

# HIGHER EDUCATION (WALES) ACT 2015

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS OF THE ACT

#### **Part 5 – Fee and Access Plans: Withdrawal of Approval etc**

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

105. Notice of refusal to approve a new fee and access plan is one of the ways in which HEFCW can take enforcement action against an institution's non-compliance with:
- limits on student fees (under section 10);
  - a general requirement of an institution's approved plan;
  - a direction in respect of a general requirement of a plan (under section 13);
  - a direction in respect of inadequate quality of education (under section 19); and
  - a direction in respect of failure to comply with the Code (under section 32).
106. Currently HEFCW can refuse to approve a new fee plan under the Higher Education Act 2004 on the basis of non-compliance with limits on student fees or general provisions of an institution's approved plan. Whilst educational quality and financial management does not form part of the existing fee planning arrangements, HEFCW regulates an institution in respect of these matters through terms and conditions of funding.
107. Once notice has been given HEFCW must not approve a new fee and access plan until the period specified in the notice has expired. However, HEFCW may withdraw a notice at which point the restriction on approving a new plan ceases. For instance, HEFCW may consider withdrawing notice if they are satisfied that an institution has remedied the failing identified in a direction and it is not appropriate to continue with enforcement action.
108. Subsection (7) permits the Welsh Ministers to make regulations to provide for:
- the period that may be specified in a notice, during which HEFCW will not approve a new fee and access plan. For instance, this might provide that HEFCW cannot approve a new fee plan for a period of at least one year. Alternatively the maximum period for not approving a fee plan could be limited to one year;
  - matters that HEFCW must take into account in deciding whether to give or withdraw a notice. This might require HEFCW to consider whether the institution has (after the date for compliance) complied with a direction or adjusted its fees and repaid any student fees that have been overcharged;
  - the procedure to be followed on the withdrawal of a notice. For instance, this might require HEFCW to give notice of the withdrawal to the institution and/or, to publish in some form notice of withdrawal.

109. HEFCW may give a direction under section 13 to the governing body of an institution which was previously a regulated institution but is no longer a regulated institution, where that governing body failed to comply with a general requirement of a fee and access plan at a time when that plan was in force. Section 37(7) applies section 37 to institutions that are not regulated but which have failed to comply with a direction given under section 13.
110. [Sections 41 to 44](#) set out the warning notice and review procedures that apply to giving notice under this section.

### ***Section 38– Duty to withdraw approval***

111. This section requires HEFCW to withdraw their approval of a fee and access plan by giving notice to a governing body of an institution if they are satisfied that an institution has ceased to:
- be an institution in Wales (see section 57(3) for the definition of institutions in Wales);
  - provide higher education; or
  - be a charity.
112. The Welsh Ministers may by regulations under subsection (2) make provision about what matters HEFCW must take into account in determining whether they are required to withdraw approval. Those regulations might, for example, require HEFCW to take account of decisions made by the Charity Commission relating to the charitable status of an institution if they believe that an institution has lost its charitable status.
113. The procedural requirements in sections 41 to 44 (warning and review procedures) do not apply to this section. However regulations made under subsection (3) may provide for the procedure that HEFCW must follow. That includes amending, applying or modifying the requirements in sections 41 to 44 for the purposes of this section. That could, for instance, require HEFCW to give a warning notice to the governing body of an institution and to take account of representations made by the governing body before they decide whether they are required to withdraw an institution's fee and access plan.

### ***Section 39 - Power to withdraw approval***

114. This section permits HEFCW to withdraw their approval of a fee and access plan where:
- a governing body has persistently failed to comply with limits on student fees or has failed to comply with a compliance and reimbursement direction;
  - a governing body has persistently failed to comply with the general requirements of an institution's approved plan or has failed to comply with a direction given under section 13;
  - the quality of education provided by or on behalf of the institution is seriously inadequate; or
  - there has been serious failure by the governing body of an institution to comply with the Code.
115. Persistent failure could (in the context of student fees and general requirements of an approved plan) consist of a number of separate failures or the repetition or continuation of the same failure. Section 39(3) reflects the provision at section 37(4). Section 39(3) provides that where HEFCW are satisfied that a governing body has taken all reasonable steps to comply with a general requirement of its approved plan, that governing body is not to be treated for the purposes of section 39(2)(b) as having failed to comply with that requirement. For example, the governing body of an institution may commit in its approved plan to provide bursary assistance to a certain number of students. The actual

number of students which subsequently receive a bursary is lower than the number set out in the plan because the number of eligible students applying for the bursary is lower than expected, despite the bursary being widely publicised. HEFCW may, in that scenario, be satisfied that the governing body has taken all reasonable steps to comply with the general requirement.

116. The Welsh Ministers may by regulations make provision about what HEFCW must take into account when deciding whether to give notice that they are withdrawing their approval of a plan under this section. For instance, this might include a requirement for HEFCW to take account of the effect of inadequate quality of education on students or the effect of non-compliance with the Code on the financial stability of an institution.
117. The warning notice and review procedures in sections 41 to 44 apply to notice given by HEFCW under this section.

#### ***Section 40 – Publication etc. of notice under Part 5***

118. This section requires HEFCW to give a copy of any notice they give under Part 5 to the Welsh Ministers and to publish the notice. Regulations made by the Welsh Ministers may make provision about the way in which HEFCW must give a copy of the notice to the Welsh Ministers and publish the notice, and about when they must do so. Regulations might include a requirement for HEFCW to provide the Welsh Ministers with a copy of the notice within a specified period of time of it being given to an institution. Regulations might also require HEFCW to publish the notice on a web site or in a newspaper.