

## **Regulation of higher education providers and designation for student support**

### **Consultation response form**

**Your name:**

**Organisation (if applicable):**

This is the joint response of Universities Wales and Chairs of Universities Wales.

Universities Wales represents the interests of universities in Wales. Our membership encompasses the Vice Chancellors of all the universities in Wales and the Open University in Wales. Our mission is to support a university education system which transforms lives through the work Welsh universities do with the people and places of Wales and the wider world.

Chairs of Universities Wales (ChUW) is the representative body for the Chairs of university governing bodies in Wales. It serves as a strategic forum for Chairs to discuss, shape, and express a collective position on key issues facing the Higher Education sector. Through close collaboration with Universities Wales, ChUW plays an active role in supporting the strength, sustainability, and continued development of the higher education sector in Wales.

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Responses should be returned by 4 Jul 2025 to:

TERA Implementation Team  
Tertiary Education Directorate  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ

or completed electronically and sent to:

email: [TER.Consultations@gov.wales](mailto:TER.Consultations@gov.wales)

**Question 1** – Do you agree with the proposal to maintain the existing policy and only specify full-time undergraduate and postgraduate certificate in education courses as qualifying courses for the purpose of tuition fee limits?

|              |                                     |                 |                          |                                   |                          |
|--------------|-------------------------------------|-----------------|--------------------------|-----------------------------------|--------------------------|
| <b>Agree</b> | <input checked="" type="checkbox"/> | <b>Disagree</b> | <input type="checkbox"/> | <b>Neither agree nor disagree</b> | <input type="checkbox"/> |
|--------------|-------------------------------------|-----------------|--------------------------|-----------------------------------|--------------------------|

### Supporting comments

We agree that fee limits should continue to apply to full-time undergraduate and PGCE courses for UK students only.

**Question 2** – Do you agree that registration with Medr should be a prerequisite for the automatic designation of Welsh higher education courses, including part-time and postgraduate, for the purpose of Welsh Government student support?

|              |                          |                 |                          |                                   |                                     |
|--------------|--------------------------|-----------------|--------------------------|-----------------------------------|-------------------------------------|
| <b>Agree</b> | <input type="checkbox"/> | <b>Disagree</b> | <input type="checkbox"/> | <b>Neither agree nor disagree</b> | <input checked="" type="checkbox"/> |
|--------------|--------------------------|-----------------|--------------------------|-----------------------------------|-------------------------------------|

### Supporting comments

This proposal to provide automatic course designation for providers registering in both the Core and Alternative registration categories is in line with the policy intention previously expressed by the Welsh Government in its consultation on the regulations determining the registration categories published in October 2023.

Currently, courses at regulated institutions in Wales are automatically designated, but part-time and postgraduate only HE providers cannot become regulated institutions and have to be a 'Welsh funded institution' to receive automatic designation. A Welsh funded institution is one that is maintained or assisted out of recurrent grants or funds provided by the Welsh Ministers.

We would expect that extending automatic course designation to those registering in the alternative category who previously sought specific designation will reduce the administrative burden/costs in relation to course designation for Medr and the providers involved. Bringing providers within Medr's new regulatory framework we hope will also benefit students.

However, we question whether the Welsh Government has sufficiently identified the potential for this to increase competition to provide HE in Wales from non-charitable providers or the additional resource required for Medr to regulate the increased number of providers.

**Question 3** – Do you agree with the proposal that the higher education courses provided by OfS-registered providers, whether registered in the Approved or the Approved (fee cap) categories, should be automatically designated for the purpose of Welsh Government student support?

|              |                          |                 |                          |                                   |                                     |
|--------------|--------------------------|-----------------|--------------------------|-----------------------------------|-------------------------------------|
| <b>Agree</b> | <input type="checkbox"/> | <b>Disagree</b> | <input type="checkbox"/> | <b>Neither agree nor disagree</b> | <input checked="" type="checkbox"/> |
|--------------|--------------------------|-----------------|--------------------------|-----------------------------------|-------------------------------------|

### Supporting comments

We recognise the need for cross-border arrangements for course designation to rely on reciprocal recognition of different countries' regulatory arrangements, and that the approved (fee cap) and approved categories in England are broadly equivalent to the core and alternative HE categories to be introduced in Wales.

