



Llywodraeth Cymru
Welsh Government

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Regulation of higher education providers in Wales

We want your views 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 (Wales) Act 2022.

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Ministerial foreword

Whilst driving forward our reform of the tertiary education and research sector I have been impressed by the professional expertise and willing engagement of our stakeholders as they have collaborated with us on our journey. I am convinced that this continued collaboration is what will enable the success and sustainability of these reforms. This document, and the accompanying draft Statutory Instruments, form the latest in a series of invitations to engage again.

The overarching framework for a new system of regulatory oversight is already established by the Tertiary Education and Research (Wales) Act 2022.

The aim of this consultation is to give a finer level of detail; enabling the Commission for Tertiary Education and Research, once operational, to establish the registration system for tertiary education providers of higher education in Wales and give the sector as a whole clarity about what to expect and when.

I have listened to the resounding messages from those most affected by these changes, and I am determined to facilitate a smooth and effective transition from the existing arrangements to the new registration system, particularly in terms of the regulatory oversight and the wider impacts on student support. I believe it imperative that there needs to be sufficient time allowed for this to happen.

For this reason, although I would expect much of the Commission's development of the new system, and its consultation with those affected, to start during 2024 and 2025, it is now my intention that the register be established for July 2026 and the associated regulatory arrangements fully implemented in academic year 2027 to 2028.

To equip the Commission to take these next steps, we must make certain Regulations for the registration system to operate as intended. This consultation is the first of several steps towards the establishment of a register of tertiary

education providers of higher education in Wales. The Regulations, once made, will provide a foundation for the Commission's work.

The policy context is very different here in Wales to other parts of the UK. We have always been proud of the distinct values and characteristics of our tertiary education sector. These reforms are not market-led to manage hundreds of providers, but a means of effectively and proportionately regulating a smaller, diverse sector.

Our approach to regulation and relationship management has been, and will remain, distinct from that operated elsewhere. It is my firm belief that even whilst the structures and mechanisms are changing, those valued relationships will grow and strengthen.

The register of tertiary education providers has therefore been designed to be a flexible mechanism for proportionate and accountable regulation of the tertiary education sector in Wales.

The register will form the "regulatory gateway" for the automatic designation of higher education courses for Welsh Government student support. The legislation underpinning the new system provides the Commission with a range of regulatory interventions. Although it will be a matter for the Commission to set out its approach to these, I expect it to support providers to protect the interests of students, Welsh taxpayers, and the reputation of higher education in Wales.

With this in mind, I believe these Regulations will give the Commission operational freedom to develop its own expectations of providers to satisfy regulatory requirements and its distinct approach to monitoring and intervention. I look forward to hearing the views of stakeholders on these matters.

Summary

Introduction

The Tertiary Education and Research (Wales) Act 2022 (“the TER Act”), an Act of Senedd Cymru, was given Royal Assent on 8 September 2022.

The TER Act provides for the dissolution of the Higher Education Funding Council for Wales (“HEFCW”) and establishes a new Welsh Government sponsored body, the Commission for Tertiary Education and Research (“the Commission”).

The Commission will be responsible for promoting, funding, and regulating tertiary education and research in Wales. Tertiary education encompasses post-16 education, including further and higher education, adult community learning, apprenticeships, and local authority-maintained school sixth form provision.

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.

Purpose of this consultation

This consultation covers a broad range of matters which arise from the TER Act relating to the register of tertiary education providers in Wales. It seeks feedback on policy proposals and on draft regulations which the Welsh Government proposes to make for the following matters:

1. The register including the categories of registration, information to be included in the register, further registration conditions, and the eligibility of registered providers to receive higher education, research and innovation funding from the Commission.
2. The designation of providers as institutions for the purpose of making registration applications.
3. Decision reviews by an independent person or panel.
4. Transitional or savings provisions in connection with deregistration.
5. The principle of whether to introduce secondary legislation to require the Commission to assess the quality of providers of higher education at specified regular intervals.

In relation to matters 1 through to 3 above, the consultation is accompanied by the following draft regulations, which it is intended to make during 2024:

- Commission for Tertiary Education and Research (Registration of Tertiary Education Providers in Wales) Regulations.
- Commission for Tertiary Education and Research (Designation of Providers)

(Wales) Regulations.

