

ACCOMPANYING DOCUMENTS

Explanatory Notes and an Explanatory Memorandum are printed separately.

# Higher Education (Wales) Bill

[AS AMENDED AT STAGE 3]

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# Higher Education (Wales) Bill

[AS AMENDED AT STAGE 3]

An Act of the National Assembly for Wales to make provision about student fees payable to certain institutions providing higher education; to make provision about the quality of education provided by and on behalf of those institutions and about their financial management; and for connected purposes.

5 **Having been passed by the National Assembly for Wales and having received the assent of Her Majesty, it is enacted as follows:**

## PART 1

### INTRODUCTION

#### 1 Overview of this Act

- 10 (1) This Act has eight Parts.
- (2) This Part contains an overview of the Act.
- (3) Part 2 makes provision about fee and access plans. It deals with—
- 15 (a) the contents of a fee and access plan, including a fee limit;
- (b) failure to comply with a fee limit or other requirement included in a fee and access plan;
- (c) the validity of certain contracts;
- (d) the monitoring of fee and access plans.
- (4) Part 3 makes provision about the assessment of the quality of education provided by or on behalf of institutions that have a fee and access plan, including provision about—
- 20 (a) powers available for the purposes of assessment;
- (b) steps that may be taken by HEFCW in respect of education of inadequate quality.
- (5) Part 4 makes provision about the preparation and publication of a code relating to the organisation and management of the financial affairs of institutions that have a fee and access plan, including provision about—
- 25 (a) compliance with the code;
- (b) powers available for the purposes of monitoring compliance with the code, and in the case of failure to comply with the code.
- (6) Part 5 makes provision for circumstances in which—
- (a) HEFCW may refuse to approve a new fee and access plan for an institution;

- (b) HEFCW must, or may, withdraw their approval of an institution's fee and access plan.
- (7) Part 6 makes procedural provision about notices and directions given by HEFCW (including provision about the review of certain notices and directions).
- 5 (8) Part 7 makes supplementary provision about functions of HEFCW, including provision relating to guidance, reports, information and advice.
- (9) Part 8 contains general provisions, including provision about—
- (a) the exercise of powers to make regulations;
- (b) the interpretation of terms used in the Act.
- 10 (10) That Part also introduces a Schedule containing amendments to existing enactments and transitional provision.

## PART 2

### FEE AND ACCESS PLANS

#### *Application for approval of fee and access plan*

- 15 **2 Application by institution for HEFCW's approval of fee and access plan**
- (1) The governing body of an institution within subsection (3) may apply to HEFCW for HEFCW's approval of a proposed fee and access plan relating to the institution.
- (2) A fee and access plan is a plan that complies with sections 4 to 6.
- (3) An institution within this subsection is an institution in Wales that—
- 20 (a) provides higher education, and
- (b) is a charity.
- (4) Regulations may make provision about the making of applications for approval of a fee and access plan.
- 3 Designation of other providers of higher education**
- 25 (1) The Welsh Ministers may, on the application of a provider of higher education within subsection (2), designate the provider for the purposes of this section.
- (2) A provider of higher education within this subsection is one that—
- (a) provides higher education in Wales and is a charity, but
- 30 (b) would not (but for the designation) be regarded as an institution for the purposes of this Act.

(3) Subject to any provision made under subsection (4)(d), a provider of higher education designated under this section is, unless the designation is withdrawn, to be treated for the purposes of any provision made by or under this Act as being an institution.

(4) Regulations may make provision about—

- 5 (a) the making of applications for designation;
- (b) the making of designations under this section (including provision about matters to be taken into account in determining whether to make a designation);
- (c) the withdrawal of a designation (including provision about matters to be taken into account in determining whether to withdraw a designation);
- 10 (d) the effect of a withdrawal of a designation (including provision for a provider whose designation is withdrawn to continue to be treated as an institution for prescribed purposes).

*Contents of fee and access plan*

**4 Period to which plan relates**

15 (1) A fee and access plan relating to an institution must specify a period in respect of which it is to have effect.

(2) The period specified must not exceed two years.

(3) Regulations may amend subsection (2) to substitute a different period for the period for the time being mentioned in that subsection.

20 (4) Before making regulations under subsection (3), the Welsh Ministers must consult—

- (a) HEFCW,
- (b) the governing body of each regulated institution, and
- (c) any other persons they think appropriate.

25 (5) References in this Act to the period to which a plan relates are to the period specified in it under this section.

**5 Fee limit**

(1) A fee and access plan relating to an institution must—

- (a) specify, or
- (b) provide for the determination of,

30 a fee limit, in relation to each qualifying course and in respect of each relevant academic year (and for this purpose may specify, or provide for the determination of, different fee limits in relation to different courses and in respect of different relevant academic years).

(2) For this purpose—

- 35 (a) a fee limit, in relation to a course, is a limit that the fees payable to the institution by a qualifying person, in connection with the person's undertaking the course, may not exceed;

(b) a qualifying course is a course, of any prescribed description, that is wholly or principally provided in Wales;

(c) a relevant academic year, in relation to a course, is an academic year that is applicable to the course, and in respect of which fees are payable to the institution, and which begins within the period to which the fee and access plan relates.

(3) Where a fee and access plan specifies a fee limit in relation to a year and course, the fee limit specified must not exceed whatever amount is prescribed for the purposes of this section (“the maximum amount”).

(4) Where a fee and access plan provides for the determination of a fee limit in relation to a year and course, the plan must specify that the fee limit determined in accordance with the plan is not to exceed the maximum amount.

(5) A qualifying person, for the purposes of subsection (2)(a), is a person who –

(a) is not an international student, and

(b) falls within any class of persons prescribed for the purposes of this section.

(6) The power to prescribe a description of course under this section may not be exercised so as to prescribe a postgraduate course, unless it is a course of initial teacher training.

(7) Nor may the power to prescribe a description of course under this section be exercised so as to discriminate –

(a) in relation to courses of initial teacher training, between different courses on the basis of the subjects in which such training is given;

(b) in relation to other courses, between different courses at the same or a comparable level on the basis of the areas of study or research to which they relate.

(8) An international student is a person who does not fall within any class of persons prescribed under section 1 of the Education (Fees and Awards) Act 1983 (charging of higher fees in case of students not having prescribed connection with the United Kingdom) for the purposes of subsection (1) or (2) of that section.

(9) Regulations may make provision for circumstances in which fees payable to a person, in connection with a qualifying person’s undertaking a course, or part of a course, provided on behalf of an institution, are to be treated for the purposes of subsection (2)(a) as being payable to that institution in connection with the qualifying person’s undertaking the course.

## **6 Promotion of equality of opportunity and higher education**

(1) A fee and access plan relating to an institution must include such provisions relating to the promotion of equality of opportunity or the promotion of higher education as may be prescribed.

(2) A fee and access plan may also include further provisions relating to the promotion of equality of opportunity or the promotion of higher education.

