The HEFCE register currently contains more information, and cross-references the UK Register of Learning Providers. It is noted however that understanding corporate groups can be difficult even with the UK Register of Learning Providers e.g. separate UKPRNs to Regents Business School London and Regent's University London).

12.3. A key finding of the National Audit Office report was that a lack of clarity existed within BIS and its partner organisations about which courses were approved for student support, and that a number of providers had enrolled students onto unapproved courses. There were also concerns that providers had provided incorrect information about student attendance, but highlighted the lack of the Student Loans Company (SLC)'s right to access this information.<sup>11</sup> It also highlighted BIS's lack of right to access higher

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<sup>10</sup> For instance, references to Regent's College are out of date (it became Regent's University London in 2013).

<sup>11</sup> Op cit, p.6 et al.

education and the limits this placed on its ability to investigate issues.<sup>12</sup> The HE (Wales) Act 2015 places significant new powers on HEFCW to investigate and access information in relation to regulated institutions. The higher risks are seemingly within the alternative provider sector, however, and no such controls are currently proposed (and seemingly may be beyond the Welsh Government's direct legislative competence if the provider or provision is based outside Wales).

12.4. We welcome the Welsh Government's intention that alternative providers should also subscribe to HESA (i.e. provide public data) in line with arrangements in England. However, according to the Welsh Government's analysis a threshold of 50 students would mean that the information requirements would apply to less than eight of the current providers – and fewer once the charity requirement is taken into account. We are uncertain that this arrangement will provide sufficient means of assurance about the use of public funding and support of students at the majority of alternative providers.

12.5. The NAO report also identified concerns about the information provided to students by a number of alternative providers.

### **13. Impact of the proposals**

**Question 6** – Do you agree with our assessment on the impact of these proposals? Specifically, what are your views on the impact on the range of courses available to learners?

13.1. The consultation identifies that the main impacts of the proposals will be on student choice of provider, since the charitable status criteria would reduce the number of alternative providers eligible for specific designation. In particular, it identifies that a higher proportion of providers offering professional studies do not have charitable status. It also highlights potential issues for disabled student allowance and theological colleges (dealt with in Questions 7 and 8).

13.2. We refer to our comments above on the charity status criteria, and queries regarding whether this is the most effective criterion for selecting courses for which students should receive public support.

13.3. More generally, the consultation document does not discuss the potential impact for existing universities and providers of higher education. There are clearly a number of risks for the sector. The first is the risk to the reputation of the sector as a whole. Current concerns about provision through alternative providers as identified by the National Audit Office pose a risk to the sector if not addressed. See our comments above in particular about the adequacy of quality assurance arrangements.

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<sup>12</sup> Op cit. p13.

13.4. Secondly, there are risks in terms of control of the student support budget. In England, student number controls were put in place after the increase in numbers at alternative providers exceeded expectations.

13.5. Thirdly, if the sector does increase, there is potentially greater competition for existing providers of higher education. This may bring greater choice for students, but may not ultimately provide the greater access to high-quality higher education subject to the full range of regulatory safeguards for students.

**Question 7** – We have identified a potential impact on students eligible for Disabled Students Allowances. Have you any evidence on how these proposals may impact on these students? If you are a student who is or may be eligible for Disabled Students Allowance, how would these proposals impact upon you?

13.6. The consultation document identifies a likely reduction in courses receiving specific designation as a result of the charitable status requirement which would have an impact on the number of students able to access DSA. In the case of postgraduate courses, this is the only form of support for students on courses granted specific designation.

13.7. To our mind there is also a potential risk that increased regulatory requirements may deter providers seeking designation for student support in future unless it provides significant support for a significant number of students. This may mean that for postgraduate studies, for instance, fewer providers offer courses designated to receive DSA.

13.8. Further consideration should be given to where support for disability sits on the priorities for student support, and whether the eligibility or regulatory requirements could be different for providers seeking only this element of support. In response to the Diamond review, we have argued that in general student support needs to be refocused to areas of need, and we need to be clear when support is genuinely helping a student to access higher education.

**Question 8** – We have identified a potential impact on theological colleges. If you are a student at a theological college, or responding on behalf of a theological college, how would these proposals impact upon you?

13.9. We recognise that a significant number of the alternative providers on the current list of institutions who receive specific designation are theological colleges. We also note that while the Higher Education Act 1992 requires HEFCW to take into account the denominational character of institutions, there is no such provision in the HE (Wales) Act 2015 or in the current proposals. We look forward to the outcomes of the consultation in this area.

**Question 9** – If you have a specific designation, what will be the impact on your organisation? If you are a student at an alternative provider, what is your view of these proposals?

13.10. The consultation assumes that universities would wish to become regulated institutions, subject to the HE (Wales) Act 2015 provisions rather than seek specific designation. As detailed above, however, this may not be the case and will ultimately depend on further detail – particularly financial support available – relating to both designation routes, and any major changes in arrangements in England.

#### **14. Related issues**

**Question 10** – 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.

14.1. We refer to the comments above.

**Universities Wales**  
**April 2015**