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Consultation – summary of response

Regulation of Higher Education Providers in Wales

Tertiary Education and Research (Wales) Act 2022 – Register of Tertiary Education Providers – Initial Regulations

April 2024

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

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Overview

The Welsh Government recently consulted on policy proposals and draft regulations relating to the establishment of the register of tertiary education providers in Wales under the Tertiary Education and Research Act 2022. The regulations, when made, will enable the Commission for Tertiary Education and Research, once operational, to establish the registration system for tertiary education providers of higher education in Wales. The consultation was live between 31 October 2023 and 5 February 2024. It attracted 21 responses, mainly from institutions and organisations and these were predominantly based in Wales.

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Action required

This document is for information only.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Link to the consultation documentation: Regulation of Higher Education Providers in Wales : [Regulation of higher education providers in Wales \[HTML\] | GOV.WALES](#)

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Additional copies

This summary of response and copies of all the consultation documentation are published in electronic form only and can be accessed on the Welsh Government's website.

This document is also available in Welsh: <https://www.llyw.cymru/cofrestr-o-ddarparwyr-addysg-drydyddol-rheoliadau-cychwynnol>

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Background

The Tertiary Education and Research (Wales) Act 2022 ('the TER Act'), provided for the establishment of a new Commission for Tertiary Education and Research ('the Commission').

The Commission will be the regulatory body responsible for the funding, oversight and regulation of tertiary education and research in Wales. Tertiary education encompasses post-16 education, including further and higher education, adult community learning and work-based education, apprenticeships, and local authority-maintained school sixth forms

One of the Welsh Government's initial policy objectives for implementation of the TER Act is to establish an effective, robust, and sustainable legislative basis for regulating tertiary education providers.

Providers whose higher education provision is primarily funded by tuition fees cannot be regulated through the Commission's terms and conditions of funding alone as tuition fee payments are a contractual undertaking between providers and their students. Therefore, an early priority for the Commission will be to develop a regulatory oversight system for these providers.

Part 2 of the TER Act makes provision for a registration system for tertiary education providers in Wales, with the register is to be established and maintained by the Commission.

At first only providers of higher education will be eligible to apply to be registered with the Commission, and, as such, this will initially be the only group of providers who will be subject to the conditions of registration.

The register and associated conditions of registration will provide a regulatory gateway for the designation of registered providers' higher education courses, for the purpose of Welsh Government student support and access to funding from the Commission. Additionally, Chapter 2 of Part 2 of the TER Act places the Commission under a duty to assess or make arrangements for the assessment of the quality of higher education provided by, or on behalf of, registered providers.

Part 3 of the TER Act provides for a link between the register and the Commission's powers to fund a range of tertiary education as well as research and innovation. The Act enables the Commission to fund categories of registered providers specified in regulations for the purpose of supporting higher education provided by or on behalf of such providers, as well as to carry out research or innovation.

Additionally, the TER Act enables the regulatory oversight of unregistered providers, who rely on funding from the Commission for delivery of their tertiary education provision, by way of terms and conditions of funding. Providers of further education or training will initially be regulated through this mechanism. However, providers of further education who wish their higher education courses to be automatically designated for student support will need to register with the Commission.

The TER Act does not make provision for higher education student support in relation to tuition fees or maintenance costs. The Welsh Ministers intend to make regulations under the Teaching and Higher Education Act 1998, for the automatic designation of the relevant higher education courses of registered providers of higher education for the purpose of Welsh Government statutory student support.

The TER Act both requires, and enables, the Welsh Ministers to make subordinate legislation to specify matters relating to the establishment and operation of a register of tertiary education providers in Wales. The register and associated conditions of registration will provide the statutory framework within which the Commission oversees the activities of registered tertiary education providers.

The Welsh Government recently consulted on policy proposals and draft regulations relating to the establishment of the register of Tertiary education providers in Wales under the Tertiary Education and Research Act 2022. The regulations, when made, will enable the Commission for Tertiary Education and Research, once operational, to establish the registration system for tertiary education providers of higher education in Wales.

The consultation was live between 31 October 2023 and 5 February 2024. It attracted 21 responses, mainly from education institutions and organisations and these were predominantly based in Wales.

Respondents were invited to review the consultation document and supporting information online and respond to each of the questions via e-mail, postal questionnaire or an online form. We received 16 email responses; no postal responses and 5 online forms were submitted. A further 8 online forms were opened but not formally submitted, 2 of those were subsequently submitted by email. The remaining 6 were excluded from the analysis as it was not possible to seek permission to include them as no contact details were provided.

