

Cyngor Cyllido Addysg
Uwch Cymru
Higher Education Funding
Council for Wales

hefcw

Transitional Statement of Intervention

Effective 04/02/2016

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Background

1. Prior to the implementation of the current higher education fees and funding regime in 2012/13, the principal source of public funding of the higher education sector in Wales was recurrent grant funding from HEFCW to institutions under the terms of the Further and Higher Education Act 1992. This act included a requirement that HEFCW make provision for the assessment of the quality of education in those institutions that it funds. HEFCW attaches terms and conditions to its funding¹, which relate to, amongst other things, the financial management of institutions and more recently the level of fees charged by institutions. HEFCW has also been able to withhold funding in the event of unsatisfactory quality². The administration and enforcement of terms and conditions of HEFCW funding has therefore been the principal means by which the higher education sector was regulated in Wales.
2. Following the introduction of the non-means tested tuition fee grant in 2012/13, funding which was previously provided by the Welsh Government to HEFCW and then allocated by HEFCW to institutions in Wales, was re-directed to the Welsh Government's student support budget. The amount of financial support paid by HEFCW to institutions in Wales has hence reduced and consequently HEFCW's ability to attach terms and conditions to that support has also reduced. Therefore the effectiveness of the higher education regulatory regime, which relies on HEFCW imposing terms and conditions of funding relating to fee controls, quality of education and financial management, has been diminished.
3. For this reason, the Higher Education (Wales) Act 2015 (The 2015 Act)³ has sought to introduce a new higher education regulatory framework for Wales which was not reliant on terms and conditions of HEFCW recurrent funding. The 2015 Act sets out the regulatory functions of HEFCW and makes provision for a new higher education regulatory system for Wales. **Institutions regulated under The 2015 Act are those institutions to which an approved fee and access plan relates** (see Section 7(5)(b) of The 2015 Act)⁴. The 2015 Act aims to:
 - a. ensure robust and proportionate regulation of institutions in Wales whose courses are supported by Welsh Government backed higher education grants and loans;
 - b. safeguard the contribution made to the public good arising from the Welsh Government's significant financial subsidy of higher education;
 - c. maintain a strong focus on fair access to higher education; and
 - d. preserve and protect the institutional autonomy and academic freedom of our universities.

¹ Financial Memorandum (parts 1 and 2).

² Unsatisfactory Quality Procedures

³ www.legislation.gov.uk

⁴ See also Sections 26 and 27(8) of The 2015 Act

The 2015 Act sets out HEFCW's regulatory powers in relation to student fees; as well as in relation to the quality of education and institutions' financial management. These powers include those in relation to intervention by HEFCW where necessary to ensure compliance with The 2015 Act. HEFCW's other powers under The 2015 Act and its remaining powers under The Further and Higher Education Act 1992 mean that HEFCW will continue to have wider role that is not solely focused on remedial action and compliance.

4. The 2015 Act received Royal Assent on 12 March 2015. It is proposed that it will be commenced, i.e. come into force, in stages with HEFCW's functions, duties and powers under The 2015 Act coming into force at different times:
 - The provisions in relation to Compliance and Reimbursement Directions to address issues in respect of the charging of excess fees; Directions in Respect of Inadequate Quality; and Other Measures in Respect of Inadequate Quality, together with the associated regulations, came into force on 1 September 2015.
 - It is anticipated that the remaining provisions (including those in relation to Directions in Respect of Failure to Comply with the Financial Management Code; Refusal to Approve a New Fee and Access Plan; and Withdrawal of Approval of an Existing Fee and Access Plan) will come into force by 1 September 2017.
5. Section 52 of The 2015 Act places HEFCW under a duty to produce a statement in respect of its intervention functions (the Statement of Intervention). The Statement of Intervention must be published following a consultation process involving the governing bodies of regulated institutions and other appropriate persons.
6. It is anticipated that many of HEFCW's intervention powers will not be brought into force until 2017/18. HEFCW has, therefore, prepared this Transitional Statement of Intervention for the purposes of section 52 of The 2015 Act, to provide a public and transparent framework within which HEFCW will operate for the period from 4 February 2016 until such time as it is superseded by a full Statement of Intervention, upon full commencement of its intervention powers, or any other update is required.
7. The Transitional Statement of Intervention relates to the following intervention functions as set out under The 2015 Act:
 - Section 11 provides for intervention in respect of a failure to comply with Section 10(1) of The 2015 Act regarding limits on student fees. This intervention takes the form of Compliance and Reimbursement Directions.
 - Section 19 provides for intervention through Directions in Respect of Inadequate Quality.
 - Section 20 provides for intervention through Other Measures in Respect of Inadequate Quality. This intervention takes the form of the

provision of advice and assistance, or the review of other matters in relation to quality.

- Sections 42 to 44 provide for warning notice and review procedures that apply to all Directions and notices included in section 41(1) of The 2015 Act, although these will only apply to Compliance and Reimbursement Directions and Directions in Respect of Inadequate Quality during the transitional period.

Further detail in respect of the legislation underpinning the issue of Compliance and Reimbursement Directions and the associated processes in respect of warning notices and the review of Directions is provided under the Higher Education (Fee and Access Plans) (Notices and Directions) (Wales) Regulations 2015⁵.

Roles and Responsibilities

8. To reduce the requirement for intervention, it will be important for governing bodies of regulated institutions to be authoritative and informed, having oversight of all aspects of institutional strategy and key decisions. Principles of good governance are outlined in the Higher Education Code of Governance published by the Committee of University Chairs⁶ (CUC). The CUC Higher Education Code of Governance notes that, whilst the governing body must respect the role of the Senate/Academic Board and other bodies involved in academic governance, it should still receive assurance that academic risks, such as those in relation to quality assurance, are being effectively managed.
9. HEFCW's role under The 2015 Act will be to monitor compliance by regulated institutions with Fee and Access Plans (including Fee Limits), requirements in respect of the Quality of education; and the Financial Management Code, among other powers and monitoring functions. HEFCW will intervene only where necessary and reasonable to ensure that the students, the institution and the wider higher education sector are protected from, the charging of excess fees; provision of inadequate quality or provision likely to become inadequate; unacceptable fee and access plans and fee and access plan delivery; and poor financial management and governance. Where intervention is required, HEFCW will operate in a reasonable manner, as reflected in the following principles, and also in the intervention processes outlined below in relation to limits on student fees and inadequate quality.