- Commission for Tertiary Education and Research (Decision Review) (Wales) Regulations.

The consultation seeks feedback on the draft regulations.

The consultation also sets out the Welsh Government's policy proposals for matters 4 and 5 above and seeks stakeholders' views on the proposals to enable the preparation of further regulations which are intended to be made during 2025.

These regulations will be issued for consultation prior to being made.

The Welsh Government will consult with the Open University about proposals for regulations that need to be made to enable the Open University, insofar as its activities in Wales are concerned, to make a registration application to the Commission.

The proposed regulations and policy align with the registration system proposals contained in the Statement of Policy Intent published alongside the introduction of the TER Act.

Current higher education regulatory and course designation arrangements

Students ordinarily resident in Wales may elect to study higher education courses at universities, colleges, or other providers throughout the UK. Where the course is designated, by the Welsh Ministers, for the purpose of student support, then eligible students are entitled to apply for tuition fee and maintenance support in connection with their undergraduate studies or support towards the costs of postgraduate (master's and doctoral) studies.

The Welsh Ministers can make regulations under the Teaching and Higher Education Act 1998 to designate higher education courses for the purpose of providing student support.

Currently there are two routes by which higher education courses may be designated for Welsh Government student support which have different regulatory oversight requirements associated with them:

- Automatic designation: providers do not need to apply for course designation as provision is made within the undergraduate and postgraduate student support regulations for automatic designation to apply subject to the course satisfying a number of conditions, and not falling within the list of exceptions. Reliance is placed on the regulatory oversight undertaken by the relevant regulatory or funding body in each of the UK administrations.
- The relevant regulations in respect of automatic designation are the:
 - **Education (Student Support) (Wales) Regulations 2018**
 - **Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019**
 - **Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018**
- Specific or case-by-case designation: providers need to apply for a course to be specified by the Welsh Ministers as designated (when otherwise it would not be), regulatory oversight is currently undertaken by HEFCW on behalf of the Welsh Ministers.

At present providers of higher education in Wales who wish for their full-time undergraduate level courses to be automatically designated for student support must apply to HEFCW for approval of a fee and access plan. Upon approval of a plan, providers become regulated institutions and must comply with HEFCW's requirements relating to quality assessment, financial and governance assurance as well as with fair access commitments and fee limits relating to their full-time qualifying courses.

Currently, providers of higher education in Wales who wish for their part-time undergraduate level courses or postgraduate masters or doctoral degrees to be automatically designated for student support are required by the relevant student support regulations to be a “Welsh funded institution”.

Welsh funded institutions are defined in the relevant regulations as those maintained or assisted by recurrent grants out of funds provided by the Welsh Ministers. Such institutions include both higher education institutions in Wales and further education institutions in Wales.

Where such a provider is also a regulated institution under the Higher Education (Wales) Act 2015 (“the 2015 Act”), all its courses are subject to HEFCW’s regulatory oversight for the purpose of quality assessment. Where such a provider is not a regulated institution under the 2015 Act, regulatory oversight may be secured by means of the terms and conditions of funding.

Where a higher education course is not automatically designated it must be specifically designated on a course-by-course basis if students are to be able to apply for financial support from the Welsh Government. HEFCW currently manages the process and advises the Welsh Ministers on whether to designate a specific course.

A **specific course designation policy** is currently administered by HEFCW on behalf of the Welsh Ministers to deal with providers of higher education whose courses are designated on a case-by-case basis. These are not regulated institutions under the 2015 Act, generally do not receive funding from HEFCW (unless they provide part-time higher education courses) and they are not required to be charities.

Many of the providers whose courses are specifically designated operate wholly or mainly outside Wales and would not be eligible to register with the Commission. Currently there are 21 providers with extant specific course designations of which 6 are providers in Wales, 14 are providers in England and

1 is a provider in Scotland.

Providers must apply for specific designation of each individual course and course location. The number of designated courses may change over time as new courses are developed and existing courses may cease to be offered.