Not all questions were answered by all respondents and some gave a general response to the consultation rather than answering specific questions. Where this is the case, we have included their response under the most appropriate question.

Structure of the consultation

The consultation contained 18 questions that covered different aspects relating to the establishment of the register and associated regulatory oversight system for tertiary education providers of higher education in Wales. Included was a specific question that sought stakeholder views on the registration categories titles, if they agreed with the proposed information that must be included in provider's entry in the register and questions about the sufficiency of further initial and ongoing conditions of registration.

Further questions sought stakeholders' views on the principle of specifying the frequency of higher education quality assessments in regulations, transitional arrangements in the event of de-registration of providers and questions about

financial impacts, cost and benefits. There are also questions relating to the impact of the proposals on equal opportunities and the Welsh language.

To support the consultation, there were two briefing sessions held on the registration system (22nd and 30th November 2023). The aim of these sessions was to

- give an overview of the purpose of the registration system and the proposals contained in the [consultation document](#)
- provide further context and explanation around those proposals
- explain next steps.

The main objective of these sessions was to assist stakeholder understanding of the purpose of the consultation and to enable stakeholders to consider the information included in the consultation document and respond to the consultation.

About the analysis

For analysis purposes, all responses were securely saved. Where agreement was indicated, respondents' details were logged along with the details from the consultation responses.

The comments received covered a range of themes, not all of which were within the scope of this consultation. Where comments did not fall within scope of the consultation, these were not included. There were also narrative responses where respondents did not indicate to which question, they were referring and often the respondents did not complete the answer boxes for specific questions. These responses have been analysed and where the feedback was relevant, it was included in the summary under the appropriate question.

This document is intended to be a summary of the responses received. It does not aim to capture every point raised by respondents but highlights the key themes. A summary of the major themes and headlines from the responses is contained in this document and will help to shape the policy.

Summary of Responses

Question 1

We have provisionally entitled the registration categories as "Higher Education Core" and "Higher Education Alternative". Do you agree with these titles, or do you have alternative suggestions?

Number of responses: 17

Agree: 10

Disagree: 2

Neither agree nor disagree: 5

Most respondents agreed the names of the categories were acceptable. It was noted that the Commission would need to be able to clearly set out the benefits, obligations and regulatory requirements for each category. Respondents believed that the Commission needed to have the flexibility to enable all types of providers to seek

registration and allow for any further regulation that may be needed. Concern was raised there could be confusion regarding the category names as providers who currently consider themselves to be 'alternative' providers could choose to register in the 'Core' category.

Those that disagreed believed the term 'alternative' suggested something second best or offering education of lesser value. One of these respondents proposed the term 'specialist' replaced the title of the 'Alternative' category as this would reflect the idea that these institutions met the same quality and standards as 'Core' category providers. It was noted that the Higher Education Funding Council for Wales (HEFCW) already uses this term for Prevent returns.

Those that neither agreed nor disagreed along with most other (agree) comments believed the term 'Core' category to be clear but the 'Alternative' category needed to be clearly defined. Some were also in favour of further consultation when operational detail of the application of the categories was known.

More generally stakeholders would welcome further information about how the proposed categories are intended to work.

Question 2

Do you agree with the suggested information that must be contained within a provider's entry in the register? Is there any proposed content that should be added or removed from the regulations?

Number of responses: 17

Agree: 15

Disagree: 2

Neither agree nor disagree: 0

The majority of respondents agreed with the suggested information and the Welsh Government approach of not to be overly prescriptive, enabling the Commission to determine further requirements and to minimise the administrative burden on providers. Some asked about the need for the information to be regularly updated, suggesting an annual cycle. There were also requests for clarity around the terms 'sub-contractual arrangements' 'franchised' and 'validated' provision.

Those that disagreed, like some of the other respondents who agreed, wanted consideration to be given to the following additional information to be included in a provider's entry in the register:

- a baseline requirement linked to equality duties
- setting out their Welsh language provision
- the type of degree awarding powers held by an institution.
- information about staff and student numbers
- details of any campuses outside Wales

- “Main location of activities,” in line with the wording of the statutory test as to whether the provider is “in Wales” or not
- “Institution” status (and whether or not designated as one by the Welsh Government under the Designation regulations)
- the ‘Legal’ name, details of previous names/name changes,
- company type/legal form of constitution e.g. Royal Charter, Higher Education Corporation etc.
- corporate/group structures
- governing documents and details of the governing body
- registration conditions applicable and any specific conditions of registration imposed
- Higher Education Statistics Agency (HESA) and Universities and Colleges Admissions Service (UCAS) provider reference numbers
- identify all the regulators e.g. Social Care Wales, The Nursing and Midwifery Council for professional and regulated programmes offered by the provider.

