

Cylchlythyr | Circular

Guidance on partnership arrangements for franchise education provided on behalf of regulated institutions in Wales

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To: Heads and Governing bodies of regulated institutions in Wales
Any other interested parties
Response by: No response required
Contact: Name: Dr Cliona O'Neill
Telephone: 029 2068 2283
Email: cliona.oneill@hefcw.ac.uk

This circular provides guidance on franchise partnership arrangements in Wales, taking account of the Higher Education (Wales) Act 2015.

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Introduction

1. This circular provides guidance on franchise partnership arrangements in the UK. We are doing this in response to the introduction of the Higher Education (Wales) Act 2015 (the 2015 Act), which gives us powers in relation to education provided by or on behalf of regulated institutions.
2. Provision may also be delivered through a range of other partnership arrangements, including validation partnerships, and many of the points in this guidance may be applicable to these other arrangements. However, we do not intend to produce guidance for other types of partnerships at this stage.
3. In this guidance we refer to regulated institutions. Regulated institutions are those which have a Fee and Access Plan approved by HEFCW that applies from 2015/16 onwards. Regulated institutions currently include all formerly publicly funded higher education institutions and directly funded providers of full-time higher education (HE) in further education (FE). For the purposes of this document, the term regulated institution refers to the institution which is franchising the provision, and the term '(an/the) other body' refers to the organisation providing education on behalf of a regulated institution¹. In the case of institutions that provide only part-time courses, which are not covered under the 2015 Act, we attach terms and conditions in relation to quality assessment to the grant funding provided to these institutions².
4. We recognise that the circumstances of individual partnerships vary, and it is for partners to determine the precise arrangements that best suit them. However, arrangements and formal agreements between partners in England and Wales must comply with the 2015 Act and the requirements in this guidance, namely:
 - Governing bodies of regulated institutions must take account of this guidance once published, and ensure that their partnership agreements are updated accordingly, so that they can be considered in applications for 2017/18 Fee and Access Plans in spring 2016. This will include re-signing the document or adding an addendum to the agreement to confirm that the provision comes within the 2015 Act.
 - The governing bodies of franchise partners must also ensure that anyone assessing the quality of education, or undertaking other measures in response to inadequate quality, on behalf of HEFCW is provided with information, assistance and access to the other body's facilities as reasonably required. Governing bodies must ensure that other aspects of this guidance are addressed when developing new

¹ In the 2015 Act the term 'external provider' is only used for an organisation, which is not itself a regulated institution, providing education on behalf of a regulated institution. Therefore the term (an/the) other body is used for clarity, to incorporate franchise partners which both are and are not, regulated institutions.

² This does not apply to the Open University in Wales

franchise partnership agreements, and revising/updating existing agreements.

5. We may need to update this guidance in the future to take account of changes to quality assessment arrangements and any changes resulting from the final implementation of the 2015 Act.

Background

6. In March 2015 the [Higher Education \(Wales\) Act 2015](#) was given Royal Assent. This included a number of implications for franchise higher education (HE) delivered in FEIs:
 - Courses franchised by a regulated institution will be included within HEFCW's new quality of education duties if they are provided by another body on behalf of a regulated institution in Wales. This is only applicable for those arrangements that came into place on or after 1 September 2015. In terms of quality assessment, a course cannot be classified as being on behalf of a regulated institution if the arrangements under which it was provided were made before 1 September 2015.
 - A consequential provision order was made to the 2015 Act under powers conferred by section 150 order of the Government of Wales Act that extends HEFCW's quality of education duties to other bodies in England, as well as Wales;
 - Provision that has been validated by a regulated institution is not a qualifying course for that regulated institution's Fee and Access Plan and therefore the provider with responsibility for controlling and delivering the course will be responsible for the quality of that provision;
 - A higher education provider in Wales that has its provision validated by another institution will need to apply for a Fee and Access Plan and will be responsible for the quality of that provision;
 - HEFCW has statutory responsibility for all the education provided by regulated institutions, which includes further education (FE) and secondary education as appropriate. HEFCW will take this forward separately.
7. Under the [Higher Education \(Qualifying Courses, Qualifying Persons and Supplementary Provision\) \(Wales\) \(Amendment\) Regulations 2016](#), which came into force in March 2016, franchise partners will need to be charities in order for the provision to be eligible for student support.
8. Under Section 18 of the 2015 Act, quality of provision is deemed to be inadequate if it is not adequate to meet the reasonable needs of those receiving the education or undertaking the course. We currently contract with the Quality Assessment Agency for Higher Education ([QAA](#)) to assess the quality of education provided in Wales. The reasonable needs will be considered to be met for these purposes if a provider obtains judgements of 'Meet(s) UK expectations' or 'Commended' in all four judgement

categories in QAA review using the [Higher Education Review: Wales](#) (HERW) method. The review considers whether the institution meets the set of expectations about the provision of higher education contained in the [UK Quality Code for Higher Education](#). In every case, a regulated institution receiving a 'requires improvement' or 'does not meet' outcome will be deemed to have quality that is (likely to become) inadequate. However, regulated institutions will be able to apply for a Fee and Access Plan while going through due process to rectify problems in relation to quality.