The need for change

The higher education landscape has changed over recent years and continues to evolve with an increased diversity of providers of higher education and a greater choice for students in where, and how, they can pursue their studies.

Consequently, the current arrangements for course designation in Wales have developed incrementally in response to changes in the higher education funding and student support environment.

In addition, the regime provided for by the 2015 Act does not enable HEFCW to have statutory responsibility for the regulatory oversight of all providers of higher education in Wales, whose courses are designated for Welsh Government student support.

The **PCET reforms technical consultation** put forward proposals for revising the regulatory oversight of providers of higher education in Wales and for amending the arrangements for course designation for the purpose of student support. The principles underpinning the proposals were to simplify the administrative arrangements, developing coherence for all types of providers of higher education in Wales, and, taking account of the cross-border interfaces, to make the course designation arrangements as streamlined and efficient as possible.

The technical consultation proposed that course designation would remain a

function of the Welsh Ministers and that the regulatory oversight of all providers in Wales whose higher education courses are automatically designated for student support would be a function of the Commission.

The establishment of the register and associated regulatory system presents an opportunity to simplify the approach to course designation.

The TER Act registration system

The new registration system provided for by the TER Act will replace the current higher education regulatory oversight regime operated by HEFCW under the 2015 Act.

The policy intention is that the register will deliver a single regulatory gateway with common baseline requirements applicable to the full range of providers of higher education in Wales including universities, further education colleges and other providers of higher education courses.

Where courses are delivered in partnership arrangements, the organisation which has overall responsibility for the course will need to register with the Commission. For example, if a further education institution delivers higher education courses on behalf of a university under franchise arrangements, then the further education institution would not need to register with the Commission (unless it also delivers its own higher education courses for which it seeks automatic course designation).

Robust regulatory oversight of providers whose courses are designated for student support is therefore essential to protect the interests of students, the Welsh Government, and taxpayers.

The Welsh Government recognises the importance of maintaining stability in the

operation of the statutory student support system at a time of significant change. In line with the proposals set out in the Statement of Policy Intent which accompanied the TER Act on its introduction to the Senedd, the current policy intention is for automatic course designation of full-time undergraduate and PGCE courses of Welsh higher education providers to be contingent on their registration with the Commission.

The long-term aim is to streamline the current arrangements for Welsh providers who wish their higher education courses to be automatically designated for student support through reliance on a single regulatory gateway provided for by the register and the Commission's regulatory oversight of registered providers.

The course designation arrangements for providers in the rest of the UK will not involve the Commission's register, as this will only apply to registered Welsh providers of higher education, that is, those tertiary education providers in Wales providing higher education, including higher education provided on their behalf, whose activities are wholly or mainly carried on in Wales.

The Welsh Government intends to review the current automatic and specific course designation arrangements and will consult separately on this matter.

Proposed future arrangements for higher education course designation

The register and regulatory oversight system

The register will be the mechanism by which appropriate and proportionate regulatory oversight is applied to registered higher education providers who are in receipt of public funds, including grant funding from the Commission, or who benefit from the automatic designation of their courses for Welsh Government tuition fee support.

The registration system will equip the Commission with sufficient legal means to effect robust regulatory oversight of providers whilst also respecting and protecting their autonomy and independence. Providers who elect to register with the Commission will be required to demonstrate satisfaction of initial baseline regulatory requirements and compliance with ongoing regulatory requirements.

The Welsh Government's policy objectives for the establishment of the registration system are to:

- ensure robust and proportionate regulation of tertiary education providers in Wales, whose courses are supported by Welsh Government higher education grants and loans
- safeguard the contribution made to the public good from the Welsh Government's financial subsidy of higher education
- preserve and protect the institutional autonomy and academic freedom of higher education providers
- establish an approach capable of adaptation, should the need arise, due to changes to the tertiary education funding and regulatory environment
- enable future expansion of the registration categories to encompass a wider range of tertiary education should a policy need arise

Certain requirements relating to the registration system are set out in Part 2 of the TER Act. The Act places the Commission under a duty to establish and maintain a register of tertiary education providers. Additionally, the Act sets out initial and ongoing conditions of registration applicable to registered providers.

