

Explanatory Memorandum to the Higher Education Funding Council for Wales (HEFCW) Financial Management Code prepared under section 27 of the Higher Education (Wales) Act 2015

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Department and is laid before the National Assembly for Wales in conjunction with the above HEFCW Financial Management Code and in accordance with Standing Order 27.1.

Cabinet Secretary/Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of HEFCW's Financial Management Code.

Kirsty Williams AM, Cabinet Secretary for Education

29 March 2017

1. Description

The Higher Education (Wales) Act 2015 (the 2015 Act) establishes a new regulatory system for higher education in Wales and provides HEFCW with the necessary functions to ensure the quality of higher education provision; to enforce compliance with fee limits and fee and access plan commitments; and to provide assurance about the financial management of higher education providers which are subject to the 2015 Act.

The Act places a duty on HEFCW to prepare and publish a financial management code relating to the organisation and management of the financial affairs of regulated institutions (*these are institutions with a fee and access plan approved by HEFCW under section 7 of the Act*). Upon full implementation of the new regulatory system from 1 August 2017, all regulated institutions must comply with any requirement imposed on them by HEFCW's financial management code and take account of any guidance that it contains.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

There are no matters of special interest.

3. Legislative background

Section 27(1) of the Higher Education (Wales) Act 2015 places HEFCW under a duty to prepare and publish a code relating to the organisation and management of the financial affairs of regulated institutions.

Section 27(2) prescribes that the Code may, amongst other things, make provision about:

- the accounting and audit arrangements of regulated institutions;
- circumstances where HEFCW consent is required before a regulated institution is able to enter into certain transactions; and
- the provision of information to HEFCW.

Under Section 27(3) provisions within the Code can take the form of a requirement or guidance. Section 27(4) requires the governing body of a regulated institution to comply with any requirement imposed by the Code and take account of any guidance that it contains.

Sections 28 to 30 of the Higher Education (Wales) Act 2015 Act set out the procedure that must be followed before HEFCW is permitted to publish its first financial management code or any subsequent revision to that Code.

Under section 28 of the 2015 Act, HEFCW is required to consult with the governing bodies of each regulated institution and any other persons it thinks appropriate as part of the preparation of the financial management code before submitting a post consultation version to the Welsh Ministers for their approval.

Section 30 requires the Welsh Ministers to lay a draft that they have approved before the National Assembly for Wales for a period of 40 days, during which the Assembly can bring forward a resolution not to approve it.

HEFCW must not publish the code until this 40 day period has concluded without a resolution being brought forward.

4. Purpose & intended effect of the legislation

Prior to academic year 2012/13, the principal source of public funding of the higher education sector in Wales took the form of recurrent grants payable by HEFCW to institutions. These grants were subject to terms and conditions and the administration and enforcement of those terms and conditions provided the principal method of regulating the higher education sector in Wales. Following the introduction of the non-means tested tuition fee grant in academic year 2012/13, the funding which was previously provided by the Welsh Government to HEFCW and then allocated by HEFCW to institutions, was paid out to students (via the student loans company) to cover their tuition fees. Accordingly, a new regulatory system in respect of higher education was required which did not rely on the enforcement of terms and conditions of funding in respect of grants paid by HEFCW to institutions.

The Higher Education (Wales) Act 2015 establishes a revised regulatory system for higher education in Wales which does not rely on HEFCW providing financial support to institutions.

The financial management code forms a key component of the new regulatory system for higher education in Wales and is central to HEFCW's financial assurance functions under the Higher Education (Wales) Act 2015. It provides a means by which HEFCW can continue to regulate the financial management of regulated institutions and ensure that they are well run, have effective and efficient financial management arrangements in place and are sustainable for the future. This is considered necessary to ensure that the interests of students are protected, public funds are safeguarded, and the reputation of higher education in Wales is preserved.

Whilst it is a matter for HEFCW to determine the content and operational detail of the Code in consultation with regulated institutions and other stakeholders, provisions contained within it must fall within the scope of section 27 of the 2015 Act, that is that they must relate to how a regulated institution organises and manages its financial affairs.

All regulated institutions are under a duty to comply with HEFCW's financial management code, however, the 2015 Act recognises that there may be circumstances where it may be necessary to take account of different categories of provider in the way the Code is applied. As such, the 2015 Act allows the Code to make different provision for different purposes, including for different institutions and different descriptions of institutions. HEFCW are able to exercise such differentiation, for example, to minimise the administrative burden placed on institutions and to take account of existing data collection and financial return processes which may be in place for certain types of institution.

The new regulatory system will be fully implemented from 1 August 2017. The Code is pivotal to HEFCW's financial assurance functions under the 2015 Act and should the approval procedure for the code not be completed by that time, HEFCW will be unable to fully discharge its financial assurance functions under the Act.

5. Consultation

In preparing its financial management code, Section 28(2) of the Higher Education (Wales) Act 2015 requires HEFCW to consult with the governing bodies of each regulated institution and any other persons they think appropriate.

In discharging this duty, HEFCW carried out a six week consultation exercise in relation to its draft financial management code. This is a similar period to those consultations undertaken on financial assurance matters under the previous arrangements and is in line with HEFCW's recognised practice in relation to such consultations.

HEFCW undertook its consultation across 91 stakeholder organisations and was specifically drawn to the attention of Higher Education Directors of Finance, Clerks to Governing Bodies of all institutions in Wales, Principals of higher education institutions and directly funded further education institutions, Universities Wales, and Colegau Cymru.

Eight responses were received in total, six of which were from higher education institutions one was from a further education institution, with the remaining response from Universities Wales.

6. Regulatory Impact Assessment (RIA)

Relevant Welsh Subordinate Legislation for which a Regulatory Impact Assessment must be carried out is defined in Section 76(2)(b) of the Government of Wales Act 2006 as subordinate legislation that is made by the Welsh Ministers, the First Minister or the Counsel General and is required to be laid before the Assembly. The financial management code has been prepared by HEFCW in accordance with its duty under the Higher Education (Wales) Act 2015 and has not been made by the Welsh Ministers, the First Minister or the

Counsel General. As such, the Code does not satisfy the section 76 criteria and a Regulatory Impact Assessment is therefore not required.