9. In March 2015 the Competition and Markets Authority (CMA) published [advice on consumer law applying to the provision of educational services](#). This set out CMA's views on requirements relating to the provision of information, terms and conditions, and complaints processes. It confirmed that, when an offer of a place on a course is accepted by a prospective student, the HE provider and student enter into a contract.
10. The Higher Education Act 2004 required the appointment of an independent body to run a student complaints scheme in England and Wales. The [Office of the Independent Adjudicator](#) was chosen to operate this scheme. Initially, all universities in England and Wales were required to subscribe to the Scheme. However, the Consumer Rights Act 2015, the relevant section of which came into force on 1 September 2015, extended the range of higher education providers that are required to participate in the Scheme to include FE colleges providing higher education, whether this is franchise or directly funded provision.
11. In June 2015 Welsh Government published [A review of Higher Education delivered in Further Education Institutions](#). This included a recommendation that HEFCW consider strengthening guidance on partnership arrangements.
12. We consulted on this guidance in circular [W16/08HE: Guidance on partnership arrangements for provision delivered by external providers on behalf of regulated institutions in Wales](#). The outcomes of this are available at **Annex A**.

Types of partnerships

13. We use the following definitions of validation and franchise arrangements:
 - a. **Validation arrangements** – Courses made available and taught by one institution that lead, on successful completion, to a qualification awarded usually by another institution with degree awarding powers (DAPs). Normally the course will have been designed by the teaching and not the validating institution. There will be a validation agreement in place, in which the validating institution seeks assurances about the quality and delivery of the course but leaves the teaching institution leeway as to how it teaches the course. The institution with DAPs is the validating and awarding body for the course, while the institution which teaches the course has control of

the provision, and full contractual responsibility to the student for the provision of education.

b. Franchise arrangements – Courses made available by one institution, where some or all of the teaching is provided by another body under a sub-contractual arrangement. The course will usually have been designed by the first institution, which will normally impose its own requirements as to teaching and assessment. That first institution has full contractual responsibility to the student for the provision of education, even though its staff are not teaching (all of) the course. Usually, that institution will also be the awarding body for the course qualification, but exceptionally this may be a third party.

14. These definitions focus on the control of the provision and contractual responsibility to the student. Factors used to determine who has control include responsibility for the overall content and delivery of the qualifying course(s), and quality assessment arrangements. HEFCW will take account of how both parties define their partnership arrangement, but it is ultimately for HEFCW to confirm whether the provision is provided by, or on behalf of, a regulated institution.
15. In Wales a number of institutions have group arrangements, with a parent and subsidiary organisation(s). Wholly-owned subsidiaries of institutions in Wales which have overall responsibility for the content and delivery of the qualifying courses will be considered to provide higher education directly, as if they were delivering higher education under a validation agreement. Wholly-owned subsidiaries of institutions in Wales which do not have responsibility for the overall content and delivery of the qualifying courses will be considered as if they were providing higher education under a franchise agreement. Institutions within group structures will therefore need to be clear regarding who has responsibility for the provision to inform the Fee and Access Plan application process.
16. Regulated institutions need to be very clear within their own institutional context whether provision is franchise or validated in relation to HEFCW's definitions, in order to determine whether or not it comes under the regulated institution's Fee and Access Plan. Any agreement between a regulated institution and another body should clarify whether the other body needs to apply for specific designation or whether the provision will come under the regulated institution's Fee and Access Plan.
17. The Key Information Set (KIS) for collaborative provision should normally be returned by the teaching institution, although it remains the responsibility of the registering institution to ensure that the KIS is returned. This also applies where a single course has students registered at two institutions. The [KIS guidance on collaborative arrangements](#) provided by HESA contains more details. There are two exceptions:
 - Where all of an institution's provision is franchised out from a single institution - ie the institution has no need to do a KIS return of its own. The KIS must be returned by the registering institution.