The most immediate benefit of this change from a Welsh perspective would be to reduce the administrative burden/costs in relation to course designation for Medr. The benefits for Welsh students are less clear-cut, however, as it will rely on OfS regulatory arrangements without the additional application processing by Medr.

The consultation identifies the change as a small risk, based on the 152 students at the 16 providers outside of Wales whose courses are currently specifically designated. However, we question whether this has sufficiently identified the potential increase in recruitment of Welsh students at alternative providers in England (many of whom are not charities), the potential costs of this for the student support budget or knock-on impact for the existing HE sector arising from facilitating increased competition.

**Question 4** – Do you agree with the proposal that the higher education courses provided by accredited school-based initial teacher-training providers should be automatically designated for the purpose of Welsh Government student support?

|              |                          |                 |                          |                                   |                                     |
|--------------|--------------------------|-----------------|--------------------------|-----------------------------------|-------------------------------------|
| <b>Agree</b> | <input type="checkbox"/> | <b>Disagree</b> | <input type="checkbox"/> | <b>Neither agree nor disagree</b> | <input checked="" type="checkbox"/> |
|--------------|--------------------------|-----------------|--------------------------|-----------------------------------|-------------------------------------|

### Supporting comments

In line with our comments on Question 3, we recognise the need for cross-border arrangements which rely on reciprocal recognition of different countries' regulatory arrangements.

The consultation identifies that there are only two non-registered English providers who are accredited by the Secretary of State at the moment. However, we query whether the potential for increased numbers of providers and increased costs to the student support budget have been fully identified.

**Question 5** – What are your views on the proposed approach to the designation, for the purpose of Welsh Government student support, of courses provided on behalf of regulated higher education providers?

### Supporting comments

We note that the Welsh Government's policy intent in relation to collaborative provision appears to have changed. At this stage we are still concerned that the detail of the new proposals in this area may not yet been fully worked through and the potential resource implications clearly identified.

According to the Welsh Government's consultation on the regulations which determined the registration categories in October 2023, an institution that delivers courses on behalf of a registered provider under 'franchise arrangements' would not have to register, as it is the "organisation with overall responsibility for the course" that would need to register, i.e. mirroring the approach currently taken in England where the delivering provider does not have to be registered themselves.

The Welsh Government is now proposing to automatically designate courses provided on behalf of:

- Welsh providers **registered in the Core category** if those courses are being delivered by **a provider registered in Wales (in any category), registered in England (in any category) or in receipt of any funding from Medr.**
- English providers registered in the Approved (fee cap) category with an approved access and participation plan, if those courses are being delivered by a provider registered in England (in any category), **or registered in Wales (in any category), or in receipt of any funding from Medr.**

This represents significant changes from the existing policy in Wales under which the Welsh Government automatically designates full-time HE courses provided by:

- a charity on behalf of a Welsh regulated institution (with an approved fee and access plan)
- an English institution registered by OfS (in any category) on behalf of an English provider registered by OfS in the Approved (fee cap) category with an approved access and participation plan.

We note the changes in arrangements could lead to different patterns of provision, and potentially increase pressures on the student support budget as well as increase competition in Wales that will need to be taken into account:

- Most notably, for Welsh providers it means that collaborative provision no longer has to be delivered through a charity. Instead, it must be delivered by a provider who is registered or funded by Medr or registered by OfS. In practice this will mean changes in providers that collaborative provision can be delivered through going forward – we would welcome some further clarity on arrangements for continuing cohorts of students/delivering providers.
- For English providers the changes would mean they can also now receive automatic designation for courses delivered through Welsh registered/funded providers (at the moment the delivering partner has to be registered with OfS). The most obvious impact would be to encourage growth in provision on behalf of registered English providers delivered through Welsh registered or funded providers.
- In both cases, further clarification is needed on what is meant by ‘in receipt of any funding from Medr’. Medr has powers to provide funding for HE providers, R&I, FE, training, apprenticeships, schools and specific HE courses designated by regulations. This appears to significantly extend the types of organisation that provision can be delivered through with automatic designation - but the extent of Medr’s regulatory powers in relation to some providers under some of these funding powers can be very limited in the absence of registration. It should perhaps be limited to providers in receipt of recurrent grants from Medr rather than ‘any funding’. Alternatively, automatic designation should perhaps be limited to delivery through registered providers only.
- The Core registration category will be able to include part-time and postgraduate only higher education providers, unlike the current position for a regulated institution under HEWA 2015. This would seemingly encourage a greater number of providers to register in the core category to enable them to deliver HE courses through franchise arrangements.

