

Consultation responses received

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Respondent 1 - Anonymous

Q1. Do you agree that a new residency category for individuals granted leave to remain under Section 67 of the Immigration Act 2016 should be added to the regulations, to enable them to be eligible students for the purpose of student support?

Yes

Q2. Do you agree to the proposed changes for the designation of courses in England?

No response

Q3. Please explain what, if any, impact you believe the proposed policy would have on opportunities for persons to use the Welsh language and on treating it no less favourably than the English language. In particular: any positive or adverse effects of the proposed policy; how the policy could be formulated or revised so that it would not have any adverse effects or so that it would have decreased adverse effects; and how the policy could be formulated or revised so that it would have positive or increased positive effects.

No response

Q4. Are there any other issues about our proposal that you would like to raise?

No response

Respondent 2 - Christopher J L Yewlett

Q1. Do you agree that a new residency category for individuals granted leave to remain under Section 67 of the Immigration Act 2016 should be added to the regulations, to enable them to be eligible students for the purpose of student support?

Yes

Q2. Do you agree to the proposed changes for the designation of courses in England?

Yes

Q3. Please explain what, if any, impact you believe the proposed policy would have on opportunities for persons to use the Welsh language and on treating it no less favourably than the English language. In particular: any positive or adverse effects of the proposed policy; how the policy could be formulated or revised so that it would not have any adverse effects or so that it would have

decreased adverse effects; and how the policy could be formulated or revised so that it would have positive or increased positive effects.

No comment.

Q4. Are there any other issues about our proposal that you would like to raise?

No. Congratulations on a fairer treatment for 'Dubs' children!

Respondent 3 – Response by e-mail - National Deaf Children’s Society

I write on behalf of the National Deaf Children’s Society Cymru in response to the consultation on Changes to the Student Finance Support Package in the 2019/20 Academic Year.

We believe that deaf young people should have the same choices as hearing young people as to which higher education provider they can attend. We understand there will only a small number of providers that will not be automatically eligible for student support funding from the Welsh Government. However, it is conceivable that these could include smaller, more specialist providers that offer courses in subjects that cannot be taken at other providers.

It is, therefore, important that safeguards are put in place to reduce the risk of disabled students being negatively affected by this change. In the first instance, we would urge the Welsh Government to consider whether an exemption to the condition of funding could be made for students who require Disabled Students Allowance. If this is not a viable option, then at the very least we would expect the Welsh Government to put in place measures to incentivise providers that are not automatically enrolled to apply for specific designation to ensure they are accessible to disabled learners.

Respondent 4 – Open University in Wales

Q1. Do you agree that a new residency category for individuals granted leave to remain under Section 67 of the Immigration Act 2016 should be added to the regulations, to enable them to be eligible students for the purpose of student support?

We agree that individuals granted leave to remain under Section 67 of the Immigration Act 2016 should be added to the regulations, to enable them to be eligible for the purpose of student support.

However, we do not believe that these students should be required to satisfy the three-year residency requirement. Students granted refugee status or humanitarian protection do not need to satisfy the three-year residency requirement and are entitled to access student support as soon as their status is confirmed. The Section 67 category appears to be very similar and we do not think the proposal as it stands aligns with the spirit of the legislation, particularly when Section 67 status entitles individuals to access other public funds.

Q2. Do you agree to the proposed changes for the designation of courses in England?

We agree with the proposed changes for the designation of courses in England.

The Open University is a UK-wide provider of higher education and, as such, will be registered with the Office for Students in the Approved Category with an Access and Participation Plan.

Q3. Please explain what, if any, impact you believe the proposed policy would have on opportunities for persons to use the Welsh language and on treating it no less favourably than the English language. In particular: any positive or adverse effects of the proposed policy; how the policy could be formulated or revised so that it would not have any adverse effects or so that it would have decreased adverse effects; and how the policy could be formulated or revised so that it would have positive or increased positive effects.

We do not foresee the policy changes having any negative impact on opportunities to use the Welsh Language.

Q4. Are there any other issues about our proposal that you would like to raise?

There are no further issues about the policy that we would like to raise.

Respondent 5 – UK Council for International Students

Q1. Do you agree that a new residency category for individuals granted leave to remain under Section 67 of the Immigration Act 2016 should be added to the regulations, to enable them to be eligible students for the purpose of student support?

Yes, we would very much welcome for such a new category to be added to the regulations for student support.

Furthermore, we would strongly recommend, if not already planned, that this new category also be added to The Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015 – referred to below, in our answer to question 4, as the “fees regulations”.

Q2. Do you agree to the proposed changes for the designation of courses in England?