- Where students study at two or more institutions as part of the same course - ie they start at one institution and finish at another. The KIS will normally be returned by the registering institution.
18. In addition, the regulated institution is responsible for submitting course information to the Student Loans Company (SLC), which will then pay it the relevant tuition fees and arrange payment of the tuition fee grant for Welsh-domiciled students. Some of the fees will then be paid by the regulated institution to its partner. Other full-time undergraduate franchisee providers would not be able to submit information directly to SLC.
 19. From 2017/18 funding and enrolment data, and student number forecasts, for franchise students will be returned to HEFCW by the regulated franchising institution and the students are also included in the regulated institutions' HESA returns.³ There may be instances where one regulated institution franchises provision to another in Wales, and the guidance applies equally to such arrangements.
 20. The table below illustrates the typical responsibilities of the regulated institution and another body when the regulated institution is franchising provision provided by another body. It also sets out the typical responsibilities of the regulated institution and the other body in validation partnerships. However, the responsibilities may be varied as part of the agreement between the institutions, and therefore the table is intended to provide a general overview only. The other body may have both franchise and validation partnerships. The ultimate responsibility for the academic standards and quality of provision provided through a partnership rests with the awarding body. This over-rides any considerations relating to responsibilities for funding and administration.

Responsibility	Typical responsibilities: franchise partnership	Typical responsibilities: validation partnership⁴
Design of course/programme	Regulated institution	Normally the other body
Teaching and assessment (programme delivery)	As required by regulated institution	Normally delivery is by the other body but there may be some input from the regulated institution. There is more scope for delegated responsibility in a validation arrangement
Students' primary registration	Regulated institution	Other body
Responsibility for	Regulated institution	Primary responsibility

³ Both part-time and full-time franchises are treated the same in terms of data returns.

⁴ For simplicity, it is assumed here that the validated partner does not have degree awarding powers.

academic standards		with regulated institution
Responsibility for quality assurance	Regulated institution	Responsibility remains with regulated institution
Contractual responsibility for provision of education	Regulated institution, which provides funding to the other provider	Other body, which pays a validation fee
Student complaints	<p>Complaints mechanisms can be delegated by the regulated institution but students have ultimate right of review by the regulated institution.</p> <p>Students can go to OIA with a complaint after they have exhausted the regulated institution's procedures. In some cases, they can go directly to the OIA, depending on the conditions set out in the franchise agreement.</p>	<p>Complaints mechanisms can be delegated by the regulated institution but students have ultimate right of review by the regulated institution</p> <p>Students can go to OIA with a complaint after they have exhausted the regulated institution's procedures. In some cases they can go directly to the OIA, depending on the conditions set out in the franchise agreement.</p>
Fees paid to	Regulated institution	Other body
Validation/ approval of programme	Regulated institution	Regulated institution
Awarding body	Regulated institution	Regulated institution
HERW	Under the regulated institution	Separate review of the other body for home provision and seeking access to student support arrangements
Fee and Access Plan	Under the regulated institution	Other body has a separate Fee and Access Plan
Student numbers	Allocated by the regulated institution	Decided by the other body. It would be prudent for the regulated institution to build some expectations into numbers admitted by the other body
Return of data to HESA	Regulated institution	Other body
Return of data to KIS	Where all the other body's provision is franchised out from a single institution, or where students study at	Other body

	more than one institution as part of the same course, the KIS is returned by the regulated (registering) institution. If the other body has franchise arrangements with different regulated institutions, or is a regulated institution which also acts as another body through franchise arrangements, then the other (teaching) body returns the KIS	
Submission of data to the SLC	Regulated institution	Other body if it is a regulated institution in its own right; otherwise the regulated institution will submit on behalf of the other body.

21. All full-time franchise provision must be either included within a regulated institution's fee plan, or have received specific designation, in order to receive student support. All the education provided by or on behalf of regulated institutions is covered by the 2015 Act, which includes part-time franchise provision. As noted above, we will attach terms and conditions in relation to quality assessment to the grant funding provided to institutions that only offer part-time provision, as the provision is not covered in the 2015 Act and is therefore not subject to Fee and Access Plans.
22. When HEFCW was established in 1992 it inherited a situation where there was limited franchising by HEIs in Wales to organisations outside Wales. These arrangements were permitted to continue, but no expansion or new agreements with institutions outside Wales using HEFCW funds could be made without agreement from HEFCW. HEFCW will expect to be kept informed of all franchising arrangements made by regulated institutions via Fee and Access Plan submissions. Further information is available via our Fee and Access Plan guidance, published in April 2016.