(3) The provisions that may be prescribed under subsection (1) for inclusion in a plan include provisions requiring the governing body –

- (a) to take measures to attract applications from prospective students who are members of under-represented groups (or to secure the taking of such measures);
- (b) to take measures to retain students who are members of under-represented groups (or to secure the taking of such measures);
- 5 (c) to provide financial assistance to students (or to secure the provision of such assistance);
- (d) to make available to students or prospective students information about financial assistance available to students from any source (or to secure that such information is made available).
- 10 (4) The provisions that may be prescribed for inclusion in a plan also include provisions –
- (a) setting out objectives relating to the promotion of equality of opportunity and the promotion of higher education;
- (b) setting out information about expenditure in respect of those objectives;
- (c) relating to the monitoring by the governing body of –
- 15 (i) compliance with the provisions of the plan;
- (ii) progress in achieving any objectives set out in the plan by virtue of paragraph (a).
- (5) But the power to prescribe provisions for inclusion in a fee and access plan may not be exercised so as to require a plan relating to an institution to include provision –
- 20 (a) referring to particular courses or to the manner in which courses are taught, supervised or assessed,
- (b) relating to the criteria for the admission of students, or
- (c) requiring the institution to incur expenditure, in any academic year, of an amount exceeding the amount of the qualifying fee income of the institution that is attributable to that academic year.
- 25 (6) For the purposes of this section –
- (a) the amount of the qualifying fee income of an institution that is attributable to an academic year is the aggregate amount of those fees payable to the institution, in respect of that academic year, in relation to which a fee limit applies that is specified in the fee and access plan relating to the institution, or for the determination of which the fee and access plan relating to the institution provides;
- 30 (b) “under-represented groups”, in relation to a fee and access plan, are groups that, as at the date of the plan’s approval under section 7, are under-represented in higher education.
- 35 (7) References in this Act to the general requirements of a fee and access plan are to provisions included in the plan by virtue of this section which require the governing body of the institution to do (or not to do) specified things.

*Approval etc of fee and access plan***7 Approval of fee and access plan**

(1) If an application for approval of a fee and access plan is made to HEFCW under section 2, HEFCW must by notice to the governing body concerned either –

- 5 (a) approve the plan, or  
(b) reject the plan.

(2) But HEFCW may not approve a plan unless satisfied that the institution to which it relates is within section 2(3).

10 (3) Regulations may make provision about matters to be taken into account by HEFCW in making any determination in respect of approval or rejection of a plan under this section.

(4) For the purposes of this Act, the period within which a fee and access plan relating to an institution and approved under this section is in force is the period beginning with the day of its approval under this section, and ending with the earlier of the following –

- 15 (a) the day on which the period to which it relates expires;  
(b) if HEFCW's approval of it is withdrawn by notice given under section 38 or 39, the date of the notice.

(5) In this Act –

- 20 (a) references to an approved plan are to a fee and access plan relating to an institution that has been approved under this section and is currently in force;  
(b) references to a regulated institution are to an institution to which an approved plan relates (but see sections 26 and 27(8)).

(6) This section is subject to section 37(5) (no approval of new fee and access plan).

(7) For procedural provision about notice under subsection (1)(b), see sections 41 to 44.

**8 Publication of approved plan**

25 (1) Regulations may require the governing body of a regulated institution to publish the institution's approved plan.

(2) The provision that may be made by regulations under this section includes provision about how and when a plan is to be published.

**9 Variation of approved plan**

30 (1) Regulations may make provision permitting the governing body of a regulated institution to vary the institution's approved plan.

(2) The regulations must provide for a variation to take effect only if approved by HEFCW.

- (3) The regulations may make provision about the making and determination of applications for approval of a variation.

*Compliance with fee limit*

**10 Limits on student fees**

- 5 (1) The governing body of an institution within subsection (2) must ensure that regulated course fees do not exceed the applicable fee limit.
- (2) An institution is within this subsection if a fee and access plan relating to it has been approved under section 7 (whether or not that plan is still in force).
- 10 (3) “Regulated course fees” are fees payable to the institution by a qualifying person—
- (a) in connection with the person’s undertaking a qualifying course, and
  - (b) in respect of an academic year applicable to that course, where that year begins at a time within the period specified under section 4 in the institution’s most recent fee and access plan (whether or not the plan is still in force).
- (4) The institution’s most recent fee and access plan is the fee and access plan most recently approved under section 7 in relation to the institution.
- 15 (5) The applicable fee limit is—
- (a) in a case where the institution’s most recent fee and access plan specifies a fee limit for the course and year in question, that limit;
  - (b) in a case where the institution’s most recent fee and access plan provides for the determination of a fee limit for the course and year in question, that limit as
- 20 determined in accordance with the plan.

**11 Compliance and reimbursement directions**

- (1) This section applies where HEFCW are satisfied that the governing body of an institution has failed to comply with section 10(1).
- 25 (2) HEFCW may direct the governing body to do either or both of the following—
- (a) to comply with section 10(1);
  - (b) to reimburse excess fees paid to the institution.
- (3) A direction under this section (a “compliance and reimbursement direction”) may specify—
- 30 (a) steps that are (or are not) to be taken by the governing body for the purpose of compliance with section 10(1);
- (b) the manner in which reimbursement of excess fees is to be, or may be, effected.
- (4) If HEFCW give a direction under this section, they must—
- (a) give a copy of the direction to the Welsh Ministers;

(b) publish the direction.

(5) Regulations may make provision about how and when HEFCW are to comply with subsection (4).

(6) "Excess fees" are regulated course fees, to the extent that those fees exceed the applicable fee limit (as quantified for the purposes of the duty under section 10(1) with which the governing body has failed to comply).

## 12 Supplementary provision about compliance and reimbursement directions

(1) HEFCW may issue guidance about steps to be taken for the purpose of complying with a compliance and reimbursement direction.

(2) Before issuing guidance under this section HEFCW must consult the governing body of each regulated institution; and may consult the governing body of any other institution within section 2(3) as they think appropriate.

(3) A governing body to which a compliance and reimbursement direction has been given must, in complying with the direction, take into account any guidance issued under this section.

(4) For procedural provision about compliance and reimbursement directions, see sections 41 to 44.

### *Compliance with general requirements of approved plan*

## 13 Directions in respect of failure to comply with general requirements of approved plan

(1) If the condition in subsection (2) or (3) is met, HEFCW may give the governing body of an institution a direction within subsection (4).

(2) The condition is that HEFCW are satisfied that –

(a) there has been a failure by the governing body to comply with a general requirement of a fee and access plan relating to the institution, and

(b) at the time of the failure, the fee and access plan was approved under section 7.

(3) The condition is that HEFCW are satisfied that the governing body is likely to fail to comply with a general requirement of the institution's approved plan.

(4) A direction within this subsection is a direction requiring the governing body to take (or not to take) specified steps for the purpose of dealing with or preventing the failure to comply.

(5) But HEFCW may not give a direction under this section if they are satisfied that the governing body has taken all reasonable steps to comply with the requirement in question.

(6) For procedural provision about directions under this section, see sections 41 to 44.

*Contracts***14 Validity of contracts**

- 5 (1) This section applies to a contract that provides for the payment of regulated course fees to an institution, by a qualifying person and in connection with the person's undertaking a qualifying course, that exceed the applicable fee limit.
- (2) For the purposes of any rights and liabilities arising under the contract, and any proceedings in respect of those rights and liabilities, the contract is to be treated as providing for the payment of fees in an amount equivalent to the applicable fee limit.
- 10 (3) Except as provided in subsection (2), the contract is not void or unenforceable in consequence of providing for the payment of fees exceeding the applicable fee limit.

*Approved plans: compliance and effectiveness*

**15 HEFCW's duty to monitor and evaluate compliance and effectiveness**

- 15 (1) HEFCW must –
- (a) monitor compliance with section 10(1);
  - (b) monitor compliance with the general requirements of approved plans;
  - (c) evaluate the effectiveness of each approved plan;
  - (d) evaluate the effectiveness of approved plans generally.
- (2) For the purposes of this section, the effectiveness of an approved plan is its effectiveness in promoting –
- 20 (a) equality of opportunity, and
- (b) higher education.