N/A

Q3. Please explain what, if any, impact you believe the proposed policy would have on opportunities for persons to use the Welsh language and on treating it no less favourably than the English language. In particular: any positive or adverse effects of the proposed policy; how the policy could be formulated or revised so that it would not have any adverse effects or so that it would have decreased adverse effects; and how the policy could be formulated or revised so that it would have positive or increased positive effects.

N/A

Q4. Are there any other issues about our proposal that you would like to raise?

We would recommend that the Welsh Government also consider adding new categories for those granted “Calais leave”.

Similarly, we would also recommend provision for those with forms of limited leave that the Home Office have been granting instead of discretionary leave in recent years. This would greatly assist those in an analogous position to those granted discretionary leave who have been specifically provided for within the Welsh regulations since 2011.

As in our answer to question 1 above, we would strongly recommend that these new categories also be added to the fees regulations.

With regard to both the student support and the fees regulations, it would seem appropriate that any requirement to have been ordinarily resident in the UK and Islands for three years should not be applied to those granted 5 years’ section 67 leave as it would not seem desirable to place any unnecessary obstacles to their participation in either further education or higher education. Removal of this three-year residence requirement would facilitate such students’ resettlement in the UK enabling their unhindered participation in their wider community. This would mirror the provisions for those who have been granted refugee status and their family members.

If considering those with Calais leave and other forms of leave mentioned above, we would suggest similarly that there should be no three-year ordinary residence requirement.

If an equivalent requirement to be ordinarily resident in Wales on the first day of the first academic year of the course in the Student Support regulations were to be included in any new category / categories in the fees regulations, this should be changed from ‘Wales’ to ‘United Kingdom’.

Respondent 6 – Children in Wales

Q1. Do you agree that a new residency category for individuals granted leave to remain under Section 67 of the Immigration Act 2016 should be added to the regulations, to enable them to be eligible students for the purpose of student support?

Children in Wales welcomes the proposal to enable young people, as so-called 'Dubs Children' under the new Home Office Section 67 leave categorisation system, to become eligible to access student support from the 2019/20 academic year. This change will enable this group of children to have the same rights and entitlement to student support as they current have in respect of other public services, such as healthcare and housing support. It will also put them on a par with their peers living in England following a similar commitment in November 2018 by the Minister of State for Universities.

These changes are in line with the Welsh Governments commitment to tackle inequality and poverty, and ambition to make Wales a nation of sanctuary for all those who choose to make it their home. We therefore very much welcome the change.

Q2. Do you agree to the proposed changes for the designation of courses in England?

We do not provide a fully informed position on this proposed change in respect of designated courses in England. However we do not have any clear objections or concerns from the information which has been provided.

Q3. Please explain what, if any, impact you believe the proposed policy would have on opportunities for persons to use the Welsh language and on treating it no less favourably than the English language. In particular: any positive or adverse effects of the proposed policy; how the policy could be formulated or revised so that it would not have any adverse effects or so that it would have decreased adverse effects; and how the policy could be formulated or revised so that it would have positive or increased positive effects.

We do not perceive the proposed changes to have any negative consequences on opportunities for so called 'Dubs Children' to use the Welsh language, and believe providing them with financial support to enable them to begin a higher education course could have positive effects.

'Dubs Children' will of course require information to be able to access this financial support. We welcome the announcement that a new multi-lingual website – 'sanctuary' – will be launched later in 2019, and believe that this site can provide the necessary information to enable this group of young people to access their new entitlement.

Q4. Are there any other issues about our proposal that you would like to raise?

We do not have any other issues about the proposal we would wish to raise at this stage.

Respondent 7 – Higher Education Funding Council for Wales

Q1. Do you agree that a new residency category for individuals granted leave to remain under Section 67 of the Immigration Act 2016 should be added to the regulations, to enable them to be eligible students for the purpose of student support?

We support the proposals to allow persons granted leave to remain under 67 of the Immigration Act 2016 to be eligible students for the purpose of student support.

We have set out our commitment to work with Welsh Government, institutions and partners to: identify opportunities to engage with refugees and asylum seekers and reduce barriers to education; audit and publish practice on supporting refugees and asylum seekers in our Widening Access Programme of Action, recently submitted to the Cabinet Secretary for Education.

Q2. Do you agree to the proposed changes for the designation of courses in England?

We recognise the practical reasons for making these changes. We also recognise the importance of reciprocal arrangements for designation of courses across the UK by each administration in the UK. The ability of higher education institutions in Wales to recruit students domiciled in other nations of the UK is fundamental to supporting a sustainable sector in Wales. We are therefore supportive of the proposed changes on the basis that they should ensure that reciprocal arrangements are secured for the designation by other UK Government Ministers of courses at HE providers in Wales.

