

**Welsh Government Response to the Children, Young People and Education Committee’s Report:
Post-legislative scrutiny of the Higher Education (Wales) Act 2015**

| Recommendation | Accept / Reject / future consideration | WG response |
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| <p>Recommendation 1. That the Welsh Government explain the rationale behind the student funding regulations allowing non-HEFCW publicly funded institutions to have automatic designation of their part-time and postgraduate provision, and what the benefits and dis-benefits of this approach are.</p> | <p>Accept</p> | <p>Until the introduction of the Higher Education (Wales) Act 2015, student support regulations made under section 22 of the Teaching and Higher Education Act 1988, automatically designated higher education courses provided by publicly funded providers of higher education in Wales. This system also applied to part-time undergraduate and postgraduate courses. This policy was in place in all four UK administrations for many years and has been successful.</p> <p>Universities are not the sole providers of higher education, and using the ‘publicly funded’ criteria enables higher education to be delivered in other parts of the publicly funded education sector, most notably by further education colleges, supporting the widening access agenda (although such provision is limited in Wales).</p> <p>The publicly funded education sector in Wales must meet certain standards. Professor Sir Ian Diamond noted in his review that funding should support and enhance diverse modes of study, including full, part-time and distance learning, should ensure freedom of movement between different educational sectors, and stressed the importance of both part-time and postgraduate higher education.</p> <p>The benefits of the approach are regulatory and operational simplicity, whilst allowing students to access financial support for studying a wider range of courses that meet specified quality and financial criteria. The current approach provides assurance for students that their chosen courses and providers meet specified standards and assurance for the Welsh Government that public funding is being allocated appropriately.</p> |

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| | | <p>The dis-benefit is that Government may not have direct line-of-sight to some provision, and the arrangements for regulation may not be as obvious as those subject to a regulator or terms and condition of funding. However, it should be noted that the Welsh Government has the powers to directly regulate part time and post graduate courses should it consider that the risks outweigh the mitigation that is in place.</p> <p>Financial Implications: None.</p> |
| <p>Recommendation 2. That the Welsh Government explain how it does, (or how it would), maintain oversight over automatically designated part-time and postgraduate provision where the recurrent grant does not originate from HEFCW.</p> | <p>Accept</p> | <p>Providers in Wales which have a fee and access plan are regulated by HEFCW under the Higher Education (Wales) Act 2015. The overwhelming majority of postgraduate provision is delivered by such providers and is therefore regulated appropriately. Together with the Open University, these providers also account for the overwhelming majority of part-time provision. The Open University is regulated by virtue of its recurrent grant from HEFCW.</p> <p>The other principal publically funded provider of higher education is the further education sector in Wales. Its provision is dwarfed by that of the university sector in Wales and is subject to appropriate and effective regulation (including two colleges which have fee and access plans). Any other part-time and postgraduate provision which is automatically designated is marginal, and is regulated by the controls which extend to the publicly funded body in question.</p> <p>Whilst the Welsh Government does not have responsibility for oversight of providers outside of Wales with automatically designated courses, they are subject to the regulatory and quality inspection regimes relevant to the home nation in which they are primarily based. The Welsh Government takes assurance, therefore, that such</p> |

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| | | <p>providers are sufficiently regulated and that satisfactory oversight arrangements are in place.</p> <p>In March 2016, the funding bodies in England and Northern Ireland published a revised operating model for quality assessment, for implementation from 2016/17. This model was underpinned by a set of baseline regulatory requirements, consisting of external reference points that already existed in the higher education landscape. The requirements were designed to ensure that all providers operating in the higher education system are able to deliver a high quality academic experience for students, to protect degree standards, and the student interest more broadly.</p> <p>The baseline regulatory requirements, set out below, are a core component of the approach to assessing the quality of higher education in England, Northern Ireland and Wales:</p> <ul style="list-style-type: none"> • the frameworks for higher education qualifications, as set out in the UK Quality Code for Higher Education; • the expectations of the UK Quality Code for Higher Education; • the relevant code of governance; • the providers’ relevant obligations under consumer law; • The relevant good practice framework for handling complaints and academic appeals; and • the financial sustainability, management and governance requirements of the relevant funding body, and mission and strategy for higher education provision. |