**16 Monitoring and evaluating compliance and effectiveness: duty to co-operate**

- 25 (1) The governing body of a regulated institution must ensure the provision to HEFCW of such information, assistance and access to the institution's facilities as HEFCW reasonably require for the purpose of their functions under section 15.
- (2) If HEFCW are satisfied that a governing body has failed to comply with subsection (1), they may direct it to take (or not to take) specified steps for the purpose of securing the provision of information, assistance or access as described in that subsection.

**PART 3****QUALITY OF EDUCATION***Assessment of quality of education***17 Assessment of quality of education**

- 5 (1) HEFCW must assess, or make arrangements for the assessment of, the quality of education provided in Wales—
- (a) by each regulated institution;
  - (b) on behalf of each regulated institution (whether by another regulated institution or by an external provider).
- 10 (2) For the purposes of subsection (1), education provided outside Wales is to be treated as provided in Wales if it is provided as part of a course that is provided principally in Wales.
- (3) In this Act, references to an external provider are references to a person who—
- (a) is not a regulated institution, but
  - 15 (b) is responsible for providing all or part of a course of education on behalf of a regulated institution.
- (4) For the purposes of subsection (3)(b)—
- (a) regulations may make provision about the circumstances in which a person is (or is not) to be treated as responsible for providing a course (or part of it);
  - 20 (b) a course (or part of it) is not to be treated as provided on behalf of a regulated institution if it is provided under arrangements with that institution that were made before the coming into force of this section.

*Powers in respect of education of inadequate quality***18 Education of inadequate quality: general**

- 25 (1) Sections 19 and 20 apply if, as a result of exercising their functions under section 17, HEFCW are satisfied that—
- (a) the quality of education provided by or on behalf of a regulated institution, or
  - (b) the quality of a particular course of education so provided,
- is inadequate or likely to become inadequate.
- 30 (2) For the purposes of this Act, the quality of education or of a course of education is inadequate if it is not adequate to meet the reasonable needs of those receiving the education or undertaking the course.

**19 Directions in respect of inadequate quality**

- (1) HEFCW may give a direction to the governing body of the institution requiring it to take (or not to take) specified steps for the purpose of –
- (a) improving the quality of the education or course, or
  - (b) preventing the quality of the education or course from becoming inadequate.
- (2) For procedural provision about directions under this section, see sections 41 to 44.

**20 Other measures in respect of inadequate quality**

- (1) HEFCW may give advice or assistance to the governing body of the institution with a view to –
- (a) improving the quality of the education or course, or
  - (b) preventing the quality of the education or course from becoming inadequate.
- (2) HEFCW may carry out, or arrange for another person to carry out, a review of any matters that they think are relevant to the quality of education provided by or on behalf of the institution.
- (3) A governing body must take into account any advice given to it under subsection (1).

*Co-operation with quality assessment etc***21 Quality assessment etc: duty to co-operate**

- (1) The governing body of a regulated institution must ensure that a person exercising a function by virtue of section 17 or 20 is provided with such information, assistance and access to the institution's facilities as the person reasonably requires for the purpose of exercising the function (including for the purpose of exercising any power under section 22).
- (2) The governing body of an external provider must ensure that a person exercising a function by virtue of section 17 or 20(2) is provided with such information, assistance and access to the external provider's facilities as the person reasonably requires for the purpose of exercising the function (including for the purpose of exercising any power under section 22).
- (3) If HEFCW are satisfied that a governing body has failed to comply with subsection (1) or (2), they may direct it to take (or not to take) specified steps for the purpose of securing the provision of information, assistance or access as described in subsection (1) or (2) (as appropriate).

*Supplementary powers for purpose of quality assessment etc***22 Quality assessment etc: powers of entry and inspection**

- (1) For the purpose of the exercise of a function by virtue of section 17 or 20(2), an authorised person may –
- (a) enter the premises of a regulated institution or external provider;
  - (b) inspect, copy or take away documents found on the premises.

- (2) In subsection (1)(b), references to –
- (a) documents include information recorded in any form;
  - (b) documents found on the premises include –
    - (i) documents stored on computers or electronic storage devices on the premises, and
    - (ii) documents stored elsewhere which can be accessed by computers on the premises.
- (3) The power conferred by subsection (1)(b) includes power –
- (a) to require a person to provide documents;
  - (b) to impose requirements as to how documents are provided (which may include requirements to provide legible copies of documents stored electronically);
  - (c) to inspect a computer or electronic storage device on which documents have been created or stored.
- (4) A power conferred by this section may be exercised only after giving reasonable notice to –
- (a) the governing body of the regulated institution or external provider in relation to whose premises the authorised person intends to exercise the power, and
  - (b) the governing body of any regulated institution on whose behalf that institution or external provider provides the education to which the exercise of the function under section 17 or 20(2) relates.
- (5) Subsection (4) does not apply to the exercise of a power if the authorised person is satisfied that –
- (a) the case is one of urgency, or
  - (b) complying with that subsection would defeat the object of exercising the power.
- (6) In this section, “authorised person” means a person authorised in writing by HEFCW (whether generally or specifically) to exercise the powers conferred by this section.
- (7) Before exercising a power under this section, an authorised person must, if required to do so, produce a copy of the person’s authorisation under subsection (6).
- (8) The powers conferred by this section –
- (a) may be exercised at reasonable times only;
  - (b) may not be exercised to require a person to do anything otherwise than at a reasonable time.
- (9) The powers conferred by this section do not include power to enter a dwelling without the agreement of the occupier.

*Guidance relating to quality of education***23 Guidance about matters relevant to quality**

- 5 (1) HEFCW may issue or approve guidance about any matter they think relevant to improving or maintaining the quality of education provided by or on behalf of regulated institutions.
- (2) Before issuing or approving guidance under this section (or any revised guidance), HEFCW must consult—
- 10 (a) the governing body of each regulated institution, and
- (b) any other persons they think appropriate.
- (3) The governing body of a regulated institution must take into account any guidance issued or approved under this section.

**24 Guidance about criteria for assessing quality**

- 15 (1) HEFCW may issue or approve guidance about—
- (a) criteria to be applied by a person exercising a function by virtue of section 17 in assessing the quality of education;
- (b) matters HEFCW will take into account in determining whether the quality of education, or of a course of education, is inadequate or likely to become inadequate.
- 20 (2) Before issuing or approving guidance under this section (or any revised guidance), HEFCW must consult—
- (a) the governing body of each regulated institution, and
- (b) any other persons they think appropriate.

*Advice to HEFCW about quality assessment functions***25 Committee to advise HEFCW about exercise of quality assessment functions**

- 25 (1) HEFCW must establish a committee to advise them on the exercise of their functions under this Part.
- (2) HEFCW may confer on the committee any other functions that they think appropriate.
- (3) One member of the committee must be a person who appears to HEFCW to represent the interests of persons being provided with higher education in Wales.
- 30 (4) Of the other members of the committee—
- (a) a majority must be persons who are not members of HEFCW;
- (b) a majority must be persons who appear to HEFCW to have experience of, or to have shown capacity in, the provision of higher education.
- 35 (5) In appointing persons within subsection (4)(b) to the committee, HEFCW must take into account the desirability of appointing persons who are currently engaged in the provision of higher education or in carrying responsibility for its provision.

- (6) Schedule 1 to the Further and Higher Education Act 1992 applies in relation to the committee as it applies in relation to a committee established by HEFCW under paragraph 8 of that Schedule.