The quality thresholds for regulation in Wales are different to those in England: this includes the fact that in Wales we have maintained cyclical external quality assurance reviews by a body on the European Quality Assurance Register (Universities in Wales have contracted to take these from the QAA). In England cyclical external quality assurance reviews have been removed. This means that institutions in England will be able to meet the standards for approved (fee cap) registration by the Office for Students, whereas they would not meet the quality requirements for regulation in Wales. This will increase the number of private non-charitable providers in England that will have their courses automatically designated for student support from the Welsh Government. This differs from the policy position

in Wales but we recognise that it will not be possible in future to distinguish between those private providers and the previously publicly funded charitable institutions that have historically had courses automatically designated for student support from Welsh Government.

While we agree that it is important to ensure continued reciprocal arrangements for the designation of courses across the UK, it is also important for Welsh Government to be aware that the quality regulatory requirements in England are different to Wales. This brings some potential risk in terms of the use of public funding, as institutions in England will be designated by Wales in a context where they would not have been under the previous quality regime in England, and would not meet the requirements were they based in Wales. We cannot see any means of avoiding this, as cross-border recruitment benefits Welsh institutions and Welsh domiciled students and therefore it is important to maintain reciprocal designation arrangements.

Q3. Please explain what, if any, impact you believe the proposed policy would have on opportunities for persons to use the Welsh language and on treating it no less favourably than the English language. In particular: any positive or adverse effects of the proposed policy; how the policy could be formulated or revised so that it would not have any adverse effects or so that it would have decreased adverse effects; and how the policy could be formulated or revised so that it would have positive or increased positive effects.

No response.

Q4. Are there any other issues about our proposal that you would like to raise?

No response.

Respondent 8 – Cardiff University

Q1. Do you agree that a new residency category for individuals granted leave to remain under Section 67 of the Immigration Act 2016 should be added to the regulations, to enable them to be eligible students for the purpose of student support?

Making Student Support available to young people who have section 67 leave is to be welcomed. However, we would question why these young people are required to have been ordinarily resident in the UK and Islands throughout the three year period immediately preceding the first day of the first academic year of the course. This is not in line with the current requirements to access Student Support for those who are awarded Humanitarian Protection and Refugee status, and could result in students' access to Higher Education being delayed by a number of years. We would ask Welsh Government to bring the requirements for those with section 67 leave in line

with those for Humanitarian protection and Refugee status to ensure parity of access for this vulnerable group of young people.

Q2. Do you agree to the proposed changes for the designation of courses in England?

No comment.

Q3. Please explain what, if any, impact you believe the proposed policy would have on opportunities for persons to use the Welsh language and on treating it no less favourably than the English language. In particular: any positive or adverse effects of the proposed policy; how the policy could be formulated or revised so that it would not have any adverse effects or so that it would have decreased adverse effects; and how the policy could be formulated or revised so that it would have positive or increased positive effects.

There does not seem to be any evidence in the consultation document that the proposed policy would have any impact on the opportunities for persons to use the Welsh language, or on it being treated less favourably than the English language.

Q4. Are there any other issues about our proposal that you would like to raise?

No further comment.

Respondent 9 – Independent Higher Education

Q1. Do you agree that a new residency category for individuals granted leave to remain under Section 67 of the Immigration Act 2016 should be added to the regulations, to enable them to be eligible students for the purpose of student support?

No comment.

Q2. Do you agree to the proposed changes for the designation of courses in England?

Independent Higher Education and our members welcome the proposal for automatic designation for Approved (fee cap) category providers for own or validated provision. Concerns have been raised by our members regarding the current process for specific designation including the duplication of work to return to both HEFCW and the Office for Students (OfS). This would be reduced through automatic designation as once on the register they will be regulated in the same way as those HEIs who were regulated under HEFCE and had the advantage of automatic designation.

Providers not on OfS Register

We support the proposal to allow providers not on the register to apply for specific designation. This will allow high quality providers who do not meet the OfS register eligibility, due to overseas links or unique partnership arrangements with UK universities, to accept Welsh students and receive their loan support. In particular, where a provider offers a specialist course in England which is not currently offered in Wales, HEFCW can ensure the funding rules do not disadvantage Welsh students who wish to take these courses.

