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Consultation Document

The designation of higher education courses at alternative providers for the purpose of student support

Date of issue: 19 January 2015

Action required: Responses by 10 April 2015

The designation of higher education courses at alternative providers for the purpose of student support

Overview	This consultation seeks views on our proposals to strengthen the regulation of alternative providers of higher education to safeguard the student experience and ensure effective use of public funds.
How to respond	Responses to this consultation should be e-mailed/posted to the address below to arrive by 10 April 2015 at the latest.
Further information and related documents	<p>Large print, Braille and alternate language versions of this document are available on request.</p> <p>The consultation documents can be accessed from the Welsh Government's website at www.wales.gov.uk/consultations</p> <p><i>Further and Higher Education (Wales) Bill</i> White Paper (2012) www.wales.gov.uk/consultations/education/feandhebill/?status=closed&lang=en</p> <p><i>Higher Education (Wales) Bill</i> technical consultation (2013) www.wales.gov.uk/consultations/education/higher-education-wales-bill-technical-consultation/?status=closed&lang=en</p> <p>The Higher Education (Wales) Bill www.senedd.assemblywales.org/mglssueHistoryHome.aspx?lId=9722</p> <p>The Education (Student Support) (Wales) Regulations 2013 www.legislation.gov.uk/wsi/2013/3177/contents/made</p>
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Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Contents

What are the main issues?	2
Where are we now?	3
The case for change	5
Overview of a revised system	7
Our proposals	9
The criteria for specific designation	9
Designation of franchised courses	12
Maintaining a specific designation	13
Administration	14
Comparison of regulation between regulated institutions and alternative providers	14
Impact	16
Implementation	18
Review of existing designations	18
Existing students	18

What are the main issues?

The Further and Higher Education (Wales) Bill White Paper published in July 2012 set out the Welsh Government's proposals to reform the regulation of higher education (HE) in Wales.

Revisions were made to the proposals following feedback to the White Paper consultation. The Welsh Government then undertook a further Technical Consultation in May 2013. The Higher Education (Wales) Bill was introduced to the National Assembly for Wales on 19 May 2014.

This consultation is about the designation of 'alternative providers' of higher education and complements and develops the earlier consultations. Alternative providers are organisations that are not publicly funded and deliver courses of higher education (they are also referred to as private or non-public providers). These providers have various legal structures. Some operate for profit, others do not.

Students undertaking courses at these providers may be eligible to receive financial support from the Welsh Government. To enable this support, alternative providers must apply to have their courses 'designated' by the Welsh Ministers. This has been known as case-by-case or specific designation. It will be referred to here as *specific* designation.

Previous consultations focussed on the regulation of HE providers that have courses *automatically* designated. By making changes to the arrangements for the specific designation of alternative providers the Welsh Government will further the process of revising key aspects of the regulatory framework for all HE providers, whether designated on an automatic or specific basis.

The Welsh Government intends to implement changes in the way alternative providers are designated to:

- safeguard the student experience by undertaking more rigorous checks on organisations applying for a designation; and
- provide for greater assurance of the effectiveness of the expenditure of public funds.

This document describes the new criteria for designation and our preferred method for implementation and seeks your views on these proposals.

The deadline for response is 10 April 2015.

Where are we now?

The Higher Education Act 2004 transferred the majority¹ of functions relating to student support contained in section 22 of the Teaching and Higher Education Act 1998² to the National Assembly for Wales including the designation of courses for the purpose of statutory student support. These powers were then transferred to the Welsh Ministers³.

Providing certain criteria are met⁴, courses at many HE providers are *automatically* designated for the purpose of statutory student support. Where courses are automatically designated students domiciled in Wales who are undertaking such a course will normally be eligible to apply for financial support. The overwhelming majority of students receiving financial support from the Welsh Ministers are on courses that are automatically designated. The Higher Education (Wales) Bill proposes that institutions in Wales which wish for their HE courses to be automatically designated for statutory student support will need to have a fee and access plan in force, approved by HEFCW. Institutions in Wales which have an approved fee and access plan in force will be subject to the requirements of the new regulatory framework

Automatic designation is not the only way in which courses can be designated. Providers of higher education that charge a fee to students may choose instead to apply to the Welsh Ministers to have some or all of their courses designated on a specific basis. For a course to be designated certain criteria must be met. Only the courses that the provider applies for will be designated. This route to designation is referred to as specific designation to differentiate it from the automatic route.

