

Cylchlythyr | Circular

Guidance on partnership arrangements for provision delivered by external providers 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: 21 March 2016
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This circular provides a consultation on guidance on partnership arrangements between external providers and regulated institutions in Wales, taking account of the Higher Education (Wales) Act 2015.

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Introduction

1. This circular provides a consultation on guidance on partnership arrangements between external providers and regulated institutions in Wales, taking account of the Higher Education (Wales) Act 2015 (the 2015 Act). Provision may be delivered through validation or franchise partnerships, however, this consultation focuses primarily on franchise arrangements.
2. In this guidance we refer to regulated institutions and external providers. Regulated institutions are those which have a fee plan (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). An external provider is defined as another institution or provider which delivers all or part of a course on behalf of a regulated institution under franchise arrangements¹. However, the terminology is complex, as external providers may themselves also be regulated institutions, eg an FEI which is a regulated institution that also offers franchise provision. For the purposes of this document, the term regulated institution refers to the institution which is franchising the provision, and the term external providers refers to institutions which are delivering provision on behalf of regulated institutions, regardless of whether or not they are also regulated institutions.
3. Under sections 23 and 24 of the Higher Education (Wales) Act 2015 (the 2015 Act) HEFCW must consult the governing bodies of regulated institutions, and any other persons appropriate, before issuing or approving guidance relating to the quality of education and criteria to be used in assessing this.
4. Governing bodies of regulated institutions are expected to take account of this guidance once published, in accordance with the 2015 Act, 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.
5. Within a group structure, a subsidiary can be classed under the 2015 Act as an external provider, in which case it delivers its provision as a franchisee of the parent organisation, or it may have provision which it controls, in which case it can itself seek to become a regulated institution.
6. 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.

¹ See definition in para 20

Scope of the guidance

7. This guidance relates to higher education delivered through partnerships, although our powers under the 2015 Act extend beyond this, and primarily covers arrangements where provision is franchised from a regulated institution to an external provider. Several aspects of the guidance are also relevant to the partnership agreements which may be made between regulated institutions and other organisations which have their courses automatically designated under the 2015 Act.
8. It also covers arrangements made in relation to directly-funded part-time provision which is not franchised by a regulated institution. For quality assessment purposes all provision made by or on behalf of a regulated institution comes under the 2015 Act provisions. Where institutions are funded for part-time provision only, we propose that quality assessment be covered through attaching terms and conditions to the grant funding provided to these institutions, and have consulted institutions electronically on this proposal.
9. We recognise that the circumstances of individual partnerships vary, and it is for partners to determine the precise arrangements that best suit them. Arrangements and formal agreements between partners must comply with the 2015 Act. This includes that the governing body of an external provider must ensure that a person assessing the quality of education, or undertaking other measures in response to inadequate quality, is provided with such information, assistance and access to the external provider's facilities as reasonably required.
10. This guidance will impact on HE providers' consideration of their provision and partnership arrangements, on which they will report in their 2017/18 Fee and Access Plan applications.

Background

11. In 2003/04 HEFCW commissioned an evaluation of partnerships for higher education provision in FEIs in Wales. Following the recommendations of this evaluation, HEFCW decided that any future development of HE in further education (FE) provision would be via franchise (circular [W04/60HE](#)). This was because of the level of support which the higher education institution (HEI) could provide to its partners under franchise arrangements and the benefits to the student in terms of access to the facilities of the HEI and potential progression arrangements. Following consultation, HEFCW published guidance on agreements and arrangements between HEIs and FEIs for HE in FE provision as circular [W06/11HE: Guidance on partnership arrangements between Higher and Further Education Institutions](#).