Approved and Approved (fee cap) Access statement

The OfS system is very clear that there are limited and contextual differences between the regulatory processes for those in Approved and Approved (fee cap). The core annual regulation, in particular that of which is student focused, is the same across both categories. The Access and Participation Plan is required where a provider has eligible students on eligible courses and wishes to access tuition loans above the minimum amount. It is intended to drive a portion of this additional funding towards widening participation for English students. It does not provide any further regulatory function outside of this context. It seems misguided to IHE members to use this aspect of regulation as a quality measure to require an annual designation process. Providers across both categories are monitored on an annual basis through the same student return and must meet the same annual conditions with exceptions related specifically to the Access and Participation Plan and regularity of the public grant money they receive. It would seem logical to allow automatic re-designation across both categories as the conditions on quality are the same.

Franchise Provision

Members agreed that for franchised provision when the Franchisor is in the Approved (fee cap) with a plan that the course should get automatic designation. They had objections to the proposal that those in Approved (fee cap) with a statement should have to apply for specific designation and would call for all those whose Franchisor is in Approved (fee cap) category to have automatic designation. They would argue that as their Franchisor has already met the criteria for the OfS Approved (fee cap) category they should not have to go through another process they have already completed. Specific designation for these approved (fee cap) providers would increase duplication of information, burden to the provider and regulator and cost to the student if reported to both OfS and HEFCW.

In the Office for Students Regulatory Framework, OfS states that "Where all of a provider's higher education courses are being delivered on behalf of another provider (the lead provider) under a subcontractual arrangement, the provider delivering the courses (the delivery provider) will not normally be required to register in its own right, although it may do so if it wishes." The proposals in this consultation contradict the OfS guidance as there is a requirement for the delivery provider to be

on the register, as well as the lead provider to avail themselves of automatic designation. The judgement by OfS was that operationally, it was not necessary for the delivery provider to be on the register because all students learning under the franchise provision would be returned by the lead provider. This means that most, if not all regulatory functions, related to those students, would be assigned to the lead provider giving the OfS very little oversight into the delivery provider in a system based primarily on student data. Should HEFCW feel that risk is not being appropriately managed by the lead provider within a franchise arrangement they should implement action for the lead provider. However, with so little operational or regulatory responsibility attributed to the delivery provider, it would not be fair to ask them to pay over £10,000 to join a register under which they have no regulatory responsibility. We do not agree that the arrangements proposed balance risk and operational practicality but rather confuse it, where one provider has regulatory responsibility to HEFCW for students and another has regulatory responsibility to both HEFCW and OfS. Members did feel that where neither the lead provider or delivery provider for franchised provision is on the register, the proposal of remaining in specific designation was fair.

Specific Designation for all courses

The current system allows providers to not designate courses. This is commonly the case where the majority of students have historically self-funded rather than through government loans, for example where the cost of the course is so low that this funding is possible/desirable or where the course is very high cost due to expensive equipment and materials. This allows providers to have more student places on courses which are appropriate to fund by student loans, under student number controls. We would not want to move to a situation where providers had to designate all their courses which would require them to spread available places across courses which students are unlikely to fund using Welsh government loans. An alternative would be to guarantee no cap on the number of Welsh students eligible for loans at any one provider in England.

Q3. Please explain what, if any, impact you believe the proposed policy would have on opportunities for persons to use the Welsh language and on treating it no less favourably than the English language. In particular: any positive or adverse effects of the proposed policy; how the policy could be formulated or revised so that it would not have any adverse effects or so that it would have decreased adverse effects; and how the policy could be formulated or revised so that it would have positive or increased positive effects.

No response.

Q4. Are there any other issues about our proposal that you would like to raise?

Tuition Fee cap

Independent Higher Education would challenge the statement that "Providers with an Access and Participation Plan may charge higher fees, up to a legal maximum, than those without a plan, for certain qualifying courses. The UK Government will make available fee support to students accordingly. Providers on the Register are regulated by the OfS," as incorrect. Those providers in the approved category can charge the tuition fee level they wish to (including over the fee cap limit), however, they will only have access to the lower amount of loan. Only those who are in Approved fee cap have a fee cap they must adhere to.

Accelerated Degrees

Members also raised concerns with accessing student support for accelerated degrees for Welsh students. With the uplift in fees for accelerated degrees in England now passed, they would support courses designated by Wales to be able to access the full support, up to the limit, for accelerated degrees. Without access to the full tuition fee loan, Welsh students who are seeking accelerated degree courses in order to enter the job market earlier and with the necessary skills will be disadvantaged. As stated in Student Finance Wales Information Notice (SFWIN05 /2018) members would hope to see this issue of accelerated degrees and designation for courses offered in England for student support resolved in time for 2020/21 entry. As England has already approved the uplift for 2019/20, it would be useful for, as a temporary measure until a decision is made, to permit Welsh students taking accelerated degrees to access the maximum tuition fee loan with a self-funded element between the maximum loan and the maximum fee cap for 2019/20 and for the duration of their accelerated degree. As providers cannot justify charging a Welsh student less than an English student, this would be a reasonable solution to ensure Welsh students seeking to start an accelerated degree in 2019/20 are not disadvantaged.