⁵ www.legislation.gov.uk

⁶ www.universitychairs.ac.uk/wp-content/uploads/2015/02/Code-Final.pdf

Purpose and Principles

In addition to safeguarding the interests of students, HEFCW intervention may be essential in order to ensure that the reputations of the institution and the wider higher education sector are protected, and potentially to minimise risk to public funds and/or publically-funded assets. Intervention will be required when an institution has failed to satisfactorily address serious issues, despite being given reasonable time, support and/or advice to do so, or where an issue is sufficiently serious that more immediate action must be taken.

The following principles will be adhered to by HEFCW in exercising its intervention powers under The 2015 Act:

- **HEFCW will focus on promoting good practice and early prevention of potential compliance issues, wherever possible.** HEFCW will generally seek to place an emphasis on the avoidance or early resolution of compliance issues, rather than remedial intervention.
- **HEFCW will seek to work in partnership with institutions in the first instance.** Prior to any formal intervention under The 2015 Act, HEFCW will normally seek to work with the institution(s) to address issues through dialogue and the provision of advice or support where necessary.
- **HEFCW will only intervene under The 2015 Act when necessary.** HEFCW's intervention powers will normally be exercised in instances where a partnership approach has failed to address issues via dialogue with the senior management of an institution within a reasonable timescale, although HEFCW may resort to formal intervention at an earlier stage where an issue is sufficiently serious. Such serious issues might include, for instance: widespread or systematic non-compliance regarding fee levels, a more limited number of flagrant cases of overcharging, or serious quality issues that require immediate intervention in order to protect the interests of students and other stakeholders. When intervening, HEFCW will seek to work with the institution, where appropriate, to address non-compliance.
- **Any intervention will be proportionate to the severity of the issue that HEFCW is seeking to address.** HEFCW will consider interventions on a case-by-case basis, based on the severity of the issue that is to be addressed.

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- **HEFCW will always act reasonably.** For example, institutions are autonomous entities and HEFCW will give due regard to institutional autonomy at all times. HEFCW will also avoid unnecessary duplication of the actions of other regulatory organisations (e.g. the Charities Commission, the Office of the Independent Adjudicator for Higher Education and the Competition and Markets Authority) and will give consideration to student and stakeholder interests when intervening.
- **HEFCW will pay due regard to the wider impact of any intervention.** Whilst HEFCW will consider the impact of intervention, such as any impact in relation to the national accounting classification of institutions, HEFCW may have a statutory duty to intervene that would take precedence over such considerations.
- **HEFCW will always act fairly.** For example, when intervening, HEFCW will base its decisions on consideration of all the relevant information, with any decisions that are taken being fair to institutions and to students and their sponsors (e.g. when agreeing the timescale for reimbursement of excess fees).
- **Intervention processes will be transparent and consistent.** HEFCW will undertake formal intervention in accordance with published processes as set out in this Statement of Intervention.
- **Intervention actions will be targeted.** Interventions undertaken by HEFCW will focus only on those areas where there has been non-compliance and will seek only to address specific compliance issues that have been identified.
- **HEFCW will seek to end its intervention as soon as reasonably possible.** HEFCW's intervention will cease as soon as the identified issues have been resolved and any underlying issues addressed.
- **HEFCW will be accountable for its decisions.** The intervention processes operated by HEFCW will be subject to scrutiny, including through review of any Directions issued.
- **HEFCW will give due regard to impact on protected characteristics and the Welsh language when undertaking its intervention functions.** HEFCW has responsibilities in respect of the 2010 Equality Act under the Public Sector Equality Duty Wales.

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- **HEFCW will pay due regard to data protection.** Whilst HEFCW may need to share information with institutions and other relevant bodies (e.g. the Office of the Independent Adjudicator for Higher Education) in relation to allegations of non-compliance under The 2015 Act, HEFCW will not share a complainant's details unless explicit permission has been given by the complainant.
- **HEFCW will give due regard to issues relating to the publication of information.** HEFCW is required under The 2015 Act to publish Compliance and Reimbursement Directions once they have been given. HEFCW will only publish other information in relation to non-compliance with The 2015 Act exceptionally, where this is in the public interest to do so. In all instances we will notify the institution(s) concerned prior to the publication of information. Where information is published by third parties, HEFCW will liaise with the institution(s) affected as appropriate.
- **HEFCW will give due regard to issues relating to the disclosure of information under the Freedom of Information Act.** HEFCW is subject to the Freedom of Information (FoI) Act 2000. This gives a public right of access to any information that we hold, which therefore may be disclosed on request under the terms of the FoI Act. We have a responsibility to decide whether any information should be made public or treated as confidential. We may refuse to disclose information in exceptional circumstances, such as where disclosure of information would prejudice commercial interests. As and when we determine that information should be made publicly available, through disclosure under the FoI Act, we will consult with the institution(s) concerned prior to its release in accordance with our FoI procedures.
- **HEFCW will not intervene in a way that is incompatible with the governing documents of an institution.** This is a requirement set out at Section 47 of The 2015 Act. For chartered institutions these governing documents include the Royal Charter and any Instruments which require the approval of the Privy Council. For Higher Education Corporations and Further Education Corporations the governing documents are the institution's instrument of government and articles of government. For any institutions that are companies that do not fall within the above categories the governing instruments are the company's memorandum and articles of association.

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- **HEFCW will not intervene in a way that demands a governing body do anything that is incompatible with any obligations or restrictions as a charitable organisation.**

This is a requirement set out at Section 47 of The 2015 Act. Where necessary, HEFCW will liaise with the Charity Commission prior to initiating any intervention.

- **HEFCW will take into account the importance of protecting academic freedom when exercising its intervention powers.** This is a requirement set out at Section 48 of The 2015 Act. The 2015 Act states that academic freedom includes the freedom of institutions to determine:

- the contents of courses and the manner in which they are taught, supervised and assessed;
- the criteria for the admission of students and to apply those criteria in particular cases; and
- the criteria for the selection and appointment of academic staff and to apply those criteria in particular cases.

These points should be viewed in the context of institutions' responsibilities under the Public Sector Equality Duty Wales, including in relation to: eliminating unlawful discrimination; advancement of equality of opportunity; and fostering good relations between people of different groups.

10. In addition to the above principles, Section 49 of The 2015 Act requires that HEFCW take account of any guidance issued by Welsh Ministers when exercising its functions under The 2015 Act.

