



# Higher Education (Wales) Act 2015

2015 anaw 1

## PART 7

### SUPPLEMENTARY PROVISION ABOUT FUNCTIONS OF HEFCW

#### *Exercise of functions by HEFCW*

#### **47 Compatibility with charity law and governing documents of institutions**

- (1) Nothing in this Act confers power on HEFCW to require the governing body of an institution to do anything that is incompatible with—
- (a) any legal obligation or legal restriction that applies to the governing body by virtue of the institution being a charity, or
  - (b) the governing documents of the institution.
- (2) For the purposes of subsection (1)(b), the governing documents of an institution are—
- (a) in the case of an institution established by Royal charter—
    - (i) the institution's charter, and
    - (ii) any instrument relating to the conduct of the institution the making or amendment of which requires the approval of the Privy Council;
  - (b) in the case of an institution conducted by a higher education corporation, the corporation's instrument of government and the institution's articles of government;
  - (c) in the case of an institution conducted by a further education corporation, the corporation's instrument of government and articles of government;
  - (d) in the case of an institution designated under section 129 of the Education Reform Act 1988 or section 28 of the Further and Higher Education Act 1992, the institution's instrument of government and articles of government;
  - (e) in the case of an institution not falling within paragraphs (a) to (d) that is conducted by a company, the company's memorandum and articles of association.

#### **48 Duty to take into account importance of protecting academic freedom**

In exercising functions by virtue of this Act, HEFCW must take into account the importance of protecting academic freedom including, in particular, the freedom of institutions—

- (a) to determine the contents of particular courses and the manner in which they are taught, supervised or assessed,
- (b) to determine the criteria for the admission of students and to apply those criteria in particular cases, and
- (c) to determine the criteria for the selection and appointment of academic staff and to apply those criteria in particular cases.

#### **49 Duty to take Welsh Ministers' guidance into account**

In exercising functions by virtue of this Act, HEFCW must take into account any guidance issued by the Welsh Ministers.

*Reports to be made by HEFCW*

#### **50 Annual reports**

- (1) As soon as possible after the end of each reporting period, HEFCW must submit a report to the Welsh Ministers on how, during the period, HEFCW have exercised their functions by virtue of this Act.
- (2) As soon as possible after receiving a report under subsection (1), the Welsh Ministers must lay a copy of the report before the National Assembly for Wales.
- (3) The report must comply with any requirements that the Welsh Ministers may by direction to HEFCW specify.
- (4) Those requirements may include requirements as to the form and content of the report.
- (5) For the purposes of this section the first reporting period is the period—
  - (a) beginning with the day on which this section comes into force, and
  - (b) ending with whichever is the earlier of the anniversary of that day, and a day specified by HEFCW in notice given to the Welsh Ministers.
- (6) The subsequent reporting periods are each successive period of 12 months.
- (7) The Welsh Ministers may by direction specify requirements with which notice given as described in subsection (5) is to comply (including as to form and content, and the time at which it is to be given); and notice is not to be treated as having been given for the purposes of subsection (5) unless it complies with those requirements.

#### **51 Special reports**

- (1) HEFCW must if directed to do so by the Welsh Ministers report to the Welsh Ministers on any of the following—
  - (a) compliance with section 10(1) by institutions within section 10(2) generally or by a particular institution;
  - (b) compliance with the general requirements of approved plans generally, or with the general requirements of a particular approved plan;

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*Status: This is the original version (as it was originally enacted).*

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- (c) the effectiveness of approved plans generally, or the effectiveness of a particular approved plan, in promoting equality of opportunity and promoting higher education;
  - (d) any other matters specified in the direction that relate to the promotion of equality of opportunity or the promotion of higher education;
  - (e) the quality of education provided by or on behalf of regulated institutions generally, or the quality of education provided by or on behalf of a particular regulated institution;
  - (f) compliance by regulated institutions generally, or by a particular regulated institution, with requirements of the Code.
- (2) A direction under subsection (1) may specify—
- (a) the form and content of a report made for the purposes of this section;
  - (b) when the report is to be made.

*Other information etc to be given by HEFCW*

## **52 Statement in respect of intervention functions**

- (1) HEFCW must prepare and publish a statement setting out how they propose to exercise their intervention functions.
- (2) HEFCW—
- (a) must keep the statement under review;
  - (b) may revise it.
- (3) Before publishing the statement or a revised statement, HEFCW must consult—
- (a) the governing body of each regulated institution, and
  - (b) any other persons they think appropriate.
- (4) Regulations may make provision about—
- (a) the preparation of the statement (including as to its form and content);
  - (b) its publication;
  - (c) the consultation to be carried out under subsection (3).
- (5) HEFCW's intervention functions are their functions under the following provisions—
- (a) section 11 (compliance and reimbursement directions);
  - (b) section 13 (directions in respect of failure to comply with general requirements of approved plan);
  - (c) section 19 (directions in respect of inadequate quality);
  - (d) section 20(1) and (2) (other measures in respect of inadequate quality);
  - (e) section 33 (directions in respect of failure to comply with the Code);
  - (f) section 34(1) and (2) (other measures in respect of failure to comply with the Code);
  - (g) section 37 (refusal to approve new fee and access plan);
  - (h) sections 38 and 39 (withdrawal of approval of existing fee and access plan).

**53 Information and advice to be given by HEFCW to Welsh Ministers**

- (1) HEFCW must, if directed to do so by the Welsh Ministers, give the Welsh Ministers such information and advice relating to the promotion of equality of opportunity and the promotion of higher education as the Welsh Ministers may require.
- (2) HEFCW may give the Welsh Ministers other information and advice relating to the promotion of equality of opportunity and the promotion of higher education.

**54 Other information and advice**

- (1) HEFCW may—
  - (a) identify good practice relating to the promotion of equality of opportunity and the promotion of higher education, and
  - (b) give information and advice about such practice to the governing body of a regulated institution, or to the governing bodies of regulated institutions generally.
- (2) In exercising its functions, the governing body of a regulated institution is to take into account any information or advice given by HEFCW to it, or to governing bodies generally, under subsection (1)(b).
- (3) HEFCW may provide such other information and advice as they think appropriate having regard to (among other things) their functions and those of regulated institutions.
- (4) That information and advice may (among other things) relate to—
  - (a) the powers and duties of regulated institutions;
  - (b) the organisation and management of the financial affairs of regulated institutions;
  - (c) the effect of approval of a fee and access plan.