

2015 No. 1327 (W. 122) (C. 74)

EDUCATION, WALES

**The Higher Education (Wales) Act
2015 (Commencement No.1 and
Saving Provision) Order 2015**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 59(2) and 59(3) of the Higher Education (Wales) Act 2015 (“the Act”). It is the first commencement order to be made under the Act.

Article 2 brings into force certain provisions of the Act but only for the purpose of making regulations. Those provisions will come into force on the day after the day on which this Order is made.

Article 3 brings certain provisions of the Act into force for certain purposes on 25 May 2015. These provisions are in Part 2 (fee and access plans), Part 4 (financial affairs of regulated institutions) and Part 7 (supplementary provision about functions of HEFCW) of the Act. The provisions in Part 4 of the Act include HEFCW’s function of preparing a code relating to the organisation and management of the financial affairs of regulated institutions (section 27(1)). Provisions of the code may take the form of requirements or guidance (section 27(3)). The provisions in Part 7 of the Act include sections 47 to 49. Section 47(1)(a) provides that any requirement that HEFCW may impose under the Act on the governing bodies of institutions cannot require those bodies to act in breach of their obligations as charity trustees. Section 47(1)(b) provides that HEFCW cannot require governing bodies of institutions to do anything that is incompatible with their governing documents. Section 48 imposes a duty on HEFCW to take into account, in exercising their functions by virtue of the Act, the importance of protecting academic freedom. Under section 49 of the Act, HEFCW must, in exercising their functions by virtue of the Act, take into account any guidance issued by the Welsh Ministers. The provisions in Part 7 of the Act which also come into force on 25 May 2015 include HEFCW’s function of preparing a

statement in respect of their intervention functions (section 52(1)) and their function in section 54(3) and 54(4) of providing information and advice about, amongst other things, the regulatory framework established by the Act and the roles and responsibilities of regulated institutions.

Article 4 brings Part 2 of the Schedule to the Act (transitional provision) fully into force on 1 August 2015. As such, the transitional period described in Part 2 of the Schedule begins on that date and ends on 31 August 2017 (paragraph 29(2) of the Schedule). A plan that has been approved by HEFCW under section 34 of the Higher Education Act 2004 (“the 2004 Act”) before 1 August 2015 and which falls within paragraph 27 of the Schedule to the Act will be treated, during the transitional period, as a fee and access plan approved under section 7 of the Act. The purposes for which those plans will be treated as approved under section 7 of the Act are limited and the provisions listed in paragraph 28 of Part 2 of the Schedule to the Act refer. Those provisions concern compliance with the applicable fee limit (sections 10 to 12, 14, 15(1)(a) and 16 of the Act) and the assessment of quality of education (sections 17 to 23 of the Act). Those plans will also be treated as plans approved under section 7 of the Act for the purposes of HEFCW special reports (section 51(1)(e)) and for consultation and good practice, information and advice purposes (sections 24(2)(a), 28(2), 52(3) and 54(1) of the Act). Part 2 of the Act comes into force on 1 August 2015 because some students who attend or undertake courses of higher education at institutions in Wales might be required by those institutions to start attending or undertaking their courses during August and continue on those courses during the following autumn. (For the purposes of payments of statutory student support, such courses are treated as starting on 1 September in the relevant calendar year).

Only certain provisions of the regulatory framework established by the Act will have effect during the transitional period. Article 5 brings those provisions into force on 1 September 2015. Provisions relating to institutions’ compliance with the applicable fee limit are brought fully into force (sections 10 to 12, 14 and 15(1)(a) and 16), as are provisions concerning the assessment of quality of education (sections 17 to 25). Article 5 also brings into force other provisions relating to the warning notice and review procedure (sections 41(1)(b), 41(1)(d), 41(2) and sections 42 to 44). From 1 September 2015, the warning notice and review procedure will apply in relation to any directions given by HEFCW under sections 11 or 19 of the Act. Additionally, article 5 brings into force, on 1 September 2015, provisions relating to the production of special reports by HEFCW (sections 51(1)(a), 51(1)(e) and 51(2)) and the publication of a statement

in respect of HEFCW's intervention functions under sections 11, 19 and 20(1) and 20(2). As article 5 brings certain provisions in Parts 2 and 3 of the Act into force, it also brings into force a number of related minor and consequential amendments set out in Part 1 of the Schedule to the Act. These include amendments to section 70 of the Further and Higher Education Act 1992 which limit the application of that section to the Higher Education Council for England. Amendments to Part 3 of the Higher Education Act 2004 are also brought into force which limit that Part's application to English approved plans and which remove HEFCW's functions as relevant authority under that Act.

Article 6 brings sections 2, 4, 5, 6 and 7 of the Act fully into force on 1 January 2016. These provisions fall within Part 2 of the Act (fee and access plans) and relate to applications that institutions may make to HEFCW for approval of proposed fee and access plans. Article 6 also brings section 41(1)(a) into force on 1 January 2016. From that date, the warning notice and review procedure in sections 42 to 44 of the Act will apply to any notices issued by HEFCW under section 7(1)(b) of the Act.