Intervention in Relation to Limits on Student Fees

Basis for intervention

11. This section relates to HEFCW intervention in respect of limits on student fees through Compliance and Reimbursement Directions. These interventions apply where HEFCW is satisfied that the governing body of an institution has failed to comply with section 10(1) of the Higher Education (Wales) Act in relation to limits on student fees. Section 10(1) of The 2015 Act states that the governing body of an institution within subsection (2) must ensure that regulated course fees do not exceed the applicable fee limit. Institutions falling within subsection (2) are all those with an approved fee and access plan (whether or not that plan is still in force).

Note

Regulated course fees are the fees paid to an institution by a qualifying person:

- a. in connection with the person's undertaking a qualifying course; and
- b. in respect of an academic year applicable to that course, where that year begins at a time within the period specified under section 4 of the institution's most recent fee and access plan (whether or not the plan is still in force).

The most recent fee and access plan is the institution's fee and access plan most recently approved in accordance with section 7 of The 2015 Act.

Fee and access plans are 'in force' from the day of approval until the end of the plan period.

The applicable fee limit is:

- a. In a case where the institution's most recent fee and access plan specifies a fee limit for the course and year in question, that limit;
- b. In a case where the institution's most recent fee and access plan provides for the determination of a fee limit for the course and year in question, that limit as determined in accordance with the plan.

Excess fees are regulated course fees, to the extent that those fees exceed the applicable fee limit (as quantified for the purposes of the duty under section 10(1) with which the governing body has failed to comply).

12. The governing body of an institution is responsible for ensuring that excess fees are not charged. HEFCW will monitor and assess potential issues in relation to fee levels, through the monitoring of fee data and allegations

against institutions⁷, and through HEFCW's institutional assurance processes, including audit where appropriate. The governing bodies of regulated institutions will also be subject to a compliance duty under section 16 of The 2015 Act, which requires them to provide HEFCW with such information, assistance and access to the institution's facilities as HEFCW reasonably requires for the purposes of monitoring compliance with fee limits. Where an institution receives an allegation which includes an element in respect of the charging of excess fees, the governing body of the institution will be required to inform HEFCW of the details of the complaint at the earliest reasonable opportunity, even if the allegation has been referred to the Office of the Independent Adjudicator for Higher Education (OIA) or the Competition and Markets Authority (CMA). This is because HEFCW has a duty under Section 15(1)(a) of The 2015 Act to monitor institutions' compliance with fee limits. In addition, HEFCW may liaise with the OIA or the CMA, as relevant, to ensure that information is shared as required. Where HEFCW receives an allegation in respect of the charging of excess fees from an individual (or group of individuals), the individual will be expected to have pursued the issue via the institution's procedures in the first instance.

13. Where HEFCW is satisfied that the governing body of an institution has failed to comply with section 10(1) of The 2015 Act in relation to limits on student fees (i.e. it has charged fees in excess of those set out in the relevant fee and access plan), section 11 of The 2015 Act states that HEFCW may take action to rectify the situation by issuing a Compliance and Reimbursement Direction to direct the governing body of the institution to do either or both of the following:
 - a. To comply with section 10(1) of the Higher Education (Wales) Act in order to ensure that the regulated course fees do not exceed the applicable fees limit.
 - b. To reimburse excess fees paid to the institution.
14. The stages of this intervention process that are provided for under sections 42 to 44 of The 2015 Act and the Fee and Access Plans (Notices and Directions) (Wales) Regulations 2015⁸ are outlined below, together with the associated checks and balances. However, as set out in the section on Purpose and Principles above, HEFCW will initially engage with institutions through a partnership approach in order to address issues in respect of the charging of excess fees.

Prior to Intervention

15. Where an issue in respect of the charging of excess fees has been brought to HEFCW's attention, HEFCW will contact the Accountable Officer of the institution (normally the Head of the institution) to discuss and verify the

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www.hefcw.ac.uk/working_with_he_providers/institutional_assurance/allegations_concerning_institutions.aspx

⁸ www.legislation.gov.uk

issue and to clarify what actions have already been taken to comply and to reimburse any excess fees (all correspondence at this informal stage will be copied to the Clerk to the governing body and Chair of the governing body). Where actions have not yet been taken by the institution, a reasonable timescale will be agreed for the institution to comply and to reimburse the excess fees that have been charged. In agreeing this timescale, it should be noted that HEFCW must balance the institution's view regarding the reasonableness of any timescale with the need to reimburse students and their sponsors at the earliest reasonable opportunity.

16. Where an allegation in relation to the charging of excess fees has been raised with the OIA or CMA prior to being relayed to HEFCW, HEFCW may await the outcome of the OIA or CMA processes, prior to initiating formal intervention, in order to avoid unnecessary duplication of action. Whilst HEFCW will seek to avoid unnecessary duplication, it should be noted that the circumstances that trigger HEFCW intervention (Fees in excess of the level set out in an approved Fee and Access Plan) may be slightly different to those that trigger OIA or CMA involvement. HEFCW will liaise closely with the OIA or CMA in such circumstances and may choose to initiate formal intervention prior to the completion of these bodies' processes if this is considered to be necessary to address serious non-compliance issues. Where HEFCW is to liaise with the OIA or CMA, HEFCW would advise the Accountable Officer of the institution at an early stage whether HEFCW is to await the outcome of OIA or CMA processes.
17. HEFCW will normally only initiate formal intervention where an institution has failed to take appropriate action to comply and reimburse excess fees within an agreed timescale. Where serious failures are identified, such as repeated, widespread or systemic instances of the charging of excess fees, or where there is evidence of a flagrant disregard for the fee levels set out in an agreed Fee and Access Plan, HEFCW may decide that it is necessary to initiate formal intervention at an early stage. HEFCW will be mindful of the circumstances of the case when considering formal intervention, including the institution's explanation of why excess fees were charged (e.g. administrative error); the likelihood of the institution addressing the issue voluntarily if given further time; the number of students affected; the extent to which fees have been overcharged; and any other relevant factors.

The Intervention Process

18. When intervening, for the purpose of clarity, all communication from HEFCW in respect of intervention will clearly state the stage and any sub-element of the intervention process to which it relates.

Stage 1: Warning Notice

19. Before HEFCW can proceed to issue a Compliance and Reimbursement Direction to an institution, HEFCW must provide the governing body of that institution with a warning notice (sent via the Chair of the governing body and Clerk to the governing body and copied to the Accountable Officer). The warning notice will:
 - a. Set out the proposed Compliance and Reimbursement Direction;
 - b. State HEFCW's reasons for proposing to give it;
 - c. Inform the governing body that it may make representations about the proposed Compliance and Reimbursement Direction;
 - d. Specify the period from the date of issue within which, and the way in which, representations may be made.

