

Cylchlythyr | Circular

Consultation on Full Statement of Intervention

Date: 07 July 2016
Reference: W16/23HE
To: Clerks to the governing bodies of regulated institutions in Wales for the attention of the governing bodies
Heads of regulated institutions in Wales
Other interested parties
Response by: Thursday 18 August 2016
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This consultation circular is addressed to the governing bodies and heads of regulated institutions and other interested parties. It seeks views on the Statement of Intervention outlining HEFCW's full powers of intervention under the Higher Education (Wales) Act 2015, which will supersede the Transitional Statement of Intervention with effect from date of final publication.

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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Purpose of this consultation

1. This consultation circular is addressed to the governing bodies and heads of regulated institutions¹ and other interested parties. It seeks views on the Statement of Intervention which outlines HEFCW's full intervention powers in respect of providers regulated under the Higher Education (Wales) Act 2015. This 'full Statement of Intervention' is to supersede the Transitional Statement of Intervention² with effect from date of publication.
2. The full Statement of Intervention under consultation is attached as **Annex A**.

Background

3. Section 52 of The Higher Education (Wales) Act 2015 ('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. HEFCW's powers to consult under The 2015 Act came into force on 1 September 2015, with this consultation document representing the formal consultation process in respect of the full Statement of Intervention.
4. HEFCW's functions, duties and powers under The 2015 Act come into force at different times, with several intervention powers already in force under the transitional arrangements which operated from 1 September 2015. The intervention power in relation to Withdrawal of Approval of an Existing Fee and Access Plan under Section 38 of The 2015 Act will come into force on 1 August 2016. It is anticipated that the remaining provisions in respect of intervention powers, including those in relation to Directions in Respect of a 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 under Section 39 of The 2015 Act will come into force on 1 September 2017.
5. HEFCW has prepared this 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 its full range of intervention powers.

Proposed effective date

6. We are proposing to introduce this full Statement of Intervention with an anticipated effective date in early September 2016.

¹ Regulated institutions are institutions in Wales which have an approved fee and access plan in force that will be subject to the requirements of the Higher Education (Wales) Act 2015. These institutions are universities in Wales and some directly funded further education institutions.

² www.hefcw.ac.uk/documents/publications/circulars/circulars_2016/W16%2005HE%20Annex%20B%20Transitional%20Statement%20of%20Intervention.pdf

Responding to the consultation

7. Please respond electronically. Responses should be emailed to assurance@hefcw.ac.uk. The consultation closes on **18 August 2016 at 17:00**.

Our duties under the Freedom of Information Act 2000

8. All responses may be disclosed on request, under the terms of the Freedom of Information Act. The Freedom of Information Act gives a public right of access to any information held by a public authority, in this case HEFCW. This includes information provided in response to a consultation. We have a responsibility to decide whether any responses, including information about your identity, should be made public or treated as confidential. We can refuse to disclose information only in exceptional circumstances. This means that responses to this consultation are unlikely to be treated as confidential except in very particular circumstances. Further information about The Freedom of Information Act is available at www.ico.org.uk.
9. However, if you would like us to treat your personal details as confidential for those areas in which we have discretion (such as reporting) please indicate this within your response.

Our approach to analysing responses

10. We will commit to read, record, and analyse the views of every response to this consultation in a consistent manner. For reasons of practicality, usually a fair and balanced summary of responses rather than the individual responses themselves will inform any decision made. In most cases the merit of the arguments made is likely to be given more weight than the number of times the same point is made. Responses from organisations or representative bodies which have high relevance or interest in the area under consultation, or are likely to be impacted upon most by the proposals, are likely to carry more weight than those with little or none.

We will publish a summary of consultation responses

11. We will publish an analysis of the consultation responses and an explanation of how the responses were considered in our subsequent decision. Where we have not been able to respond to a significant and material issue raised, we will usually explain the reasons for this.

Finalising the full Statement of Intervention

12. The HEFCW Council will consider a summary of the responses to this consultation, and, subject to any changes they believe to be necessary following consultation, it is intended that they will approve the Statement of Intervention in early September 2016.