Respondent 10 - Pearson

Q1. Do you agree that a new residency category for individuals granted leave to remain under Section 67 of the Immigration Act 2016 should be added to the regulations, to enable them to be eligible students for the purpose of student support?

Yes.

Q2. Do you agree to the proposed changes for the designation of courses in England?

Yes.

By permitting 'automatic designation' for providers in England in the 'Approved Fee Cap' category, the Higher Education Funding Council for Wales (HEFCW) can

safeguard public funds, without unnecessarily increasing the bureaucratic burden on higher education providers in England already registered with the Office for Students in the above category.

It is also important that the proposals still allow providers in England the opportunity to maintain courses that are designated for Welsh funding, even if they are not in the 'Approved Fee Cap' category or where the provider has chosen not to register with the Office for Students. HEFCW can evaluate each application for specific designation and make a determination, applying its own criteria.

Q3. Please explain what, if any, impact you believe the proposed policy would have on opportunities for persons to use the Welsh language and on treating it no less favourably than the English language. In particular: any positive or adverse effects of the proposed policy; how the policy could be formulated or revised so that it would not have any adverse effects or so that it would have decreased adverse effects; and how the policy could be formulated or revised so that it would have positive or increased positive effects.

No comments.

Q4. Are there any other issues about our proposal that you would like to raise?

Yes.

We would propose that in a franchise situation the 'lead' should always be the provider that will draw down the funding and register the students, particularly if registration with an Awarding Organisation is required.

Respondent 11 – Anonymous / Summary of e-mail response as the respondent asked that the response be anonymised.

Q1. Do you agree that a new residency category for individuals granted leave to remain under Section 67 of the Immigration Act 2016 should be added to the regulations, to enable them to be eligible students for the purpose of student support?

No response.

Q2. Do you agree to the proposed changes for the designation of courses in England?

Respondent welcomes the proposal for automatic designation for Approved (Fee Cap) category but is concerned that the Approved Category, which is required to meet the majority of the OfS register conditions for Approved (Fee Cap) is still required to undergo a specific designation process, possibly disadvantaging Welsh residents wishing to study at smaller specialist institutions. The Welsh specific

designation process could be sufficient to determine the appropriate category without additional expectations.

Q3. Please explain what, if any, impact you believe the proposed policy would have on opportunities for persons to use the Welsh language and on treating it no less favourably than the English language. In particular: any positive or adverse effects of the proposed policy; how the policy could be formulated or revised so that it would not have any adverse effects or so that it would have decreased adverse effects; and how the policy could be formulated or revised so that it would have positive or increased positive effects.

No response.

Q4. Are there any other issues about our proposal that you would like to raise?

Respondent concerned with the proposals for Franchise provision that require the Franchisee to be on the register for automatic designation. This will require the Franchisee to go through the OfS process, where there is currently no requirement from OfS to do so. This appears to be an additional layer of regulatory compliance that will ultimately disadvantage smaller specialist providers and Welsh residents who choose to study at them.

Want assurance that Welsh residents are not disadvantaged with regards the maximum loan amount available to those undertaking accelerated degrees and that students can still get the maximum tuition fee loan provided by Wales.

Respondent 12 – Coleg Cambria

Q1. Do you agree that a new residency category for individuals granted leave to remain under Section 67 of the Immigration Act 2016 should be added to the regulations, to enable them to be eligible students for the purpose of student support?

Yes

Q2. Do you agree to the proposed changes for the designation of courses in England?

Yes. We would, however, ask that discussion takes place between HEFCW/WG and the Office for Students to agree reciprocal arrangements for FE Colleges in Wales. Currently students who reside in England and wish to study HE at a Welsh FE College are unable to apply for tuition fee loans and/or maintenance loans.

Q3. Please explain what, if any, impact you believe the proposed policy would have on opportunities for persons to use the Welsh language and on treating it no less favourably than the English language. In particular: any positive or

adverse effects of the proposed policy; how the policy could be formulated or revised so that it would not have any adverse effects or so that it would have decreased adverse effects; and how the policy could be formulated or revised so that it would have positive or increased positive effects.

No response.

Q4. Are there any other issues about our proposal that you would like to raise?

No response.