

## **Guidance issued to HEFCW by the Welsh Ministers under section 49 of the Higher Education (Wales) Act 2015**

### **Introduction**

1. The Higher Education (Wales) Act 2015 (“the 2015 Act”) establishes a revised regulatory framework for higher education in Wales. The new arrangements will not rely on HEFCW providing financial support to institutions under Part 2 of the Further and Higher Education Act 1992 or Part 3 of the Education Act 2005. This guidance is issued under section 49 of the 2015 Act. That section requires HEFCW to take any such guidance into account in the exercise of its functions by virtue of the 2015 Act.
  
2. In many respects, the regulatory system established by the 2015 Act provides for continuity with the regulatory regime established under the Further and Higher Education Act 1992, the Higher Education Act 2004 and the Education Act 2005. Regulated institutions (those with fee and access plans approved by HEFCW) will be able to set their own fees, up to a maximum amount specified in regulations and HEFCW will be required to monitor compliance with those fees. The 2015 Act also requires HEFCW to assess the quality of education provided in Wales by and on behalf of regulated institutions<sup>1</sup>. The 2015 Act additionally provides for a financial management code to apply to those institutions.
  
3. It is anticipated that HEFCW will be able to build on existing and well established operational practices in respect of fee limit and fee plan monitoring, quality assessment and financial assurance within the context of the new statutory framework. However, some changes to HEFCW’s existing procedures, processes and guidance will be necessary as the 2015 Act is brought into force. The purpose of this guidance is to assist HEFCW to prepare for the implementation of the new regulatory system with particular reference to the transitional period.

### **Transitional Period Arrangements**

4. The 2015 Act makes provision for a transitional period which starts on the coming into force of paragraph 29 of the Schedule to the 2015 Act (1 August 2015) and ends on 31 August 2017. This period has been designed to allow a smooth transition from the arrangements in place under the 1992, 2004 and

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<sup>1</sup> For these purposes, education “provided in Wales” includes education provided outside Wales if it is provided as part of a course that is provided principally in Wales (section 17(2) of the 2015 Act). It is proposed that the Secretary of State for Wales will make an order under section 150 of the Government of Wales Act 2006 which will have the effect of extending HEFCW’s remit under section 17 of the 2015 Act.

2005 Acts to the new regulatory system with the aim of minimising disruption for HEFCW and for institutions. Under the transitional arrangements, institutions with fee plans approved under the Higher Education Act 2004 will be treated, for limited purposes, as regulated institutions under the 2015 Act during the transitional period.

5. From 1 August 2015 institutions which have a fee plan approved by HEFCW under section 34(2) of the Higher Education Act 2004 will become regulated institutions for certain components of the new regulatory system which include:
  - compliance with fee limits as set out in their fee plans;
  - cooperation with HEFCW in respect of their monitoring of fee limit compliance; and
  - compliance and cooperation with HEFCW in relation to quality assessments and / or persons appointed by HEFCW to undertake quality assessments.

In addition, such institutions will be regarded as regulated institutions for the purposes of any consultation that HEFCW is required to undertake under the Act. HEFCW must consult these institutions before issuing or approving guidance under sections 23 or 24 (guidance relating to quality of education) during the transitional period. HEFCW must also consult these institutions in preparing a draft of the financial management code (section 28(2)) during the transitional period and before publishing a statement in respect of intervention functions (section 52(3)). The other relevant consultation requirement for this purpose is set out in section 12(2) (supplementary provision about compliance and reimbursement directions).

6. Some of HEFCW's functions will be brought into force from 25 May 2015, including HEFCW's function of preparing a draft financial management code; the preparation of a statement in respect of intervention functions and HEFCW's function of providing information and advice to prospective fee and access plan applicants. Certain other functions will be brought into force as of 1 September 2015. These functions are mainly concerned with the monitoring and enforcement of fee limits and the assessment of quality of education together with associated powers of intervention in respect of inadequate quality.
7. To ensure that tuition fee limits are regulated and that the quality of education at regulated institutions continues to be assessed during the transitional period, HEFCW will be able to enforce fee limits and to assess or make arrangements for the assessment of the quality of education provided by or on behalf of regulated institutions.
8. HEFCW's functions of consulting on and publishing a draft code relating to the organisation and management of the financial affairs of regulated institutions

and consulting on and publishing a statement of intervention functions will be brought into force on 1 September 2015. In relation to the publication of the statement during the transitional period, HEFCW's duty will only extend to publishing a statement in connection with HEFCW's functions under sections 11, 19 and 20(1) and (2) of the 2015 Act. The commencement of these functions in 2015 will allow HEFCW to make the necessary preparations for full implementation of the new regulatory system from the 2017/18 academic year.