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| | | <p>While a different set of regulatory requirements apply in Scotland (under the Further and Higher Education (Scotland) Act 2005), all four nations agree on the core principles the requirements represent. They also agree that: students are entitled to a high quality academic experience; students’ interests should be protected; and degree standards should be comparable across the UK. The baseline will be kept under review to ensure it remains appropriate in response to developments in the different countries of the UK.</p> <p>Looking ahead, the forthcoming Bill will introduce a more consistent approach to regulation of Welsh higher education providers whose courses are either currently designated automatically or on a case-by-case basis. This will include a clearer regulatory process for Welsh providers where only part-time or postgraduate courses are designated and which do not receive any grant funding.</p> <p>Financial Implications: None.</p> |
| <p>Recommendation 3. That the Welsh Government provide a register of all the courses relevant to recommendation 2, with each course entry setting out the quality assurance arrangements that are applicable and the body that is accountable for oversight. This register</p> | <p>Accept</p> | <p>This is effectively in place already. The Student Loans Company (SLC) has a database of specifically designated courses on its website which is open to anyone. The database provides details of courses that are specifically designated for Wales (and elsewhere) and the relevant awarding bodies. This is updated regularly as and when courses are designated by Welsh Ministers and the Welsh Government and HEFCW liaise with the SLC to ensure that the list of courses is complete and accurate. The database does not specify quality assurance arrangements for each course. Quality assurance is one of the three criteria that a provider has to meet in order to have its courses specifically designated and for the course to appear on the database.</p> |

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| <p>should also include details of all specifically designated courses, should be placed online within 90 days of this report’s publication, and should be subject to regular updating.</p> | | <p>Financial Implications: None.</p> |
| <p>Recommendation 4. That the Welsh Government, as part of its response to this report, provide details of any instance in which Welsh Ministers have individually designated a course of higher education, against the recommendation of HEFCW. The justification for any such decisions should also be set out in the response.</p> | <p>Accept</p> | <p>There has been one such instance. HEFCW recommended that courses offered by Kaplan Open Learning should not be designated on the basis that the provider had not provided sufficient evidence of a contribution to the public good.</p> <p>Whilst the Minister recognised that Kaplan had not appropriately covered this area in its application, it was deemed inappropriate to refuse designation on the basis of the public good criterion alone given that KAPLAN is a distance learning provider, who offers a wide range of part time courses, and is an organisation that is supportive of the widening access agenda.</p> <p>Designation was approved for the 2019/20 academic year, with the proviso that the information requested by HEFCW should be provided in order to secure designation for future years.</p> <p>Financial Implications: None.</p> |

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| <p>Recommendation 5. That the Welsh Government reflect on the lessons from the prescriptive and fragmented nature of the regulatory framework created by the 2015 Act and ensure that the forthcoming tertiary education Bill creates a coherent and integrated post-16 system. This Bill should be drafted to create a legislative framework that is flexible enough to cope with unanticipated changes that could occur years or decades into the future.</p> | <p>Accept</p> | <p>The legislation will be drafted so as to enable a long-term, coherent and flexible approach to regulation and oversight of a diverse range of tertiary education providers.</p> <p>Financial Implications: None. However, any costs relating to the development of the Bill will be drawn from existing budgets or any additional costs will be drawn from existing programme or DRC budgets</p> |
| <p>Recommendation 6. That the Welsh Government ask HEFCW to share any key findings or actions that emerge from the review of sector governance currently being undertaken</p> | <p>Accept</p> | <p>The Welsh Government has welcomed the independent review currently being undertaken by Gillian Camm and is keen to see the report’s findings and recommendations. It is an important review and it is pleasing that HEFCW and our Universities are taking the lead to reform in this area.</p> |