The TER Act also requires the Welsh Ministers by way of regulations to:

- specify categories for which provision must be made in the register
- make provision in connection with the carrying out of reviews of certain of the Commission's decisions by an independent decision reviewer

To ensure the register and the associated regulatory oversight system operate as intended the Welsh Government intends to make regulations for certain other matters. The intention is to bring the regulations forward in two tranches:

The regulations to be made in the first tranche are those included with this consultation, and which relate to:

- the categories for which the Commission must make provision in the register
- prohibiting providers from simultaneously registering in more than one category
- the information that must be contained in a provider's entry in the register
- further initial and / or ongoing conditions of registration
- the categories of the register to which a fee limit condition applies
- the categories of registered providers eligible to receive funding from the Commission
- the designation of providers as institutions for the purpose of making a registration application
- provision in connection with reviews of the Commission's decisions by an independent person or panel

The regulations to be made in the second tranche are intended to relate to:

- qualifying courses and qualifying persons for the purpose of regulated course fees subject to fee limits
- the maximum amount that the fee limit specified in a fee limit statement may not exceed
- when fees payable to a provider in respect of a course it provides on behalf of a registered provider are to be treated as payable to the registered provider for the purposes of fee limits
- transitional or saving provisions in connection with the removal or voluntary removal of an institution from a category of the register
- the Open University for the purpose of making a registration application

Following receipt of consultation responses, the Welsh Government will review the draft regulations and consider if any changes need to be made prior to bringing them forward for scrutiny by the Senedd.

The Welsh Government also intends to use the responses received to this consultation to inform the preparation of certain of the regulations in tranche 2. A further consultation on those regulations and regulations to be made relating to tuition fee limits as well as qualifying courses and qualifying persons for the purpose of regulated course fees will then be undertaken in due course.

The regulations to be made will provide the basis for the intended operation of the register and regulatory oversight by the Commission. The operational detail, in particular the expectations that providers applying for registration must satisfy and the ongoing compliance requirements applied to registered providers will be matters for the Commission to determine.

Categories of registration

The draft Commission for Tertiary Education and Research (Registration of Tertiary Education Providers in Wales) Regulations provide for the two categories of registration, which are Higher Education Core and Higher Education Alternative

This approach will ensure consistent regulatory oversight of Welsh providers of higher education, whose undergraduate level courses will be automatically designated for Welsh Government student support, where oversight cannot be achieved through terms and conditions of funding alone.

The TER Act enables the Welsh Ministers to establish further categories of registration applicable to different types of tertiary education providers as appropriate. While there is no current policy need identified, the specification of different categories of registration may become necessary in future. For

example, if new forms of Welsh Government student support funding were to be introduced to support the expansion of post-compulsory education opportunities, such as in non-degree higher technical and vocational education and training. Additionally, following establishment of the register the Commission could elect to provide evidence to the Welsh Ministers for the need, or otherwise, to expand the categories of registration to encompass a wider range of funded providers.

The current policy intention is for non-registered providers to be primarily regulated through the terms and conditions attached to grant or contract funding received from the Commission. These arrangements will be kept under review by the Welsh Government following the establishment of the register in relation to higher education providers.

It will be for the Commission to determine the detail of the terms and conditions it applies to funded providers. However, the TER Act requires the Commission to consider the imposition of terms and conditions which relate to many of the initial conditions of registration, when providing financial resources for further education or training, apprenticeships, or higher education courses specified in regulations, to a provider who is not a registered provider.

This approach is intended to ensure parity of regulatory oversight of registered and non-registered funded providers.

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?

Registration in more than one category

The draft Commission for Tertiary Education and Research (Registration of Tertiary Education Providers in Wales) Regulations will prohibit the simultaneous registration of providers in both the Higher Education Core and Higher Education

Alternative categories.

This is necessary to enable the regulatory system and provider benefits to operate as intended. It will be for individual providers to consider which registration category is appropriate to their circumstances. It is anticipated that the Commission may set out the benefits and obligations arising from registration in each of the registration categories.