The guidance

23. The paragraphs below give a set of guidance principles which regulated institutions and their franchise partners must take into account in developing, managing and reviewing their partnerships. Governing bodies must take account of these in their franchise agreements. They may choose to take account of them in other franchise agreements.

24. Partnership arrangements should aim to meet the needs, aims and aspirations of all the partners. In doing so, they should aim to provide appropriate opportunities for participation and progression, as well as high-quality, cost-effective teaching and learning.

Partnerships should meet as far as possible the needs, aims and aspirations of all partners, within an overall context of providing participation and progression opportunities and high-quality and cost-effective teaching and learning for the students concerned.

25. A course provided by a franchise partner is not classified as being provided on behalf of a regulated institution, for quality assessment purposes, if the arrangements under which it was provided were made before 1 September 2015. As such HEFCW's duties for quality of education do not apply to these courses. HEFCW will only consider the inclusion of courses provided by other bodies in future Fee and Access Plans if arrangements between the other body and the regulated institution have been in place from, or renewed since, 1 September 2015. These arrangements should be reviewed by 31 May 2016. This provision is reiterated in our Fee and Access Plan guidance. In reviewing the arrangements, regulated institutions must ensure that other bodies are fully aware that the 2015 Act provides HEFCW, or a person authorised by HEFCW, a right of entry and inspection for the purpose of exercising functions relating to the assessment of quality of education or the review of matters relating to the quality of education).

Regulated institutions must review all arrangements that were established before 1 September 2015 with other bodies, so that they are classified as being provided on behalf of a regulated institution under the 2015 Act.

Institutional missions and franchise partnerships

26. There must be compatibility between the objectives that each partner wishes to achieve, although there may be a difference of emphasis for the partners. For the regulated institution, for example, franchising may be a significant element in its widening access strategy, a recognition that it can help meet a need for HE in particular location, a means of providing progression to other courses which it provides directly, or part of how it positions itself as an HE provider within a particular geographical area. For the other body, it may be about providing progression opportunities to HE, and becoming a provider which is able to meet the needs of local students and employers across a range of levels from basic skills through to FE and HE.
27. Partners must determine whether entering into a particular franchise arrangement is consistent with their organisational strategies and whether it will contribute to meeting particular objectives.

28. The partners may wish to consider including a brief statement of the strategic purposes of the partnership within their formal agreement or other documentation associated with the partnership.

The decision to enter into franchise partnerships should be in line with the institutional missions of both the regulated institution and the other body providing education on its behalf and be an integral part of their institutional strategies.

Multiple partnerships

29. HEFCW does not limit the number of franchise partnerships into which regulated institutions or other bodies in Wales may enter, within Wales. However, please note the restrictions covered in para 22 with regards to franchises with other bodies outside Wales.
30. No other body providing education on behalf of a regulated institution should engage in serial arrangements, where the provider subsequently subcontracts the work in its entirety to a second provider. There may be instances where the provider subcontracts elements of the provision to a third party, eg specialist services, tuition for a particular course, or work placements; however, responsibility for the delivery remains with the other body. The express written permission of the regulated institution is required for any involvement of a third party in a course provided by another body, to ensure that the regulated institution is able to retain effective oversight of what is being done in its name. Partners must consider whether details of the third party involvement should be included in the formal agreement or supporting documentation, as appropriate.

Franchise agreements between regulated institutions and other bodies should explicitly prohibit subcontracting of course delivery by the other body. Where it is desired to subcontract specific elements of the course, this must be formally agreed between the partners.

Operation of the franchise partnership agreement

31. The agreement must set out how, within both partners, its operation will be managed. Regulated institutions have recognised the benefits of a central unit or central procedures to ensure effective and consistent management, particularly where the regulated institution enters into agreements with a number of partners. Where responsibilities are delegated to departments of the regulated institution, it must be stated what those responsibilities are, and how the regulated institution will monitor its effectiveness in discharging the agreement and ensure consistency of practice. Similarly, where other bodies have agreements with several regulated institutions and/or across a number of subjects, the other bodies must have procedures to ensure that these are properly managed and monitored at an institutional as well as a subject level. The regulated institution's responsibility to ensure the quality and standard of their awards will determine many of the responsibilities set out in agreements and influence others.

32. A partnership agreement may cover part-time and full-time provision. Quality assurance requirements apply consistently across both modes of study, however, considerations relating to funding, financial agreement and financial support will impact on the development, approval, agreement and delivery processes. Where agreements cover both modes of provision, they should stipulate any differences in the operational arrangements by mode of study. HEFCW's quality assessment powers under the 2015 Act relate to all the provision of regulated institutions, which includes their part-time provision and franchise provision.