9. Furthermore, HEFCW's functions of identifying good practice (section 54(1)(a)) and providing advice and information to regulated institutions in respect of the promotion of equality of opportunity and the promotion of higher education (section 54(1)(b)) will be brought into force during the transitional period. As indicated above, HEFCW's function of providing information to prospective fee and access plan applicants (section 54(3) and (4)) will have already been brought into force. It is envisaged that, together, these functions will allow HEFCW to ensure that information and advice is provided to institutions in a timely manner in order to allow them to make decisions about entry to the new regulatory system.
10. Finally, certain elements of HEFCW's duty to provide special reports to the Welsh Ministers under section 51 of the 2015 Act will also be brought into force on 1 September 2015. During the transitional period, the Welsh Ministers will be able to direct HEFCW to provide them with reports on institutions' compliance with fee limits (either generally or by a particular institution) and/or the quality of education provided by or on behalf of regulated institutions (again, either generally or in relation to a particular regulated institution). Guidance on each of the above functions is set out below.

## **Fee limits**

11. Transitional arrangements will apply to fee plans approved by HEFCW under the Higher Education Act 2004 which set fee limits for academic years beginning during the transitional period i.e. the period up to 31 August 2017. During the transitional period, the fee limits provided for by a plan will be treated as the applicable fee limit for the purposes of HEFCW's functions under sections 11, 15(1)(a) and 16 of the 2015 Act.
12. As with the regulatory system established under the Higher Education Act 2004, fee limits will apply in relation to 'qualifying persons' undertaking 'qualifying courses'. A qualifying course is a course that is wholly or principally provided in Wales<sup>2</sup> and which is to be described in regulations made by the

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<sup>2</sup> It is proposed that the Secretary of State for Wales will make an order under section 150 of the Government of Wales Act 2006 which will result in courses that are wholly or principally provided in England by an institution in Wales are to be treated as being courses wholly or principally provided in Wales. The aim of the Order will

Welsh Ministers under section 5(2) of the 2015 Act. In general, and as with the system established under the Higher Education Act 2004, such courses will be undergraduate level, PGCE, HND and HNC courses studied by full-time students undertaking their first degree or equivalent qualifications and are those courses of higher education that are currently designated for the purposes of student support by regulations made under section 22 of the Teaching and Higher Education Act 1998. It is proposed that the categories of 'qualifying person' established under the Higher Education Act 2004 will continue for the purposes of the 2015 Act.

13. During the transitional period a fee plan that has been approved by HEFCW under the Higher Education Act 2004 will be treated as a plan approved under section 7 of the 2015 Act for the purposes of compliance with tuition fee limits. This arrangement ensures that fee limits will be regulated during the transitional period.
14. Although the majority of fee plans approved by HEFCW under the Higher Education Act 2004 are likely to specify fee limits in respect of qualifying courses, it may be the case that certain plans provide for a determination of a fee limit by way of reference to the maximum fee amount as specified in regulations, or alternatively by specifying that an inflationary increase is to apply to course fees from one academic year to the next. It is proposed that the Welsh Ministers will make regulations in relation to fee limits. The Welsh Government's policy intention is for the maximum fee amount under the 2015 Act to reflect the higher fee amount as provided for under the Higher Education Act 2004. In all cases HEFCW will need to be satisfied that institutions comply with the regulated fee limits applicable to their approved plans.
15. The following provisions, which concern the regulation of fee limits, will come into force on 1 September 2015:

a requirement for governing bodies of regulated institutions to ensure that regulated courses fees do not exceed the applicable fee limit (**Section 10(1)**);

HEFCW's power to issue compliance and reimbursement directions in respect of excess fees (**Section 11**);

HEFCW's power to issue guidance concerning compliance and reimbursement directions and the related duty on those regulated institutions which receive a compliance and reimbursement direction to take that guidance into account (**Section 12**);

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be to maintain the current Wales / England cross border arrangements for higher education regulation which have existed between HEFCW and HEFCE to date.

provision for a contract between an institution and a student which requires the payment of excess fees (namely fees in excess of the applicable fee limit) to be treated as requiring the payment of fees which are equivalent to the applicable fee limit (**Section 14**);

HEFCW's duty to monitor institutions' compliance with fee limits (**Section 15(1)(a)**); and

a requirement for the governing bodies of regulated institutions to co-operate with HEFCW's monitoring (**Section 16**).