It was suggested that reference to ‘franchised arrangements’ be replaced with ‘education provided by another provider on its behalf,’ allowing the Commission the flexibility to work through the definitions further.

While not to be prescribed in the regulations and not published it was suggested that the Commission may wish to consider requiring joint or dual awards with another provider, and/or whether it uses agents for student recruitment purposes to be included as information in a provider’s entry in the register.

We noted comments, that in the future, the Commission may wish to consider the Office for Students’ approach to include additional information in the register for key stakeholders and prospective students. However, at the outset the register should focus on regulatory essentials.

Question 3

Do you agree with the inclusion of the two proposed further initial conditions in the regulations?

Number of responses: 16

Agree: 14

Disagree: 0

Neither agree nor disagree: 2

The majority of respondents agreed with the inclusion of the two proposed conditions as being necessary and appropriate. There was support for charitable status being a condition of ‘Core’ registration category. A request was noted for clarification regarding the charitable status requirement including providers that hold an exempt charity status and a request that the Office for Students be added to the list of bodies as a charity regulator.

Respondents raised concerns that additional requirements for compliance with consumer protection law, should be proportionate and any changes should be the

subject of future consultation. They also requested clarity on how responsibility for compliance with this registration condition would dovetail between the Commission and the Competition and Markets Authority (CMA). We noted this was also raised in question 5.

While one respondent agreed with the condition relating to the provision of information for prospective students, they had concern about the additional resource requirements placed on the Commission which were not covered by current budgets and cautioned against the Commission putting itself in a position for potential litigation against unrealistic expectations. They went on to suggest this condition be delayed until the Commission had an opportunity to consider student complaint procedures and the coverage of the Office of Independent Adjudicator's (OIA) scheme. Another strongly supported that this condition is applicable to both the Higher Education Core and the Higher Education Alternative categories.

We have noted one respondent, who neither agreed nor disagreed, questioned when considering the effectiveness of the validation arrangements for alternative providers how much the validating organisation would be expected to contribute to the registration process.

Question 4

Are there any other further initial conditions that you think should be included in the regulations

Number of responses 17

Yes 4

No 12

Unsure 1

The majority of respondents did not think there should be further initial conditions of registration specified in the regulations.

Those respondents that said yes identified the following areas of concern that should be included:

- Part-time provision (within the registration system as a whole);
- Provision for Welsh medium education and duties under the Welsh Language (Wales) Measure (2011);
- Confirmation that the provider is also in scope for oversight by other UK strategy bodies such as the Competition and Marketing Authority, Office of Independent Adjudicator and the Higher Education Statistics Agency;
- Demonstratable commitment to 'net zero' with to achieve comparability between financial and environmental sustainability;
- The inclusion of a broad condition addressing the equalities Act 2010 including specific conditions related to tackling harassment among staff and students and the implementation of an appropriate complaints procedure, duties under the Public Sector Equality Duty including gender pay gaps and procurement.

Some of respondents that said no, felt further initial conditions should be the responsibility of the Commission, giving them the flexibility rather than such conditions being prescribed in the regulations.

Another respondent indicated they would welcome further consultation when more information is available about part-time provision and any new forms of Welsh Government student support funding.

Question 5

Do you agree with the further mandatory ongoing conditions proposed for inclusion in the regulations

Number of responses 15

Agreed 10

Disagree 2

Neither agree nor disagree 3

The majority of respondents agreed with the inclusion of the three further mandatory ongoing conditions of registrations. One respondent believed the condition relating to the information provided to prospective students about the provider, its courses and its terms and conditions of contracts with students is important. Another respondent raised concerns that the ongoing conditions should not conflict with responsibilities to other bodies without prior agreement (e.g. providing UCAS data).

As in Question 3 clarification was sought that the charitable status requirement includes those universities who hold exempt charity status.

Further clarification was also sought, when more detail is available, on the Learner Engagement Code and what will be the measurable outcomes in respect of equality of opportunity. It should be noted that provision for ongoing registration conditions for these matters is already provided for by the Tertiary Education and Research Act 2022 and consequently they are not a matter for inclusion in the draft regulations.

Those that disagreed and one respondent that agreed believed there was duplication between ongoing registration condition 31(1)(f): "notify changes to register information" and the further ongoing condition: "notify changes in status as a Tertiary Education Provision in Wales" and suggested the latter is removed or fully included in the statutory information requirements. Another respondent who disagreed considered that while there is provision in the mandatory ongoing registration conditions for learners from underrepresented groups there is no specific reference to learners who wish to study through the medium of Welsh.