Students undertaking courses that have a specific designation are eligible to apply for a range of grants and loans, some of which are means tested. The main grants and loans available are:

- tuition fee loan;
- means tested living costs (maintenance) grants and loans; and
- dependants' allowances.

The amount of support is reviewed annually. (This consultation is not seeking views on the amount of support that the Welsh Ministers make available to

¹ Not all the functions under section 22 of the Teaching and Higher Education Act 1998 are transferred to the National Assembly (now Welsh Ministers), and some that are transferred are exercisable concurrently with the Secretary of State and Welsh Ministers, see section 44(2) of the Higher Education Act 2004.

² C.30.

³ Paragraph 30, Schedule 11 Government of Wales Act 2006.

⁴ See regulation 5 of the Education (Student Support) (Wales) Regulations 2013 (S.I. 2013/3177) (as amended).

students on designated courses.) Students on courses that have a specific designation are not eligible to apply for a tuition fee grant; students on courses that have an automatic designation are eligible to apply for this grant.

The types of courses that can be designated include full and part time undergraduate, postgraduate (for the purpose of Disabled Students' Allowances only) and distance learning courses. The Education (Student Support) (Wales) Regulations 2013, as amended⁵, ('the Regulations') designate certain courses for the purpose of section 22 of the 1998 Act and describe the amount and type of financial support that a student might be eligible to receive.

Latest data suggests that the Welsh Ministers are supporting 340 students on courses with a specific designation at 66 alternative providers in the 2013/14 academic year⁶ (as a comparison, there were 61,195 Welsh domiciled students enrolled full time at UK HEIs in 2012/13 and a further 63,470 part time⁷). Most courses have small numbers of supported students; 32 of the 66 providers have only a single supported Welsh domiciled student. Only eight providers have 10 or more students supported by the Welsh Ministers. A further 25 providers have courses that are designated but have no supported students undertaking them at present.

⁵ Amended by Education (Student Support) (Wales) (Amendment) Regulations 2014/1712 (W.172).

⁶ Data in this paragraph provided by the Student Loans Company.

⁷ EDUC0097 Enrolments (All year) of Welsh domiciled students at UK HEIs by UA of domicile, gender, first-year status, level and mode of study. Welsh Government. <https://statswales.wales.gov.uk/Catalogue/Education-and-Skills/Post-16-Education-and-Training/Higher-Education/Students/Welsh-Domicile-Enrolments-at-UK-HEIs/EnrolmentsDuringTheYearAtUKHEIs-by-Mode-YearOfStudy-Level>

The case for change

The Welsh Government incurs expenditure by making student support available to eligible students at alternative providers. Alternative providers effectively benefit from a Welsh Government subsidy from the receipt of fees. As such, the Welsh Government has an interest in ensuring that funding is used effectively and for the public good.

There are several reasons for introducing new arrangements for the designation of courses at alternative providers now.

First, the higher education landscape is undergoing significant change. More HE courses are being offered by alternative providers. The number of students on courses that had a specific designation from the Welsh Ministers grew from 245 in the 2012/13 academic year to 340 in the 2013/14 academic year⁸. As these numbers grow, so too does the case for enhancing the regulation of such provision.

Second, providers of HE that are based in Wales will have a choice about how their courses are designated. A provider that wishes to have its courses automatically designated will need to apply for the approval of a 'fee and access plan'. A fee and access plan will ensure, among other things, that the fees that the provider charges are regulated and that it must work to widen access to higher education. Alternatively, a provider will be able to apply to have some or all of its courses designated on a specific basis. Providers that have courses designated in this way will not be subject to the requirements of a fee and access plan. The Welsh Government expects that large HE providers will choose to apply for a fee and access plan but this is not mandatory—it is for the provider to choose whether to follow the automatic or specific route to designation. Strengthening the regulation of providers that have courses designated on a specific basis is necessary to ensure continued regulation of the courses of any large providers that choose to have courses designated in this way.