Checks and balances

20. From issue of the warning notice, governing bodies will have up to 40 days to make representations in writing to HEFCW, with all representations to be sent to the HEFCW Chief Executive. Where representations are not received, no Compliance and Reimbursement Direction will be issued until after this 40 day period.
21. Where representations are received, HEFCW will undertake to review these and decide on whether to issue a Compliance and Reimbursement Direction within 40 days of receipt of the representations, except where the submission of additional information is required in order for HEFCW to be able to adequately consider representations. In such instances, the additional information will be requested within 28 days of receipt of the representations and should be submitted by the institution within 28 days of this HEFCW request, in order for a decision to be made within 60 days of receipt of the original representations. Where representations are received, no Compliance and Reimbursement Direction will be issued until after the completion of this process.
22. Decisions regarding the issuing of a Compliance and Reimbursement Direction will be made by the HEFCW Chief Executive. Where a decision is taken to not issue a Compliance and Reimbursement Direction, HEFCW will send a notice to the governing body within 14 days of that decision to inform them of the decision and the reasons for this.

Stage 2: Compliance and Reimbursement Direction

23. When issuing the Compliance and Reimbursement Direction to an institution (sent via the Chair of the governing body and Clerk to the governing body and copied to the Accountable Officer), Section 43 of The 2015 Act requires that HEFCW provide a statement to the governing body of that institution. The statement will:

- a. Set out HEFCW's reasons for issuing the Compliance and Reimbursement Direction;
 - b. Inform the governing body that it may apply for a review of the Compliance and Reimbursement Direction, providing information on the grounds for review, the review process and details of to whom an application for review should be made; and
 - c. Include any other prescribed information set out under the Fee and Access Plans (Notices and Directions) (Wales) Regulations 2015 at Regulation 6, i.e. the date of issue of the notice or direction; when the notice or direction is to be treated as having been given; the grounds in Regulation 7 on which an application for a review may be made; the procedure in Regulation 8 that a governing body must follow in order to apply for a review; and the name and address of the Review Panel to whom an application for a review must be made.
24. The Compliance and Reimbursement Direction that is issued may specify:
- a. The steps that are (or are not) to be taken by the governing body for the purpose of compliance with section 10(1);
 - b. The manner in which reimbursement of excess fees is to be, or may be, effected.

The Compliance and Reimbursement Direction may be varied or revoked by the issue of a later Direction.

25. Regulation 4 under the Fee and Access Plans (Notices and Directions) (Wales) Regulations 2015⁹ states that a notice or Direction specified in Section 41(1) of The 2015 Act is to be treated as having been given on the day that the first of the following events occurs:
- a. The governing body notifies HEFCW in writing that it accepts the Compliance and Reimbursement Direction;
 - b. The time limit to apply for a Review of the Compliance and Reimbursement Direction under Section 44 of The 2015 Act has expired and the governing body has not applied for a review;
 - c. A review of the Compliance and Reimbursement Direction under Section 44 of The 2015 Act has concluded and HEFCW has notified the governing body in writing that the Direction stands.
26. Once a Compliance and Reimbursement Direction is given (see paragraph 25 above), HEFCW must immediately provide a copy of the Direction to Welsh Ministers. Whilst a Compliance and Reimbursement Direction will not be shared with Welsh Ministers until the point at which it is given, HEFCW will need to provide briefing to Welsh Government officials (and hence to Welsh Ministers) at the point of first issuing the Direction. The Compliance and Reimbursement Direction will also be published on the HEFCW website www.hefcw.ac.uk within seven days of being given and

⁹ www.legislation.gov.uk

will remain on the website until either the Direction is revoked by HEFCW, or HEFCW is satisfied that the Direction has been complied with.

Checks and balances

27. Where HEFCW issues an institution with a Compliance and Reimbursement Direction, Section 44 of The 2015 Act provides the ability for the governing body of that institution to apply for a review of the Direction.
28. The Higher Education Fee and Access Plans (Notices and Directions) (Wales) Regulations 2015 specify that an application for a review may be made on one or more of the following grounds:
 - a. The governing body presents a material factor for consideration to which, for good reason, it had not previously drawn HEFCW's attention;
 - b. The governing body considers that HEFCW has disregarded a material factor it should have considered;
 - c. The governing body considers that the Direction is disproportionate in view of all the relevant facts which were considered by HEFCW.

Regulation 8 states that applications for review must be made within 40 days of issue of the Compliance and Reimbursement Direction, with applications made in writing as outlined in the Direction. The application for review must specify the grounds for review and include: a copy of the direction to be reviewed; a copy of the statement issued in accordance with Section 43 of The 2015 Act (see Paragraph 23); and information in support of the application. It should be noted that, under Regulation 7(2), an application for a review of the Compliance and Reimbursement Direction cannot be made where a governing body has notified HEFCW in writing that it accepts the Direction.

29. The review is to be carried out by a Person, or Panel of persons, appointed by the Welsh Ministers. Upon receiving an application for a review, the Person or Panel appointed by the Welsh Ministers will provide the governing body and HEFCW with an anticipated timetable for completing the review. The review Panel will give HEFCW details of the Direction to be reviewed, details of the grounds on which the review application has been made and a copy of the information supplied by the governing body in support of the application for review. The review Panel may make a written request for further information from either HEFCW or the governing body for the purposes of the review. Any request for further information made by the Panel will be sent to HEFCW and the governing body at the same time. HEFCW or the governing body will be required to provide any information requested by the Panel within 28 days of the issue of the request if it is to be considered. Under Regulation 9(8), the Panel will consider whether it is appropriate to allow representations from either HEFCW or the governing body in respect of any further information submitted to it in response to its request for such information; and if it considers it appropriate to allow

representations, it will notify HEFCW and the governing body accordingly. The review Panel will ensure that both HEFCW and the governing body are in receipt of all information submitted by the other party.

30. The review Panel will take account of the requested information submitted by HEFCW and the governing body in making its decision. The Panel will prepare a written report that is sent to both HEFCW and the governing body at the same time. HEFCW will take account of the review Panel's report and reconsider its decision to issue the Direction. HEFCW will then notify the governing body in writing within 40 days as to whether the Direction stands or not, and provide reason for that decision. If HEFCW's decision is that the Direction should stand, that decision will be binding on the governing body of the institution.
31. Under Section 12 of The 2015 Act, HEFCW may issue guidance about the steps to be taken for the purpose of complying with a Compliance and Reimbursement Direction. Before issuing such guidance, HEFCW will consult the governing bodies of all regulated institutions, as well as any other institutions in Wales that provide higher education and that are charities, which HEFCW considers to be appropriate. A governing body to which a Compliance and Reimbursement Direction has been issued must take account of such guidance.