Articles 7 and 8 make saving provision in relation to certain provisions of the 2004 Act and certain regulations made under that Act. Article 7 ensures that from 1 September 2015 an institution remains able to apply to HEFCW for a variation of a 2004 Act plan (defined in paragraph 29(3) of the Schedule to the Act), which is treated as approved under section 7 of the Act during the transitional period, in accordance with the Student Fees (Approved Plans) (Wales) Regulations 2011 ("the 2011 Regulations"). Article 8 ensures that an institution which has applied to HEFCW for approval of a proposed plan under section 34 of the 2004 Act prior to 1 September 2015 remains able to apply for a review in relation to that application after that date in accordance with the 2011 Regulations.

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EDUCATION, WALES

**The Higher Education (Wales) Act
2015 (Commencement No.1 and
Saving Provision) Order 2015**

Made

19 May 2015

The Welsh Ministers, in exercise of the powers conferred upon them by section 59(2) and 59(3) of the Higher Education (Wales) Act 2015(1), make the following Order:

Title and interpretation

1.—(1) The title of this Order is the Higher Education (Wales) Act 2015 (Commencement No.1 and Saving Provision) Order 2015.

(2) In this Order—

“the Act” (“*y Ddeddf*”) means the Higher Education (Wales) Act 2015;

“the 2004 Act” (“*Deddf 2004*”) means the Higher Education Act 2004(2);

“the Approved Plans Regulations” (“*Rheoliadau Cynlluniau a Gymeradwywyd*”) means the Student Fees (Approved Plans) (Wales) Regulations 2011(3); and

“the Designation Regulations” (“*y Rheoliadau Dynodi*”) means the Higher Education Act 2004 (Relevant Authority) (Designation) (Wales) Regulations 2011(4).

Provisions coming into force on the day after the day on which this Order is made

2. The following provisions of the Act come into force, for the purpose only of making regulations, on the day after the day on which this Order is made—

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- (1) 2015 anaw 1.
(2) 2004 c. 8.
(3) S.I. 2011/884 (W. 128).
(4) S.I. 2011/658 (W. 96).

- (a) section 2(4) (applications for approval of a fee and access plan);
- (b) section 3(4) (designation of other providers of higher education);
- (c) section 4(3) and 4(4) (period in respect of which a fee and access plan is to have effect);
- (d) section 5(2)(b), 5(3) and 5(5) to 5(9) (qualifying courses, the maximum fee amount, qualifying persons and fees payable to a person providing a course on behalf of an institution);
- (e) section 6(1) and 6(3) to 6(6) (fee and access plans and the promotion of equality of opportunity and the promotion of higher education);
- (f) section 7(3) (determination of an application for the approval of a fee and access plan);
- (g) section 8 (publication of an approved fee and access plan);
- (h) section 9 (variation of an approved fee and access plan);
- (i) section 11(5) (compliance and reimbursement directions);
- (j) section 17(4)(a) (treating a person as being responsible for providing a course);
- (k) section 37(7) (notice of refusal to approve a new fee and access plan);
- (l) section 38(2) (duty to withdraw approval of a fee and access plan);
- (m) section 39(4) (power to withdraw approval of a fee and access plan);
- (n) section 40(2) (notices given under Part 5 of the Act);
- (o) section 42(2)(d) (representations in respect of warning notices);
- (p) section 43(c) (information given with certain notices and directions);
- (q) section 44(3) and 44(4) (review of certain notices and directions);
- (r) section 52(4) (statement in respect of intervention functions);
- (s) section 58(2) (transitional provision) in so far as it relates to paragraphs 28(g) and 30 of the Schedule; and
- (t) in the Schedule—
 - (i) paragraph 28(g); and
 - (ii) paragraph 30.

Provisions coming into force on 25 May 2015

3. The following provisions of the Act come into force on 25 May 2015 to the extent specified—

- (a) section 6(7) (general requirements) for all purposes;
- (b) section 7(5) (references in the 2015 Act to an approved plan and to a regulated institution);
- (c) section 27(1) (financial management code) in so far as it relates to the preparation of a code;
- (d) section 27(2), 27(3), 27(7) and 27(8) for all purposes;
- (e) sections 47 and 48 (exercise of functions by HEFCW) for all purposes;
- (f) section 49 (duty to take Welsh Ministers' guidance into account) for all purposes;
- (g) section 52(1) (statement in respect of intervention functions) in so far as it relates to the preparation of a statement;
- (h) section 52(5) for all purposes; and
- (i) section 54(3) and 54(4) (information and advice) for all purposes.

Provisions coming into force on 1 August 2015

4. The following provisions of the Act come into force on 1 August 2015 to the extent specified—

- (a) section 58(2) (transitional provisions) in so far as it relates to paragraphs 27, 28(a) to 28(f) and paragraph 29 of the Schedule; and
- (b) in the Schedule (transitional provision)—
 - (i) paragraph 27 for all purposes;
 - (ii) paragraph 28(a) to 28(f) for all purposes; and
 - (iii) paragraph 29 for all purposes.