It also raises some wider policy questions which we would ideally have liked to have been fully discussed before determining the registration categories:

- There appears to be some inconsistency in relation to the importance attached to charity status. In the legislation, charity status is the key distinguishing requirement that separates eligibility for the Core and Alternative registration categories, and enables access to automatic designation of courses at the higher level of support. The current proposal in relation course designation for student support would address the current anomaly that non-charitable providers can receive automatic support if they are delivering on behalf of an English provider but not if they are delivering on behalf of a Welsh provider. However, dispensing with the charity requirement altogether means that Welsh public funding will be used to support delivery through non-charitable organisations who are not required to deliver public benefit or subject to the regulatory oversight of the Charity Commission.
- The ‘dual-registration approach’, requiring both the provider responsible for the provision and delivering provider to be registered/regulated by Medr, poses questions about how Medr’s oversight would help in the case of the need for intervention, and about how far Medr and/or OfS would be expected to exercise their regulatory/funding powers directly in relation to a delivering partner rather

than in relation to the provider who is responsible for the provision. We remain concerned that this may lead to issues of responsibility, accountability and clarity in relation to the exercise of intervention powers between the parties involved and Medr/OfS, and the potential for regulatory over-reach. If this approach is adopted, it will be essential for Medr to work with providers to develop a formal policy on intervention that addresses our concerns.

Without drafts of the regulations themselves, which we previously understood would be included in the consultation, we are unable to check the detail of the proposals further unfortunately. We would welcome further information on how the student support regulations will need to deal with all cohorts of students (the consultation only appears to concern arrangements for new cohorts), for instance.

In particular, we know from previous experience that collaborative arrangements are complex, and the precise definitions potentially problematic. The consultation uses the terminology of the 2022 Act in making the broad distinction between education provided by or on behalf of a registered provider. We would welcome further clarity on when a tertiary provider in Wales is considered 'to provide HE, or have HE provided on its behalf' for purposes of eligibility to register as required by the regulations (can this requirement be met by a provider who only delivers provision on another provider's behalf for instance?), and how this will work, for instance, with the provisions/definitions relating to 'validation arrangements' as defined by the 2022 Act and 'franchise arrangements' as defined in the regulations.

**Question 6** – Do you anticipate any resource or cost implications for your organisation arising from the proposed approach to the automatic designation of higher education courses for Welsh Government student support?

|     |                          |    |                          |        |                                     |
|-----|--------------------------|----|--------------------------|--------|-------------------------------------|
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> | Unsure | <input checked="" type="checkbox"/> |
|-----|--------------------------|----|--------------------------|--------|-------------------------------------|

### Supporting comments

We do not anticipate any direct resource or cost implications for universities, since universities are expected to continue to receive automatic course designation. There may be indirect impacts for universities, however, in terms of the increased call on student support budget, and Medr resources in regulating a greater number of providers as identified in response to the questions above.

**Question 7** – Do you anticipate any cost savings for your organisation arising from the proposed approach to the designation of higher education courses for Welsh

Government student support? (This can include immediate savings or long-term cost reductions.)

|     |                          |    |                                     |        |                          |
|-----|--------------------------|----|-------------------------------------|--------|--------------------------|
| Yes | <input type="checkbox"/> | No | <input checked="" type="checkbox"/> | Unsure | <input type="checkbox"/> |
|-----|--------------------------|----|-------------------------------------|--------|--------------------------|

### Supporting comments

Universities are all currently regulated institutions, so already automatically designated for purposes of student support.

**Question 8** – Do you think any of the proposals in this consultation could impact (positively or negatively) on any persons with protected characteristics covered by the general equality duty that is set out in the Equality Act 2010? If so, how could positive impacts be increased, or negative impacts be mitigated?

### Supporting comments

The proposals could clearly have an impact on the pattern of provision and delivery of higher education which may have an impact on student participation but the impact for specific groups of student is not clear at this stage.