Further information / responses to

13. For further information, contact Ewen Brierley (tel 029 2068 2291; email ewen.brierley@hefcw.ac.uk).

Consultation

14. The full Statement of Intervention (the full Statement) sets out HEFCW's full range of intervention powers and processes, which are drawn directly from the provisions set out in The 2015 Act and related regulations, including the Higher Education (Fee and Access Plans) (Notices and Directions) (Wales) Regulations 2015. They are also informed by relevant Welsh Government guidance in respect of the implementation of The 2015 Act. As the powers and processes are drawn directly from The 2015 Act, regulations and guidance there is relatively limited scope for amendment. Additionally, as the full Statement follows the format already established for the published Transitional Statement of Intervention (consulted on in October 2015), we have not sought views on general layout and format in this consultation. The consultation has therefore focused on the additional powers outlined in the full Statement and, in particular, the explanations of when and how these will be utilised.

Securing Information, Assistance or Access

15. The full Statement provides explanatory text on pages 15, 27, 41-42 and 53-54 on how HEFCW will exercise its powers to secure the information, assistance or access that is needed to carry out its monitoring functions under The 2015 Act.

Question 1: Are there any issues in respect of the explanations of how HEFCW would secure information, assistance or access?

Refusal to approve a new Fee and Access Plan - Section 37 of The 2015 Act

16. The full Statement provides explanatory text in respect of escalation of intervention to use of the powers under Section 37 of The 2015 Act, including high-level examples of the types of circumstances under which such escalation would be considered as an alternative to injunction, as follows:
 - Escalation of Intervention in respect of Failure to Comply with General Requirements of Approved Plan on page 34-35;
 - Escalation of Intervention in respect of Inadequate Quality on pages 49; and
 - Escalation of Intervention in respect of Failure to Comply with The Code on pages 61-62.
17. The section on Refusal to Approve a New Fee and Access Plan also outlines the basis for HEFCW's use of the powers under Section 37 of The 2015 Act on pages 65-66 and the details of the intervention process itself on pages 67-72.

Question 2: Are there any issues in respect of the explanations of the types of circumstances under which HEFCW would escalate intervention to use of its powers under Section 37 of The 2015 Act?

Question 3: Is the explanation of the basis for HEFCW's use of the powers under Section 37 of The 2015 Act on pages 65-66 sufficiently clear?

Question 4: Is the explanation of the intervention process in respect of the powers under Section 37 of The 2015 Act on pages 67-72 sufficiently clear?

Withdrawal of approval of a Fee and Access Plan - Section 38 of The 2015 Act

18. The section on Withdrawal of Approval of a Fee and Access Plan outlines the basis for HEFCW's use of the powers under Section 38 of The 2015 Act on page 73 and the details of the intervention process itself on pages 74-78.

Question 5: Is the explanation on the basis for HEFCW's use of the powers under Section 38 of The 2015 Act on page 73 sufficiently clear?

Question 6: Is the explanation of the intervention process in respect of the powers under Section 38 of The 2015 Act on pages 74-78 sufficiently clear?

Withdrawal of approval of a Fee and Access Plan - Section 39 of The 2015 Act

19. The full Statement provides explanatory text in respect of escalation of intervention to use of the powers under Section 39 of The 2015 Act, including high-level examples of the types of circumstances under which such escalation would be considered, as follows:

- Escalation of Intervention in respect of Limits on Student Fees on pages 23-24;
- Escalation of Intervention in respect of Failure to Comply with General Requirements of Approved Plan on pages 35-36;
- Escalation of Intervention in respect of Inadequate Quality on pages 49-50; and
- Escalation of Intervention in respect of Failure to Comply with The Code on page 62-63.

The section on Withdrawal of Approval of a Fee and Access Plan also outlines the basis for HEFCW's use of the powers under Section 39 of The 2015 Act on pages 79-81 and the details of the intervention process itself on pages 82-86.

Question 7: Are there any issues in respect of the explanations of the types of circumstances under which HEFCW would escalate intervention to use of its powers under Section 39 of The 2015 Act?

Question 8: Is the explanation on the basis for use of the powers under Section 39 of The 2015 Act on pages 79-81 sufficiently clear?

Question 9: Is the explanation of the intervention process in respect of the powers under Section 39 of The 2015 Act on pages 82-86 sufficiently clear?

20. Whilst the full Statement is based on text drawn from The 2015 Act, and the associated regulations and guidance, there may be issues of content that have not been identified in the drafting of the document. This consultation provides the opportunity to raise such issues.

Question 10: Are there any other substantive issues in relation to the content of the full Statement of Intervention which you would like to highlight?

21. The draft full Statement of Intervention is attached to this consultation at **Annex A**.