Respondents that neither agreed nor disagreed believed the further mandatory ongoing conditions seem reasonable. However, one respondent considered that "to have measurable outcomes in respect of equality of opportunity concerned with increasing participation, increasing retention, reducing attainment gaps and provision of support in respect of learners who are members of under-represented groups." could be interpreted as being the same as a Fee and Access Plan. This respondent suggested that the current arrangements, in relation to Fee and Access Plans,

needed an overhaul, and the process in future needs to be fit for both further and higher education institutions and proportionate versus scale of the provider's provision.

Question 6

Are there any other mandatory ongoing conditions that you think should be included in the regulations?

Number of responses: 17

Yes: 2

No: 13

Unsure: 2

The majority of respondents could not think of any additional ongoing conditions, and were supportive of the Commission having flexibility to determine any further requirements once the register is established.

One of the respondents, who neither agreed nor disagreed, wanted the Commission to collect comprehensive data to provide robust evidence to help address inequalities in post-16 compulsory education. The Commission should also set priorities, using the Public Sector Equality Duty, to promote equality and widen access to groups that have lower educational attainment and employment rates, including learners from socio-economically disadvantaged backgrounds. This respondent welcomed the mandatory ongoing condition (provided for by the TER Act) in relation to measurable outcomes in respect of equality of opportunity, increasing participation, increasing retention, reducing attainment gaps and provision of support in respect of learners who are members of under-represented groups but considered a further condition is needed.

Another respondent wanted the Welsh language to be included in a specific mandatory ongoing condition. Another proposed an additional condition requiring providers to have the quality of their provision independently assessed to meet a threshold set by the Commission. It was noted that providers who offer transnational education should continue to participate in an existing scheme to demonstrate their commitment to assuring and enhancing the quality of their transnational education provision.

Question 7

Do you agree with the arrangements proposed for decision reviews?

Number of responses: 17

Agree: 14

Disagree: 1

Neither agree nor disagree: 2

The majority of respondents agreed with the arrangements proposed for decision reviews. A respondent believed one of the strengths was the decision review panel would be independent from the Commission's decision makers. They were content

with the proposals as they are closely modelled on current arrangements under existing legislation. However they believed it would be helpful to review regulation 9 to include an explicit duty on the Commission to take the account of the recommendations and findings of the panel in line with current arrangements. Concerns were also raised, with regard to reviewing regulation 5b(ii), so providers cannot intentionally withhold information to delay regulatory action by the Commission.

The respondent, that disagreed, understood the need to provide clarity for the process, for the outcome to be determined in a timely fashion and that the 40- and 28-day limits are in-keeping with standard practice. However, they had reservations as to whether these timescales would be sufficient in the event of the Commission determining to de-register a provider. They also indicated that where a decision reviewer recommends that the Commission reconsider a decision that they would like to see a requirement placed on the Commission to consider the evidence considered by the reviewer.

One of the respondents, that neither agreed nor disagreed believed the decision review process appeared reasonable subject to there being a prescribed timescale for a de-registered provider to receive a response from the Commission after they have raised an appeal. We noted the respondent raised the same issue in question 8.

Question 8

Are there any matters other than those listed that the Commission should be enabled to enforce in the event that a provider is de-registered?

Number of responses: 17

Yes: 4

No: 9

Unsure: 4

Many of the respondents that replied did not identify any matters beyond those listed. One respondent added that the provisions that are outlined, including Learner Protection Plans, should be sufficient to enable the 'teach out' of students in an orderly manner. It was noted that adding further detail in legislation may constrain the Commission's ability to act as required.

Those that responded, yes, raised the following matters:

- Quality assessment should be considered independently of fee limits. It would be important that close monitoring of the quality of provision is maintained in the event that a provider is de-registered in order to ensure the quality of the student learning experience is maintained to a high standard.
- Within the proposals there are prescribed periods of time for a de-registered provider to raise an appeal and provide documentation (provided for in decision review regulations). Consequently, it was believed there should also be a defined period in which a provider should receive a response.

- A provider under threat of deregistration will have a period of great uncertainty, including for its students, applicants and staff, which can be better managed and supported by having reasonable and defined timeframes for all parties.

Another respondent sought clarification on the transitional arrangements, particularly with regards to arrangements for financial support, such as what will happen to projects and activities which are receiving funding approved in advance for a number of years. The respondent also noted the impact of de-registration on partnerships needs to be considered - e.g. with franchise partners, colleges, professional bodies and other partners, such as in relation to provision of nursing, veterinary and teaching courses.