12. That guidance was based on the Academic Infrastructure, which was a set of nationally agreed reference points giving all institutions a shared starting point for setting, describing and assuring the quality and standards of their HE courses. This has been replaced by the Quality Code.
13. The UK Quality Code for Higher Education ([the Quality Code](#)) has been developed by the QAA with the HE community, and sets out the expectations that all providers of UK HE are required to meet. It has three parts: Part A on academic standards; Part B on academic quality; Part C on information about HE provision. Under the 2015 Act, HEFCW published a consultation in [W15/27HE: Consultation on criteria for the assessment of quality, method for assessment of quality and investigation of matters relating to quality and standards](#).
14. The use of the quality code in regulated institutions is currently assessed via Higher Education Review: Wales (HERW). The quality code includes a chapter on managing HE provision with others. This is based on the key principle that the delivery of learning opportunities with others, wherever and however organised, should widen learning opportunities without prejudice either to the academic standard of the award or the quality of what is offered to students. Additional guidance for external providers has been published in the revised HERW handbook (Annex 11 and Annex 12) in relation to academic standards and managing HE provision with others.
15. In March 2015 the [Higher Education \(Wales\) Act](#) 2015 was given Royal Assent. This included a number of implications for franchise HE delivered in FEIs, as follows:
 - Courses franchised by a regulated institution will be included within HEFCW's new quality of education duties if they are provided by an external provider 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. 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.
 - 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 external providers 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.
16. Under the 2015 Act, HEFCW is required to assess, or make arrangements for the assessment of, the quality of education provided in Wales by or on behalf of each regulated institution (whether by another regulated

institution or by an external provider). This has particular impact for FEIs which become regulated institutions under the 2015 Act, as HEFCW has statutory responsibility for all the education provided by regulated institutions, which would include FE and secondary education as appropriate. This is outside the remit of this circular, and HEFCW will take it forward separately.

17. 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 QAA to assess the quality of education provided in Wales, as enabled under the 2015 Act. 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. In every case, a regulated institution receiving a 'requires improvement' or 'does not meet' outcome will be deemed to have inadequate quality. However, it will be able to apply for a fee and access plan while going through due process to rectify problems in relation to quality.
18. 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.
19. 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.

Q1 Should this guidance cover any other types of partnership arrangements?

Types of partnerships

20. We use the definitions of validation and franchise arrangements which are used in England by [BIS](#) and [HEFCE](#). These are as follows:

'a. **Validation arrangements** – Courses made available and taught by one institution that lead on successful completion to a qualification awarded by another institution with degree awarding powers (DAPs). Usually 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 full contractual responsibility to the student for the provision of education.

b. Sub-contractual or ‘franchise’ arrangements – Courses made available by one institution, where some or all of the teaching is provided by a different institution under a sub-contractual arrangement. These are often referred to as ‘franchises’, but we will refer to them as ‘sub-contractual arrangements’. The course will usually have been designed by the first institution, which will usually 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.’

21. These definitions focus on the control of the provision and contractual responsibility to the student. In Wales a number of institutions have group arrangements, with a parent and subsidiary organisation(s). Where the parent organisation has control of the subsidiary’s provision within these definitions, we consider the provision as it were a franchise. Where the subsidiary organisation has control of the provision, we consider the provision to be validated. Institutions within group structures will therefore need to be clear regarding who has control of the provision to inform the Fee and Access Plan application process.
22. Regulated institutions may also have provision validated by other degree awarding bodies. In these circumstances the validated provision of the regulated institution will also be subject to HEFCW’s quality arrangements, as it is provided by the regulated institution under section 17 of the 2015 Act.
23. Two or more regulated institutions with degree awarding powers may also have courses which, on successful completion, lead to a joint award, or dual or multiple awards from each institution involved. Each regulated institution remains responsible for the provision of education to its students, quality assessment, and teaching may be provided in varying proportions by the institutions.
24. The institution which has control of the provision and contractual responsibility to the student for the provision of educational services is also the one which must include the student in any data returns. However, exceptionally, the responsibility for returning the Key Information Set (KIS) to the Higher Education Statistics Agency (HESA) depends on the arrangements between the regulated institution and the external provider. The KIS guidance on collaborative arrangements provided by HESA contains more details².
 - If it is in a franchise arrangement with one regulated institution only, then the regulated institution will return the KIS.
 - If it has several franchise arrangements with different regulated or other institutions, or is a regulated institution which also acts as an

²https://www.hesa.ac.uk/includes/C15061_resources/download/KIS_collaborative_provision.pdf?v=1.7

external provider through franchise arrangements, then it will return its own KIS.

25. 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. Other full-time undergraduate franchisee providers would not be able to submit information to SLC.
26. 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. Those delivering provision under such arrangements are referred to as external providers within the 2015 Act. There may be instances where one regulated institution franchises provision to another in Wales, and the guidance applies equally to such arrangements.
27. The table below illustrates the responsibilities of the regulated institution and external provider when the regulated institution is franchising provision delivered by an external provider. It also sets out the responsibilities of the degree awarding institution and the validated partner in validation partnerships. A validated partner may separately have franchise partnerships making it an external partner for the relevant provision.