Third, in England, the number of English domiciled students undertaking courses with a specific designation from the Secretary of State for Education is growing. This may result in the designation of ever more courses and the entry of new alternative providers. In response, the Department of Business, Innovation and Skills has implemented new designation arrangements in England that will strengthen the regulation of alternative providers⁹. In the absence of change, there could be fewer safeguards in place for students undertaking courses designated by the Welsh Ministers.

⁸ Data provided by the Student Loans Company.

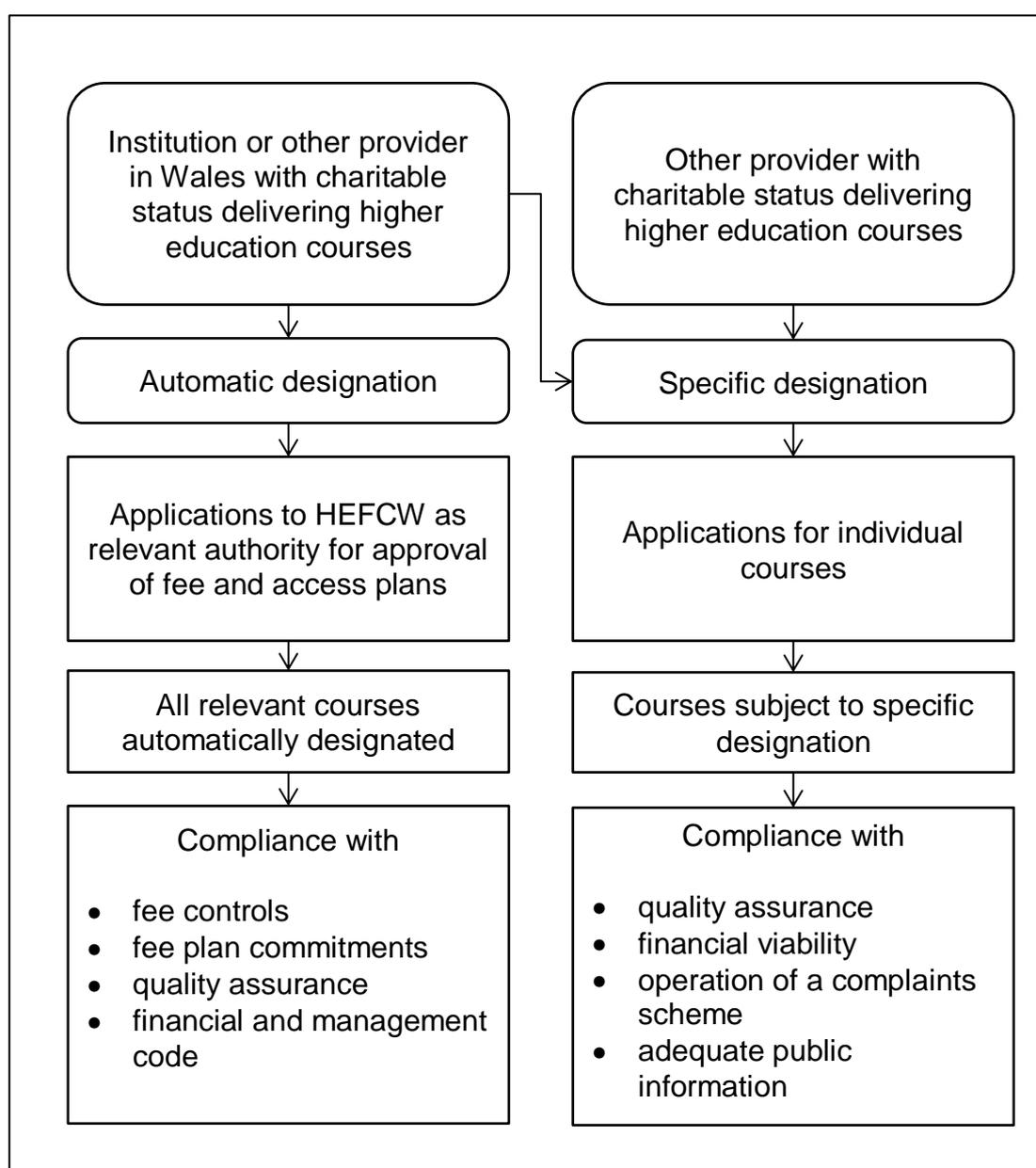
⁹ Specific Course Designation, Guidance for Providers, DBIS, August 2014.