### **Excess fees**

16. It is essential that students studying at regulated Welsh institutions are charged the correct fees for their courses. HEFCW will therefore wish to be assured that regulated course fees do not exceed the applicable fee limit and will need to ensure that the arrangements to monitor institutions' compliance with fee limits are robust.

17. In the unlikely event of excess fees being charged, action will be necessary to rectify the situation in order to protect the interests of students and their sponsors. If HEFCW is satisfied that an institution has failed to comply with the fee limits set out in its approved fee plan then HEFCW is enabled under section 11 of the 2015 Act to issue the institution with a compliance and reimbursement direction which requires the institution to do either or both of the following:

to take such action as is necessary to comply with the appropriate fee limit  
e.g. reduce the fee to the limit specified in the fee plan; and/or

to reimburse excess fees which have been paid to it.

18. It is, however, expected that HEFCW's first course of action will be to notify the institution that a breach of the applicable fee limits has been identified and to seek to resolve the situation through voluntary action by the institution to an agreed timescale. HEFCW should be mindful of the interests of students and their sponsors in agreeing timescales for voluntary action.

### **Compliance and reimbursement directions**

19. In the event of an institution failing voluntarily to rectify a failure to comply with applicable fee limits then HEFCW may wish to consider issuing a compliance and reimbursement direction to the governing body of the institution. The course of action will, however, be a matter for HEFCW to determine having taken account of the circumstances of the case. HEFCW should be mindful of the number of students affected and the extent to which fees have been overcharged.

20. From 1 September 2015, HEFCW will be able to issue guidance under section 12 of the 2015 Act about the steps to be taken by an institution for the purpose of complying with a compliance and reimbursement direction. Whilst the preparation of the guidance is a matter for HEFCW (and is subject to consultation) it is anticipated that if HEFCW issues a compliance and reimbursement direction then in order to comply with the direction an institution will, depending on the timing and content of the direction, need to:

(a) reduce its fees in accordance with the applicable fee limit relevant to their circumstances; and/or

(b) make arrangements for the refund of excess (overcharged) fees, namely those fees which exceed the applicable fee limit.

It is envisaged that action (a) would be sufficient if HEFCW issues a direction prior to students commencing their courses. However, if HEFCW does not issue a direction until after students have commenced their courses, and fees have been charged, then, subject to the terms of the direction, it is likely that the institution would need to make arrangements to refund excess fees. 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. These issues are also likely to be relevant to a situation where an institution has agreed voluntarily to comply with fee limits and to reimburse any excess fees.

21. It is envisaged that in the case of self-financing students an institution would need to refund the excess fees to the students directly or make an arrangement whereby future fees are reduced in order to take account of the overpayment. HEFCW may wish to consider if an institution should provide evidence of such reimbursement having been made as it is likely that only the institution in question will be able to identify the fee status of individual students.

22. In the case of students in receipt of statutory student support, it is envisaged that an overpayment of support could be dealt with by way of recovery of that support under the provisions of each UK administration's statutory student support regulations. This is considered to be a more appropriate means of recovery of overpaid fees for students in receipt of statutory student support as the students' fee costs will have been covered by grants and/or loans provided by their home administration. In these circumstances, it is likely that an institution would need to notify the Student Loans Company (SLC) of the required reduction in fees, thereby allowing the automatic recovery of overpaid fee support by the SLC on behalf of each administration. Again HEFCW may

wish to consider if an institution should provide evidence of the reimbursement having been made.