The partnership agreement should set out at the time of the programme validation how, within both partners, its operation will be managed.

Negotiating partnerships and agreements

33. We understand that most regulated institutions, particularly those which have a network of franchise partners, have adopted a standard or template agreement for all their franchise arrangements, which can be completed or adapted to meet the requirements of the course(s) concerned. This enables them to ensure that their agreements are managed in a consistent manner in terms of the services which they provide to their partners and the obligations and responsibilities which are placed on both parties.
34. An implication of the use of standard agreements by regulated institutions is that the other body may be expected to accept the terms set out in them, with little or no scope to vary them, except possibly for financial/ student number arrangements. However, the signing of agreements must be preceded by negotiations and discussions between the partners to ensure the interests of all partners are taken into account. This is particularly important where regulated institutions are contracting with new partners, and revising the terms of agreements with, or expanding the portfolios of, existing partners.
35. There will be clauses in a franchise agreement that a regulated institution deems essential in terms of its responsibility for academic standards and quality, its financial accountability to HEFCW, its requirements to submit data to HEFCW, HESA and other bodies, and to protect its reputation and interests generally.
36. Achieving parity of student experience, regardless of location of study, must be a key principle providing a basis for determining many of the responsibilities of the partners.
37. There should be broadly similar clauses in the agreements which different regulated institutions have with their franchise partners, as all must align with the expectations of the UK Quality Code for Higher Education (the Quality Code). Where other bodies have agreements with more than one regulated institution, they will need to manage these carefully so that they can meet any differing requirements placed upon them, for example, in terms of data collection, monitoring returns, invoicing and payment

arrangements. Regulated institutions must be willing to be flexible and modify their arrangements, if possible, should the other bodies indicate that this would help them manage the range of their partnership agreements more effectively.

38. There must be a formal written agreement which is confirmed through appropriate approval procedures by, and signed by the accountable officers from, both partners. It must be reviewed and monitored regularly.

Both partners should clearly understand and agree the basis of the agreement, particularly in respect of obligations on each partner which, if not met, might jeopardise the agreement.

The interests and reputation of both partners should be respected and adequately protected.

Regulated institutions, in discussion with their partners, should seek to define and operate their agreements in ways which help other bodies manage agreements with more than one partner, as appropriate.

Negotiations and preparation for franchise agreements, or for amendment and review, must be drawn up by means of an agreed and explicit procedure, involving all those in both the regulated institution and the other body who will have a significant part to play in implementing it, including at institutional and subject level.

There must be a formal written agreement which is confirmed through appropriate approval procedures by, and signed by authorised representatives from, both partners. It must be reviewed and monitored regularly.

39. The formal agreement between the regulated institution and the other body
Chapter B10 of the Quality Code lists a number of topics for consideration in developing agreements. This includes concerns, complaints and appeals procedures and responsibilities. It is important that no relevant issues are omitted which could damage the successful implementation of the agreement and that both parties understand the full extent of their rights and obligations.
40. The provision of information to students should be covered within the agreement, in alignment with Competition and Markets Authority (CMA) guidance, confirming the responsibility of the regulated institution for providing the information in the case of franchise arrangements. In the case of other arrangements, the agreement needs to confirm who will be responsible for the provision of this information.
41. In addition, the agreement should clarify how complaints will be dealt with, and the circumstances under which the student may approach the OIA. Depending on the nature of the agreement, they may need to exhaust the

other body's procedures, the regulated institution's procedures, or both before approaching the OIA.

Regulated institutions and their partners should take account of Chapter B10 of the Quality Code in developing their agreements.

Regulated institutions, in discussion with their partners, should ensure that franchise agreements are sufficiently secure, comprehensive and transparent for other bodies to be able to assess the services and support they receive from the regulated institution, both in terms of the funding from the regulated institution for providing the course and the obligations on the other body.

The agreement should include confirmation of the responsibility for providing information for students, in line with CMA guidance.

The agreement should clarify how complaints will be dealt with and the circumstances under which students may approach the OIA.