Stage 3: Compliance and Reimbursement

32. The governing body of the institution will be expected to consider the Compliance and Reimbursement Direction at the earliest possible opportunity, in order that it can agree measures to reduce the fee level to ensure that it complies with Section 10(1) of The 2015 Act (i.e. that the fee level does not exceed the applicable fee limit). The governing body will be expected to write to all affected persons within 60 days of the Direction being given (see paragraph 25).
33. In instances where the Compliance and Reimbursement Direction is not given until after students have commenced their courses, and excess fees have already been charged, it is likely that excess fees will need to be refunded. The mechanism for refunding excess fees will be dependent on whether the fees are self-financed or paid on students' behalf via the statutory student support system.
 - For self-financing students, excess fees will need to be refunded to the students directly or an arrangement made with the students whereby future fees are reduced in order to take account of the overpayment.
 - For students in receipt of statutory student support, an overpayment of support may be recovered via the Student Loans Company (SLC). The institution would be expected to notify the SLC of the required reduction in fees, thereby allowing the automatic recovery of overpaid fee support by the SLC on behalf of each UK administration.

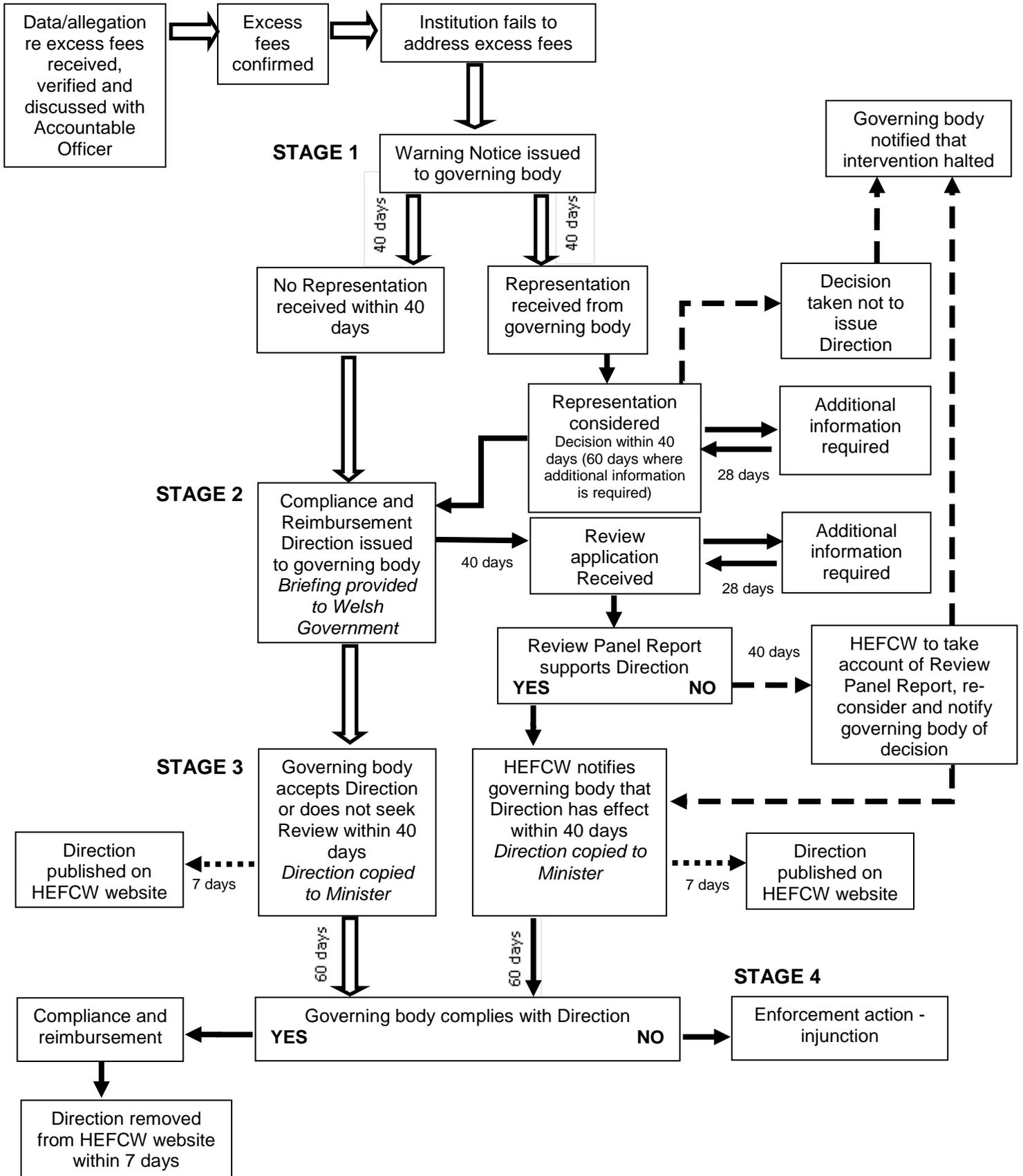
34. Unless otherwise agreed by HEFCW, excess fees are to be repaid, or recovery arrangements put in place via the SLC, within 60 days of the Compliance and Reimbursement Direction being given (see paragraph 25).
35. The governing body will be expected to notify HEFCW in writing once compliance and reimbursement actions have been completed. Following completion of the compliance and reimbursement actions by the institution, HEFCW will seek to consider the information from the governing body regarding compliance within 14 days. If requested by the institution's governing body, HEFCW will give written notice to the governing body stating whether they are satisfied that it has complied with the Direction (or with a particular requirement of the Direction). Once satisfied, HEFCW will remove the Compliance and Reimbursement Direction from its website at the earliest opportunity and at most within 7 days.

Stage 4: Enforcement

36. Where HEFCW issues a Compliance and Reimbursement Direction to the governing body of an institution, the governing body must comply with the Direction (subject to the outcome of any review of the Direction - see Stage 2 above). In the event that a governing body fails to comply satisfactorily (in HEFCW's opinion) with the Direction within the above timescale, the Direction will be enforceable by injunction in accordance with section 45 of The 2015 Act. HEFCW decisions on whether to proceed to injunction will take account of the particular circumstances of the case. Decisions on enforcement will be taken in line with the general principles of intervention outlined on page 4 of this document.

Flow Chart: Compliance and Reimbursement Intervention Process

Intervention may be halted at any point if the institution complies.