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| by Gillian Camm on behalf of providers. | | <p>It has been agreed that a copy of the report will be shared with the Welsh Government prior to its publication. We will discuss the report’s findings with HEFCW and to ensure publication to a wider audience.</p> <p>Financial Implications: None.</p> |
| <p>Recommendation 7. That the Welsh Government ensure that, subject to safeguards, accountability and consultation, the Commission for Tertiary Education and Research (the Commission) has the scope to imagine and put into place the detailed powers, interventions, incentives and sanctions it feels are required for the effective regulation of a varied and dynamic tertiary education sector that will evolve over time in unanticipated ways. In short, the Commission must be allowed to create what HEFCW calls the “regulatory machinery”.</p> | <p>Accept</p> | <p>The Welsh Government agrees that the Commission must be enabled within the scope of legislation to develop its own approach to regulatory oversight and intervention in respect of a diverse and dynamic sector. Welsh Government expects that the Commission will adopt a constructive approach to engagement and regulation of providers, and not a punitive one.</p> <p>However, for a regulatory framework to be legally effective, it will be necessary for certain regulatory and intervention powers for the Commission to be set out in legislation. Nonetheless, the powers set out will not necessarily be the full-extent of the “regulatory machine” available to the Commission, and there will be ample space for the new body to develop its own approach as befits the sectors it will oversee.</p> <p>Financial Implications: None. However, any costs relating to the development of the Bill will be drawn from existing budgets or any additional costs will be drawn from existing programme or DRC budgets</p> |

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| <p>Recommendation 8. That the tertiary education Bill allows the Commission to set the conditions for good governance and does not hinder its ability to intervene as early as possible in cases of suspected poor or ineffective governance.</p> | <p>Accept</p> | <p>The Bill will require the Commission to set clear regulatory expectations for good governance and enable it to take regulatory action in cases of suspected poor or ineffective governance.</p> <p>Financial Implications: None. However, any costs relating to the development of the Bill will be drawn from existing budgets or any additional costs will be drawn from existing programme or DRC budgets</p> |
| <p>Recommendation 9. That HEFCW provide a copy of any evaluations of fee and access plans it has conducted to date</p> | | <p>This is a recommendation for HEFCW.</p> <p>HEFCW's first Annual Regulatory Report 2017/18 has been laid before the National Assembly for Wales. The report includes details of how the Council has exercised its legislative functions in the period up to 31 July 2018, including the assessment of fee and access plans. The report includes a summary of HEFCW's evaluation of plans.</p> <p>Financial Implications: None.</p> |
| <p>Recommendation 10. That the Welsh Government work with HEFCW and other stakeholders toward the aim of identifying how the</p> | <p>Accept</p> | <p>We note the Committee's comments and will consider, together with HEFCW and other stakeholders, whether there is scope within the current legislation to simplify the process for institutions and improve the effectiveness of the fee and access plans.</p> <p>Financial Implications: None.</p> |

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| <p>secondary legislation made under the 2015 Act in relation to fee and access plans can be amended to:</p> <ul style="list-style-type: none"> • reduce their administrative burden as far as possible; • strengthen their effectiveness. | | |
| <p>Recommendation 11. That the Welsh Government ensure that the new tertiary education Bill enables the Commission to set a regulatory and funding environment in which providers are incentivised to adopt outcomes seamlessly into their own strategies, thereby ensuring governing bodies and their providers are</p> | <p>Accept in principle</p> | <p>Welsh Government intends that the regulatory and funding functions of the Commission will incentivise providers to align their own strategic priorities with those of the Commission, which in turn will be focused on meeting the needs of the people of Wales and the priorities of the Welsh Government. However, this will be balanced with the need for providers to maintain their autonomy and own distinctive strategic focus.</p> <p>Financial Implications: None. However, any costs relating to the development of the Bill will be drawn from existing budgets or any additional costs will be drawn from existing programme or DRC budgets</p> |