The respondents who replied unsure, in the main, did not offer any further matters. One respondent citing this was because they were without clear sight of the regulations relating to the matters that the Commission should be enabled to enforce in the event that a provider is de-registered (the “transitional arrangements”). They thought further clarity would be particularly useful on how the Commission would work with bodies such as Health Education and Improvement Wales (HEIW). They also raised in the event that a provider is de-registered, it would be critical that there are clear arrangements agreed for students to complete the course on which they are registered and the de-registration process is carefully considered and managed in a way there is sufficient time to take decisions and to protect the interests of students and public funds. We noted one respondent raised the same point in question 7.

Question 9

Do you agree with the principle of making regulations requiring that higher education must be quality assessed at least every six years to align with the statutory requirements for other parts of the post 16 sector and HEFCW’s current practice set out in its quality assessment framework?

Number of responses: 17

Agree: 9

Disagree: 4

Neither agree nor disagree: 4

Most respondents agreed in principle to making broad regulations and having a consistent approach to quality assessment across the post-16 sector. Those that disagreed, or neither agreed nor disagreed, were in favour of regular assessment cycles but, along with most other (agree) comments, felt the Commission needed to have the flexibility to determine the frequency of those cycles.

Suggestions for improvement included making the cycles shorter, a review of cost based on size, student number and breadth of provision and having a risk based continuous improvement approach to assessments, which could be less resource

intensive. There was also a recommendation that a review be undertaken of the efficacy of quality assessment on a six-year cycle.

Many thought the amount of prescription in regulations needed to be considered, to aid the Commission to adopt a flexible approach, particularly in circumstances such as mergers or pandemics. Furthermore, there may be a need to consult on different assurance and inspection arrangements for other providers in the post-16 sector (for example, further education colleges who are regulated for higher education provision, as well as receiving funding for further education, apprenticeships and as partners in adult community learning partnerships).

An initial mid-cycle review, during 2026-2027 for inspection of further education and training was suggested to take account of possible changes in quality assessment arrangements for registered higher education providers for the following academic years. Similarly, it was suggested that the quality enhancement methodology could be reviewed to ensure it remained fit for purpose.

A point was made that the Commission also needs to consider providers who may be assessed by more than one quality regime.

A comment relating to the necessity for the designated quality body to be independent of the regulator was also noted.

Question 10

Do you anticipate any resource implications for your organisation arising from the regulations or registration system?

Number of responses: 17.

Yes 9/10*

No: 2

Unsure: 5/6*

*One respondent provided a yes and unsure answer to this question. As indicated with the asterisk to avoid double counting only 1 answer has counted in overall number of responses received.

Most respondents agreed there would be resource implications for their organisation.

Those who agreed identified the following potential implications. There will be administrative time required to comply with the new regulatory system and re-register. The allocation of both time and resources from senior management within institutions was considered by one respondent to result in high opportunity costs. Other respondents gave similar responses regarding time and resources, and one noted that both matters would be impacted by the need to keep the information required by the register up to date. However another respondent considered there would only be minor costs associated with maintaining an institution's entry in the register. One respondent noted that making a registration application would necessitate additional resource or the redirecting of existing resources.

We noted a concern about the potential risk to institutional sustainability if resources and funding for higher education were to be spread too thinly because of the new approach.

It was recognised by some that the new approach should not place a significant burden on providers that are currently regulated by HEFCW as it will remove the need to re-apply for regulated institution status. In contrast those further education institutions who are not currently regulated by HEFCW may face some additional burden. The potential cost implications for 'non-core' and small providers are deemed to be disproportionate relative to 'core' providers.

In the short term it was considered there would be demands placed on providers to respond to consultations on the registration system as well as additional staff resource needed to implement the register. There will also be time and resources required to understand the new system as well as to keep the required information up to date. It was noted that the register provides an opportunity for the Commission and Estyn to consider different quality assurance and inspection arrangements for registered institutions than the current arrangements for providers in post-16 sectors. This may have resource implications depending on the new arrangements.

Those respondents who were unsure, like those who agreed, also presented a common view that the extent of the resource implications will largely depend on the detail to come from further technical consultations on the registration conditions for different categories and provider types. One respondent considered that this may be the case where registration conditions start to diverge significantly in Wales compared to England. It was noted that any significant changes would cause additional costs in the short term especially those which require adjustments to existing systems. However it was noted that the burden of the current regulatory system decreased once it was understood.

One respondent that replied no, as a currently regulated provider, they anticipated minimal cost and bureaucracy arising from registering with the Commission.