Responsibility	Franchise partnership	Validation partnership where validated partner does not have degree awarding powers
Design of course/programme	Regulated institution	Normally the validated partner
Teaching and assessment (programme delivery)	As required by regulated institution	Normally delivery is by the validated partner but there may be some input from the regulated institution
Students' primary registration	Regulated institution	Validated partner
Responsibility for academic standards	Regulated institution	Primary responsibility with awarding institution
Responsibility for quality assurance	Regulated institution	Responsibility remains with awarding institution
Contractual responsibility for provision of education	Regulated institution, which provides funding to the external provider	Validated partner, which pays a validation fee
Student complaints	Complaints mechanisms can be delegated by the awarding body but students have	Complaints mechanisms can be delegated by the awarding body but students have ultimate right of appeal to

	<p>ultimate right of appeal to the degree-awarding body.</p> <p>Students can go to OIA with a complaint after they have completed the institution's procedures.</p>	<p>the degree-awarding body</p> <p>Students can go to OIA with a complaint after they have completed the awarding institution's procedures.</p>
Fees paid to	Regulated institution	Validated partner
Validation/ approval of programme	Regulated institution	Awarding institution
Awarding body	Regulated institution	Awarding institution
HERW	Under the regulated institution	Separate review of validated partner for home provision and seeking access to student support arrangements
Fee and Access Plan	Under the regulated institution	Separate Fee and Access Plan
Student numbers	Allocated by the regulated institution	Decided by validated partner. It would be prudent for the awarding institution to build some limits into numbers admitted by the validating institution.
Return of data to HESA	Regulated institution	Validated partner
Return of data to KIS	Normally the regulated institution, however, If the external provider has several franchise arrangements with different regulated or other institutions, or is a regulated institution which also acts as an external provider through franchise arrangements, then the external provider will return its own KIS	Validated partner
Submission of data to the SLC	Regulated institution	Validated partner if it is a regulated institution in its own right; otherwise the awarding institution will submit on behalf of the Validated partner.

28. 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. This position has not changed and HEFCW will expect to be kept informed of all franchising arrangements made by regulated institutions via Fee and Access Plan submissions. Further information is provided on [our website](#), where we have published Fee and Access Plan guidance for consultation.

Q2 Is there any existing provision which falls outside of the descriptions of partnership arrangements set out above.

Fee and access planning

29. HEFCW's draft 2017/18 Fee and Access Plan guidance is the subject of a separate consultation (circular [W16/07HE](#)) following the publication of the Welsh Government's guidance to HEFCW on fee and access planning³.
30. Fee and Access Plans from 2017/18 will need to address any franchise arrangements operated by the regulated institution, including the names and location of franchise partners, and fee levels to be charged by UK-based partners, together with the date on which each agreement was reviewed (see para 4).
31. For the purposes of fee planning, regulated institutions which operate group structures will need to sign, and to submit to HEFCW details of, internal 'franchise' agreements with each subsidiary member of the group providing full-time, undergraduate and/or PGCE higher education, where the parent organisation has control of the provision, in order to ensure that the provision is covered by the Fee and Access Plan. In cases where the subsidiary has control of the provision it may seek to become a regulated institution.
32. Institutions submitting Fee and Access Plans will also need to confirm that they meet the requirements of the Competition and Markets Authority consumer protection law advice for UK higher education (HE) providers in relation to their dealings with undergraduate students.
33. Further information relating to partnerships will be published in early 2016 as part of our consultation on the new, draft HEFCW Fee and Access Plan guidance. This guidance will be updated in the light of the consultation outcomes both on this document and on the Fee and Access Plan guidance as appropriate.

³ See [HEFCW circular W16/03HE](#)

The guidance

34. The paragraphs below give a set of guidance principles which regulated institutions and external providers must take into account in developing, managing and reviewing their partnerships.
35. 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 must 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.

36. A course provided by an external provider is not classified as being provided on behalf of a regulated institution 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 external providers in future Fee and Access Plans if arrangements between the external provider and the regulated institution have been in place from, or renewed since, 1 September 2015. These arrangements should be reviewed by March 2016, as outlined in para 4. This provision is reiterated in our Fee and Access Plan guidance.