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| wholly aligned behind them | | |
| <p>Recommendation 12. That the Welsh Government amend its specific course designation policy so that it takes into consideration a wider and more reasonable concept of student interests than the current “threshold” model of course quality, financial sustainability and “public good” (defined in practice in HEFCW guidance as widening access).</p> | <p>Accept in principle</p> | <p>We believe that we have put in place a robust process and set of criteria for specific course designation, which are specified in the Welsh Government’s policy document (https://www.studentfinancewales.co.uk/practitioners/policy-information/designated-courses.aspx) and in HEFCW’s guidance for providers. Providers must demonstrate that they meet the following criteria in order to have their courses specifically designated:</p> <ul style="list-style-type: none"> • the course is validated by an appropriate body; • the provision offered by the provider is of an adequate quality; • the provider is financially viable; • the provider makes a significant and ongoing contribution to the public good in connection with education. <p>A course must meet the other criteria for designation before any evidence in respect of a significant and ongoing contribution to the public good will be considered. We believe that there is merit in ensuring that providers meet these thresholds as a condition of designation as it ensures that a common level of assurance is provided, regardless of the type of provider or the nature of the course.</p> <p>The Bill will introduce a more formalised regulatory process for providers whose courses are currently specifically designated, to be administered by the new Commission. This will enable a wider range of regulatory concerns to be overseen, particularly in regards to the student experience, and ensure greater consistency in regulatory expectations between different types of provider.</p> |

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| | | Financial Implications: None. |
| <p>Recommendation 13. That the Welsh Government, in the tertiary education Bill, shifts the emphasis from regulation based on the sum of public funding at stake, to a greater focus on regulation based on a reasonable, inclusive and relevant understanding of student interests, ensuring the Bill supports and safeguards them. This should enable learners to have their reasonable student expectations met at any regulated post-16 provider.</p> | Accept | <p>The Bill will ensure that a common threshold of regulatory conditions is applied to all higher education providers whose courses are designated for Welsh Government student support. This will ensure appropriate and consistent safeguards for learners, particularly in regards to learner voice, protections, and access to an appropriate complaints scheme.</p> <p>Financial Implications: None. However, any costs relating to the development of the Bill will be drawn from existing budgets or any additional costs will be drawn from existing programme or DRC budgets</p> |
| <p>Recommendation 14. That the Welsh Government, via the</p> | Accept | <p>The Bill will place a duty on the Commission to develop, consult on and publish a Learner Engagement Code about how learners are to be engaged and represented within tertiary education providers, and to monitor the Code’s effectiveness as part of</p> |

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| <p>tertiary education Bill, ensure that suitable learner voice mechanisms are established and maintained by all providers regulated by the Commission, and that the student voice must be given due regard by the Commission itself. This will help ensure that what represents student interests can evolve over time.</p> | | <p>annual reporting. The Bill will also contain provisions allowing appropriate representation of learners’ interests within the Commission itself.</p> <p>Financial Implications: None. However, any costs relating to the development of the Bill will be drawn from existing budgets or any additional costs will be drawn from existing programme or DRC budgets</p> |
| <p>Recommendation 15. That the Welsh Government publish a draft tertiary education Bill to allow stakeholders to engage with the details of the proposed legislation.</p> | <p>Reject</p> | <p>There is not sufficient time to have a draft Bill published for public consultation, receive full pre-legislative scrutiny by the Assembly, and, introduce that Bill giving the appropriate time for all of the Assembly stages before dissolution in 2021. However, stakeholders will be consulted on the provisions which affect them most directly, and their comments will be considered. The Bill will enter the National Assembly for Wales for scrutiny at which point we will encourage stakeholders to engage in the scrutiny process and we look forward to working with the Committee and stakeholders to ensure the final bill reflects the needs of Wales.</p> |