Question 11

Do you have any evidence which we could use to help us assess the costs and benefits of implementing the proposed registration system?

Number of responses: 15

Yes: 4

No: 7

Unsure: 4

Just under half of the respondents replied no, of those, 5 offered no further comments. One respondent said they had no evidence at this time however staff time and resource would be required to understand and implement the new system and to deliver monitoring requirements. Another believed it impossible to provide evidence without further operational detail the but saw the benefit of further consultation.

Those that replied yes provided evidence drawn from experience. One respondent drew on their experience of the implementation of the Higher Education (Wales) Act 2015 providing current staff costs associated with course designation for student

support purposes, financial and governance assurance, quality assurance and institutional engagement and intervention. They anticipated an increase in cost for the additional staff resource that would be required for the Commission to operate the new Register-based regulation system. There will also be additional costs associated with the Register IT system, and potentially legal advice, although these not currently known. Another respondent referred to evidence in [a report, commissioned by Universities UK](#), which looked at the impact of the regulatory burden of registration with the Office for Students. One of its findings was that significant resource was required to understand and meet regulatory requirements. It also found that there were opportunity costs arising from the regulatory burden. The same respondent noted that it will be important to ensure that regulation is proportionate and risk-based, and does not place significant additional burden on providers.

Those that were unsure believed the situation was too vague to understand at present. One respondent explained their own cost-benefit analysis was unavailable for the new system, but they envisaged that there will be significant costs at the outset and then costs on an ongoing basis. The exact level of work will be determined by how the Commission implements the new requirements. This respondent referred to evidence given by Universities Wales to the [Senedd Children, Young People and Education Committee](#). Whether the costs are similar are not will, to some extent, depend on how the regulations are used by Welsh Government and the Commission. Another respondent referred to the Data Futures project that resulted in significant cost implications for institutions and the possibility it may offer lessons learnt. Another respondent felt it should be recognised that alternative providers have small administrative teams so extra resource will need to be found if the administrative burden grow significantly under the new system.

Question 12

Apart from HE providers and the Commission, are any other stakeholders likely to face costs arising from the registration system, either directly or indirectly? If yes please provide details of the stakeholders in the supporting comments.

Number of responses: 15

Yes: 6

No: 2

Unsure: 7

Many of the respondents were unsure, some provide no comments, another felt it was unclear at this stage until the details of the registration system are known.

Those that replied yes, believed the Coleg Cymraeg Cenedlaethol, Universities Wales and Colegau Cymru may face some indirect and discretionary costs. Given that the registration system is part of a wider regulatory system that will also apply to providers that are regulated through terms and conditions of funding then other tertiary education providers will also be impacted. Other respondents considered that there may be resource implications for partner organisations that work with

registered institutions including those in franchise and validation arrangements as well as bodies with oversight responsibility for specific types of courses for example, teaching, nursing and veterinary services. The contracts and financial arrangements underpinning these relationships precede the new register, so reflect existing regulatory requirements. It was noted that the new requirements could affect the contents of contracts and/or the delivery costs for both organisations in partnership arrangements.

The Quality Assurance Agency, as the delivery partner for the operation of the higher education quality review cycle, will also incur costs. One respondent referred to their answer to question 10, while they recognised need for a coherent approach to the development of, higher education in Wales, making best use of limited resources there was potential for the new registration system to result in already stretched resources being spread more thinly across a wider range of providers.

Although the question relates to organisations other than higher education providers some respondents identified the potential for additional administrative burden for 'alternative' providers of higher education. One respondent commented there would be additional administrative burden for 'non-core' institutions and that the costs of this will have to be met to provide the required administrative resource. They considered any additional costs would effectively be borne by having to either raise costs for students or reduce the resource level available to them. As an example, they cited the recent requirement to report data to HESA to fulfil new HEFCW requirements has already required additional staffing resource to be put in place.

We noted those that replied no, provided no further comments

Question 13

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?

Number of responses: 15

Yes: 3

No: 5

Unsure: 7

Several yes and unsure respondents felt there could be some positive impact to persons with protected characteristics. The extent to this, however, was unclear but could be informed in more detail through impact assessments and further consultation. Respondents who were unsure described the importance of equality impact assessments as a legal requirement, along with compliance with the Public Sector Equality Duty, coupled with continuous robust monitoring and review. From the respondents that were unsure, further discussions were proposed to consider alternative ways to ensure equality as part of base line requirements for higher education providers who register in the alternative category, along with the

impacts for students and providers who could be subject to the Public Sector Equality Duty.

