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Llywodraeth Cymru
Welsh Government

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Cardiff Bay
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27 June 2014

CHILDREN, YOUNG PEOPLE AND EDUCATION COMMITTEE - STAGE 1 SCRUTINY OF THE HIGHER EDUCATION (WALES) BILL

Following my attendance at the Children, Young People and Education Committee on 5 June I agreed to provide Members with further details in the following areas: Higher Education Funding Council for Wales' functions; costs; part time courses; operating arrangements for medical schools and the relationship between HEFCW and QAA.

Before I respond in detail to each of the areas, I would like to take this opportunity to clarify the arrangements for specific course designation being progressed by way of legislation. The Bill does not provide for either automatic or specific course designation, my intention is to consult on new requirements for specific course designation with the aim of introducing rigorous quality assurance and robust checks on the financial health of institutions delivering such courses. Any new arrangements for specific course designation will be progressed by way of the Welsh Ministers' existing regulation making powers under the Teaching and Higher Education Act 1998. Therefore new legislation is not needed.

Now turning to the specific areas Members sought clarity on, please find detailed responses below:

HEFCW's functions

In my Plenary statement I indicated that not all of HEFCW's functions can be included in the revised regulatory system and that it will not be a direct replacement for the existing funding-based system. The Bill will amend, repeal and replace certain of HEFCW's current functions. The Bill provisions build on HEFCW's existing functions under the Further and Higher Education Act 1992 and the Higher Education Act 2004, recasting and consolidating them in the context of the new regulatory system. These changes will ensure that HEFCW continues to be able to enforce tuition fee limits and fee and access plan commitments, and

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provide assurance about the quality of education and the organisation and management of regulated institutions' financial affairs.

HEFCW's function to allocate funding to institutions under section 65 of the 1992 Act will remain in force and HEFCW will continue to be able to attach terms and conditions to such funding. However, following the introduction of the new tuition fee regime the amount of funding available to be allocated has significantly reduced and institutions are now less dependent on HEFCW grant funding and more reliant instead on tuition fee income from students which is heavily subsidised by the Welsh Government. The Bill does not make provision for a revised approach to the manner in which HEFCW will support delivery of the Welsh Government's policy priorities; it is restricted to the introduction of a new regulatory system.

Moving from a system of funding controls to a system of statutory regulation presents an opportunity for the Council to re-define its relationship with the sector. In my remit letter to HEFCW for 2014/15 I made clear my expectation that the funding regime introduced in 2012/13 requires a fundamental reappraisal of the relationship between Government, the Funding Council and HE institutions in Wales. The new funding regime for higher education in Wales brings with it new expectations on our universities. The Welsh Government continues to make a very substantial investment through HEFCW in respect of the funding which goes direct to institutions in Wales and the Tuition Fee Grant and loans paid to Welsh-domiciled students at Welsh institutions. This shift in funding and change in role means that the Council will need to identify new ways of working in partnership with the sector to influence behaviour and to support the delivery of policy aims. My expectation is that this work should include identifying ways in which the Council's enhanced role can foster a stronger recognition by institutions of the link between their status as designated bodies in receipt of public funding and their responsibility to ensure positive outcomes for all learners. I look to the Funding Council and our HE institutions to develop a more robust partnership through which the national strategic priorities set out in my remit letter can be delivered.

Costs

The additional cost to HEIs in Wales of introducing the Bill is estimated to be £1.6m over the first five years of operation. Implementing the Bill will mean costs are incurred by Welsh Government, higher education institutions (HEIs) and the Higher Education Funding Council for Wales (HEFCW).

These costs have been estimated using a task-based model. The Bill has been carefully analysed in order to ascertain all the tasks that will be undertaken in the operation of the new regulatory framework. The number of days taken to complete each task has been estimated and appropriate wage rates and overhead costs have been used to arrive at cost estimates for those tasks that will be undertaken regularly, as well as the cost of sanctions.

The Bill has been costed as Option Three in the RIA. Excluding the costs of any sanctions (returned to below) the estimated costs of the Bill are recorded in table one.