Intervention in Relation to Inadequate Quality

Basis for intervention

37. This section relates to HEFCW intervention in respect of inadequate quality of higher education provision through Directions and other measures. Sections 19 and 20 of The 2015 Act outline those interventions that apply where HEFCW is satisfied that, in accordance with Section 18 of The 2015 Act:
- a. The quality of education provided by or on behalf of a regulated institution is inadequate or likely to become inadequate; or
 - b. The quality of a particular course of education so provided is inadequate or likely to become inadequate.

Note

Assessment of quality - Section 17 of The 2015 Act states that HEFCW must make arrangements for the assessment of the quality of education provided in Wales:

- a. by each regulated institution; and
- b. on behalf of each regulated institution (whether by another regulated institution or by an external provider).

This encompasses all the education provided by, or on behalf of, a regulated institution (including part-time provision), irrespective of whether that formally constitutes a course that results in a qualification, including modules and bite-size provision.

For quality assessment purposes, education provided outside of Wales is to be treated as provided in Wales if it is part of a course that is provided principally in Wales. Information on HEFCW arrangements for the assessment of the quality of education is provided at www.hefcw.ac.uk.

The quality of education or of a course of education, under the terms of section 18 of The 2015 Act, is deemed to be inadequate if it is not adequate to meet the reasonable needs of those receiving the education or undertaking the course. For the purposes of interventions by HEFCW, details of what is meant by inadequate quality under current quality assessment arrangements are provided at www.hefcw.ac.uk.

A regulated institution is an institution to which an approved fee plan relates. **An external provider** is not a regulated institution, but is responsible for providing all or part of a course on behalf of a regulated institution. A course is not to be treated as provided on behalf of a regulated institution if provided under arrangements that were made before 1 September 2015.

Continued

It should be noted that, in addition to intervention in relation to inadequate quality (as outlined in this Statement of Intervention), Regulation 7 of The Higher Education (Fee and Access Plans) (Wales) Regulations 2015 provides that the quality of education provided by, or on behalf of, the institution must be taken into account by HEFCW when considering approval or rejection of a Fee and Access Plan.

38. As the relevant provisions of The 2015 Act came into effect on 1 September 2015, courses provided by external providers cannot be treated as being provided on behalf of a regulated institution if provided under partnership arrangements made before that date. In order to ensure that courses provided by external providers can be regulated effectively, HEFCW will consult on, and issue, guidance regarding all regulated providers updating their partnership agreements with external providers.
39. HEFCW will be responsible for monitoring and assessing potential issues in relation to inadequate quality or quality that is likely to become inadequate, including through: the quality assessment review process¹⁰; the statutory inspection of certain courses by Estyn (e.g. initial teacher training); liaison with professional, statutory and regulatory bodies; strategic engagement with institutions¹¹; and institutional assurance work including the monitoring of allegations against institutions^{12,13}. It should be noted that HEFCW will only initiate intervention based on objective evidence of inadequate quality or quality that is likely to become inadequate.
40. Where an allegation in relation to inadequate quality has been raised with the OIA or CMA prior to being relayed to HEFCW, HEFCW may await the outcome of the OIA or CMA processes, prior to initiating formal intervention, in order to avoid unnecessary duplication of action. However, HEFCW will liaise closely with the OIA or CMA in such circumstances and may choose to initiate formal intervention prior to the completion of these bodies' processes if this is considered to be necessary to address serious non-compliance issues.
41. In respect of the quality assessment being undertaken on behalf of HEFCW, Section 24 of The 2015 Act enables HEFCW to issue or approve guidance regarding:
 - The criteria to be applied by the person undertaking quality assessment; and
 - The matters that HEFCW will take into account in determining whether the quality of a course of education is inadequate or likely to become inadequate.

¹⁰ www.hefcw.ac.uk/policy_areas/learning_and_teaching/teaching_quality_assurance.aspx

¹¹ www.hefcw.ac.uk/working_with_he_providers/strategic_engagement/strategic_engagement.aspx

¹² www.hefcw.ac.uk/working_with_he_providers/institutional_assurance/institutional_assurance.aspx

¹³ www.qaa.ac.uk/concerns

Before issuing such guidance, HEFCW will consult the governing bodies of all regulated institutions, as well as any other institutions in Wales that provide higher education and that are charities, which HEFCW considers to be appropriate.

42. More generally in respect of quality, Section 23 of The 2015 Act enables HEFCW to also issue or approve guidance regarding any matter they think relevant to improving or maintaining the quality of education provided by or on behalf of regulated institutions (e.g. QAA guidance). This includes good practice for maintaining or improving the quality of education, as well as practical examples relevant to educational delivery. Before issuing or approving such guidance, HEFCW will consult the governing bodies of all regulated institutions, as well as any other institutions in Wales that provide higher education and that are charities, which HEFCW considers to be appropriate. The governing bodies of regulated institutions are required to take this advice into account.
43. As outlined at Section 21(1) of The 2015 Act, the governing bodies of all regulated institutions have a duty to cooperate with HEFCW, or an agency working on behalf of HEFCW, for quality assessment purposes. Similarly, as outlined at Section 21(2) of The 2015 Act, the governing bodies of all external providers (i.e. franchise providers) also have a duty to cooperate with HEFCW, or an agency working on behalf of HEFCW, for quality assessment purposes (provided that they are covered under a partnership agreement made after 1 September 2015). For both types of provider, this cooperation includes the provision of such information, assistance and access to facilities as is reasonably required for quality assessment purposes. HEFCW will write to the Head of the institution to request any such information, assistance or access, with a reasonable timescale to be agreed with the institution.
44. Where HEFCW considers that an institution's governing body has not complied with its duty to cooperate at Sections 21(1) and 21(2) of The 2015 Act, Section 21(3) of The 2015 Act provides for HEFCW to direct the governing body to take (or not to take) specified steps in order to secure the information, assistance or access that is required for quality assessment purposes. In addition, under Section 22 of The 2015 Act, HEFCW (or a person authorised in writing by HEFCW) has powers in relation to entry and inspection that may be used to obtain the documentation needed for quality assessment purposes. It should be noted that this power would only be used as a last resort and after giving reasonable notice in writing to the governing body of the regulated institution or external provider.
45. Where HEFCW is satisfied that the quality of education or a course provided by, or on behalf of, a regulated institution is inadequate or likely to become inadequate, Section 19 of The 2015 Act states that HEFCW may take action to rectify the situation by issuing a Direction in Respect of Inadequate Quality. This directs the governing body of the institution to take steps (or not to take steps) to improve the quality of the education or

course, or to prevent the quality of the education or course from becoming inadequate. In addition, Section 20 of The 2015 Act states that HEFCW may take action to rectify the situation via Other Measures in Respect of Inadequate Quality. These Other Measures may be used to provide the governing body of the institution with advice or assistance in order to improve the quality of the education or course, or to prevent the quality of the education or course from becoming inadequate. This advice will be clearly marked as statutory advice provided under The 2015 Act, with the governing body required to take this advice into account.