Quite a few (unsure) respondents thought part-time higher education should be integral (to the new registration system) and have equal focus to that of full-time education. The risk in not doing so could negatively impact under-represented groups, who are more likely to undertake part-time education (for example, mature learners, additional learning needs learners and those residing in rural and hard to reach locations).

A further comment supported statutory funding for alternative higher education providers which could have a positive impact on individuals with protected characteristics under the Equality Act. Additionally, funding should be available to all students irrespective of the category of registration of their provider.

In relation to transnational education one respondent asked the Welsh Government and the Commission to consider the provision of tertiary education provided for in a student's home country, rather than the provider's location, and the related possible impact for women and girls education.

Those who responded no, thought the proposals in this consultation had no impact.

Question 14

Is there scope for any of the proposals in this consultation to promote equality of opportunity and foster good relations between people who share a relevant protected characteristic and those who do not?

Number of responses: 15

Yes: 3

No: 2

Unsure: 10

Yes, respondents felt there was scope within the proposals to promote equality of opportunity and foster good relations. There were some similar responses to those summarised under question 13, including the need to integrate part-time provision to help widen participation. Another mentioned the proposals could help to support staff and student welfare as part of the conditions for registration, as well as help improve access, retention, and attainment by underrepresented groups.

A further yes respondent suggested including equality of opportunity as a baseline requirement of registration, in addition to mandatory ongoing registration conditions - with measurable, equality related outcomes. The publication of a provider's strategic equality plan could also aid transparency. Again, like responses in question 13, robust equality impact assessments can assist in supporting this agenda.

Some respondents who were unsure thought the proposals presented an opportunity to improve this area and looked forward to further discussion and details as the process developed.

Further comments from respondents who were unsure saw suggestions relating to the provision of bursaries to support the equalities agenda, as well as a possible provider obligation to support community engagement. Another commented that the ongoing implementation of the Tertiary Education and Research (Wales) Act 2022 had the potential to strengthen this agenda, along with the development of the Learner Complaints System and the Learner Engagement Code.

Some responses to this question were also picked up in questions 2 and 4 and included here.

Question 15

Are there likely to be any negative impacts arising from the regulations on particular groups of people or particular places? If so, how could positive impacts be increased, or negative impacts be mitigated?

Number of responses: 14

Yes: 2

No: 4

Unsure: 8

One yes respondent thought there could be a negative impact on smaller institutions, given their potential to attract learners with different needs and the possible risks of handling an onerous registration system. A similar (unsure) respondent thought there could be an indirect negative impact on alternative providers, effecting student fees, if additional resources are required to comply with the registration requirements.

As mentioned in the summary to question 13, there could be consequential effects on women and girls, relating to transnational education.

Comments from a (no) respondent thought the conditions of registration could have a positive impact on under-represented groups, along with the use of impact assessments to inform the development of the regulatory system.

Those that were unsure commented on similar issues summarised under question 13, including the need for part-time provision to have parity with full-time, as well as consideration being given to learners in rural locations. One thought any bespoke funding relating to part-time provision and associated regulations would need to be comparable, transparent, and transferable to all providers.

A further, unsure, respondent mentioned the role of equality impact assessments to identify any negative impacts and mitigating actions. The same respondent queried if the removal of fee and access plans was fully assessed for the Tertiary Education

and Research (Wales) Act 2022 and saw this as an opportunity to explore any negative impacts relating to that change.

Question 16

We would like to know your views on the effects that establishing the register of tertiary education providers would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

Number of responses: 15

Many respondents felt it was difficult to understand at this stage how the register could have an impact on the Welsh language. However, some were supportive of the inclusion of conditions relating to a provider's commitment to the language and relevant duties, with the potential to have a positive impact.

Matters identified in the responses to this question included:

- Institutions should demonstrate their commitment to Welsh-medium provision, which should reflect the legal framework in Wales with measurable outcomes.
- There are no registration conditions relating to the Welsh language, one respondent thought the existing provisions in the primary legislation should be sufficient, although a few felt the inclusion of conditions relating to a provider's commitment to the Welsh language could have a positive impact. Additionally, providers could be required as a condition of registration to abide by the Welsh Language (Wales) Measure 2011, along with a duty to promote the language.
- There could be negative perceptions if there are no regulatory levers to increase Welsh language provision, although this should be mitigated by the duties the Tertiary Education and Research Act places on the Commission, who should determine how it discharges its strategic duty in this respect.
- One respondent was disappointed at the lack of reference to the Welsh language within the consultation document and thought it vital to ensure a standard of provision that is treated equally to the English language.
- Others noted the commitment to enhancing innovative provision, working with key partners across the sector leading to a more collaborative landscape.
- The need to keep the Welsh-medium funding premium for delivery.
- The register and guidance will need to be bilingual.
- Enabling providers to engage on regulatory matters through the medium of Welsh needs to be improved.
- Collaboration with partners, such as Coleg Cymraeg Cenedlaethol will be critical.
- Recruiting Welsh language speaking staff to deliver specialist provision is likely to be a problem.