Finally, there is a need to ensure that designation of courses aligns with the Welsh Government's strategy for higher education. The White Paper consulted upon the intention to ensure that 'all HE institutions and other HE providers offering courses which are designated for the purpose of statutory student support...should be required to comply with the same regulatory controls in order to protect the interests of students, taxpayers and Welsh society'.

For these reasons, new arrangements are needed to ensure effective regulation of courses with a specific designation.

Overview of a revised system

The Technical Consultation (May 2013) outlined the two routes to designation that a provider will be able to choose between—automatic, which will require the production of and adherence to a fee and access plan, and specific, where providers will not be subject to the requirements of a plan but will be subject to specific designation criteria. These routes form part of a single system for the regulation of publicly funded HE. As such, and in line with the policy objectives above, it is desirable to replicate the features of the regulatory system that applies to providers with a fee plan to those without—a ‘level playing field’ for the two routes. The two routes to designation are summarised in the diagram below.



The Technical Consultation summarised the regulatory system as providing for:

- fee controls and fair access;
- quality assessment; and
- financial assurance.

Balanced against this is the very small amount of provision delivered by alternative providers, the consequently small amount of benefit derived by those providers and the relatively small cost to the Welsh Government. Policy development has therefore been informed by a need to ensure regulation 1) is proportionate to the size of the sector and the provision at each provider 2) is proportionate to the cost to the Welsh Government and 3) maintains reasonable learner choice.

The Higher Education (Wales) Bill builds upon the existing regulatory framework in Wales. The opportunity has been taken to consider whether some of the existing regulatory controls should be introduced to the specific route to designation to bring alternative providers more in line with regulated providers.

Our proposals

The criteria for specific designation

At present, applicants have to demonstrate that their courses meet certain criteria to be eligible for a specific designation from the Welsh Ministers. The criteria vary depending on the nature of the course—whether it is full or part time, for example. These existing criteria are specified in the Regulations and will not be altered by these proposals.

The Welsh Ministers will retain the power to designate the types of courses specified in the Regulations (full and part time, postgraduate, distance learning)—this is also unaffected by these proposals.

A number of additional, new criteria are proposed. These criteria, dealt with in turn below, will need to be satisfied in addition to the existing criteria before a designation will be granted.

Most of these criteria have been consulted upon previously in the White Paper (July 2012) and/or Technical Consultation (May 2013).

Charitable status

The White Paper consultation sought stakeholders' views on the continuation of funding of student support for courses delivered by alternative providers. Following that consultation the Welsh Government has concluded that the provision of a range of study opportunities is desirable but that it is necessary to balance the costs of such provision against the wider public good.

The Welsh Government considers that all higher education institutions and alternative providers that benefit from a degree of financial subsidy from public funds should be expected to make a contribution to the public good. A means of ensuring this is to require that all such bodies seeking designation of their courses from the Welsh Government have charitable status. Charities exist to benefit the public, not specific individuals, and must have exclusively charitable purposes.

Therefore, the first of the new criteria to be introduced is that an applicant body will be required to demonstrate its status as a charity. This criterion has previously been discussed in the Technical Consultation.

Quality of provision

The second new criterion will ensure that only provision that reaches a certain standard will be eligible for a designation. The Welsh Government intends to

require that an applicant has undergone a successful quality assurance review by the Quality Assurance Agency (QAA) before applying for a designation. This criterion has been introduced in England.