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| | | <p>Financial Implications: None. However, any costs relating to the development of the Bill will be drawn from existing budgets or any additional costs will be drawn from existing programme or DRC budgets</p> |
| <p>Recommendation 16. That the Welsh Government set out how it intends to ensure business continuity of the vital day-to-day functions of the current regulatory and funding bodies (such as making normal regular payments of funding to providers) during the transition to the new Commission.</p> | <p>Accept</p> | <p>To provide assurance to the PCET sector across Wales, Welsh Government is working to implement plans to ensure the smooth transition of the vital day-to-day functions of the current regulatory and funding bodies.</p> <p>Financial Implications: None. Due diligence reports have been commissioned and taken forward so that key contracts requiring continuation have been identified and steps taken to ensure that these payments continue during the transition to the new Commission.</p> <p>Discussions continue regarding the transferring of property, rights, and liabilities from HEFCW and Welsh Government to the Commission.</p> <p>Ensuring fit for purpose plans are in place for the smooth transition form part of Welsh Government’s programme management protocols involving risk management and mitigation, milestone setting as well as business assurance. This process is overseen by the Senior Responsible Owner for the CTER programme who is a senior member of staff within Welsh Government.</p> <p>The transition arrangements will be set out and communicated to the current regulatory and funding bodies.</p> |

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| <p>Recommendation 17. That the Welsh Government explain how it intends to ensure that the corporate memories in HEFCW and the Welsh Government are not lost in the transition to the new Commission.</p> | <p>Accept</p> | <p>The Government of Wales Act, GOWA is being amended to replace HEFCW with CTER. An IT and records working group will be set up to ensure a smooth transition of systems and records from Welsh Government and HEFCW and will include discussions with the National Archives. Further work will include a transfer order agreement, to transfer all records from HEFCW (see response to recommendation 18 for information on staff).</p> <p>Financial Implications: None. However, any costs relating to the development of the Bill will be drawn from existing budgets or any additional costs will be drawn from existing programme or DRC budgets</p> |
| <p>Recommendation 18. That the Welsh Government ensure that the tertiary education Bill provides for suitable transition arrangements and that a shadow Commission is established as soon as practicable to help provide for a smooth transition to the new body.</p> | <p>Accept</p> | <p>A 4 year project transition plan has been drafted and agreed by the Welsh Government Programme Board and HR & OD Project Board. The plan details the arrangements necessary to transition staff to the new body as well as the early appointments of both the Chair and CEO of CTER, to take forward the plans and strategies needed for the new Commission. The plan also includes the early appointment of a senior team to support the transition to the new Commission and the key timescales for the appointment of a full CTER board. In developing the plan, HR and the Bill Team worked to ensure transition activities and timescales were realistic and clearly documented within the Bill.</p> <p>Financial Implications: None. However, any costs relating to the development of the Bill will be drawn from existing budgets or any additional costs will be drawn from existing programme or DRC budgets</p> |
| <p>Recommendation 19. That the Welsh Government provide</p> | <p>Reject</p> | <p>The wider work on PCET reforms have overtaken the need for a specific evaluation of the 2015 Act. As part of the preparation of the new Bill, officials have considered</p> |

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| <p>copies of the year one and year two evaluations it committed to in the Explanatory Memorandum of the 2015 Act. If these reviews have not been conducted, an explanation of the reasons why they have not should be provided.</p> | | <p>the merits of the 2015 Act and these have been included in the instructions for the draft Bill that will be issued in the Spring.</p> <p>However, we have received information on the costs of moving to the new regulatory system in 2015 and HEFCW have been asked to undertake a review of the costs of moving to the new HE regulatory system. HEFCW provided a report on the costs to the Council of preparing for the move, developing and implementing their new systems and processes, and on the costs incurred by the Council in the first two years following full implementation of the Act.</p> <p>Financial Implications: None. However, any costs relating to the development of the Bill will be drawn from existing budgets or any additional costs will be drawn from existing programme or DRC budgets</p> |