Duration of agreements

42. The agreements must be of sufficient duration to enable the other body to build up its capacity to deliver the HE provision. This must normally be for a period of at least five years, subject to satisfactory performance and viability, with the expectation of continuation thereafter, should the right to terminate the agreement not be exercised by either party. Aspects needing to be reviewed or agreed more frequently can be identified within this longer term agreement. If the provision is to be stopped then existing students must be taught out, either by the former partner or a new partner.
43. Delivery arrangements must be underpinned by joint strategic working between organisations providing HE. Franchise agreements of longer duration facilitate this, and provide the stability to enable other bodies to plan strategically.
44. Agreements must be revised where appropriate, for example as a consequence of new legislation, or HEFCW guidance which regulated institutions are required to take account of under the 2015 Act. For this reason, regulated institutions need to revise their partnership agreements by 31 May 2016, to take account of this guidance.

Regulated institutions should normally set agreements within a time period of at least five years, with an expectation of continuation thereafter, if both parties so wish, so that the other body may feel reasonably confident about building up its capacity to deliver the HE provision concerned. Within the agreement, partners can then make provision for aspects of the arrangement which need to be agreed annually, or to take account of policy, curriculum, recruitment or demand changes during the period.

Partners should revise their partnership agreements to take account of this guidance, once finalised.

45. Agreements make provision for termination as a result of a breach of obligations. They should also provide for voluntary termination by either party, which is an important right. However, voluntary termination which has not been prompted by breaches of the agreement can have significant implications for the other partner.
46. Agreements need to ensure that if terminated, students already enrolled are able to finish their courses at the regulated institution if they wish. This is the responsibility of the regulated institution.

The agreement must confirm that any termination of arrangements enables students already enrolled to finish their courses at the regulated institution, should they wish.

47. Any notice period for termination of an agreement must be as long as possible, to give both regulated institutions and the other bodies more time to plan the action they need to take in the light of the ending of the agreement. This is particularly the case in the context of Fee and Access Plans which have long lead-in times. The notice period should normally be at least three academic years.

The notice period for voluntary termination of the agreement by one or other party should normally be at least three academic years, and preferably longer.

Regulated institutions' services and support to other bodies and their students

48. The services and support which the other body and its students receive from the regulated institution are important elements in improving the quality of the student experience overall and staff satisfaction. Agreements which represent a genuine collaboration between the partners, with benefits to the regulated institution as well as the other body as a result, contribute to a strong and effective partnership.

Student access to the regulated institution's facilities

49. Areas which may be considered include: library resources; information systems; laboratories and studios; specialist facilities; specialist equipment and resources; student union; welfare and other advice services; financial support, including hardship funding; social facilities and services.
50. The way in which access is achieved will depend on circumstances, for example, on whether the partners are located close together geographically, or on the resources and information which the regulated institution has available for students to access electronically.

The arrangements for student access to the regulated institution's facilities should be published for the students and staff concerned.

Student progression

51. Opportunities for the student to progress to higher level provision, either at the regulated institution or the other body, are a valuable feature of franchise arrangements⁵. Further advice on this is available in the Quality Code.
52. Partners must agree on the opportunities available. The agreement must indicate how students will be informed of, and given appropriate guidance, on progression opportunities, including:
 - the range of courses they may be able to progress to at the regulated institution;
 - whether such progression is automatic for students at the other body who reach a specified level of attainment on the course provided, or whether the regulated institution will apply a selection procedure;
 - the basis for calculating any accreditation of prior learning for successful completion of the course provided on a regulated institution's behalf in terms of the point of entry to the regulated institution-provided course.
53. Geographical distance between the other body and the regulated institution may make direct progression less practical for some students. Nonetheless, the regulated institution must consider making such opportunities available if students wish to take advantage of them. Collaboration between the other body, the regulated institution and other regulated institutions closer to the other body, may also extend the progression opportunities for franchise students.

Student progression arrangements should be an integral part of franchise agreements.

Collaborative working between staff

54. Opportunities for collaboration between staff are a valuable feature of franchising, and may include:
 - regulated institution staff contributing to the teaching delivered by another body on its behalf;
 - joint staff training and development;
 - collaborative curriculum development;
 - involvement of the other body's staff in research and development activity undertaken by regulated institutions' staff.
55. Although there is a greater likelihood of this sort of collaboration where the regulated institution and the other body are in close geographical proximity, distance should not rule it out.

⁵ And an essential component of foundation degrees

56. Where a regulated institution has partnership arrangements with two or more other bodies, there may be major benefits if the other bodies can work together collaboratively, as well as with the regulated institution.

Partners should consider how, either through the agreement itself, or through other appropriate mechanisms, they will identify rights and responsibilities with respect to staff development, curriculum development and joint scholarly activity.