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

Institutional missions and franchise partnerships

37. 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 delivers directly, or part of how it positions itself as an HE provider within a particular geographical area. For the external provider, 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.
38. 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.

39. 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 must be in line with the institutional missions of both the regulated institution and the external provider and be an integral part of their institutional strategies.

Multiple partnerships

40. HEFCW does not limit the number of franchise partnerships into which regulated institutions or external providers in Wales may enter, within Wales. However, please note the restrictions covered in para 28 with regards to franchises with external providers outside Wales.
41. No external provider delivering provision 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 of the provision overall remains with the external provider. The express written permission of the regulated institution is required for any engagement of a third party with a course delivered by an external provider, 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 should be included in the formal agreement or supporting documentation as appropriate.

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

Operation of the agreement

42. 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 external providers have agreements with several regulated institutions and/or across a number of subjects, they 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.

The partnership agreement must set out how, within both partners, its operation will be managed.

Negotiating partnerships and agreements

43. 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.
44. An implication of the use of standard agreements by regulated institutions is that the external provider 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 must include instances where regulated institutions are contracting with new partners, revising the terms of agreements with, or expanding the portfolios of, existing partners.
45. 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.
46. Achieving an equivalence 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.
47. There should be broadly similar clauses in the agreements which different regulated institutions have with their franchise partners, as all must align with the Quality Code. Where external providers 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 external providers indicate that this would help them manage the range of their partnership agreements more effectively.
48. There must be a formal written agreement which is confirmed through appropriate approval procedures by, and signed by accountable officers from, both partners. It must be reviewed and monitored regularly.

Both partners must 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 must be respected and adequately protected.

Regulated institutions, in discussion with their partners, must seek to define and operate their agreements in ways which help external providers 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 external provider 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.

The formal agreement between the regulated institution and the external provider

49. 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.
50. The provision of information to students must 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.

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, must ensure that franchise agreements are sufficiently secure, comprehensive and transparent for external providers 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 delivering the course and the obligations on the external provider.

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

Duration of agreements

51. The agreements must be of sufficient duration to enable the external provider to build up its capacity to deliver the HE provision. This must normally be for a period of at least five years, 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.
52. Delivery arrangements must be underpinned by joint strategic working between organisations delivering HE. Longer durations of franchise agreements facilitate this, and provide the stability to enable external providers to plan strategically.
53. Agreements must be revised where appropriate, for example as a consequence of new legislation, or HEFCW guidance which partners are required to take account of under the 2015 Act. For this reason, partners need to revise their partnership agreements by March 2016, to take account of this guidance, once finalised.

Regulated institutions must 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 external provider 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 need to revise their partnership agreements to take account of this guidance, once finalised.

54. Agreements make provision for termination as a result of a breach of arrangements. They 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.
55. Agreements need to ensure that any termination of arrangements enables students already enrolled to finish their courses under the awarding body 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 under the awarding body, should they wish.

56. Any notice period for termination of an agreement must be as long as possible, to give both regulated institutions and external providers more

time to plan the action they need to take in the light of the ending of the agreement. The notice period must normally be at least three academic years.

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

Regulated institutions' services and support to external providers and their students

57. The services and support which the external provider 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 external provider as a result, contribute to a strong and effective partnership.

Student access to the regulated institution's facilities

58. 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.
59. 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 must be published for the students and staff concerned.

Student progression

60. Opportunities for the student to progress to higher level provision, either at an external provider or by articulating to provision at the regulated institution, are a valuable feature of franchise arrangements. Further advice on this is available in the Quality Code.
61. 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 external provider 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 externally-provided course in terms of the point of entry to the regulated institution-provided course.

62. Geographical distance between the external provider 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 external provider, the regulated institution and other regulated institutions closer to the external provider, may also extend the progression opportunities for franchise students.

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

Collaborative working between staff

63. Opportunities for collaboration between staff are a valuable feature of franchising, and may include:
- regulated institution staff contributing to the teaching at external providers;
 - joint staff training and development;
 - collaborative curriculum development;
 - involvement of external provider staff in research and development activity undertaken by regulated institutions' staff.
64. Although there is a greater likelihood of this sort of collaboration where the regulated institution and external provider are in close proximity, distance should not rule it out.
65. Where a regulated institution has partnership arrangements with two or more external providers, there may be major benefits if the external providers can work together collaboratively, as well as with the regulated institution.