Information to be included in the register

The Welsh Government considers it is in the interests of students and other stakeholders for the Commission to ensure certain information about registered providers is made publicly available, and kept up to date, following the establishment of the register.

The draft Commission for Tertiary Education and Research (Registration of Tertiary Education Providers in Wales) Regulations set out the information which must be included in a provider's entry in the register.

The matters covered include:

- provider's name, contact details, principal place of business and website
- the category of registration and the date of registration
- the type of tertiary education provided by or on behalf of the provider
- whether the provider is a charity and charity registration number (where applicable)
- whether the provider is a company, if so its company registration number (where applicable)
- whether a fee limit applies to the provider's registration, if so, details of how to access the provider's fee limit statement
- whether the provider has university title and/or degree awarding powers
- whether the provider has entered into validation arrangements

- whether the provider has entered into franchise arrangements

The Welsh Government does not wish to be overly prescriptive in specifying the mandatory information requirements, and considers the requirements set out in the draft Regulations to be the minimum information which must be included in a provider's entry in the register.

The publication of the specified matters, and the requirement to keep the register up to date, will ensure that stakeholders have access to accurate information about a registered provider.

It is the Welsh Government's view that the information providers will be required to supply to the Commission relates to matters which are of public interest and that its provision should result in a minimum administrative burden on registered providers.

The matters specified in the draft Regulations do not limit the Commission's ability to include further information in the register should the Commission consider it appropriate to do so.

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?

Eligibility for registration, benefits, and obligations for providers

Registration with the Commission will form the regulatory gateway to enable the automatic designation of registered providers' relevant higher education courses for the purpose of Welsh Government student support.

Eligibility for receipt of funding for the purpose of supporting higher education, research or innovation will also be dependent on registering with the Commission.

Registration for higher education providers will be voluntary. However, all Welsh providers of higher education who wish to access the benefits of registration will need to register with the Commission. A provider will be eligible to register in one of the proposed higher education categories if it is a tertiary education provider in Wales either providing higher education, or has higher education provided on its behalf, and it satisfies, in the view of the Commission, the initial conditions applicable to the category of registration sought.

The TER Act requires that certain initial conditions apply to each category of the register.

The TER Act requires the Commission to publish its expectations as to the requirements to be met for it to be satisfied in relation to the initial conditions of registration and undertake consultation as it considers appropriate.

The Welsh Government expects the Commission to consult all relevant stakeholders on the development of, and any future revisions to, its expectations for satisfaction of the initial registration conditions. This will ensure that prospective registration applicants are aware of the requirements they must satisfy, and stakeholders will have an opportunity to comment on the Commission's proposals.

Which providers will need to register

Providers of higher education who wish their relevant full-time undergraduate level and PGCE courses to be automatically designated for Welsh Government student support will need to register with the Commission. Additionally, higher education providers who wish to be eligible to receive funding from the

Commission for the purpose of supporting higher education, research or innovation will also need to register with the Commission.

Providers who are delivering higher education courses on behalf of another provider in Wales or elsewhere under franchise arrangements will not normally need to register with the Commission, unless they are delivering their own courses, for which they are seeking automatic designation for student support purposes or direct funding from the Commission.

In the longer-term the Welsh Government intends to consider application of registration requirements to enable automatic designation of part-time undergraduate, as well as post-graduate master's and post-graduate doctoral courses for the purpose of student support. There will be further consultation on this matter in due course.

Conditions of registration

Further initial conditions of registration

In addition to the initial conditions of registration set out on the face of the TER Act, the Welsh Ministers may specify further initial conditions in regulations.

The initial conditions of registration applicable to each registration category are specified on the face of the TER Act and relate to the following matters:

- quality of the kind of tertiary education provided by, or on behalf of, the applicant to which the category of the register relates
- effectiveness of the governance and management of the applicant (including its financial management)
- financial sustainability of the applicant
- effectiveness of the applicant's arrangements for supporting and promoting

the welfare of its students and staff

- effectiveness of any validation arrangements in enabling the applicant to satisfy itself as to the quality of the education leading to the award of a qualification under those arrangements

The draft Commission for Tertiary Education and Research (Registration of Tertiary Education Providers in Wales) Regulations provide for the below matters to also be initial conditions of registration:

- Charitable status: a condition requiring the applicant to be charity, applicable to the Higher Education Core category only. This is a continuation of the Welsh Government's current policy under the 2015 Act.
- Compliance with consumer law requirements: a condition relating to the information provided to prospective students about the provider, its courses and its terms and conditions of contracts with students, applicable to both the Higher Education Core and the Higher Education Alternative categories. Providers would be expected to demonstrate they have given due regard to complying with consumer protection law, and to the Competition and Markets Authority's (CMA) [advice](#).