Financial and funding arrangements

57. Regulated institutions normally receive fees for franchise provision and then transfer a proportion of the funding to the other body to provide the course. While some agreements currently make provision for tuition fees to be paid directly to the franchise partner, under the 2015 Act arrangements, only regulated institutions will be able to receive tuition fees in alignment with their approved Fee and Access Plan and agreements may need to be amended to take account of that. HEFCW does not prescribe a set proportion which regulated institutions must transfer and the sum which the regulated institution retains to cover its contribution to the arrangements may differ in each partnership. The proportion transferred should be stipulated within the partnership agreement. As other bodies do not have access to amend SLC data, the regulated institution will need to ensure it discloses SLC information to its franchise partners.
58. In setting out the financial arrangements for franchise agreements, both parties must be clear on:
- a) the total tuition fee and, if appropriate, HEFCW funding received by the regulated institution in respect of the students concerned;
 - b) the proportion of the fee/funding retained by the regulated institution;
 - c) What that retained funding is intended to pay for, in terms of the regulated institution's overheads and services contributed to the partnership arrangements, with an indication of how that retention has been calculated;
 - d) expectations regarding how the proportion of the retained funding contributes to expenditure against the fee plan;
 - d) the arrangements for the collection and distribution of tuition fee income between partners.
59. It is not feasible to cost every aspect of a partnership agreement. Particularly in a long-term and wide-ranging association between a regulated institution and the other body, there will be intangible and unquantifiable benefits. One of the advantages of franchise partnerships is that a regulated institution can undertake activities at marginal additional cost, which would cost the other body a great deal more to do on its own (eg administrative and quality requirements associated with the provision of HE). There will be wider activities and facilities provided by the regulated institution whose contribution to the franchised provision cannot sensibly be costed. Nonetheless, both parties must be clear about how the total funding available for the provision is being used, so that a concept of a fair distribution of fees and funding between partners can be established.

In setting out financial arrangements for franchise agreements, both parties should be clear about how the total funding available for the franchised provision is being distributed and used.

Assignment of student numbers/funded credits to the other body

60. The agreements generally set maximum numbers of students/credit values, stating whether or not the other body may recruit beyond the maximum number which the regulated institution agrees to support, and any conditions or penalties which may apply. They also specify arrangements if the other body recruits below the maximum number set by the regulated institution or when a student withdraws or fails to complete a course. Sometimes a minimum number of students to be recruited is set, below which the course is not considered viable.
61. In some instances, regulated institutions enter into wide ranging partnership agreements (in terms of courses/student numbers) with a particular partner and may give that partner greater flexibility to manage its own portfolio and the distribution of numbers between courses, rather than agreeing numbers on a course by course basis. In such cases, the agreements set out the parameters within which the partner may operate.
62. We appreciate that regulated institutions may need to make decisions on the exact numbers to be allocated to the other body on an annual basis. However, within the context of the recommendations on longer-term agreements above, it would be helpful to other bodies if regulated institutions could set a broad framework for how numbers will be determined from year to year. Partners should consider including within the agreement a baseline below which numbers/credits allocated by the regulated institution to the other body will not drop, in order to protect the experience of the students on that course, and to maintain the viability of the provision. Partners will need to take account of the Competition and Markets Authority Guidance on consumer law in taking any decisions regarding programmes.

Where possible, regulated institutions should set the annual confirmation of franchise numbers to other bodies within an overall framework of how numbers will be determined from year-to-year.

Partners should consider including within the agreement a baseline below which numbers/credits allocated by the regulated institution to the other body will not drop.

Monitoring and review

63. Both partners must monitor the operation of the agreement and its effectiveness on a regular basis. They must agree the frequency of and the procedure for undertaking review, including reporting results to the governing bodies of both partners.

64. Partners must have in place procedures which will allow them to assess, for example, whether and how far:
- the conditions of the agreement are being met;
 - the needs of the students are being met;
 - where relevant, students are gaining access to the regulated institution's facilities;
 - where relevant, students are progressing on to courses provided directly by the regulated institution.
65. As part of monitoring progress against its overall institutional strategy, each partner must decide how it will assess, over time, whether in practice a particular arrangement is meeting its purpose. This means that each party must have considered what success criteria or performance indicators it would use.

Partners should have in place procedures for regular monitoring and review of agreements.