This criterion was outlined in the White Paper (July 2012) and respondents were broadly in favour of its introduction. The way in which this criterion will be implemented will likely be informed by the approach taken in England¹⁰, ensuring consistency for providers where possible. The Welsh Government believes that a QAA review is suitable to meet its aim of guaranteeing quality of provision. By adopting the same review process as that which is required for a designation in England, it is intended that applicants that seek a designation from both administrations will only have to undergo quality assessment once.

The Quality Assurance Agency requires various fees for undertaking a review. It will be the responsibility of the applicant to pay these fees.

Financial viability

The third new criterion will ensure that a provider is financially viable and that students can therefore reasonably expect to be able to complete their studies. A series of standard financial assessments will be made on each applicant who will be required to provide appropriate evidence to enable the assessment. A similar criterion has been introduced in England.

This criterion was also discussed in the White Paper (July 2012) and respondents were in favour of its introduction.

Membership of the student complaints scheme

The Further and Higher Education (Wales) Bill White Paper consulted upon the intention to require that a provider that has courses designated for the purpose of statutory student support be a member of the student complaints scheme currently operated by the Office of the Independent Adjudicator. The majority of respondents agreed with the intention.

The Consumer Rights Bill, currently passing through the UK Parliament, makes provision for all alternative providers with a designation by the Secretary of State for Education or the Welsh Ministers to be members of the scheme. Recourse by students to robust and independent complaints handling will be strengthened, and equivalent in the automatic and specific routes to designation.

¹⁰ Respondents may find it helpful to refer to Chapter 3 of the DBIS guidance (Specific Course Designation, Guidance for Providers, DBIS, August 2014).

Our current intention is to work with the UK Government to introduce this requirement during 2015 subject to the Consumer Rights Bill receiving Royal Assent.

Adequate public information

The fifth and final new criterion will require that sufficient information about courses is made available to students and to the public to ensure transparency and accountability. To fulfil this criterion, applicants will be required to subscribe to the Higher Education Statistics Agency (HESA).

The Welsh Government considers that a balance needs to be struck between the currently small numbers of students being supported and the cost of a HESA subscription. It is therefore proposed to exempt providers with fewer than 50 supported students. Should student numbers at any one provider be or grow above this limit a subscription to HESA would be required as a condition of designation.

This criterion was also discussed in the White Paper (July 2012) and respondents were broadly in favour of its introduction.

This criterion has been introduced in England and we intend to mirror the arrangements put in place there by the Department of Business, Innovation and Skills.

Other facts material to the designation decision

A condition that would allow the Welsh Ministers to consider any facts they deem material to the designation decision is proposed. This will enable consideration of issues that are not straightforward to define in guidance to providers or subject to straightforward testing and will provide an additional safeguard. This could be used to account for any significant management, governance or other concerns not explicitly covered by the proposed criteria.

There are examples in other situations where similar provision is included, for instance in the 2014/15 Education Maintenance Allowance (EMA) Scheme which provides the Welsh Ministers with a discretion in identifying a 'recognised educational institution' for EMA purposes as 'any other educational institution which the Welsh Ministers consider appropriate'. Such discretion would be subject to general public law principles and would be exercised within public law constraints.

Guidance would give applicants a clear indication of the types of other information that the Welsh Ministers would consider.

Designation of franchised courses

Providers will enter into many different types of arrangements with other providers. Franchising is but one, and the term may in practice cover a variety of relationships. It is used here to mean provision which the Welsh Ministers would understand as being at least partly delivered by one provider (franchisee) on behalf of another provider (franchisor).

Franchising by a regulated institution

If the Higher Education (Wales) Bill is enacted, an institution based in Wales that successfully applies for the approval of a fee and access plan—known as a regulated institution—will have its ‘qualifying’ courses automatically designated for student support, and students may then be eligible to apply for a tuition fee grant and loan.

Qualifying courses are presently prescribed in regulations made under section 28 of the Higher Education Act 2004, and currently contained in the Student Fees (Qualifying Courses and Persons) (Wales) Regulations (as amended)¹¹. It follows, and is the policy intention, that any qualifying courses which a regulated institution franchises will be automatically designated for the purpose of supporting students ordinarily resident in Wales.