Question 3: Do you agree with the inclusion of the two proposed further initial conditions in the regulations?

Question 4: Are there any other further initial conditions that you think should be included in the regulations?

Further mandatory ongoing conditions of registration

In addition to the mandatory ongoing conditions of registration set out on the face of the TER Act, the Welsh Ministers may specify further mandatory conditions in regulations.

The mandatory ongoing conditions of registration specified on the face of the TER Act relate to all the matters specified in the initial registration conditions and the following requirements which must be applied to registered providers:

- to notify the Commission of any changes which affects the accuracy of the information contained in the provider's entry in the register
- if given notice by the Commission, to have a learner protection plan approved by the Commission on or before the date specified in the condition and to give effect to the plan
- to comply with the requirements contained in the Learner Engagement Code published by the Commission
- 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
- to have regard to advice or guidance given by the Commission in the exercise of its functions
- to provide the Commission, or a person authorised by the Commission, with such information, assistance and access to the provider's facilities, systems and equipment as the Commission may reasonably require for the purpose of exercising its regulatory oversight functions

The Welsh Government considers that the matters provided for in the TER Act offer a comprehensive and firm foundation for the Commission's ongoing oversight of registered providers.

As such it is proposed that a very limited range of matters shall be specified in regulations as further mandatory conditions of registration.

The draft Commission for Tertiary Education and Research (Registration of Tertiary Education Providers in Wales) Regulations provide for further ongoing conditions of registration.

The following ongoing conditions of registration will apply to both the Higher Education Core and the Higher Education Alternative categories:

- a condition relating to the information provided to prospective students about a provider, its courses and its terms and conditions of contracts with students
- a condition requiring a provider to notify the Commission of any changes that affect the provider's status as a tertiary education provider in Wales

The following ongoing condition of registration will apply to Higher Education Core category:

- a condition requiring a provider to be a charity

The Welsh Government considers the above matters to be the core further conditions of registration to enable the regulatory oversight system to operate as intended. The intention is to minimise additional regulatory burdens placed on providers beyond the mandatory ongoing conditions specified on the face of the TER Act.

The Commission will be able to introduce further ongoing conditions of registration should it consider any to be necessary subject to the relevant consultation requirements provided for in the TER Act.

Question 5: Do you agree with the further mandatory ongoing conditions proposed for inclusion in the regulations?

Question 6: Are there any other mandatory ongoing conditions that you think should be included in the regulations?

Fee Limits

Registration Category to which a fee limit condition applies

The draft Commission for Tertiary Education and Research (Registration of Tertiary Education Providers in Wales) Regulations provide that the Higher Education Core category shall be the category of the register to which a fee limit condition will apply.

This is consistent with the current policy as provided for in the Higher Education (Wales) Act 2015, whereby regulated institutions are required to comply with a fee limit in respect of their qualifying courses offered to qualifying persons.

The TER Act requires the Commission to ensure that an ongoing registration condition relating to fee limit statements applies to each provider registered in a category to which the fee limit applies. It follows that providers electing to register in the Higher Education Core category will be required to prepare a fee limit statement to be approved by the Commission. Such providers must ensure that regulated course fees do not exceed the applicable fee limit.

It is not proposed that a fee limit condition be applied to the Higher Education Alternative category. Providers registering in this category will have their relevant full-time undergraduate level higher education courses automatically designated for tuition fee support at the lower rate (currently £6,185 per annum).

Although providers electing to register in the Higher Education Alternative category would be able to charge tuition fees more than the fee limit applied to providers in the Higher Education Core category it is considered unlikely that few, if any, would elect to do so.