*Supplementary*

5 **26 Application of this Part where institution ceases to have approved plan**

- (1) This section applies where –
- (a) a fee and access plan relating to an institution has ceased to be in force, and
  - (b) no new fee and access plan is in force in relation to the institution.
- (2) This Part continues to apply in relation to education provided by or on behalf of the institution by means of a designated course.
- 10 (3) For the purposes of the application of this Part by virtue of subsection (2), the institution is to be treated as a regulated institution.
- (4) A designated course is one that is designated for the purposes of section 22 of the Teaching and Higher Education Act 1998 by regulations made by the Welsh Ministers under that section.
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**PART 4**

FINANCIAL AFFAIRS OF REGULATED INSTITUTIONS

*Financial management code*

27 **HEFCW's duty to prepare and publish Code**

- 20 (1) HEFCW must prepare and publish a code relating to the organisation and management of the financial affairs of regulated institutions (referred to in this Act as "the Code").
- (2) The Code may make provision about the following matters (among others) –
- (a) circumstances in which a regulated institution is to enter into a transaction of a class specified in the Code only with the consent of HEFCW;
  - 25 (b) accounting and audit arrangements of regulated institutions;
  - (c) the provision of information to HEFCW.
- (3) A provision of the Code may take the form of a requirement or guidance.
- (4) The governing body of a regulated institution must –
- (a) comply with any requirement imposed by the Code;
  - 30 (b) take into account any guidance contained in the Code.
- (5) HEFCW may publish the Code in whatever way they think appropriate.
- (6) HEFCW must –
- (a) keep the Code under review, and

(b) if they think it appropriate, prepare and publish a revised Code.

- (7) The Code may make different provision for different purposes (including for different institutions and different descriptions of institution).
- (8) For the purposes of this Part, the Open University is not to be treated as a regulated institution.
- (9) In sections 28, 29 and 30, “the first Code” means the first Code to be published under this section.

## **28 Procedure for approval of Code by Welsh Ministers**

- (1) Before publishing the first Code or a revised Code, HEFCW must –
- (a) prepare a draft of the first Code or revised Code, and
- (b) submit the draft to the Welsh Ministers for their approval.
- (2) In preparing a draft of the first Code or of a revised Code, HEFCW must consult –
- (a) the governing body of each regulated institution, and
- (b) any other persons they think appropriate.
- (3) A draft submitted to the Welsh Ministers under this section must be accompanied by a report –
- (a) setting out the reasons for the terms of the draft, and
- (b) giving details of the consultation carried out under subsection (2) and summarising the representations received by HEFCW during the consultation.
- (4) The Welsh Ministers may direct HEFCW to submit a draft of the first Code or of a revised Code to them under this section before the end of a period specified in the direction.
- (5) HEFCW must comply with a direction given under subsection (4).

## **29 Procedure if draft Code not approved by Welsh Ministers**

- (1) This section applies if the Welsh Ministers decide not to approve a draft of the first Code, or of a revised Code, submitted to them under section 28.
- (2) The Welsh Ministers must give HEFCW notice of the decision and the reasons for it.
- (3) If the Welsh Ministers give HEFCW notice under subsection (2) that they have decided not to approve a draft of the first Code, HEFCW must submit a further draft of the first Code to the Welsh Ministers.
- (4) If the Welsh Ministers give HEFCW notice under subsection (2) that they have decided not to approve a draft of a revised Code, HEFCW must either –
- (a) submit a further draft of the revised Code to the Welsh Ministers, or
- (b) give the Welsh Ministers notice –
- (i) stating that HEFCW have decided not to proceed with the revision of the Code, and

(ii) setting out the reasons for that decision.

- (5) Notice under subsection (2) may specify a period before the end of which HEFCW must comply with subsection (3) or (4) (as appropriate).
- (6) Before submitting a further draft of the first Code or revised Code to the Welsh Ministers, HEFCW must carry out any further consultation that they think appropriate.
- (7) A further draft submitted to the Welsh Ministers under this section must be accompanied by a report—
- (a) explaining how, in preparing the draft, HEFCW have taken into account the reasons set out in the notice given by the Welsh Ministers under subsection (2),
  - (b) setting out HEFCW's reasons for the terms of the draft, and
  - (c) giving details of any consultation carried out under subsection (6) in relation to the draft and summarising the representations received by HEFCW during the consultation.
- (8) Subsections (2) to (7) apply where the Welsh Ministers decide not to approve a draft submitted to them under this section as they apply where the Welsh Ministers decide not to approve a draft submitted to them under section 28.

### **30 Procedure if draft Code approved by Welsh Ministers**

- (1) If the Welsh Ministers approve a draft of the first Code or of a revised Code submitted to them under section 28 or 29, they must lay the approved draft before the National Assembly for Wales.
- (2) If the National Assembly for Wales resolves not to approve the draft within the 40 day period—
- (a) HEFCW may not publish the draft;
  - (b) if the draft is of the first Code, HEFCW must submit a further draft of the first Code to the Welsh Ministers;
  - (c) if the draft is of a revised Code, HEFCW may submit a further draft of a revised Code to the Welsh Ministers.
- (3) Before submitting a further draft of the first Code or of a revised Code to the Welsh Ministers under this section, HEFCW must carry out any further consultation they think appropriate.
- (4) A further draft submitted to the Welsh Ministers under this section must be accompanied by a report—
- (a) setting out HEFCW's reasons for the terms of the draft, and
  - (b) giving details of any consultation carried out under subsection (3) in relation to the draft and summarising the representations received by HEFCW during the consultation.
- (5) The "40 day period" means the period of 40 days beginning with the day on which the draft is laid before the National Assembly for Wales.

- (6) In calculating the 40 day period, no account is to be taken of any period during which the National Assembly for Wales is dissolved or during which it is in recess for more than four days.
- (7) If no resolution is passed by the National Assembly for Wales within the 40 day period as mentioned in subsection (2), HEFCW must publish the Code in the terms of the approved draft.
- (8) If a further draft is submitted to the Welsh Ministers under this section—
- (a) subsections (1) to (7) apply if the Welsh Ministers approve the draft as they apply if they approve a draft submitted to them under section 28 or 29;
  - (b) section 29 applies if the Welsh Ministers decide not to approve the draft as it applies if the Welsh Ministers decide not to approve a draft submitted to them under section 28.

*Monitoring compliance with Code*

**31 Monitoring compliance with Code**

HEFCW must monitor, or make arrangements for the monitoring of, compliance by each regulated institution with requirements imposed by the Code.

*Powers in respect of failure to comply with Code*

**32 Failure to comply with Code: general**

Sections 33 and 34 apply if HEFCW are satisfied that the governing body of a regulated institution has failed, or is likely to fail, to comply with a requirement imposed by the Code.

**33 Directions in respect of failure to comply with Code**

- (1) HEFCW may give a direction to the governing body requiring it to take (or not to take) specified steps for the purpose of dealing with or preventing the failure to comply.
- (2) For procedural provision about directions under this section, see sections 41 to 44.

**34 Other measures in respect of failure to comply with Code**

- (1) HEFCW may give advice or assistance to the governing body with a view to improving the organisation or management of the financial affairs of the institution.
- (2) HEFCW may carry out, or arrange for another person to carry out, a review of any matters that they think are relevant to the institution's compliance with the Code.
- (3) A governing body must take into account any advice given to it under subsection (1).

*Co-operation with monitoring etc***35 Financial management: duty to co-operate**

- 5 (1) The governing body of a regulated institution must ensure that a person exercising a function by virtue of section 31 or 34 is provided with such information, assistance and access to the institution's facilities as the person reasonably requires for the purpose of exercising the function (including for the purpose of exercising any power under section 36).
- 10 (2) If HEFCW are satisfied that a governing body has failed to comply with subsection (1), they may direct it to take (or not to take) specified steps for the purpose of securing the provision of information, assistance or access as described in that subsection.

