

Response summary

HEFCW received nine responses to the consultation. Of these, two broadly agreed with the approach set out, and did not raise any specific comments. One response provided some overarching comments, but did not respond specifically to the questions raised, while another response provided overarching comments in addition to responses to the questions.

Overarching comments were provided by two respondents. These included the following points:

- The European Standards and Guidelines (ESG) applied to all quality assurance of HE in terms of internal quality assurance within institutions, external quality assurance by European Quality Assurance Register for Higher Education (EQAR) registered agencies, and the quality assurance of EQAR agencies. A query was raised regarding whether the proposals risked Welsh higher education's alignment with ESG standards 2.4, 2.5, 2.6, 2.7 and 3.3;¹
- The guidance did not fully address the ESG requirement for judgements to be based on pre-defined and published criteria and implemented consistently;
- The financial code, Fee and Access Plan (FAP) and quality assurance requirements were different and needed to be separately assessed;
- Concern regarding intervention decisions arising from a more general Institutional Risk Review (IRR) process, and a need for a clearly distinguished process for assessing quality for purposes of the Higher Education (Wales) Act 2015, with appropriate student and expert involvement;
- The assessment of quality should be carried out by an independent agency;
- There should be consideration of how data trends and other intelligence could be considered together with the outcomes of the existing external review process to inform HEFCW's intervention decisions;
- Confusion regarding the links between the procedures and the statement of intervention, eg the procedures refer to actions prior to 'implementing the Statement of Intervention', which itself included a section on actions 'prior to intervention.'

Question 1: i) Are the mechanisms that HEFCW proposes to determine whether provision is (or is likely to become) inadequate appropriate?

Six responses were content that the mechanisms were appropriate, albeit with some caveats. The other two responses raised caveats, but did not clarify whether or not they were content overall. Issues raised included:

¹ ESG: https://enqa.eu/wp-content/uploads/2015/11/ESG_2015.pdf

2.4 - External quality assurance should be carried out by groups of external experts that include (a) student member(s)

2.5 – Any outcomes or judgements made as the result of external quality assurance should be based on explicit and published criteria that are applied consistently, irrespective of whether the process leads to a formal decision

2.6 - Full reports by the experts should be published, clear and accessible to the academic community, external partners and other interested individuals. If the agency takes any formal decision based on the reports, the decision should be published together with the report

2.7 - Complaints and appeals processes should be clearly defined as part of the design of external quality assurance processes and communicated to the institutions

Agencies should be independent and act autonomously. They should have full responsibility for their operations and the outcomes of those operations without third party influence.

- Engagement with Teaching Excellence and Student Outcomes Framework (TEF) was voluntary for Welsh institutions, and therefore could not be applied equitably. TEF data was already covered in 'trends in data';
- It would be useful for the procedures to refer the baseline regulatory requirements or other external reference points that would inform decisions;
- It would be helpful to include decision-making criteria for how HEFCW would decide that quality has become inadequate (or was likely to become inadequate), eg specifying changes in trends that would trigger activity;
- Statutory bodies were more likely than professional bodies to provide a useful source of data, as professional body accreditations could take many forms;
- Greater clarity was needed to align with standard 2.5 of the ESG, which states that outcomes or judgements should be based on published criteria;
- HEFCW should specify if the procedures would result in a published report, in order to align with ESG standard 2.6;
- It would be helpful to have clarity of the criteria behind judgements from which interventions or activity would be triggered;
- Whether and how HEFCW would engage with other stakeholders;
- Information on how appeals could be made against decisions or complaints lodged against the implementation of the procedures;
- Clarification regarding how the mechanisms articulated with cyclical QER, IRR and FAPs;
- Arrangements for areas not covered by the external review process (ie trends in data and other intelligence) were not sufficient to ensure that institutions understood the criteria and expectations, and to ensure confidence that HEFCW decisions would be made fairly and consistently;
- Clarity on how the information in para 19 would be reviewed and judgements made without firstly having a dialogue with the institution;
- There should be greater detail and clarity about who would undertake quality assessment in areas not covered by external review and the process involved;
- Query whether paras 21 and 12 were contradictory regarding the approval of FAPs;
- The guidance did not confirm arrangements for 'other intelligence' including student complaints and the findings of PSRBs;
- Paragraph 16: the statement that HEFCW 'may also choose to follow up any review recommendations separately with institutions,' might not be proportionate given that the institution would also be liaising with the agency carrying out their review;
- Paragraph 24: HEFCW should consider whether the decision-making role of the Council and Chief Executive aligned with ESG standard 2.4 which expected external quality assurance to be carried out by external experts;
- Paragraph 35: it would be helpful to clarify that the action plan referred to was agreed with the review agency;
- Paragraph 39: HEFCW did not specify how it would decide a provider is at risk, or the criteria to be used;
- Quality assurance review:
 - This was appropriate, but it could be clearer how the review articulated with the partnership approach prior to intervention;
 - The importance of understanding the extent of conditions, in order to avoid unnecessary reputational damage;