**Question 9** – What, in your opinion, would be the likely effects of the proposals in this consultation on the Welsh language? We are particularly interested in any likely effects on opportunities to use the Welsh language and on not treating the Welsh language less favourably than English.

Do you think that there are opportunities to promote any positive effects?  
Do you think that there are opportunities to mitigate any adverse effects?

### Supporting comments

The proposals could clearly have an impact on the pattern of provision and delivery of higher education which may have an impact on student participation and providers but the impact for Welsh language is not clear at this stage.



**Question 10** – In your opinion, could the proposals in this consultation be formulated or changed so as to:

- have positive effects or more positive effects on using the Welsh language and on not treating the Welsh language less favourably than English; or
- mitigate any negative effects on using the Welsh language and on not treating the Welsh language less favourably than English?

### Supporting comments

[No comments – see our comments in relation to Question 9]

**Question 11** – 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:

### Supporting comments

We remain concerned that policy relating to fundamental aspects of the registration category system are being determined at a very late stage, and the significant risk which this poses for adequate development of related policy detail in the timescales currently imposed for implementing the new registration system by end of July 2026.

The current consultation concerns the detail of the course designation arrangements associated with each category – and, as noted above, there appears to have been some significant changes in the policy intent since the Welsh Government's last consultation on registration system in October 2023. We are also commenting on the proposals without the benefit of the draft regulations themselves, which we had previously expected.

The consultation identifies that the regulations relating to the fee limits and associated definitions will be made in late 2025. This allows little time for Medr to respond to any changes in the legislation and consult on the changes before they finalise their regulatory framework.

We are also still lacking detail on the timetable for implementation of the new registration system and there appears to be conflicting messages on the transition arrangements for 2026/27:

- The Welsh Government regulations consultation set out its proposal to implement the new fee limit arrangements from AY 2027/28. According to this, during 2026 to 2027, registered providers will be regulated under TERWA 2022 in respect of quality, financial management, governance, and learner focused matters such as the learner engagement code, learner protection plans and staff and student



welfare. The full implementation of the regulatory regime will see tuition fee limits and matters relating to equality of opportunity also regulated through the register from academic year 2027 to 2028 onwards.

- Medr's consultation published on 14<sup>th</sup> May 2025, however, includes the new fee limit conditions in the Regulatory Framework which, when finalised, will apply from 2026/27. In the accompanying Statement of Intervention (p.13) it stated that for the 2026/27 academic year the intervention powers in respect of Fee Limits are covered by the 2015 Act powers. This implies that the fee limits would be set under the new Act but enforced under the old (though we understand this may not have been intended).
- Neither of these statements appear to be fully consistent with what has been provided for by the Commencement Orders at the moment. The transition provisions in Commencement Order No 5 disapply much of the 2015 Act for regulated institutions who become registered providers. Regulated institutions that register for AY 2026/27 will cease to be regulated under the 2015 Act for the purposes of quality of education and financial affairs but will continue to be regulated under the 2015 Act for the purposes of fees and equality of opportunity until the 2015 Act is repealed (i.e. in AY 2027/28 as currently planned). However, Commencement Order No.5 has already brought the fee limit condition (s.32) and related sections of the Act into force, from 5<sup>th</sup> April 2025 – unlike the equality of opportunity condition which remains in force for only limited purposes at this stage. Seemingly, as things stand, the fee limit condition will be a mandatory condition for core HE providers who register in July 2026 but not the equality of opportunity condition – and registered providers will also be subject to the fee and access plan provisions.

There is an urgent need to clarify exactly what is to happen for AY 2026/27 as soon as possible and avoid having to prepare statements/plans under both Acts etc. Universities already have approved fee and access plans/fee limits in place for two years including AY 2025/26 and AY 2026/27 already, following submission for approval in May 2024. We would expect to be going through a process at around this point in the year to enable applications for revision of fee limits for AY 2026/27 and put in place new plans for AY 2027/28.

We would also welcome further clarification on the automatic course designation arrangements for AY 2026/27 (which at the moment we assume will remain the same e.g. will continue to depend on regulated institution status, and not registration), and the meaning of the Welsh Government's statement that 'the automatic designation of higher education courses will apply from academic year 2027 to 2028 onwards, whilst eligibility for funding will apply from 2028 onwards.'

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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