A number of responses relevant to this area were summarised in response to other questions (including questions 4 and 2).

Question 17

Please also explain how you believe the proposed approach to regulations for establishing the register of tertiary education providers could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Number of responses: 14

Similar to responses to question 16, respondents felt there could be positive impacts on opportunities for the Welsh language but were unclear until further details of the registration system are known.

Matters identified in the responses to this question included:

- Most respondents welcomed the continued support for Welsh medium provision, although some small or alternative providers felt there needed to be financial support to assist them.
- Learners should be encouraged to take courses through the medium of Welsh. Similarly, there should be a commitment to enhancing the quality of Welsh language provision and opportunities for all staff and students.
- There should be a clear and comprehensive record of what provision is available through the medium of Welsh.
- Social and cultural matters also needed to be considered, alongside the Welsh language.
- As noted under question 16, the Commission could fulfil its strategic duty in this area through initial and ongoing conditions of registration as well as further initial conditions.
- Assessment reviews of the quality of higher education provision will be conducted to support the registration system, and will be available fully or partially in Welsh, if requested. There may be additional resource implications for regulators to support this.
- Assurance that the Commission is effectively discharging its duties in respect of the promotion, acquisition and improvement of Welsh language skills should be sought.
- The Commission has a role to gather information about Welsh language provision and further engagement with Coleg Cymraeg Cenedlaethol in this respect would be essential.
- By including a question in the register about whether providers offer Welsh-medium or bilingual provision, the Commission could ensure a positive impact for the Welsh-language.

- The Regulatory Impact Assessment for the regulations to be made in respect of the register must be made in line with the Welsh Language Standards guidance on policies and procedures.

A number of responses relevant to this area were summarised in other questions (including questions 2 ,12 and 16).

Question 18

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

Most responses noted in question 18 were identified as relating to other questions contained in the consultation and can be found summarised there. There were a range of additional suggestions, comments and information that fell outside of the main questions within the consultation. The additional issues have been logged and the key themes emerging from them are listed below:

- **Investigating concerns** – the potential for extension of a concerns investigation scheme operated by the Quality Assurance Agency (QAA) that currently operates for higher education to extend across the post-16 sector.
- **Collaborative approach** – a desire to see a continuation of the collaborative working that currently exists with HEFCW when the Commission develops its regulatory approach.
- **Cohesive approach** – the importance of considering how the approach to the registration system could be applied to developing a cohesive regulatory regime for application to other providers by way of terms and conditions of funding.
- **Categories of registration** – concern about there being insufficient information relating to the two proposed categories of registration, the implications for providers, and a perceived need for possible dual registration.
- **Transitional arrangements** – concern about the costs arising from the development of interim and transitional arrangements.
- **Potential new providers** – that the Commission will need to consider how to manage the risks associated with the possible entry of new providers into the regulatory system.
- **Other regulators** - there may be opportunities for the Commission to consider the wider regulatory landscape applicable to universities including alignment with other regulatory bodies such as Health Education and Improvement Wales (HEIW). Where conditions of registration relate to areas in which there is involvement by other statutory regulators, care will be needed to avoid duplication and undue regulatory burden on providers.
- **Open University** – the need to recognise that the Open University is an institution operating across the four UK nations.
- **Part-time provision** – the importance of sufficient flexibility in the regulatory system and associated regulations to enable continued access to and funding of part-time higher education courses.

- **Registration conditions** – a need for the Commission, when setting the detailed requirements for the initial conditions of registration, to consider the full range of institutions applying for registration and develop an approach that is proportionate to the risks presented.
- **Tuition fees** – a concern about the two-tier approach to tuition fees associated with the two categories of registration. There was a misconception that providers in the proposed ‘Alternative’ category could not charge the same fees as providers registering in the proposed ‘Core’ category. The proposed difference relates to the level of tuition fee loans available under the Welsh Government student support regime. The concern related to ‘Alternative’ category providers having to meet the same conditions as ‘Core’ category providers but receiving less tuition fee income.
- **Transnational Education** – clarification was sought on how transnational education (TNE) would be treated in the registration system and the implications for a provider’s eligibility to seek to register with the Commission.