*Supplementary powers for purpose of monitoring etc***36 Financial management: powers of entry and inspection**

- 15 (1) For the purpose of the exercise of a function by virtue of section 31 or 34(2), an authorised person may –
- (a) enter the premises of a regulated institution;
  - (b) inspect, copy or take away documents found on the premises.
- (2) In subsection (1)(b), references to –
- (a) documents include information recorded in any form;
  - (b) documents found on the premises include –
- 20 (i) documents stored on computers or electronic storage devices on the premises, and
- (ii) documents stored elsewhere which can be accessed by computers on the premises.
- (3) The power conferred by subsection (1)(b) includes power –
- 25 (a) to require a person to provide documents;
- (b) to impose requirements as to how documents are provided (which may include requirements to provide legible copies of documents stored electronically);
- (c) to inspect a computer or electronic storage device on which documents have been created or stored.
- 30 (4) A power conferred by this section may be exercised only after giving reasonable notice to the governing body of the regulated institution.
- (5) Subsection (4) does not apply to the exercise of a power if the authorised person is satisfied that –
- (a) the case is one of urgency, or
  - 35 (b) complying with that subsection would defeat the object of exercising the power.
- (6) In this section, "authorised person" means a person authorised in writing by HEFCW (whether generally or specifically) to exercise the powers conferred by this section.

- (7) Before exercising a power under this section, an authorised person must, if required to do so, produce a copy of the person's authorisation under subsection (6).
- (8) The powers conferred by this section –
- (a) may be exercised at reasonable times only;
  - (b) may not be exercised to require a person to do anything otherwise than at a reasonable time.
- (9) The powers conferred by this section do not include power to enter a dwelling without the agreement of the occupier.

## PART 5

### FEE AND ACCESS PLANS: WITHDRAWAL OF APPROVAL ETC

#### *Refusal to approve new fee and access plan*

#### **37 Notice of refusal to approve new fee and access plan**

- (1) If HEFCW are satisfied that a condition in subsection (3) is met in respect of a regulated institution, they may give notice under this section to the institution's governing body.
- (2) Notice under this section is notice that HEFCW will not approve a new fee and access plan relating to the institution before the end of a period specified in the notice.
- (3) The conditions are that the governing body of the institution has failed to comply with –
- (a) section 10(1) (duty to ensure that regulated course fees do not exceed applicable fee limit),
  - (b) a general requirement of the institution's approved plan,
  - (c) a direction under section 13 (directions in respect of failure to comply with general requirements of approved plan),
  - (d) a direction under section 19 (directions in respect of inadequate quality), or
  - (e) a direction under section 33 (directions in respect of failure to comply with the Code).
- (4) A governing body is not to be treated for the purposes of subsection (3)(b) as having failed to comply with a general requirement of an approved plan if HEFCW are satisfied that the governing body has taken all reasonable steps to comply with the requirement.
- (5) If HEFCW give notice under this section to the governing body of an institution, HEFCW must not approve a proposed fee and access plan relating to the institution before the end of the period specified in the notice.
- (6) Where HEFCW have given notice under this section –
- (a) they may withdraw the notice, and
  - (b) if they do so, the restriction in subsection (5) ceases to apply.

- (7) Regulations may make provision about—
- (a) the period that may be specified in notice under this section;
  - (b) matters to be taken into account by HEFCW in deciding whether to give or withdraw notice under this section;
  - (c) the procedure to be followed in connection with the withdrawal of notice.
- (8) If the governing body of an institution that is not a regulated institution fails to comply with a direction under section 13, this section applies in relation to that institution as it applies in relation to a regulated institution.
- (9) For procedural provision about notice under this section, see sections 41 to 44.

*Withdrawal of approval of existing fee and access plan*

**38 Duty to withdraw approval**

- (1) If HEFCW are satisfied that a regulated institution is no longer within section 2(3), they must withdraw their approval of the fee and access plan relating to the institution by giving notice under this section to the institution's governing body.
- (2) Regulations may make provision about—
- (a) matters to be taken into account by HEFCW in making a determination for the purposes of this section;
  - (b) the procedure to be followed in connection with giving notice under this section.
- (3) Regulations making provision as described in subsection (2)(b) may (among other things) amend or apply, with or without modifications, any provision made by or under sections 41 to 44.

**39 Power to withdraw approval**

- (1) If HEFCW are satisfied that a condition in subsection (2) is met in respect of a regulated institution, they may withdraw their approval of the fee and access plan relating to the institution by giving notice under this section to the institution's governing body.
- (2) The conditions are that—
- (a) the governing body of the institution has persistently failed to comply with section 10(1) (duty to ensure that regulated course fees do not exceed applicable fee limit) or has failed to comply with a compliance and reimbursement direction,
  - (b) the governing body has persistently failed to comply with the general requirements of the institution's approved plan or has failed to comply with a direction under section 13 (directions in respect of failure to comply with general requirements of approved plan),
  - (c) the quality of education provided by or on behalf of the institution is seriously inadequate, or

(d) there has been serious failure by the governing body of the institution to comply with the Code.

(3) A governing body is not to be treated for the purposes of subsection (2)(b) as having failed to comply with a general requirement of an approved plan if HEFCW are satisfied that the governing body has taken all reasonable steps to comply with the requirement.

(4) Regulations may make provision about matters to be taken into account by HEFCW in deciding whether to give notice under this section.

(5) For procedural provision about notice under this section, see sections 41 to 44.

*Publication etc of notice under this Part*

**40 Publication etc of notice under this Part**

(1) If HEFCW give notice under section 37, 38 or 39, they must—

(a) give a copy of the notice to the Welsh Ministers, and

(b) publish the notice.

(2) Regulations may make provision about how and when HEFCW are to comply with subsection (1).

**PART 6**

**NOTICES AND DIRECTIONS GIVEN BY HEFCW**

*Warning and review procedure for certain notices and directions*

**41 Application of sections 42 to 44**

(1) Sections 42 to 44 apply to—

(a) notice under section 7(1)(b) (rejection of proposed fee and access plan),

(b) a compliance and reimbursement direction,

(c) a direction under section 13 (directions in respect of failure to comply with general requirements of approved plan),

(d) a direction under section 19 (directions in respect of inadequate quality),

(e) a direction under section 33 (directions in respect of failure to comply with the Code),

(f) notice under section 37 (refusal to approve a new fee and access plan), and

(g) notice under section 39 (withdrawal of approval of fee and access plan).

(2) But those sections do not apply to a direction that provides only for the revocation of an earlier direction (see section 46).

**42 Proposed notices and directions: requirement to give warning notice**

- (1) If HEFCW propose to give a governing body a notice or direction to which this section applies, HEFCW must give the governing body a warning notice.
- (2) The warning notice must—
  - (a) set out the proposed notice or direction;
  - (b) state HEFCW's reasons for proposing to give it;
  - (c) inform the governing body that it may make representations about the proposed notice or direction;
  - (d) specify, in accordance with any provision made by regulations, the period within which, and the way in which, representations may be made.
- (3) In deciding whether to give the notice or direction, HEFCW must take into account any representations made by the governing body in accordance with the warning notice.
- (4) If, having taken those representations into account, HEFCW decide not to give the notice or direction, they must give the governing body notice of that decision.

**43 Information to be given with notices and directions**

If HEFCW give a governing body a notice or direction to which this section applies, they must at the same time give the governing body a statement—

- (a) setting out HEFCW's reasons for giving the notice or direction,
- (b) informing the governing body that it may apply for a review of the notice or direction under section 44, and
- (c) including any other prescribed information.