Table 1

The regular costs of the Bill

£	2015/16	2016/17	2017/18	2018/19	2019/20
Fee plan approval and automatic	341,000	331,000	331,000	341,000	331,000
Fee plan monitoring and evaluation	301,000	366,000	470,000	374,000	470,000
Quality assurance	405,000	434,000	434,000	490,000	434,000
Financial assurance	471,000	574,000	536,000	580,000	577,000
Subordinate legislation*	49,000	49,000	0	0	0
Development, training, oversight	99,000	99,000	29,000	29,000	29,000
TOTAL	1,666,000	1,853,000	1,800,000	1,814,000	1,841,000

* The development of legislation arising as a direct consequence of the Bill.

Some of this cost reflects, in part, continuing activity, tasks which are carried out presently and which will continue to be carried out upon introduction of the Bill (and which are required by its provisions)—existing costs. Additional costs, on the other hand, are costs which arise for two reasons:

- i. there may be some increased complexity in managing and administering the existing tasks.
- ii. the Bill introduces wholly new tasks (as a result of the shift from a system based upon funding levers associated with terms and conditions to one based upon express regulatory functions).

The table below, then, details:

- additional costs—the cost of wholly new regulatory tasks introduced by the Bill; and the increase in cost of continuing tasks. The analysis assumes a 25% increase in the cost of continuing tasks.
- existing costs—the existing cost of continuing tasks.

Table 2

Additional costs of the Bill, and existing costs

£	2015/16	2016/17	2017/18	2018/19	2019/20
Additional	556,000	549,000	496,000	493,000	537,000
Existing	1,109,000	1,303,000	1,303,000	1,321,000	1,303,000
TOTAL	1,666,000	1,853,000	1,800,000	1,814,000	1,841,000

The incidence of these costs between HEIs, HEFCW and Welsh Government is readily identified from the task analysis which underpins the cost model. The additional cost to HEIs in Wales of introducing the Bill is estimated to be £1.6m over the first five years of operation.

Table 3

Incidence of the additional costs of the Bill

£	2015/16	2016/17	2017/18	2018/19	2019/20	TOTAL
Welsh Government	172,000	113,000	29,000	87,000	29,000	430,000
HEFCW	126,000	128,000	104,000	97,000	145,000	600,000
Institutions [†]	258,000	308,000	363,000	308,000	363,000	1,600,000
TOTAL	556,000	549,000	496,000	493,000	537,000	2,631,000

[†] There are currently 10 institutions with fee plans and the analysis therefore assumes 10 institutions.

Finally, should 'sanctions' (used here as shorthand for activity relating to rectifying any breaches of the regulatory framework) be required further costs would be incurred. It is not possible to predict with any certainty which sanctions would be required, or when. The two scenarios used in the RIA (p.95) provided a range of possible additional costs to HEIs, from £73,000 to £188,000.

Part time courses

Paragraph 112 of the Explanatory Memorandum indicates that "There may be a small number of institutions, including the Open University in Wales, and possibly some FE institutions and private providers which only deliver part-time HE courses. Part-time provision delivered by these providers will fall outside the scope of HEFCW's new quality assessment duty, which relates only to education provided by, or on behalf of, regulated institutions."

I would like to clarify that education delivered by providers which only deliver part-time courses will only fall outside the scope of HEFCW's new quality assessment duty for as long as part-time fees remain unregulated. If part-time fees become regulated at a future date,

providers which only deliver part-time courses will be able to apply to HEFCW for approval of a fee and access plan in the same way as providers of full-time courses. Subject to HEFCW's approval of their plans they will become regulated institutions and part-time education delivered by such providers will fall within the scope of HEFCW's quality assessment duty. In summary, there is nothing in the Bill which prevents the education delivered by providers which only offer part-time courses being subject to HEFCW's quality assessment duty in the future and there is not a 'gap' in coverage of such education for the reasons set out below.

I anticipate that the majority of part-time courses currently delivered in Wales will be within scope of the quality requirements under the new regulatory framework. This is because HEFCW's quality assessment duty will cover all courses (whether full or part-time), delivered by institutions in Wales with an approved fee and access plan in place.

HEFCW's new quality assessment duty will also cover certain franchised courses. HEFCW will be required to secure the quality assessment of franchised courses delivered in Wales on behalf of regulated Welsh institutions. My officials are currently in discussions with the UK Government about a proposed Order under section 150 of the Government of Wales Act 2006. One of the aims of this Order is to extend HEFCW's quality assessment duty to cover education delivered in England by a franchisee on behalf of a regulated Welsh franchisor. However, any provision delivered by a franchisee in Wales under arrangements with a franchisor in England will be a matter for HEFCE and we must rely on the regulatory systems that they have in place in this situation.