This approach ensures continuity with the current arrangements applied to full-time undergraduate level courses specifically designated for Welsh Government student support.

Eligibility for receipt of funding from the Commission for the purpose of higher education, research, or innovation

The TER Act enables the Commission to fund certain categories of registered providers, as specified in regulations, for the purposes of supporting higher education provided by, or on behalf of, such providers and supporting research or innovation.

The funding of both higher education and research or innovation activities will be a matter for the Commission to determine. The Commission may, for example, elect to provide funding in respect of courses which are expensive to deliver, to ring fence funds for specified initiatives or to incentivise the delivery of particular courses.

The draft Commission for Tertiary Education and Research (Registration of Tertiary Education Providers in Wales) Regulations make provision for providers registering in the Higher Education Core category to be eligible for, but not entitled to, funding in respect of higher education, research or innovation.

Designation as an institution to make a registration application

Unless a provider is considered to be an 'institution' it will not be eligible for registration with the Commission.

The TER Act enables the Welsh Ministers to designate a provider of tertiary education in Wales as an institution, for the purposes of the Act, in cases where

a provider would not otherwise be defined as such under the Act.

This replicates an existing power under section 3 of the 2015 Act which has not been used to date. No higher education providers in Wales have requested to be designated as an institution for the purpose of making a fee and access plan application to HEFCW.

An application to be designated as an institution may be made by a provider who is providing tertiary education in Wales and, other than for the designation, would not be regarded as an institution.

The TER Act enables the Welsh Ministers to make provision in regulations about applications for designation as an institution, the making and withdrawal of designations, including matters to be considered to make or withdraw a designation, and the effect of a withdrawal of designation.

The draft Tertiary Education and Research (Wales) Act 2024 (Designation of Providers) (Wales) Regulations make provision for the following:

- that applications for designation as an institution should be made in writing to the Welsh Ministers
- the supporting evidence required to identify the applicant and demonstrate it provides tertiary education in Wales, and that it would not other than for the designation be considered to be an institution
- that when considering the withdrawal of a designation the Welsh Ministers must take into account whether a provider has requested its extant designation be withdrawn
- that a designation cannot be withdrawn while a provider is still registered with the Commission

Being designated as an institution does not confer any rights or obligations on a non-institutional tertiary education provider. A designation would however enable such a provider to make a registration application to the Commission.

Once designated as an institution the provider would need to satisfy the initial conditions of registration (applicable to the category in which they were seeking registration) in the same way as any other eligible provider.

Provision in connection with decision reviews

Where the Commission chooses to issue a notice or direction in reliance on certain of its regulatory powers, a provider may request a review of the Commission's decision. These arrangements ensure providers will have recourse to a review to be undertaken by an independent person or panel appointed by the Welsh Ministers.

The instances in which providers may request a decision review are set out in sections 45 and 78 of the TER Act and relate to the following circumstances:

- In respect of the registration system and the associated regulatory arrangements:
 - refusing to register a provider
 - imposing or varying a specific ongoing registration condition
 - directing a provider in respect of failure to comply with ongoing registration conditions
 - removing a provider from a category of the register
 - specifying the date on which a provider is to be removed from a category of the register
 - giving a notice rejecting a fee limit statement or a variation to such a statement
- In respect of the quality assurance aspects of the regulatory arrangements
 - directing a provider in respect of failing to co-operate with the Commission or a designated quality body

The TER Act requires the Welsh Ministers to make provision through regulations in connection with the carrying out of reviews by the decision reviewer appointed

by the Welsh Ministers.

The Welsh Ministers are currently subject to a similar duty to make such provision in respect of reviews of HEFCW's decisions under the Higher Education (Wales) Act 2015.