**44 Review of notices and directions**

- (1) If HEFCW give a governing body a notice or direction to which this section applies, the governing body may (subject to any provision made as described in subsection (4)(a)) apply for a review of the notice or direction.
- (2) A review is to be carried out by a person, or a panel of persons, appointed by the Welsh Ministers; and the Welsh Ministers may pay remuneration and allowances to persons appointed under this subsection.
- (3) The Welsh Ministers must by regulations make provision in connection with reviews under this section.
- (4) The regulations may, among other things, make provision—
  - (a) about the grounds on which an application for a review may be made;
  - (b) about the period within which, and the way in which, an application may be made;

- (c) about the procedure to be followed by a person or panel carrying out a review;
- (d) about steps to be taken by HEFCW following a review;
- (e) for a notice or direction to which this section applies not to be treated as having been given until any steps specified in the regulations have been taken, or until any period specified in the regulations has expired.

*General provisions about directions given by HEFCW*

**45 Directions: compliance and enforcement**

- (1) If HEFCW give a governing body a direction under this Act, the governing body must comply with the direction.
- (2) The direction is enforceable by injunction on the application of HEFCW.
- (3) If requested to do so by the governing body, HEFCW must give notice to the governing body stating whether they are satisfied that it has complied with the direction (or with a particular requirement of the direction).

**46 Directions: general**

A direction given by HEFCW under this Act –

- (a) must be in writing;
- (b) may be varied or revoked by a later direction.

## PART 7

### SUPPLEMENTARY PROVISION ABOUT FUNCTIONS OF HEFCW

*Exercise of functions by HEFCW*

**47 Compatibility with charity law and governing documents of institutions**

- (1) Nothing in this Act confers power on HEFCW to require the governing body of an institution to do anything that is incompatible with –
  - (a) any legal obligation or legal restriction that applies to the governing body by virtue of the institution being a charity, or
  - (b) the governing documents of the institution.
- (2) For the purposes of subsection (1)(b), the governing documents of an institution are –
  - (a) in the case of an institution established by Royal charter –
    - (i) the institution's charter, and
    - (ii) any instrument relating to the conduct of the institution the making or amendment of which requires the approval of the Privy Council;

- (b) in the case of an institution conducted by a higher education corporation, the corporation's instrument of government and the institution's articles of government;
- (c) in the case of an institution conducted by a further education corporation, the corporation's instrument of government and articles of government;
- (d) in the case of an institution designated under section 129 of the Education Reform Act 1988 or section 28 of the Further and Higher Education Act 1992, the institution's instrument of government and articles of government;
- (e) in the case of an institution not falling within paragraphs (a) to (d) that is conducted by a company, the company's memorandum and articles of association.

#### 48 **Duty to take into account importance of protecting academic freedom**

In exercising functions by virtue of this Act, HEFCW must take into account the importance of protecting academic freedom including, in particular, the freedom of institutions –

- (a) to determine the contents of particular courses and the manner in which they are taught, supervised or assessed,
- (b) to determine the criteria for the admission of students and to apply those criteria in particular cases, and
- (c) to determine the criteria for the selection and appointment of academic staff and to apply those criteria in particular cases.

#### 49 **Duty to take Welsh Ministers' guidance into account**

In exercising functions by virtue of this Act, HEFCW must take into account any guidance issued by the Welsh Ministers.

*Reports to be made by HEFCW*

#### 50 **Annual reports**

- (1) As soon as possible after the end of each reporting period, HEFCW must submit a report to the Welsh Ministers on how, during the period, HEFCW have exercised their functions by virtue of this Act.
- (2) As soon as possible after receiving a report under subsection (1), the Welsh Ministers must lay a copy of the report before the National Assembly for Wales.
- (3) The report must comply with any requirements that the Welsh Ministers may by direction to HEFCW specify.
- (4) Those requirements may include requirements as to the form and content of the report.
- (5) For the purposes of this section the first reporting period is the period –
- (a) beginning with the day on which this section comes into force, and
- (b) ending with whichever is the earlier of the anniversary of that day, and a day specified by HEFCW in notice given to the Welsh Ministers.
- (6) The subsequent reporting periods are each successive period of 12 months.

- (7) The Welsh Ministers may by direction specify requirements with which notice given as described in subsection (5) is to comply (including as to form and content, and the time at which it is to be given); and notice is not to be treated as having been given for the purposes of subsection (5) unless it complies with those requirements.

5 **51 Special reports**

- (1) HEFCW must if directed to do so by the Welsh Ministers report to the Welsh Ministers on any of the following –
- (a) compliance with section 10(1) by institutions within section 10(2) generally or by a particular institution;
  - 10 (b) compliance with the general requirements of approved plans generally, or with the general requirements of a particular approved plan;
  - (c) the effectiveness of approved plans generally, or the effectiveness of a particular approved plan, in promoting equality of opportunity and promoting higher education;
  - 15 (d) any other matters specified in the direction that relate to the promotion of equality of opportunity or the promotion of higher education;
  - (e) the quality of education provided by or on behalf of regulated institutions generally, or the quality of education provided by or on behalf of a particular regulated institution;
  - 20 (f) compliance by regulated institutions generally, or by a particular regulated institution, with requirements of the Code.
- (2) A direction under subsection (1) may specify –
- (a) the form and content of a report made for the purposes of this section;
  - (b) when the report is to be made.

25 *Other information etc to be given by HEFCW*

**52 Statement in respect of intervention functions**

- (1) HEFCW must prepare and publish a statement setting out how they propose to exercise their intervention functions.
- (2) HEFCW –
- 30 (a) must keep the statement under review;
  - (b) may revise it.
- (3) Before publishing the statement or a revised statement, HEFCW must consult –
- (a) the governing body of each regulated institution, and
  - (b) any other persons they think appropriate.
- 35 (4) Regulations may make provision about –
- (a) the preparation of the statement (including as to its form and content);
  - (b) its publication;
  - (c) the consultation to be carried out under subsection (3).

- (5) HEFCW's intervention functions are their functions under the following provisions –
- (a) section 11 (compliance and reimbursement directions);
  - (b) section 13 (directions in respect of failure to comply with general requirements of approved plan);
  - 5 (c) section 19 (directions in respect of inadequate quality);
  - (d) section 20(1) and (2) (other measures in respect of inadequate quality);
  - (e) section 33 (directions in respect of failure to comply with the Code);
  - (f) section 34(1) and (2) (other measures in respect of failure to comply with the Code);
  - 10 (g) section 37 (refusal to approve new fee and access plan);
  - (h) sections 38 and 39 (withdrawal of approval of existing fee and access plan).

### 53 Information and advice to be given by HEFCW to Welsh Ministers

- 15 (1) HEFCW must, if directed to do so by the Welsh Ministers, give the Welsh Ministers such information and advice relating to the promotion of equality of opportunity and the promotion of higher education as the Welsh Ministers may require.
- (2) HEFCW may give the Welsh Ministers other information and advice relating to the promotion of equality of opportunity and the promotion of higher education.

### 54 Other information and advice

- 20 (1) HEFCW may –
  - (a) identify good practice relating to the promotion of equality of opportunity and the promotion of higher education, and
  - (b) give information and advice about such practice to the governing body of a regulated institution, or to the governing bodies of regulated institutions generally.
- 25 (2) In exercising its functions, the governing body of a regulated institution is to take into account any information or advice given by HEFCW to it, or to governing bodies generally, under subsection (1)(b).
- (3) HEFCW may provide such other information and advice as they think appropriate having regard to (among other things) their functions and those of regulated institutions.
- 30 (4) That information and advice may (among other things) relate to –
  - (a) the powers and duties of regulated institutions;
  - (b) the organisation and management of the financial affairs of regulated institutions;
  - (c) the effect of approval of a fee and access plan.

