



# Higher Education (Wales) Act 2015

2015 anaw 1

## PART 4

### FINANCIAL AFFAIRS OF REGULATED INSTITUTIONS

#### *Financial management code*

#### **27 HEFCW's duty to prepare and publish Code**

- (1) HEFCW must prepare and publish a code relating to the organisation and management of the financial affairs of regulated institutions (referred to in this Act as “the Code”).
- (2) The Code may make provision about the following matters (among others)—
  - (a) circumstances in which a regulated institution is to enter into a transaction of a class specified in the Code only with the consent of HEFCW;
  - (b) accounting and audit arrangements of regulated institutions;
  - (c) the provision of information to HEFCW.
- (3) A provision of the Code may take the form of a requirement or guidance.
- (4) The governing body of a regulated institution must—
  - (a) comply with any requirement imposed by the Code;
  - (b) take into account any guidance contained in the Code.
- (5) HEFCW may publish the Code in whatever way they think appropriate.
- (6) HEFCW must—
  - (a) keep the Code under review, and
  - (b) if they think it appropriate, prepare and publish a revised Code.
- (7) The Code may make different provision for different purposes (including for different institutions and different descriptions of institution).
- (8) For the purposes of this Part, the Open University is not to be treated as a regulated institution.

- (9) In sections 28, 29 and 30, “the first Code” means the first Code to be published under this section.

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

- (1) Before publishing the first Code or a revised Code, HEFCW must—
  - (a) prepare a draft of the first Code or revised Code, and
  - (b) submit the draft to the Welsh Ministers for their approval.
- (2) In preparing a draft of the first Code or of a revised Code, HEFCW must consult—
  - (a) the governing body of each regulated institution, and
  - (b) any other persons they think appropriate.
- (3) A draft submitted to the Welsh Ministers under this section must be accompanied by a report—
  - (a) setting out the reasons for the terms of the draft, and
  - (b) giving details of the consultation carried out under subsection (2) and summarising the representations received by HEFCW during the consultation.
- (4) The Welsh Ministers may direct HEFCW to submit a draft of the first Code or of a revised Code to them under this section before the end of a period specified in the direction.
- (5) HEFCW must comply with a direction given under subsection (4).

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

- (1) This section applies if the Welsh Ministers decide not to approve a draft of the first Code, or of a revised Code, submitted to them under section 28.
- (2) The Welsh Ministers must give HEFCW notice of the decision and the reasons for it.
- (3) If the Welsh Ministers give HEFCW notice under subsection (2) that they have decided not to approve a draft of the first Code, HEFCW must submit a further draft of the first Code to the Welsh Ministers.
- (4) If the Welsh Ministers give HEFCW notice under subsection (2) that they have decided not to approve a draft of a revised Code, HEFCW must either—
  - (a) submit a further draft of the revised Code to the Welsh Ministers, or
  - (b) give the Welsh Ministers notice—
    - (i) stating that HEFCW have decided not to proceed with the revision of the Code, and
    - (ii) setting out the reasons for that decision.
- (5) Notice under subsection (2) may specify a period before the end of which HEFCW must comply with subsection (3) or (4) (as appropriate).
- (6) Before submitting a further draft of the first Code or revised Code to the Welsh Ministers, HEFCW must carry out any further consultation that they think appropriate.
- (7) A further draft submitted to the Welsh Ministers under this section must be accompanied by a report—

- (a) explaining how, in preparing the draft, HEFCW have taken into account the reasons set out in the notice given by the Welsh Ministers under subsection (2),
  - (b) setting out HEFCW's reasons for the terms of the draft, and
  - (c) giving details of any consultation carried out under subsection (6) in relation to the draft and summarising the representations received by HEFCW during the consultation.
- (8) Subsections (2) to (7) apply where the Welsh Ministers decide not to approve a draft submitted to them under this section as they apply where the Welsh Ministers decide not to approve a draft submitted to them under section 28.