- Clarification regarding how the outcomes of QER (meets with conditions and does not meet) articulated with what was deemed by the review team to be quality that was actually or likely to become inadequate, and the role of the QAA in either case;
- Institutions should have a maximum of six months to complete an action plan to address conditions before they are deemed to have quality which is, or is likely to become, inadequate
- Whether any condition that was not met within 12 months automatically triggered a warning notice, or whether this was subject to the outcome of follow-up by HEFCW.
- Trends in data:
 - This was appropriate and its relationship with IRR was clear;
 - It would be helpful to understand the trends that might/ not trigger intervention (eg scale of change);
 - HEFCW should discuss trends with the institution;
 - Information should be evidence-based and derived from publically available, verifiable data;
 - There could be more emphasis on trends being statistically significant;
 - HEFCW should clarify whether benchmarks would be based on Welsh HEIs or UK-wide;
 - This stated that the intervention decision would be informed by advice from the Quality Assessment Committee, but paras 20 and 21 suggested that the IRR process and FAP process could also result in a decision that quality was inadequate, presumably involving different membership and expertise;
- Intelligence from other processes:
 - This was appropriate and the relationship with data trends via IRR was clear
 - HEFCW should consider whether it would be proportionate to implement the Statement of Intervention in response to a single PSRB/ Estyn judgement where this related to a small part of the work of an institution;
 - It would be better to refer to evidence derived from publically verifiable data rather than intelligence, and to substantiated complaints, rather than to intelligence from complaints’;
 - How the outcomes of FAPs and the IRR could trigger a decision that provision was (likely to become) inadequate where a FAP was approved, or an institution was not deemed to be at high risk.

Question 2: i) Are the actions HEFCW proposes to undertake prior to implementing the Statement of Intervention appropriate?

Six responses were content that the mechanisms were appropriate, albeit with some caveats. The other two responses raised caveats, but did not clarify whether or not they were content overall. Issues raised included:

- The actions appeared to be comprehensive;
- Support for liaising with institutions prior to implementing intervention to enable clarification of any issues;
- Clarification on whether the actions compromised the partnership approach set out in the Statement of Intervention, or whether they formed a mid-point between the partnership approach and the intervention process;

- Para 25 and 37: ambiguity regarding which actions would be used in which circumstances risked non-alignment with ESG standard 2.3;
- Para 27: a query whether 'external expertise' had the same meaning as in the revised UK Quality code, and whether it included student engagement;
- Para 28: the lack of description of the more extensive engagement with HEFCW that would be associated with a relationship to FAPs or IRR might fall outside the ESG;
- Para 29: this did not describe how HEFCW would monitor outcomes and trends;
- Para 36: this did not describe how HEFCW would work in partnership with students in relation to inadequate quality;
- Para 38: this did not define what a reasonable timescale might be, which might not align with the ESG expectations. It would be helpful to have clearer guidelines on timescales for response, notices, etc.

Question 3: Are there any unintended consequences of the proposed procedures for quality that is, or is likely to become, inadequate?

A number of comments were made in relation to this, as follows:

- Support for a risk-based proportionate methodology with co-regulation, and early open discussions with the regulator, underpinning the process;
- Support for the recognition that trends in data could be slow to reverse, and the need for HEFCW to be mindful of this;
- Consideration whether the procedures unnecessarily duplicated the oversight role of the governing body and created additional bureaucracy;
- The need for HEFCW to ensure that they understood each PSRB report and any associated action plan and terminology, to avoid any unintended consequences;
- A potentially negative impact on recruitment if implementation of the procedures became public knowledge;
- If HEFCW automatically assumed the institutions receiving a 'meets with conditions' judgement from an external quality assurance review were 'likely to become' inadequate in terms of quality this might be unhelpful, as the judgement meant that most applicable requirements and/or standards had been met and those not met did not present any serious risks;
- Paragraph 39: When considering external partnerships/providers that were considered to be at risk it would be appropriate for any independent party to have experience in the type and nature of the provision to minimise burden, and ensure the appropriate context was understood.

Question 4: Are there any gaps in the procedures? If so, please provide further detail.

Three respondents identified gaps that had not been identified in the questions above, as follows:

- The need for an additional para confirming how the procedures related to institutions which had completed a gateway review, and whether any additional information needed to be included in response to this;
- Further information about the circumstances where actions prior to the statement of intervention might be deployed, and detail of possible outcomes;
- Paragraph 4: this indicated that the interventions only related to provision provided wholly or mainly in Wales. However, QER outcomes covered all

provision including TNE. It was therefore not clear whether QER outcomes relating to TNE would trigger intervention, and if not, how the interests of TNE students could be protected;

- Paragraph 26: A disconnect between the expectation of the institution to work with the Student Union (SU) and Student Union representatives, and for the QAA to consult with the SU/ reps, but no obligation on HEFCW to do the same;
- The questions appeared to exclude para 32 onwards, implementing the statement of intervention, even though this section included additional guidance;
- Para 39 referenced 'external partners' and referred to involving an independent party. HEFCW should clarify whether these referred to the same party.