**PART 8****GENERAL****55 Regulations**

(1) A power to make regulations under this Act is exercisable by statutory instrument.

(2) A power to make regulations under this Act includes power –

(a) to make different provision for different purposes;

(b) to make incidental, supplementary, consequential, transitional, transitory or saving provision.

(3) A statutory instrument containing (whether alone or with other provision) regulations within subsection (4) may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales.

(4) The regulations within this subsection are –

(a) the first regulations to be made under section 2(4);

(b) regulations under section 3(4);

(c) regulations under section 4(3);

(d) the first regulations to be made under section 5(3);

(e) regulations under section 6(1);

(f) regulations under section 7(3);

(g) regulations under section 13;

(h) regulations under section 38(2) which amend a provision of this Act;

(i) regulations under section 58 which amend or repeal a provision of –

(i) an Act of Parliament, or

(ii) a Measure or Act of the National Assembly for Wales.

(5) Any other statutory instrument containing regulations made under this Act is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

**56 Directions given by Welsh Ministers**

A direction given by the Welsh Ministers under this Act –

(a) must be in writing;

(b) may be varied or revoked by a later direction.

**57 Interpretation**

(1) In this Act –

“academic year” (“*blwyddyn academaidd*”) means a period of 12 months;

“applicable fee limit” (“*terfyn ffioedd cymwys*”) has the meaning given in section 10;

“approved plan” (“*cynllun a gymeradwywyd*”) has the meaning given in section 7;

“compliance and reimbursement direction” (“*cyfarwyddyd cydymffurfio ac ad-dalu*”) has the meaning given in section 11;

5 “enactment” (“*deddfiad*”) means a provision contained in any of the following –

(a) an Act of Parliament;

(b) a Measure or Act of the National Assembly for Wales;

(c) subordinate legislation within the meaning of the Interpretation Act 1978  
10 (including subordinate legislation made under an Act of Parliament or  
under a Measure or Act of the National Assembly for Wales);

“equality of opportunity” (“*cyfle cyfartal*”) means equality of opportunity in connection with access to higher education;

“excess fees” (“*ffioedd uwchlaw’r terfyn*”) has the meaning given in section 11;

“external provider” (“*darparwr allanol*”) has the meaning given in section 17;

15 “fee and access plan” (“*cynllun ffioedd a mynediad*”) has the meaning given in section 2;

“fee limit” (“*terfyn ffioedd*”) has the meaning given in section 5;

20 “fees” (“*ffioedd*”) means fees in respect of, or otherwise in connection with, undertaking a course, including admission, registration, tuition and graduation fees, and fees payable to an institution for awarding or accrediting any part of the course, but excluding –

(a) fees payable for board or lodging;

(b) fees payable for field trips (including any tuition element of such fees);

(c) fees payable for attending any graduation or other ceremony;

25 (d) any other fees prescribed for the purposes of this section;

“general requirements” (“*gofynion cyffredinol*”), in relation to an approved plan, is to be read in accordance with section 6;

“governing body” (“*corff llywodraethu*”) –

30 (a) in relation to a training provider who but for this section would not be regarded as an institution, means any persons responsible for the provider’s management;

(b) in relation to a provider designated under section 3, means any persons responsible for the provider’s management;

35 (c) in relation to any other institution, has the meaning given by section 90(1) of the Further and Higher Education Act 1992, but subject to any provision made by virtue of section 90(2) of that Act;

(d) in relation to an external provider that is not an institution, means any persons responsible for the provider’s management;

“HEFCW” (“CCAUC”) means the Higher Education Funding Council for Wales;

“higher education” (“*addysg uwch*”) means education provided by means of a course of any description mentioned in Schedule 6 to the Education Reform Act 1988;

5 “inadequate” (“*annigonol*”), in relation to the quality of education or of a course, has the meaning given in section 18;

“institution” (“*sefydliad*”) includes any training provider (whether or not the training provider would otherwise be regarded as an institution);

“notice” (“*hysbysiad*”) means notice in writing;

10 “prescribed” (“*rhagnodedig*”, “*a ragnodir*”) means prescribed by regulations;

“qualifying course” (“*cwrs cymhwysol*”) means a course prescribed under section 5;

“qualifying person” (“*person cymhwysol*”) has the meaning given in section 5;

“regulated course fees” (“*ffioedd cwrs rheoleiddiedig*”) has the meaning given in section 10;

15 “regulated institution” (“*sefydliad rheoleiddiedig*”) has the meaning given in section 7;

“regulations” (“*rheoliadau*”) means regulations made by the Welsh Ministers;

20 “relevant academic year” (“*blwyddyn academaidd berthnasol*”), in relation to an institution to which a fee and access plan relates, has the meaning given in section 5.

(2) In subsection (1), “training provider” means a person who provides training for members of the school workforce (within the meaning given by section 100 of the Education Act 2005).

(3) For the purposes of this Act, references to an institution in Wales—

25 (a) are to an institution whose activities are wholly or principally carried on in Wales, and

(b) include the Open University.

## 58 Consequential and transitional provision etc

(1) For minor and consequential amendments, see Part 1 of the Schedule.

30 (2) For transitional provisions, see Part 2 of the Schedule.

(3) The Welsh Ministers may by regulations make such—

(a) incidental, supplementary or consequential provision, or

(b) transitional, transitory or saving provision,

as they think appropriate in consequence of, or for giving full effect to, a provision of this Act.

5 (4) The provision that may be made by regulations under this section includes provision amending, repealing or revoking an enactment.

## 59 Commencement

(1) The following provisions come into force on the day on which this Act receives Royal Assent—

10 (a) Part 1;

(b) section 55;

(c) section 56;

(d) section 57;

(e) section 58(3) and (4);

15 (f) this section;

(g) section 60.

(2) The other provisions of this Act come into force on such day as the Welsh Ministers may appoint by order made by statutory instrument.

(3) An order under subsection (2) may—

20 (a) appoint different days for different purposes;

(b) make transitional, transitory or saving provision in connection with the coming into force of a provision of this Act.

## 60 Short title etc

(1) The short title of this Act is the Higher Education (Wales) Act 2015.

25 (2) This Act is to be included in the list of Education Acts set out in section 578 of the Education Act 1996.

SCHEDULE  
(introduced by section 58)

CONSEQUENTIAL AND TRANSITIONAL PROVISION ETC

PART 1

5 MINOR AND CONSEQUENTIAL AMENDMENTS

*Further and Higher Education Act 1992*

1 The Further and Higher Education Act 1992 is amended as follows.

2 (1) Section 70 (assessment of quality of education provided by institutions) is amended as follows.

10 (2) In subsection (1), for “Each council” substitute “The Higher Education Funding Council for England”.

(3) In the title, for “Assessment” substitute “England: assessment”.

3 In section 83 (efficiency studies), in the second column of the table in subsection (1B), after “An institution within the higher education sector” insert—

15 “A regulated institution for the purposes of the Higher Education (Wales) Act 2015 (including a provider designated under section 3 of that Act which is treated as being a regulated institution for the purposes of that Act).”

4 (1) Section 91 is amended as follows.

20 (2) In subsection (5), after paragraph (a) insert—

“(aa) universities that are regulated institutions,”.

(3) After subsection (5) insert—

25 “(5A) For the purposes of subsection (5)(aa), a regulated institution is an institution to which an approved plan, within the meaning given in section 7 of the Higher Education (Wales) Act 2015, relates.”

*Education Act 1996*

5 In section 4 of the Education Act 1996 (schools: general), in subsection (4), at the end of paragraph (c) insert “, or

30 (d) a university to which an approved plan, within the meaning given in section 7 of the Higher Education (Wales) Act 2015, relates”.