Provisions coming into force on 1 September 2015

5. The following provisions of the Act come into force on 1 September 2015 to the extent specified—

- (a) section 3 (designation of other providers of higher education) for all remaining purposes;
- (b) section 10 (limits on students fees) for all purposes;
- (c) section 11 (compliance and reimbursement directions) for all remaining purposes;
- (d) section 12 (supplementary provision about compliance and reimbursement directions) for all purposes;
- (e) section 14 (validity of contracts) for all purposes;

- (f) sections 15(1)(a) (duty to monitor compliance) and 16 (duty to co-operate) for all purposes;
- (g) section 17 (assessment of quality of education) for all remaining purposes;
- (h) sections 18 to 25 (inadequate quality, co-operation with quality assessment, supplementary powers for the purpose of quality assessment and committee to advise HEFCW on the exercise of quality assessment functions) for all purposes;
- (i) sections 27(9), 28 and 29 (preparation and procedure for approval of financial management code by Welsh Ministers) for all purposes;
- (j) section 41(1)(b), 41(1)(d) and 41(2) (warning notice and review procedure for certain notices and directions) for all purposes;
- (k) sections 42 to 44 (warning notice and review procedure for certain notices and directions) for all remaining purposes;
- (l) sections 45 and 46 (general provisions about directions) for all purposes;
- (m) section 51(1)(a), 51(1)(e) and 51(2) (special reports) for all purposes;
- (n) section 52(1) (statement in respect of intervention functions) in so far as it relates to the publication of a statement in connection with section 52(5)(a), 52(5)(c) and 52(5)(d);
- (o) section 52(2) and 52(3) for all purposes;
- (p) section 53 (information and advice to be given by HEFCW to Welsh Ministers) for all purposes;
- (q) section 54(1) (other information and advice) for all purposes;
- (r) section 58(1) (minor and consequential amendments) in so far as it relates to the paragraphs of the Schedule referred to in paragraph (s);
- (s) in the Schedule (minor and consequential amendments)—
 - (i) paragraph 1 in so far as it relates to paragraph 2;
 - (ii) paragraph 2 for all purposes;
 - (iii) paragraphs 7 to 21 for all purposes;
 - (iv) paragraph 22 for all purposes;
 - (v) paragraph 23 for all purposes;
 - (vi) paragraphs 24 to 26 for all purposes;
- (t) section 58(2) (transitional provision) in so far as it relates to paragraph 31 of the Schedule; and

- (u) paragraph 31 of the Schedule for all purposes.

Provisions coming into force on 1 January 2016

6. The following provisions of the Act come into force on 1 January 2016 to the extent specified—

- (a) section 2 (applications for approval of a fee and access plan) for all remaining purposes;
- (b) section 4 (period in respect of which a fee and access plan is to have effect) for all remaining purposes;
- (c) section 5 (fee limit) for all remaining purposes;
- (d) section 6 (promotion of equality of opportunity and higher education) for all remaining purposes;
- (e) section 7 (approval of fee and access plan) for all remaining purposes; and
- (f) section 41(1)(a) (warning notice and review procedure for certain notices and directions) for all purposes.

Saving provision in relation to the coming into force of paragraphs 11, 12, 14 to 16 and 19 of the Schedule to the Act

7. Notwithstanding the coming into force of paragraphs 11, 12, 14, 16 and 19 of the Schedule to the Act on 1 September 2015—

- (a) regulation 9 of the Approved Plans Regulations continues to apply to a 2004 Act plan which is treated during the transitional period as being a fee and access plan that has been approved under section 7 of the Act;
- (b) the following provisions continue to apply for the purposes of that regulation—
 - (i) section 32(4) of the 2004 Act; and
 - (ii) regulations 5 to 7 and 11 to 18 of the Approved Plans Regulations; and
- (c) regulation 2 of the Designation Regulations continues to apply in so far as it relates to the provisions referred to in paragraphs (a) and (b).

8. Notwithstanding the coming into force of paragraphs 11, 12, 14 and 15 of the Schedule to the Act on 1 September 2015—

- (a) regulation 5 of the Approved Plans Regulations continues to apply to an application for approval of a proposed plan received by HEFCW under section 34 of the 2004 Act before 1 September 2015;

- (b) the following provisions continue to apply in relation to that regulation for the purposes of such an application—
 - (i) section 32(4) of the 2004 Act;
 - (ii) section 35(1) and 35(2)(b) of the 2004 Act; and
 - (iii) regulations 6 to 8 and 11 to 18 of the Approved Plans Regulations; and
- (c) regulation 2 of the Designation Regulations continues to apply in so far as it relates to the provisions referred to in paragraphs (a) and (b).

9. Articles 7 and 8 are without prejudice to the operation of sections 16 and 17 of the Interpretation Act 1978(1) read with section 23 of that Act.

Huw Lewis
Minister for Education and Skills, one of the Welsh
Ministers
19 May 2015

(1) 1978 c. 30.