Question 5: Do the proposals have any positive or negative impacts or unintended consequences in terms of equality and diversity and the Well-Being of Future Generations (Wales) Act's seven wellbeing goals, sustainable development principles and five ways of working?

There were 6 responses to this question, in addition to the two responses which generally agreed with the approach proposed. Five of the responses did not raise any positive or negative issues relating to the Act or its goals. One response considered that the proposals might not align with ESG standards 2.4, 2.5, 2.6, 2.7 and 3.3, raising the following issues regarding the Future Generations Act:

- If the international recognition of Welsh degrees became more limited, it might inhibit people in fulfilling their potential;
- This might be contrary to the Act's sustainable development principle, since the needs of the present might compromise the ability of future generations to meet their needs, and be contrary to the 'long-term' way of working.

Question 6. What effects will the policy have on opportunities for persons to use the Welsh language and treating the Welsh language no less favourably than the English language? How could the policy be changed so that the policy decision would have (increased) positive effects on opportunities for persons to use the Welsh language and treating the Welsh language no less favourably than the English language, and fewer or no adverse effects?

Two responses agreed with all aspects of the proposals as set out. A further six responses addressed this question specifically, four of which did not identify any issues, other than noting that it was assumed that it was intended that the procedure would be engaged with bilingually and would comply with Welsh Language Standards as appropriate.

Respondents noted that there was no specific reference to Welsh Language requirements in the proposed procedure, outside of the footnote for students who wished to learn through the medium of Welsh, and that this missed the opportunity to cross reference with item 14 of the Quality Assessment Framework, as part of the baseline requirements. This would enable any issues identified to be considered as part of the external quality assurance review.

Question 7: Any other comments

Five respondents raised additional comments. These suggested the following clarifications/ amendments:

- The need for early dialogue with institutions to facilitate understanding of the requirements;
- Strengthening the procedure to emphasise student partnership;
- Consistency in terminology, including in using the terms 'judgement' and 'outcome', and in clarifying 'quality that is likely to become inadequate' vs 'quality that is (likely to become) inadequate; 'baseline standards' vs 'baseline requirements;'
- Inclusion of links to the Statement of Intervention;
- Naming the data sources that would be used;
- Paragraph 9: PSRBs did not always accredit provision; also recognition that the importance of accreditation could vary from being essential to being 'nice to have', and that therefore the importance of accreditation outcomes might vary in terms of these procedures;
- Paragraph 14: student representatives should be involved in drawing up the action plan;
- Paragraph 16: Clarification of the nature of the review (ie the original or the follow-up review); also that the involvement of HEFCW in the follow-up review was included in the HEFCW specification of the External Quality Assurance Reviews (April 2017);
- Paragraph 17: A query regarding the use of TEF in relation to determining provision that was (likely to become) inadequate if TEF was not consistently applied across the sector;
- Paragraph 18: Strengthening the caveat on the use of data, where data demonstrates significant and consistent declining trends to trigger an intervention;
- Para 19 and 22: complaints that are likely to trigger an intervention should be upheld (rather than just submitted) before being used as evidence to initiate action;
- Paragraph 24: cross-refer to content in the Statement of Intervention, while being clear where the guidance is expanding on its detail, eg it states that HEFCW's Council has the ultimate responsibility to proceed to the 'injunction stage', but presumably also relates to the 'enforcement stage' in the Statement;
- Paragraph 26: Clarification regarding the informal liaison with institutions was the liaison described in paragraph 86 of the Statement of Intervention, or whether it was in addition;
- Paragraph 32: whether this should refer to paragraphs 88-110 (not 76-110);
- Paragraph 34: whether there was any difference between 'unfavourable judgement outcomes' and 'unsatisfactory outcomes';
- Paragraph 36: how HEFCW and the provider would ensure that students continued to have access to high quality learning opportunities;
- Paragraph 39: whether inadequate quality concerned all the baseline regulatory requirements, or only learning opportunities and academic standards;
- Paragraph 42: what decision would be taken by HEFCW;
- Paragraph 45: how HEFCW would keep the procedures under review, and the types of evidence and feedback that would be used to evaluate the effectiveness of the procedures.

Consultation respondents

Cardiff University

Cardiff Metropolitan University

The Open University in Wales

Quality Assurance Agency for Higher Education

Swansea University

Universities Wales

University of South Wales

University of Wales Trinity Saint David

Wrexham Glyndŵr University