46. The stages of these intervention processes that are provided for under Sections 42 to 44 of The 2015 Act are outlined below, together with the associated checks and balances. However, as set out in the section on Purpose and Principles above, HEFCW will initially engage with institutions through a partnership approach in order to address issues in respect of inadequate quality.

Prior to Intervention

47. Following receipt of an assessment of inadequate quality, or quality that is likely to become inadequate, from the agency undertaking quality assessments on behalf of HEFCW (the QAA or any successor quality assessment body), HEFCW will contact the Head of the regulated institution to discuss the actions that are to be taken to address the identified quality issues (all correspondence at this informal stage will be copied to the Clerk to the governing body and Chair of the governing body). Regulated institutions will generally have a period of up to 12 months to implement an action plan to the satisfaction of HEFCW and/or its agents. Information on the current Wales quality review process and arrangements for implementation and follow up of action plans in respect of inadequate quality are outlined on the HEFCW website www.hefcw.ac.uk. These arrangements are separate to the statutory intervention processes outlined in this Transitional Statement of Intervention and may be revised independently of the Statement in order to reflect any changes in quality assessment arrangements.
48. Where HEFCW, or its agents, are satisfied that, after a reasonable period, a regulated institution has failed to address identified quality issues through the arrangements for implementation and follow up of action plans in respect of inadequate quality, it may issue a Direction in Respect of Inadequate Quality to direct the governing body of that institution to address the issues. HEFCW may also undertake Other Measures in Respect of Inadequate Quality. These intervention processes are outlined below, together with the associated checks and balances. HEFCW will be mindful of the circumstances of the case when considering formal intervention, including the likelihood of the regulated institution addressing the quality issues voluntarily if given further time; the severity of the issues; and any other relevant factors. Whilst HEFCW will normally work in partnership with regulated institutions in the first instance, where serious quality issues are identified HEFCW may decide that it is necessary to

initiate formal intervention at an early stage. Such serious quality issues may require immediate intervention in order to protect the interests of students and/or the reputation of the wider Higher Education sector.

The Intervention Process: Other Measures in Respect of Inadequate Quality

49. Separate to the issuing of a Direction in Respect of Inadequate Quality, or in support of such a Direction, where HEFCW (or its agents) are satisfied that a regulated institution has failed to address identified quality issues (either in respect of inadequate quality or quality that is likely to become inadequate) within a reasonable period (see paragraph 47), Section 20 of The 2015 Act states that HEFCW may intervene through Other Measures in Respect of Inadequate Quality. These Other Measures may take place prior to or in parallel with the issuing of a Direction in Respect of Inadequate Quality and are outlined below.

Advice or Assistance

50. HEFCW will generally seek to consult with the governing body of a regulated institution prior to giving advice or assistance. HEFCW may give advice or assistance to the governing body with a view to:
- a. Improving the quality of the education or course, or
 - b. Preventing the quality of the education or course from becoming inadequate.

Such advice or assistance might include, amongst other potential actions:

- Requesting institutions to develop and implement action plans to address the failures/weaknesses found in a quality assessment (with plans subject to HEFCW approval);
- Sending in a support team;
- Undertaking or arranging for additional assurance reviews to be undertaken with the aim of identifying whether there are any systemic weaknesses which need to be addressed; and
- Attending and addressing meetings of the governing body or management board about any matter arising from a quality assessment.

HEFCW will write to the governing body of the regulated institution to initiate the provision of this advice or assistance. Section 20(3) of The 2015 Act requires that the governing body take into account any advice provided by HEFCW in seeking to address the identified quality issues.

Review of Other Matters Relevant to Quality

51. HEFCW may carry out, or arrange for another person to carry out, a review of any matters that they think are relevant to the quality of education provided by or on behalf of the regulated institution. As outlined at Sections

21(1) and 21(2) of The 2015 Act, the governing body of the regulated institution or external provider must cooperate with the person or agency undertaking such a review, providing information, assistance and access to their facilities as reasonably required for the purpose of undertaking the review. HEFCW would write to the governing body to request any such information, assistance or access, with a reasonable timescale to be agreed with the regulated institution.

52. Where HEFCW is satisfied that a regulated institution's or external provider's governing body has not complied with its duty to cooperate at Sections 21(1) and 21(2) of The 2015 Act, Section 21(3) of The 2015 Act provides for HEFCW to direct the governing body to take (or not to take) specified steps in order to secure the information, assistance or access that is required for review purposes. In addition, under Section 22 of The 2015 Act, HEFCW (or a person authorised in writing by HEFCW) has powers in relation to entry and inspection that may be used to obtain the documentation needed for quality review purposes. It should be noted that this power would only be used as a last resort and after giving reasonable notice in writing to the governing body of the regulated institution or, in relation to an external provider, the external provider and the regulated institution on whose behalf its courses are delivered.

The Intervention Process: Directions in Respect of Inadequate Quality

53. When intervening, for the purpose of clarity, all communication from HEFCW in respect of intervention will clearly state the stage and any sub-element of the intervention process to which it relates.

Stage 1: Warning Notice

54. Where a regulated institution has failed to satisfactorily address the identified quality issues after a reasonable period (to be determined on a case-by-case basis), as assessed in accordance with The 2015 Act and in line with the arrangements for implementation and follow up of action plans in respect of inadequate quality, HEFCW will initiate the intervention process in respect of inadequate quality. Before HEFCW proceeds to issue a Direction in Respect of Inadequate Quality to a regulated institution HEFCW will provide the governing body of that regulated institution with a warning notice (sent via the Chair of the governing body and Clerk to the governing body and copied to the Accountable Officer). The warning notice will:
- a. Set out the proposed Direction in Respect of Inadequate Quality;
 - b. State HEFCW's reasons for proposing to give it;
 - c. Inform the governing body that it may make representations about the proposed Direction;
 - d. Specify the period from the date of issue within which, and the way in which, representations may be made.

