

# HIGHER EDUCATION (WALES) ACT 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS OF THE ACT

#### **Part 4 – Financial Affairs of Regulated Institutions**

##### ***Section 27 – HEFCW’s duty to prepare and publish a Code***

81. This section requires HEFCW to prepare, publish and keep under review a Code relating to the organisation and management of the financial affairs of regulated institutions.
82. Subsection (2) gives examples of matters that the Code may deal with. These may be similar to the requirements found in HEFCW’s Financial Memorandum with institutions they fund and the Audit Code of Practice that HEFCW currently publishes. They include:
  - circumstances in which HEFCW’s consent is required before an institution enters into specified transactions;
  - audit and accounting arrangements; and
  - the provision of information to HEFCW (for example, copies of accounts).
83. The Code may impose requirements with which regulated institutions must comply and give guidance which regulated institutions must take into account in managing their financial affairs.
84. Whilst it will be for HEFCW to prepare the Code it is anticipated that the Code will seek to achieve a similar framework of control in respect of a regulated institution’s financial affairs to that currently imposed by terms and conditions of funding on institutions that receive HEFCW funding.

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

85. This section sets out the procedure that HEFCW must follow before they can publish the first Code or a revised Code. HEFCW must consult the governing body of each regulated institution and submit a draft Code for approval by the Welsh Ministers.
86. It is anticipated that HEFCW will consult on a draft of the first Code during the 2015/2016 academic year with a view to the Code being published and taking effect for the start of the 2017/2018 academic year.

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

87. A draft of the first Code or a draft of a revised Code must be approved by the Welsh Ministers before it can be published by HEFCW. If the Welsh Ministers make a decision not to approve a draft submitted to them by HEFCW, they must give HEFCW notice of that decision and the reasons for it. This will trigger requirements in terms of the preparation of a new draft by HEFCW and its submission to the Welsh Ministers for

approval or (in the case of a proposed revised Code) a decision by HEFCW that the Code will not be revised.

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

88. Where the Welsh Ministers approve a draft Code submitted to them by HEFCW under section 28 or section 29, they must lay the approved draft before the National Assembly for Wales.
89. Within the period of 40 days beginning with the day on which the draft Code is laid by the Welsh Ministers, the National Assembly for Wales may resolve not to approve the draft. If the National Assembly for Wales resolves not to approve the draft, HEFCW may not publish the draft. If in that instance the draft is a draft of the first Code, HEFCW must submit a further draft of that Code to the Welsh Ministers. However, if the draft is a draft of a revised Code, HEFCW are able to decide whether to submit a further draft of the revised Code to the Welsh Ministers, although this is subject to the Welsh Ministers' power of direction under section 28(4). If no such resolution is passed by the National Assembly, HEFCW must publish the Code in the terms of the draft as approved by the Welsh Ministers.

### ***Section 31 – Monitoring compliance with the Code***

90. This section requires HEFCW to monitor or make arrangements for the monitoring of compliance with the Code by regulated institutions. HEFCW are able to undertake monitoring themselves or secure that monitoring is undertaken on their behalf by another person.
91. HEFCW may wish to arrange for another person to undertake monitoring of a group of regulated institutions where another body is already undertaking similar work, for instance the Welsh Ministers in respect of further education institutions that are also regulated institutions. Alternatively HEFCW might want to arrange for a specialist assessor or external auditor to undertake assurance functions.

### ***Sections 32 to 34 – Failure to comply with Code***

92. **Sections 32 to 34** provide HEFCW with enforcement powers if they are satisfied that a regulated institution has failed, or is likely to fail, to comply with requirements of the Code.
93. HEFCW may give directions to a governing body requiring it to take or not to take specified steps to:
  - deal with the failure to comply with a requirement of the Code. For example to provide outstanding information required under the Code within a specified period of time or to make changes to financial controls to bring an institution back into compliance with the Code; or
  - prevent a failure to comply with a requirement of the Code. For example if an institution was intending to enter into a transaction that required HEFCW's consent, to direct an institution not to enter into that transaction without obtaining HEFCW's consent.
94. The warning notice and review procedures in sections 41 to 44 will apply to directions under section 33.
95. **Section 34** permits HEFCW to give advice or assistance to the governing body of a regulated institution or to carry out or arrange a review of an institution where it is satisfied that a regulated institution has failed or is likely to fail to comply with the requirements of the Code. The advice and assistance given by HEFCW is to be with a view to improving the organisation and management of a regulated institution's financial affairs.

96. Currently, if HEFCW identify examples of inadequate financial management they are able to establish support teams to assist an institution in making improvements. It is anticipated that HEFCW would want this approach to continue. HEFCW may seek to use this power to arrange for a support team to assist an institution improve the organisation and management of its financial affairs where HEFCW has identified a failure to comply with the Code. Alternatively HEFCW may arrange for a targeted review of a particular institution by specialist auditors, for instance where HEFCW are satisfied that a failure to comply with the Code is likely.

### ***Section 35 – Financial management: duty to co-operate***

97. This requires regulated institutions to co-operate with persons exercising functions under sections 31 (monitoring compliance with the Code), 34 (other measures in respect of failure to comply with the Code) and 36 (powers of entry and inspection).
98. The duty to co-operate requires governing bodies to ensure the provision of information, assistance and access to facilities required by a person for the purposes of those functions.
99. HEFCW may give a direction to a governing body if HEFCW are satisfied that a governing body has failed to comply with its duty to co-operate. The direction may require a governing body to take, or not take, steps to secure the provision of information, assistance or access to facilities. A direction given under this section will not be subject to the warning notice and review procedure set out in sections 41 to 44.

### ***Section 36 - Financial management: powers of entry and inspection***

100. This section provides for a right of entry and inspection for the purposes of exercising functions under section 31 (monitoring compliance with the Code) or 34(2) (review of matters relating to compliance with the Code).
101. A person authorised in writing by HEFCW may enter the premises of a regulated institution for those purposes. An authorised person may also inspect, copy or take away documents found on the premises.
102. The power of entry and inspection may only be exercised after giving the governing body reasonable notice. However, the requirement for reasonable notice is not required in cases of urgency or where giving notice would defeat the object of exercising the power of entry or inspection. Entry without notice might be appropriate where HEFCW consider that relevant documents are likely to be removed from the institution's premises or destroyed if notice is given, or where HEFCW are satisfied that there is a likelihood of imminent financial failure.
103. The power of entry and inspection may only be exercised at reasonable times and does not include a power to enter a dwelling (such as staff or student accommodation) without the agreement of the occupier.
104. Before exercising a power under this section a person must produce a copy of their authorisation from HEFCW if required to do so.