The draft Commission for Tertiary Education and Research (Decision Review) (Wales) Regulations provide for the following policy intention:

- applications must be made in writing to the decision reviewer appointed by the Welsh Ministers, include specified information, and be made within 40 calendar days of the provider being notified by the Commission about its intended decision
- the decision reviewer may recommend that the Commission either take no action or reconsider its original decision
- the Commission and the review applicant to be kept informed and updated regarding information requests and outcomes. Both parties must respond to additional information requests within 28 days of receiving a request from the decision reviewer
- the Commission must reconsider its original decision, if recommended to do so, and inform the applicant of the outcome of its reconsideration within 40 days of receiving the decision reviewer's recommendation

The above approach is broadly similar to the arrangements currently provided for by the Higher Education (Fee and Access Plans) (Notices and Directions) (Wales) Regulations 2015.

Question 7: Do you agree with the arrangements proposed for decision reviews?

Transitional or saving provisions in connection with de-registration

The TER Act makes provision for the de-registration of providers.

De-registration may be voluntary if a provider applies to the Commission to be removed from the register. Additionally, the Commission has both a power and a duty to remove a provider from the register or category of the register when certain circumstances apply as set out in the TER Act.

The Welsh Ministers may make regulations to establish transitional arrangements where a provider is to be removed from the register, or from a category of the register. Transitional arrangements might, for example, involve temporarily treating a de-registered provider as being registered, to enable students completing their courses at the provider to continue to receive student support, and for the Commission to temporarily continue regulatory oversight and enforcement action while students complete their courses.

Where a provider is removed from the register, and where a provider's courses remain designated for student support, the Welsh Government considers that certain regulatory oversight requirements, such as regulatory interventions which could include for example the ability of the Commission to issue certain directions, may need to remain in place to protect students who are completing their courses.

In addition to regulatory interventions, the proposal is that the Commission should be enabled, as a minimum, to continue to enforce fee limits, undertake quality assessments and require the de-registered provider to supply information to the Commission.

It may also be helpful for the ongoing conditions of registration applicable to a registered provider to continue to apply to a de-registered provider during the

period in which students who are undertaking courses designated for student support complete their studies.

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?

Quality assessment of higher education

The TER Act enables the Welsh Ministers to make regulations specifying the intervals at which registered providers of higher education should be required to undergo a quality assessment, and to prescribe the period within which assessment reports must be published.

The Statement of Policy Intent, published with the TER Act at its introduction to the Senedd, indicated that any such regulations would likely specify that higher education assessments should take place at least once every six years. This is consistent with HEFCW's current Quality Assurance Framework, and also with Estyn's usual cycle of inspections in other parts of the post-compulsory education sector.

The intention of the proposed approach, if implemented, would be to support the Commission in its duty to assess, or make arrangements to assess, the quality of higher education provided in Wales by, or on behalf of, each registered provider of higher education. The approach would also align with the statutory requirements in place relating to the frequency of inspection of other parts of the tertiary education sector.

The consultation seeks views on the principle of specifying the interval of quality assessment in higher education as noted above and the necessity and impact of introducing regulations in future.

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?

Transitional arrangements

At present institutions in Wales whose full-time higher education courses are automatically designated for the purpose of Welsh Government student support are subject to regulatory oversight by HEFCW under the 2015 Act.

Following the dissolution of HEFCW it is proposed that the Commission will operate the 2015 Act regulatory framework for a transitional period during which the register and the associated regulatory oversight system under the TER Act will be established.

This approach will enable continued oversight of regulated institutions under the 2015 Act and allow for a smooth transition to the new regulatory regime.

Impact assessments

Appraising impact is an essential part of developing policy and we have included some questions around equality and the Welsh language. We welcome all feedback regarding any likely impacts, both positive and negative, arising from the regulations, as well as any potential opportunities for mitigating actions. This will be incorporated into the impact assessments being undertaken.

The Welsh Government wishes to ensure that the Regulatory Impact Assessment for the regulations to be made in respect of the register fully reflects

the views of all relevant stakeholders and so have included some high-level questions relating to this in this consultation. In parallel with this, we are seeking to appoint external consultants to engage with stakeholders to estimate potential system level costs for the registration system. We intend to publish both the RIA and other impact assessments with the draft regulations when laid.

Question 10: Do you anticipate any resource implications for your organisation arising from the regulations or registration system?

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?

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.

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? If so, how could positive impacts be increased, or negative impacts be mitigated?

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?

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?

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.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

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.

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 them.

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