The regulation of franchised (qualifying) courses will, then, be no different than that of courses offered directly by a regulated provider. The Bill provides for the assessment of the quality of education offered on behalf of a regulated institution. The other principal features of the Bill apply at the level of the regulated institution (the promotion of equality of opportunity or higher education, financial affairs). Finally, the Bill will ensure that any qualifying course must have a fee limit specified in a fee and access plan if an institution (a charitable organisation in Wales) offering such a course is applying for the approval of that fee and access plan.

The Bill also makes provision for fees payable to ‘other persons’—informally, other providers—in connection with a course or part of a course delivered on behalf of a regulated institution to be treated as if it were paid to the regulated institution. This will ensure that the fee limit—one of the principal features of the regulatory framework—will apply to franchised provision even when the fee is not paid to the regulated institution.

It is noted here that other UK administrations may have different arrangements in place for the designation of franchised courses for their

¹¹ S.I. 2011/691 (W.103), as amended by S.I.2012/1630 (W.209), and S.I. 2013/1792 (W.179).

students. Regulated institutions should secure any other designations they require.

Franchising by other providers

Franchised courses offered by providers that are not regulated institutions will be subject to specific designation, enabling the Welsh Ministers to provide support to learners undertaking such courses.

This will continue to include the franchised courses of publicly funded educational institutions elsewhere in the UK. Currently, the franchised courses of publicly funded educational institutions are not automatically designated¹². Rather, the franchisor must seek a designation from the Welsh Ministers. There is no proposal to change this.

Awarding body qualifications

The designation of these courses—for example, HNDs and HNCs—will normally be no different from any other courses.

Maintaining a specific designation

At present once a course has been designated providers are only required to notify the Welsh Ministers if there is any significant change in the nature of the course. Designations do not lapse or expire. The Welsh Government does not believe that this is conducive to ensuring the policy objectives described above are met and intends to introduce additional controls.

Periodic review

A periodic review—possibly annual or biennial—of each provider with a designation will be undertaken. This will test whether the criteria for designation continue to be met.

Lapsed designations

Designations will no longer continue for an indefinite period. It is proposed that the designation of any course that does not have students accessing support

¹² Amendments to the Education (Student Support) (Wales) Regulations 2013 (S.I. 2013/3177) are likely to be made to account for the way in which, it is proposed, institutions will be defined by the Higher Education (Wales) Bill. Further, changes to the way the UK Government defines certain classes of institutions (specifically, the move to defining in regulations ‘authority funded providers’) may also require amendments.

in two consecutive years will lapse and the provider will have to re-apply for designation.

Material changes

Any changes that are material to the designation will need to be notified to the Welsh Government. By material, it is meant any changes that might cause one or more of the designation criteria (including the course based criteria) to no longer be met.

Administration

The Higher Education (Wales) Bill proposes that HEFCW will have the responsibility to carry out regulatory functions with providers who have an automatic designation from the Welsh Ministers. As the specific route to designation is part of the overall regulatory approach to HE, the Welsh Government is considering whether HEFCW should have a similar role in the new specific designation arrangements. Decisions on whether or not to designate courses will remain with the Welsh Ministers.

Minimising administration costs

The Welsh Government is conscious that applying for and maintaining a designation will impose a certain amount of cost on providers that will be charities. The new designation arrangements will also be more expensive for the public sector to administer.

In order to control these costs, we are proposing that, as far as the two systems of designation in England and Wales will allow and subject to legal and regulatory constraints, that a similar administrative approach is taken and information is shared between the two administrations. This would need to be negotiated and agreed with the UK Government. There will be limits to this approach.

Comparison of regulation between regulated institutions and alternative providers

As noted, a key feature of these proposals is to ensure that regulation is robust and independent of the particular route to designation that a provider chooses. This is balanced against the need to develop a proportionate system of regulation and maintain reasonable learner choice.

Fee control and fair access

Fee control has been discounted as a control for providers that choose the specific route to designation. The amount of subsidy and thus benefit received by alternative providers is less than that received by publicly funded providers. Fee control is viewed as disproportionate.