Partners must 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

66. Regulated institutions normally receive fees for franchise provision and then transfer a proportion of the funding to the external provider to deliver the course. While some agreements currently make provision for tuition fees to be paid directly to the franchise partner, under the 2015 Act arrangements, it is proposed that 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. This proposal will be considered in the Fee and Access Plan guidance which is subject to separate consultation. 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.

67. 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;
 - e) the arrangements for the collection and distribution of tuition fee income between partners.
68. 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 an external provider, 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 external provider 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 franchised 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 must 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 external provider
69. The agreements generally set maximum numbers of students/credit values, stating whether or not the external provider 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 external provider 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.
70. In some instances, regulated institutions franchise a wide range of courses/substantial student numbers to a particular external provider and may give the external provider 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 external provider may operate.

71. We appreciate that regulated institutions may need to make decisions on the exact numbers to be allocated to the external provider on an annual basis. However, within the context of the recommendations on longer-term agreements above, it would be helpful to external providers 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 external provider will not drop, in order to protect the experience of the students on that course, and to maintain the viability of the provision.

Where possible, regulated institutions must set the annual confirmation of franchise numbers to their external providers within an overall framework of how numbers will be determined from year-to-year.

Partners must consider including within the agreement a baseline below which numbers/credits allocated by the regulated institution to the external provider will not drop.

Monitoring and review

72. 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. Further information on this is available in the Quality Code.
73. 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 delivered directly by the regulated institution.
74. 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 must have in place procedures for regular monitoring and review of agreements.

Validated provision

75. The main focus of partnership agreements for validation arrangements between a degree awarding institution and a validated partner will normally be the awarding function provided by a degree awarding institution and

associated quality assurance arrangements. However, in drawing up such agreements, many of the same considerations as for franchise agreements will be important:

- Compatibility of the partner institutions' objectives and strategic direction and mission;
 - Appropriate procedures for negotiating agreements with full involvement of both partners;
 - Agreements which respect and adequately protect the interests and reputation of both partners;
 - Clear understanding of, and agreement on, the basis of the clauses in the agreement;
 - Approval of the agreement at the appropriate level within the partner institutions;
 - Clarity and transparency of the agreement. While in the case of a validated partner, the validated partner will be paying a fee for the services which it receives from the degree awarding institution, it is equally important that both parties can see both the benefits and the obligations involved;
 - Setting a mutually acceptable duration for the agreement, and voluntary termination clauses, which give reasonable security to both partners and time for them to plan for changes;
 - Monitoring and review of agreements to ensure continued effectiveness and meeting of objectives.
76. Given that in such arrangements the degree awarding institution is responsible for the quality assurance and standards of the award which is being offered, and the implications of this for the responsibilities of the institution towards the students concerned, there are likely to be similar considerations as for franchise agreements about the areas where there needs to be clarity on the designated responsibilities of each partner.
77. Partners must also consider elements from the guidance above to be included in the agreement. As the validated partner may also be operating franchise agreements, it may be helpful to minimise any perceived differences between franchise and validated cohorts in terms of the nature of the student experience and the status of the students.
78. Similarly, regulated institutions who have agreements with another HE provider for both validated and franchise provision must consider how far it is possible to operate both types of agreements in a consistent manner.
79. Any provider delivering validated provision and wanting to charge student fees must have a fee plan (Fee and Access Plan) agreed by HEFCW.

Equalities, well-being and sustainability

80. The Equality Act 2010 requires institutions within the further or higher education sector 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. Providers 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 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 Regulations.

81. It is also 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.

Q3 Does any of the guidance above need clarification or updating? If so, please provide details.

Q4 Is there any additional information which should be covered in this guidance? If so, please provide details.

Q5 Do you have any comments on the appropriateness of the guidance in this document? If so, please provide details.

Further information / responses to

82. Please submit your responses electronically to Dr Cliona O'Neill (tel 029 2068 2283; email cliona.oneill@hefcw.ac.uk) by 21 March 2016.

Equality and diversity implications

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. Contact equality@hefcw.ac.uk for more information about EIAs.