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

- (1) If the Welsh Ministers approve a draft of the first Code or of a revised Code submitted to them under section 28 or 29, they must lay the approved draft before the National Assembly for Wales.
- (2) If the National Assembly for Wales resolves not to approve the draft within the 40 day period—
  - (a) HEFCW may not publish the draft;
  - (b) if the draft is of the first Code, HEFCW must submit a further draft of the first Code to the Welsh Ministers;
  - (c) if the draft is of a revised Code, HEFCW may submit a further draft of a revised Code to the Welsh Ministers.
- (3) Before submitting a further draft of the first Code or of a revised Code to the Welsh Ministers under this section, HEFCW must carry out any further consultation they think appropriate.
- (4) A further draft submitted to the Welsh Ministers under this section must be accompanied by a report—
  - (a) setting out HEFCW's reasons for the terms of the draft, and
  - (b) giving details of any consultation carried out under subsection (3) in relation to the draft and summarising the representations received by HEFCW during the consultation.
- (5) The “40 day period” means the period of 40 days beginning with the day on which the draft is laid before the National Assembly for Wales.
- (6) In calculating the 40 day period, no account is to be taken of any period during which the National Assembly for Wales is dissolved or during which it is in recess for more than four days.
- (7) If no resolution is passed by the National Assembly for Wales within the 40 day period as mentioned in subsection (2), HEFCW must publish the Code in the terms of the approved draft.
- (8) If a further draft is submitted to the Welsh Ministers under this section—
  - (a) subsections (1) to (7) apply if the Welsh Ministers approve the draft as they apply if they approve a draft submitted to them under section 28 or 29;
  - (b) section 29 applies if the Welsh Ministers decide not to approve the draft as it applies if the Welsh Ministers decide not to approve a draft submitted to them under section 28.

*Monitoring compliance with Code*

**31 Monitoring compliance with Code**

HEFCW must monitor, or make arrangements for the monitoring of, compliance by each regulated institution with requirements imposed by the Code.

*Powers in respect of failure to comply with Code*

**32 Failure to comply with Code: general**

Sections 33 and 34 apply if HEFCW are satisfied that the governing body of a regulated institution has failed, or is likely to fail, to comply with a requirement imposed by the Code.

**33 Directions in respect of failure to comply with Code**

- (1) HEFCW may give a direction to the governing body requiring it to take (or not to take) specified steps for the purpose of dealing with or preventing the failure to comply.
- (2) For procedural provision about directions under this section, see sections 41 to 44.

**34 Other measures in respect of failure to comply with Code**

- (1) HEFCW may give advice or assistance to the governing body with a view to improving the organisation or management of the financial affairs of the institution.
- (2) HEFCW may carry out, or arrange for another person to carry out, a review of any matters that they think are relevant to the institution's compliance with the Code.
- (3) A governing body must take into account any advice given to it under subsection (1).

*Co-operation with monitoring etc*

**35 Financial management: duty to co-operate**

- (1) The governing body of a regulated institution must ensure that a person exercising a function by virtue of section 31 or 34 is provided with such information, assistance and access to the institution's facilities as the person reasonably requires for the purpose of exercising the function (including for the purpose of exercising any power under section 36).
- (2) If HEFCW are satisfied that a governing body has failed to comply with subsection (1), they may direct it to take (or not to take) specified steps for the purpose of securing the provision of information, assistance or access as described in that subsection.

*Supplementary powers for purpose of monitoring etc*

**36 Financial management: powers of entry and inspection**

- (1) For the purpose of the exercise of a function by virtue of section 31 or 34(2), an authorised person may—

- (a) enter the premises of a regulated institution;
  - (b) inspect, copy or take away documents found on the premises.
- (2) In subsection (1)(b), references to—
  - (a) documents include information recorded in any form;
  - (b) documents found on the premises include—
    - (i) documents stored on computers or electronic storage devices on the premises, and
    - (ii) documents stored elsewhere which can be accessed by computers on the premises.
- (3) The power conferred by subsection (1)(b) includes power—
  - (a) to require a person to provide documents;
  - (b) to impose requirements as to how documents are provided (which may include requirements to provide legible copies of documents stored electronically);
  - (c) to inspect a computer or electronic storage device on which documents have been created or stored.
- (4) A power conferred by this section may be exercised only after giving reasonable notice to the governing body of the regulated institution.
- (5) Subsection (4) does not apply to the exercise of a power if the authorised person is satisfied that—
  - (a) the case is one of urgency, or
  - (b) complying with that subsection would defeat the object of exercising the power.
- (6) In this section, “authorised person” means a person authorised in writing by HEFCW (whether generally or specifically) to exercise the powers conferred by this section.
- (7) Before exercising a power under this section, an authorised person must, if required to do so, produce a copy of the person’s authorisation under subsection (6).
- (8) The powers conferred by this section—
  - (a) may be exercised at reasonable times only;
  - (b) may not be exercised to require a person to do anything otherwise than at a reasonable time.
- (9) The powers conferred by this section do not include power to enter a dwelling without the agreement of the occupier.