Checks and balances

55. From issue of the warning notice, governing bodies will have up to 40 days to make representations in writing to HEFCW, with all representations to be sent to the HEFCW Chief Executive. Where representations are not received, no Direction in Respect of Inadequate Quality will be issued until after the completion of this 40 day period.
56. Where representations are received, HEFCW will undertake to review these and decide on whether to issue a Direction within 40 days of receipt of the representations, except where the submission of additional information is required in order for HEFCW to be able to adequately consider representations. In such instances, the additional information will be requested within 28 days of receipt of the representations and should be submitted by the institution within 28 days of the HEFCW request, in order for a decision to be made within 60 days of receipt of the original representations. Where representations are received, no Direction in Respect of Inadequate Quality will be issued until after the completion of this process.
57. Decisions regarding the issuing of a Direction in Respect of Inadequate Quality will be made by the HEFCW Chief Executive. Where a decision is taken to not issue a Direction in Respect of Inadequate Quality, HEFCW will send a notice to the governing body within 14 days to inform them of the decision and the reasons for this.

Stage 2: The Direction in Respect of Inadequate Quality

58. Regulation 4 under the Fee and Access Plans (Notices and Directions) (Wales) Regulations 2015¹⁴ states that a notice or Direction specified in Section 41(1) of the 2015 Act is to be treated as having been given on the day that the first of the following events occurs:
 - The governing body notifies HEFCW in writing that it accepts the Direction;
 - The time limit to apply for a Review of the Direction under Section 44 of The 2015 Act has expired and the governing body has not applied for a review;
 - A review of the Direction under section 44 of The 2015 Act has concluded and HEFCW has notified the governing body in writing that the Direction stands.
59. When issuing a Direction in Respect of Inadequate Quality to the governing body of a regulated institution (sent via the Chair of the governing body and Clerk to the governing body and copied to the Accountable Officer), Section 43 of The 2015 Act requires that HEFCW provide a statement to the governing body of that regulated institution. The statement will:

¹⁴ www.legislation.gov.uk

- a. Set out HEFCW's reasons for issuing the Direction;
 - b. Inform the governing body that it may apply for a review of the Direction; and
 - c. Include any other prescribed information set out under the Fee and Access Plans (Notices and Directions) (Wales) Regulations 2015 at Regulation 6, i.e. the date of issue of the notice or direction; when the notice or direction is to be treated as having been given; the grounds in Regulation 7 on which an application for a review may be made; the procedure in Regulation 8 that a governing body must follow in order to apply for a review; and the name and address of the Review Panel to whom an application for a review must be made.
60. The Direction in Respect of Inadequate Quality that is issued will specify:
- a. The steps to be taken (or not to be taken) to improve the quality of the education or course; or
 - b. The steps to be taken (or not to be taken) to prevent the quality of the education or course from becoming inadequate.

The Direction in Respect of Inadequate Quality may be varied or revoked by a later Direction.

Checks and balances

61. If HEFCW issues an institution with a Direction in Respect of Inadequate Quality, section 44 of The 2015 Act provides the ability for the governing body of that institution to apply for a review of the Direction. An application for a review may be made on one or more of the following grounds:
- a. The governing body presents a material factor for consideration to which, for good reason, it had not previously drawn HEFCW's attention;
 - b. The governing body considers that HEFCW has disregarded a material factor it should have considered;
 - c. The governing body considers that the Direction is disproportionate in view of all the relevant facts which were considered by HEFCW.

Regulation 8 states that applications for review must be made within 40 days of issue of the Direction in Respect of Inadequate Quality, with applications made in writing as outlined in the Direction. The application for review must specify the grounds for review and include: a copy of the direction to be reviewed; a copy of the statement issued in accordance with Section 43 of The 2015 Act; and information in support of the application. It should be noted that, under Regulation 7(2), an application for a review of the Direction in Respect of Inadequate Quality cannot be made where a governing body has notified HEFCW in writing that it accepts the Direction.

62. The review is to be carried out by a person, or Panel of persons, appointed by the Welsh Ministers. Upon receiving an application for a review, the Panel will provide the governing body and HEFCW with an anticipated

timetable for completing the review. The review Panel will give HEFCW details of the Direction in Respect of Inadequate Quality to be reviewed, details of the grounds on which the review application has been made and a copy of the information supplied by the governing body in support of the application for review. The review Panel may make a written request for further information from either HEFCW or the governing body for the purposes of the review. Any request for further information made by the Panel will be sent to HEFCW and the governing body at the same time. HEFCW or the governing body will be required to provide any information requested by the Panel within 28 days of the issue of the request if it is to be considered. Under Regulation 9(8), the Panel will consider whether it is appropriate to allow representations from either HEFCW or the governing body in respect of any further information submitted to it in response to its request for such information; and if it considers it appropriate to allow representations, it will notify HEFCW and the governing body accordingly. The review Panel will ensure that both HEFCW and the governing body are in receipt of all information submitted by the other party.

63. The review Panel will take account of all the requested information submitted by HEFCW and the governing body in making its decision. The Panel will prepare a written report that is sent to both HEFCW and the governing body at the same time. HEFCW will take account of the review Panel's report and reconsider its decision to issue the Direction. HEFCW will then notify the governing body in writing within 40 days as to whether the Direction stands or not, and provide reason for that decision. If HEFCW's decision is that the Direction should stand, that decision will be binding on the governing body of the regulated institution.

Stage 3: Addressing inadequate quality

64. The governing body of the institution will be expected to discuss the Direction in Respect of Inadequate Quality at the earliest possible opportunity. It will then be expected to start to address the identified quality issues within 60 days of the Direction having been given (see paragraph 58) and to engage with HEFCW or its agents until they are satisfied that the issues outlined in the Direction in Respect of Inadequate Quality have been adequately addressed.
65. Following completion of the actions to address the identified quality issues by the institution, HEFCW will seek to consider any information from the governing body regarding compliance within 14 days. If requested by the regulated institution's governing body, HEFCW will give written notice to the governing body stating whether they are satisfied that it has complied with the Direction (or with a particular requirement of the Direction).

Stage 4: Enforcement

66. Where HEFCW issues a Direction in Respect of Inadequate Quality to the governing body of an institution, the governing body must comply with the Direction (subject to the outcome of any review of the Direction - see Stage

2 above). In the event that a governing body fails to comply satisfactorily (in HEFCW's opinion) with the Direction within the above timescale, the Direction will be enforceable by injunction in accordance with section 45 of The 2015 Act. HEFCW decisions on whether to proceed to injunction will take account of the particular circumstances of the case. Decisions on enforcement will be taken in line with the general principles of intervention outlined on page 5 of this document.

Flow Chart: The Intervention Process in Respect of Inadequate Quality

