

HIGHER EDUCATION (WALES) ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS OF THE ACT

Part 8 – General

Sections 55 and 56 – Regulations and Directions

148. **Section 55** provides for regulations under the Act to be made by statutory instrument. Most regulations will be subject to the negative resolution procedure. The exceptions are those regulations made under sections set out in subsection (4) that must be approved by resolution of the National Assembly for Wales, namely:
- the first set of regulations to be made under section 2(4) (making of applications for approval of a fee and access plan);
 - section 3(4) (provision about designation of other providers of higher education);
 - section 4(3) (regulations amending the maximum period set out in section 4(2));
 - the first set of regulations to be made under section 5(3) (maximum fee amount);
 - section 6(1) (provision relating to the promotion of equality of opportunity and higher education that must be included in a fee and access plan);
 - section 7(3) (matters to be taken into account by HEFCW in respect of the approval or rejection of a fee and access plan);
 - section 38(2) (duty to withdraw approval) – if the regulations amend a provision of the Act; and
 - section 58 (consequential and transitional provision) – but only if the regulations amend primary legislation.
149. **Section 56** makes provision about directions given by the Welsh Ministers.

Section 58 – Consequential and transitional provision etc

150. As a result of the substantive provisions of the Act, there need to be consequential amendments to, and repeals of, provisions in other legislation. These are set out in Part 1 of the Schedule to the Act. Transitional provisions are set out in Part 2 of the Schedule to the Act.

Schedule

151. Part 1 of the Schedule (paragraphs 1 to 26) lists those enactments to which consequential amendments are made. One effect of Part 1 of the Schedule will be to repeal the provisions of the Higher Education Act 2004 concerned with fee plans in so far as they relate to Wales.

*These notes refer to the Higher Education (Wales) Act
2015 (c.1) which received Royal Assent on 12 March 2015*

152. Part 2 of the Schedule (paragraphs 27 to 31) makes provision for transitional arrangements. Transitional arrangements will apply to fee plans approved under the Higher Education Act 2004 which set fee limits for academic years beginning during the transitional period, which is the period up to and including 31 August 2017. The arrangements will provide for those plans to be treated as fee and access plans approved under the Act for certain purposes. This will allow institutions with fee plans approved before the Act comes into force to operate, to a limited extent, under the regulatory scheme established by the Act.
153. Institutions that are subject to the transitional arrangements will be subject to most of the provisions of the Act relating to limits on student fees and quality of education, but will not be subject to the Code.
154. Transitional arrangements will require the Welsh Ministers to consult institutions with fee plans approved under the Higher Education Act 2004 on any regulations to be made under section 4(3) during the transitional period. Transitional arrangements will also require HEFCW to consult such institutions on any guidance to be issued or approved under section 24, on a draft Code and on a draft Statement of intervention policy. HEFCW will also be able to provide advice and assistance (under section 54(1)) to those institutions. It is anticipated that HEFCW will prepare and consult on the statement of intervention policy and the Code during the transitional period (see paragraph 29(2) of the Schedule). It is anticipated that the statement and the Code will take effect from September 2017.

Section 59 – Commencement

155. This section deals with the commencement of the Act once it has received Royal Assent. It provides for Part 1 (Overview of the Act) and most of the general provisions in Part 8 to come into force on the day on which Royal Assent is received. The substantive provisions of the Act, contained in Parts 2 to 7, section 59(1) and (2) and the Schedule, will come into force in accordance with orders made by the Welsh Ministers.

Section 60 – Short title etc

156. Subsection (1) provides that the title of the Act is the Higher Education (Wales) Act 2015. The Act is to be included in the list of Education Acts set out in section 578 of the Education Act 1996 (subsection (2)). Any reference in legislation to “the Education Acts” will include a reference to this Act.