Fair access has been discounted as an explicit criterion as it is also viewed as disproportionate. The charitable status criteria may improve access insofar as charities may not unreasonably restrict the opportunity to benefit.

Quality

Quality assurance is a central feature of the proposed system for alternative providers and quality assessment will now be robust across the HE sector.

Financial assurance

Financial assurance is also an important feature of the proposed system for alternative providers. Financial viability will be assessed directly.

Other controls

Other controls that are part of the existing regulatory framework for HE that have been considered for implementation are student number controls, complaints procedures, and adequate public information. The latter two will be implemented as described above but the first will not at this time. The number of students is considered too small to warrant controls. However, this may be reconsidered should there be growth in the number of supported students.

Impact

Overall, the cumulative effect of these proposals will be to substantially improve the regulation of courses delivered by alternative providers, reducing the difference in regulation between the automatic and specific designation routes, and providing a clear rationale for the difference.

We recognise that these changes may have the potential to impact adversely on some learners and providers.

It should be made clear that our intention is that there will be no impact on existing students. The Welsh Ministers intend that any student undertaking a course at a provider that is no longer eligible to (or chooses not to) maintain a designation against the new criteria will be able to complete their studies and will remain eligible for student support.

There will be an impact on providers. The charitable status criterion will mean fewer providers will be eligible to apply for or maintain a designation. Our assessment suggests that of the 91 providers that have at least one course designated by the Welsh Ministers, at least 38 are charities (the administrative process does not record whether or not providers are charities so this is an estimate based on research). If these figures are correct, up to 53 providers would no longer be eligible for a designation. Of the 66 providers that had students accessing financial support in the 2013/14 academic year, 26 are thought to be charities. There are 110 students studying at those 26 providers, 32% of the current total of 340.

There will also be an impact on prospective students. As fewer providers will be eligible for designation there is a narrowing of *institutional* choice for learners.

It is less clear what the impact will be on *subject* choice. The subjects studied by students on courses that have a specific designation can be loosely grouped into four broad areas: professional subjects (for example, law, accounting, business management etc.); health related subjects (osteopathy, acupuncture etc.); performance arts (music, music production, acting, theatre etc.); and theology. In most of these areas providers are neither predominantly non-charitable nor charitable. The exception is in professional studies where most though not all providers do not appear to have charitable status.

In some of these areas there is arguably a wide range of provision available in the public university sector although this may not be the case for all provision.

The Regulations allow for the continued provision of Disabled Students Allowance. No change is proposed to this but those eligible for this grant

might be impacted by these proposals by a potential narrowing of institutional and subject choice. It is not thought at this stage that this impact will be felt differently by disabled students than by non-disabled students.

A number of theological colleges have courses which are designated. The impact of these proposals upon students wishing to study at these providers will also be assessed.

A detailed impact assessment is being prepared and will be informed by the results of this consultation.

Implementation

Following consultation and any changes we make to this proposal, we intend to implement new arrangements in a similar timescale to the arrangements that will be made for the automatic route to designation. Changes are likely to be fully implemented for the 2017/18 academic year to allow sufficient time for planning by those affected by these proposals. The Welsh Government is considering a phased approach to implementation, with the introduction of some aspects of a new system possible by the 2016/17 academic year. Should the Consumer Rights Bill be enacted, it is envisaged that providers with a designation from the Welsh Ministers will become members of the student complaints scheme during 2015. The existing criteria will apply until then. Applicants seeking new designations will be informed of the possibility of new criteria being established and the potential for those applicants to have to reapply for a new designation.

We are planning to issue guidance on the process to be implemented, including a review of existing designations and the transitional arrangements to be made to allow existing students at providers that are no longer eligible for a designation to complete their studies.

Review of existing designations

Existing designations will be reviewed (assuming the provider wishes to maintain a designation) before the new arrangements are put into effect. In line with our objective to minimise administrative costs to both the Welsh Government and to providers, we will work with the UK Government to determine whether any information sharing is possible during this review.

Existing students

Existing students will not be affected by these proposals. The Welsh Government intends that they will be able to continue their courses and remain eligible for student support for the duration of their course.