

Cylchlythyr | Circular

Higher Education (Wales) Act 2015: Preparation for delivery of the new regulatory system

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Reference: W15/12HE
To: Heads of higher education institutions in Wales
Principals of directly-funded further education institutions
in Wales
Response by: No response required
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This circular provides a copy of Welsh Government guidance to HEFCW in pursuit of the Higher Education (Wales) Act 2015 and preparation for the delivery of the new regulatory system.

If you require this document in an alternative accessible format, please telephone us on (029) 2068 2225 or email info@hefcw.ac.uk.



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Introduction

1. This circular provides a copy of Welsh Government guidance to HEFCW in pursuit of the Higher Education (Wales) Act 2015 (“the Act”) and preparation for the delivery of the new regulatory system.

Background to the Act

2. The Higher Education (Wales) Act 2015¹ gained Royal Assent on 12 March 2015.
3. The Act makes provision for a new higher education (HE) regulatory system for Wales designed to ensure robust and proportionate regulation of institutions in Wales whose courses are supported by Welsh Government-backed HE grants and loans; safeguard the contribution made to the public good arising from the Welsh Government’s significant financial subsidy of HE; maintain a strong focus on fair access to HE; and preserve and protect the institutional autonomy and academic freedom of Welsh universities.
4. The Act has eight parts comprising 60 sections and one schedule. Explanatory notes about the Act can be found here². In summary:
 - It allows an institution in Wales which provides HE and which is a charity to apply to HEFCW for approval of a fee and access plan. The Act deals with the contents of a fee and access plan including a fee limit for courses which are to be prescribed in regulations.
 - It requires HEFCW to monitor institutions’ compliance with their fee and access plans and to monitor the effectiveness of plans. The Act also confers functions upon HEFCW which we may exercise where we are satisfied that a regulated institution³ has failed to comply with a general requirement in its plan.
 - It confers functions upon HEFCW relating to the assessment of the quality of education provided in Wales by or on behalf of a regulated institution and in relation to the steps that HEFCW may take if we are satisfied that the quality of education is inadequate or likely to become inadequate.
 - It requires HEFCW to prepare and publish a Financial Management Code (“the Code”) which will apply to regulated institutions. The Act requires HEFCW to monitor, or make arrangements for the monitoring of institutions’ compliance with the requirements of the Code. The Act also confers functions upon HEFCW which we may exercise where we are satisfied that a regulated institution has failed, or is likely to fail, to comply with a requirement of the Code.

¹ www.legislation.gov.uk/anaw/2015/1/pdfs/anaw_20150001_en.pdf

² www.legislation.gov.uk/anaw/2015/1/notes/contents

³ Regulated institutions are those institutions with a fee plan, or fee and access plan from 2017/18, in place.

- It makes provision for the circumstances in which HEFCW may refuse to approve a new fee and access plan for an institution and the circumstances in which HEFCW must, or may, withdraw our approval of a fee and access plan.
 - It makes provision for the procedures to be followed by HEFCW in relation to the steps that we may take in respect of regulated institutions, including the giving of warning notices and the ability of institutions to apply for reviews.
 - It confers functions on HEFCW in relation to the provision of reports to the Welsh Ministers and the provision of information and advice by HEFCW.
 - It makes consequential amendments to other acts, including the Further and Higher Education Act 1992 and the Higher Education Act 2004.
5. Whilst the implementation of the Act will occur on 1 September 2017, transitional arrangements are set out in the Act and some provisions will commence earlier.
 6. The regulatory framework set out above applies to providers of higher education in Wales which seek automatic designation of their higher education courses for the purpose of student support, referred to as 'automatically designated' institutions.
 7. An alternative 'specific designation' or 'case by case' (ie course by course rather than all courses) route is also available. This process is operated by the Welsh Government, which has recently consulted on new arrangements⁴.

Implementation arrangements

8. The Act provides for a transitional period to allow both HEFCW and institutions time to prepare for implementation of the full regulatory arrangements in the 2017/18 academic year. Some of HEFCW's new functions, specifically concerning fee limits and quality assessment, will be brought into force for the transitional period and current provisions will be repealed.
9. The Welsh Government has recently consulted⁵ on the first set of regulations to be made under the provisions of the 2015 Act and three of these were laid on 16 June 2015.⁶
10. The Welsh Government has provided HEFCW with guidance in respect of the first functions to be conferred on the Council. A copy of the guidance can be found at **Annex A**.

⁴ <http://gov.wales/consultations/education/designation-of-higher-education-courses-at-alternative-providers/?lang=en>

⁵ <http://gov.wales/consultations/education/regulations-from-the-higher-education-wales-act/?lang=en>

⁶ www.assembly.wales/en/bus-home/Pages/Plenary.aspx?assembly=4&category=Laid%20Document

HEFCW's role

11. The Act could be seen to alter HEFCW's role from one of 'funding' to one of 'regulation' of the sector. New regulatory provisions will now apply in the areas of quality assessment and financial management, enforceable through the fee planning arrangements rather than through funding sanctions. These arrangements will also serve to enforce compliance with fee limits. In practice, we have always had a regulatory role alongside our funding role. Whilst the Act certainly changes the balance between funding and regulatory levers, it remains the case that our core focus is to use those levers intelligently in order to secure the best higher education system possible for Wales within the policy context established by the Welsh Government. Accordingly, the vision, aims and strategic objectives of HEFCW, as set out in our Corporate Strategy⁷ continue to apply.

Timetable

12. The full implementation of the Act will be from 1 September 2017 and HEFCW will work with regulated and other providers to develop the regulatory arrangements through consultation. The timetables for these consultations are not yet confirmed but interested parties should check our website for further information www.hefcw.ac.uk

Further information / responses to

13. For further information, contact Celia Hunt (029 2068 2224, celia.hunt@hefcw.ac.uk) or Steve Williams (029 2068 2285, steven.williams@hefcw.ac.uk).

Assessing the impact of our policies

14. We will be carrying out equality impact assessments (EIA) as we develop the regulatory arrangements to help safeguard against discrimination and promote equality. We will also consider the impact of policies on the Welsh language, and Welsh language provision within the HE sector in Wales. Contact equality@hefcw.ac.uk for more information about EIAs.

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www.hefcw.ac.uk/documents/publications/corporate_documents/Corporate%20Strategy%202013-14-2015-16.pdf