Further information

66. If you have any queries please contact Dr Cliona O'Neill (tel 029 2068 2283; email cliona.oneill@hefcw.ac.uk).

Equalities, well-being and sustainability

67. The Equality Act 2010 requires universities that receive funding under section 65 of the Further and Higher Education Act 1992, universities that are regulated institutions, Higher Education Corporations and Further Education Corporations to make arrangements in order to assess the likely impact of proposed policies and practices on its ability to comply with 'the general duty', as well as the impact of any policy or practice that an authority has decided to review or any proposed revision to a policy or practice. These bodies are also required to publish a Strategic Equality Plan. This must contain a statement setting out a description of the provider, their equality objectives, details of the steps they have taken or intend to take to in order to fulfil their objectives, how long it will take in order to fulfil their objectives, and details of arrangements that have been made or are intended to be made to comply with the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011.
68. In addition, HEFCW has duties under the [Well-being of Future Generations Act](#) (Future Generations Act). It is good practice for providers to be aware of and consider the sustainable development and well-being duties contained in the Well Being of Future Generations Act 2015.
69. As an organisation HEFCW is committed to providing a high standard of service to the public in Welsh and English, in accordance with the principle of treating the Welsh and English languages equally. Our standards of

service are consistent with our [Welsh Language Scheme](#). Further information is available on our website.

70. We have carried out an equality impact assessment (EIA) screening to help safeguard against discrimination and promote equality. We also considered the impact of policies on the Welsh language, and Welsh language provision within the HE sector in Wales, and implications relating to the Well Being of Future Generations Act 2015. Contact equality@hefcw.ac.uk for more information about EIAs.

Annex A

Summary of consultation responses – W16/08HE Guidance on Partnership arrangements for provision delivered by external providers on behalf of regulated institutions in Wales.

9 responses were received from: 1 Sector Representative Body; 6 Higher Education Institutions; and 2 Further Education Institutions.

Question 1 – Should this guidance cover any other types of partnership arrangements?

Key points

- More clarity regarding the validated provision previously subject to HEI fee planning.
- More clarity is required about the scope and its applicability to a wide range of partnership arrangements operated by institutions.
- Does not cover international collaborative provision.
- Delivery arrangements where delivery responsibilities are shared 50/50.
- Other partnerships exist such as Welsh medium Teaching.

Question 2 – Is there any existing provision which falls outside of the descriptions of partnership arrangements set out above?

Key points

- The definitions within the document are limited to franchised and validated provision rather than the wider definitions set out in the QAA Quality Code (chapter 10).
- Examples provided: Joint degrees; Welsh medium provision; Transitional education; HE/HE; and HE/FE
- Guidance does not make clear if it only covers provision delivered in Wales and England.

Question 3 – Does any of the guidance above need clarification or updating? If so, please provide details.

Key Points

- Definitions in the guidance need to be consistent with the new distinctions in the HE (Wales) Act.
- Requires considerable clarification and updating.
- Clarification on partnerships outside Wales whereby the regulated institution is based in Wales and wishes to access HEFCW funding.
- The financial and funding arrangements need to consider the proposal for only the regulated institutions to receive the tuition fee.
- The negotiation of agreements should include the fee level.

- The financial outcome if both the HEI and FEI are regulated institutions.
- If FEIs lost access to the SLC portal it would have a detrimental impact on the student experience and support the FEI could provide to students. If FEIs do not have access to the SLC portal then there should be a full disclosure of SLC information to partners

Question 4 – Is there any additional information which should be covered in this guidance? If so, please provide details.

Key points

- Need to be more explicit about the responsibilities of regulated institutions.
- Need to link the guidance with both the HE (Wales) Act and the QAA Quality Code for consistency.
- Fuller definitions are required on the number of different partnership arrangement available.
- More information is required on the validation arrangements and whether there are exceptions when a validation agreement as well as the MoA will be needed.

Question 5 – Do you have any comments on the appropriateness of the guidance in this document? If so, please provide details.

Key points

- Potentially helpful however needs more clarity.
- Strengthened to make more user-friendly
- Consistency around terminology of arrangements

General comments

- Contains many useful elements that will benefit institutions in managing their partnership arrangements.
- Would be useful if it was developed to reflect the range of partnership arrangements.
- Consistency required around terminology used.
- Issues with the guidance are because of the shortcomings of the HE (Wales) Act not the guidance itself.
- Need clarity about the status of the guidance and whether it is mandatory or advice on good practise.
- The guidance on the duration of the agreement and the period of notice for voluntary termination appears excessive.
- The draft guidance is very confusing and appears to adopt a different formulation and approach again.
- The guidance does not explicitly link responsibilities to the new statutory definitions and it should.

- Assume the final guidance will take account of the amended regulations which affect partnership arrangements under the 2015 Act which are due to come in to force on 26 March 2016.
- The duration of the agreements goes beyond the maximum duration of a fee and access plan. Clarity would be useful over how an institution would be expected to handle this.