In addition, HEFCW will be able to secure quality assessment arrangements at funded institutions which only deliver part-time courses through terms and conditions of funding (in the same way as they do now). This is because HEFCW will continue to pay some recurrent funding to institutions for part-time courses for the foreseeable future. As explained above, this may only be an interim measure. If part-time fees become regulated then the education delivered by or on behalf of part-time only providers will fall within the scope of HEFCW's new quality assessment duty.

The Open University will continue to be assessed by the QAA through existing arrangements which HEFCW has put in place with HEFCE.

In terms of private providers, the quality assessment arrangements will depend on whether their courses are designated for the purpose of student support. For providers which only deliver part-time courses this would be through the case-by-case designation route. The new arrangements proposed for case-by-case designation will not require amendments to primary legislation and so do not form part of the Bill. The new arrangements will however, include robust requirements for the quality of courses and will be subject to consultation in due course. If however a private provider's courses are not designated for the purpose of student support it would not be appropriate to impose quality assessment arrangements where the Government (or other public bodies) have no financial interest.

I have ensured that the regulatory framework has been designed to accommodate part-time courses in the future if a decision is taken to regulate part-time fees. Until such time, I am satisfied that the necessary arrangements exist to ensure all provision designated for student support will continue to be subject to stringent quality assessment requirements.

Operating arrangements for medical schools

In terms of undergraduate medical education it is a matter for each higher education institution to ensure there are appropriate arrangements in place to enable their students to comply fully with the requirements of the General Medical Council and others in terms of meeting standards. These arrangements will also need to be structured in a way that best meets the requirements of an individual institution's undergraduate curriculum. I do not believe Health Boards or institutions would take the view that they would not want to be involved in those arrangements. From the perspective of Health Boards in Wales they would see this as an opportunity to show students the benefits of working in Wales and potentially see this as an opportunity to engage with them as potential future employees and to influence them through these opportunities.

The position is similar in relation to post graduate training. In the past trainees were routinely required to rotate between North and South Wales as part of many of the training programmes available. This caused some concerns amongst trainees, many of whom chose not to train in Wales because of this approach. However in response to recent questions on this issue the Minister for Health and Social Services has made it clear that no Welsh Government barriers exist to training being configured on a Wales / England basis where the benefits outweigh the disadvantages of doing so. The Deanery have been asked to ensure they take every opportunity to maximise this approach in the future. The Wales Deanery already have strong links with deaneries outside Wales and are working with them to secure the best arrangements for trainees.

These are therefore arrangements that fall within the remit of the individual establishments and outside the coverage of the Bill and in that respect will not be impacted by it. We will keep your concerns to mind however in order to ensure there is no unintended adverse impact.

Relationship between HEFCW and QAA

The existing relationship between HEFCW and the QAA is based on HEFCW's quality assessment duty in section 70 of the Further and Higher Education Act 1992. This duty enables HEFCW to secure the provision of quality assessment activity through the QAA.

In preparing this Bill I have been keen to ensure that HEFCW retains the flexibility to engage the QAA in relation to quality assessment. For this reason, section 17 of the Bill enables HEFCW to discharge its quality assessment duty through arrangements with the QAA.

This will ultimately be a matter for HEFCW. However, I was pleased to note the evidence provided to the committee by Dr Blaney of HEFCW, which indicated an intention to maintain a UK wide approach to quality assessment. As the existing UK wide arrangements involve the QAA, I anticipate that this relationship will continue in the future.

In view of this ongoing relationship, I met with the QAA in December and provided an update on my proposals for this Bill and the potential implications for HEFCW and consequently for the activities undertaken by the QAA on their behalf.

My officials and HEFCW officers also meet with the QAA on a regular basis to discuss, amongst other things, specific and general issues which affect the delivery of higher education in Wales. However, as is the case now, the role of the QAA will focus on

assessing the quality of education provided by institutions in Wales, whereas the approval and monitoring of fee and access plans will remain a matter for HEFCW.

I trust that the information I have provided is helpful and clarifies the position on the issues above to the Committee, and I look forward to appearing before the Committee on 9 July 2014.

Best Regards
Huw

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