*Education Act 2002*

6 In section 140 of the Education Act 2002 (further education: general), after subsection (3) insert—

“(4) For the purposes of section 138(3), a university to which an approved plan relates is to be treated (in any case where it would not be so treated but for this subsection) as being a higher education institution.

(5) “Approved plan”, in subsection (4), has the meaning given in section 7 of the Higher Education (Wales) Act 2015.”

#### *Higher Education Act 2004*

7 The Higher Education Act 2004 is amended as follows.

8 In section 22 (meaning of “plan” etc), in paragraph (b), for the words from “or a” to the end substitute “is a reference to a plan approved under section 34.”

10 9 Omit sections 27 and 28.

10 (1) Section 29 (supplementary provision) is amended as follows.

(2) In subsection (1), omit “or 28”.

(3) In subsection (2), omit “or 28(6)”.

(4) In subsection (3) –

15 (a) in the words preceding paragraph (a) –

(i) for “, the Education Act 2002 or the 2005 Act” substitute “or the Education Act 2002”;

(ii) for the words from “, the Assembly” to “for Wales” substitute “or the Higher Education Funding Council for England”;

20 (b) omit paragraph (b);

(c) in paragraph (c), for the words from “or 28” to “Councils” substitute “imposed by the Higher Education Funding Council for England”.

(5) In the title, for “28” substitute “26”.

11 (1) Section 30 (meaning of “the relevant authority”) is amended as follows.

25 (2) In subsection (1), omit paragraph (b) (and the “and” preceding it).

(3) Omit subsections (2) and (3).

12 In section 32 (general duties of relevant authority), omit subsection (4).

13 (1) Section 33 (contents of plans) is amended as follows.

(2) In subsection (2), for “In relation to England, a” substitute “A”.

30 (3) Omit subsection (3).

(4) In subsection (4), omit “or (3)”.

(5) In subsection (5) –

(a) in the words preceding paragraph (a), omit “or (3)”;

(b) in paragraph (d), omit the words from “and” to the end of the paragraph.

35 (6) In subsection (6), omit “or (3)”.

(7) In subsection (7) –

(a) for the definition of “the higher amount” substitute –

““the higher amount” means the amount from time to time prescribed as the higher amount under section 24(6);”;

(b) for the definition of “qualifying course” and “qualifying person” substitute—

““qualifying course” and “qualifying person” have the same meaning as in section 24;”;

(c) for the definition of “regulations” substitute—

““regulations” means regulations made by the Secretary of State.”

14 (1) Section 34 (approval of plans) is amended as follows.

10 (2) In subsection (1)(a) —

(a) after “grants” insert “from the Higher Education Funding Council for England”;

(b) omit “or section 86 of the 2005 Act”.

(3) In subsection (7), for the words from “made” to the end of the subsection substitute “made by the Secretary of State”.

15 15 In section 35 (duration of plans), in subsection (2) omit paragraph (b) (and the “or” preceding it).

16 (1) Section 36 (variation of plans) is amended as follows.

(2) In subsection (1), omit “or a Welsh approved plan”.

(3) In subsection (2), omit paragraph (b) (and the “or” preceding it).

20 17 In section 37 (enforcement of plans), in the title omit “: England”.

18 Omit section 38.

19 In section 39 (review of decisions) —

(a) in the words preceding paragraph (a), for “, 37(3)(b) or 38(3)(b)” substitute “or 37(3)(b)”;

(b) in paragraph (b), omit sub-paragraph (ii) (and the “or” preceding it);

(c) in paragraph (c), omit “or the Assembly”.

20 Omit section 40A (provision of reports etc by relevant authority in relation to Wales).

21 In section 41 (interpretation of Part 3), in subsection (1) —

(a) in the definition of “fees”, in paragraph (e), omit sub-paragraph (ii) (and the “or” preceding it);

(b) omit the definition of “Welsh approved plan”.

#### *Education Act 2005*

22 In Schedule 14 to the Education Act 2005 (amendments relating to the training of the school workforce), omit paragraphs 27 to 29.

*Government of Wales Act 2006*

23 In Schedule 11 to the Government of Wales Act 2006 (transitional provisions), in paragraph 35—

- 5 (a) in sub-paragraph (3), in Table 1 omit the entry relating to section 33(3)(a)(ii) of the Higher Education Act 2004;
- (b) in sub-paragraph (4), in Table 2 omit the entries relating to sections 30(1)(b) and 38(2) of that Act.

*Education Act 2011*

24 The Education Act 2011 is amended as follows.

- 10 25 (1) Section 77 (limit on student fees: part-time courses) is amended as follows.
- (2) In subsection (2), at the end insert “by regulations made by the Secretary of State”.
- (3) Omit subsection (3).
- 26 (1) Schedule 5 (abolition of the TDA: consequential amendments) is amended as follows.
- (2) Omit paragraphs 21 and 22.
- 15 (3) In paragraph 23, omit paragraphs (a) and (b).
- (4) Omit paragraph 27.

## PART 2

## TRANSITIONAL PROVISION

*Plans approved under the Higher Education Act 2004*

20 27 Paragraph 28 applies to the extent that a 2004 Act plan specifies, or provides for the determination of, a limit which is not to be exceeded by the fees payable by a person who is a qualifying person—

- (a) in connection with the person’s undertaking a course that is a qualifying course, and
- 25 (b) in respect of an academic year applicable to the course and beginning during the transitional period (a “transitional academic year”).

28 The plan is to be treated during the transitional period as being a fee and access plan that has been approved under section 7, for the purposes of—

- (a) section 4(4)(b);
- 30 (a) sections 10 to 12, 14, 15(1)(a) and 16;
- (b) sections 17 to 23;
- (c) section 24(2)(a);
- (d) section 28(2);
- (e) sections 51(1)(e), 52(3) and 54(1);

- (f) any other enactment, whenever enacted or made, specified in regulations (an “applied enactment”).

But this is subject to any provision made under paragraph 30.

29 (1) For this purpose –

- 5 (a) the plan is to be treated as having been approved under section 7 on the day on which this paragraph comes into force;
- (b) the period that is the transitional period (see sub-paragraph (2)) is to be treated as being the period specified in the plan under section 4;
- 10 (c) the limit provided by the plan for a course and a transitional academic year is to be treated as being the applicable fee limit for the course and academic year in question;
- (d) the institution to which the plan relates is to be treated as being a regulated institution.

15 (2) The transitional period is the period beginning with the coming into force of this paragraph and ending with 31 August 2017.

(3) A “2004 Act plan” is a plan approved in relation to Wales, under section 34 of the Higher Education Act 2004, before the coming into force of this paragraph.

30 (1) Regulations may make provision about the application of a provision referred to in paragraph 28(a) to (e), or an applied enactment, to a 2004 Act plan during the transitional period.

20 (2) The regulations may (among other things) provide that a provision or an applied enactment –

- (a) is not to apply to a 2004 Act plan during the transitional period, or
- (b) is to apply with modifications.

25 *Members of Quality Assessment Committee*

31 (1) This paragraph applies to a person who, immediately before the coming into force of section 25, is a member of the Quality Assessment Committee established by HEFCW under section 70(1)(b) of the Further and Higher Education Act 1992 (“the old committee”).

30 (2) On the coming into force of section 25, the person becomes a member of the committee established by HEFCW under that section (“the new committee”).

(3) The person’s membership of the new committee is –

- (a) on the same terms as the person’s appointment to the old committee, and
- 35 (b) for a period equivalent to the period of that appointment which remains on the coming into force of section 25.