### **Procedural requirements**

23. Where HEFCW proposes to give a compliance and reimbursement direction to an institution, or in the event that HEFCW gives such a direction to an institution, certain procedural requirements which are set out in sections 42 to 44 of the Act will apply. These procedural requirements are designed to ensure a robust and transparent approach to the issuing of certain directions (and notices) by HEFCW as well as to the process of review which is available to an institution which receives such a direction / notice. The requirements are set out below; however they do not apply to a direction given by HEFCW where that direction only revokes an earlier direction which HEFCW has issued to an institution.
24. Firstly, HEFCW is required to give a governing body of an institution a warning notice if the Council proposes to issue a compliance and reimbursement direction (section 42(1)). A warning notice must:
  - (a) set out the proposed direction;
  - (b) state HEFCW's reasons for proposing to issue the direction;
  - (c) inform the governing body that it may make representations about the proposed direction; and
  - (d) specify the period within which and the way in which representations may be made<sup>3</sup>.
25. If, after having considered any representations made by an institution as to why a direction should not be issued, HEFCW determines that it is appropriate to issue a compliance and reimbursement direction, then HEFCW must at the same time as issuing the direction, issue a statement to the governing body of the institution which:
  - (a) sets out HEFCW's reasons for issuing the direction;
  - (b) informs the governing body that it may apply for a review of the direction under section 44 of the 2015 Act; and
  - (c) includes any other information that is required to be included by regulations.
26. As regards the "other information" to be included in a statement, it is intended that when HEFCW issue a direction (or notice) which is subject to sections 42 to 44 of the 2015 Act that information must be supplied to the regulated

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<sup>3</sup> It is proposed that regulations will be made under section 42(2)(d) of the 2015 Act, in which case HEFCW must specify the period within which and the way in which representations may be made in accordance with those regulations.

institution which enables the institution to understand how and on what grounds a review may be applied for.

27. As regards compliance and reimbursement directions, it is proposed that the Welsh Ministers will also make regulations in relation to HEFCW's functions under section 11(4) of the 2015 Act, namely how and when HEFCW is to give a copy of such a direction to the Welsh Ministers and how and when HEFCW is to publish such a direction.
28. Where HEFCW has given a compliance and reimbursement direction to the governing body of an institution, the governing body may apply for a review of the direction. Such a review would be carried out by either a person or panel appointed by the Welsh Ministers.
29. The Welsh Ministers are required by section 44 of the 2015 Act to make regulations in connection with reviews. It is intended that the regulations will make provision in respect of: the grounds for seeking a review of a notice or direction; the procedure to apply for a review of a notice or direction; the review procedure and the post review procedure.
30. If an institution fails to comply with a compliance and reimbursement direction, HEFCW may, on application to the courts, seek an injunction to enforce the direction.

#### **Guidance that may be issued by HEFCW**

31. **Section 12** of the 2015 Act enables HEFCW to issue guidance about steps to be taken by institutions for the purpose of complying with a compliance and reimbursement direction. Section 12 requires a governing body which has received such a direction to take into account any guidance issued by HEFCW about this matter. Before issuing guidance concerning compliance and reimbursement directions HEFCW must consult the governing body of each regulated institution and may consult the governing bodies of other institutions that satisfy the requirements of section 2(3) of the 2015 Act (namely, other charitable institutions in Wales which provide higher education). It is envisaged that such guidance would be of assistance to institutions and that the matters set out in paragraphs 19 – 22 would be relevant considerations.

#### **Functions to be commenced after the transitional period**

32. During the transitional period HEFCW will not be able exercise its functions under section 39 of the 2015 Act to withdraw approval of a fee plan approved under the Higher Education Act 2004. HEFCW's functions under **section 13** will not come into force until September 2017 and further guidance on full implementation of the 2015 Act will be issued in due course.

33. It is proposed that HEFCW's duty to monitor and evaluate the effectiveness of approved plans under **section 15** of the 2015 Act will also be brought into force for academic year 2017/18. During the transitional period only HEFCW's duty to monitor institutions' compliance with the fee limits set out in the approved plans will be in force.

### **Monitoring compliance with fee limits**

34. HEFCW will need to consider the most efficient and effective means of monitoring compliance with fee limits. Key considerations should include minimising administrative burdens on institutions whilst providing assurance to students and their sponsors that robust monitoring arrangements are in place.
35. Institutions with an approved fee plan in force will be subject to a compliance duty under **section 16** of the 2015 Act and must ensure the provision to HEFCW of such information, assistance and access to the institution's facilities as HEFCW reasonably requires for the purpose of monitoring compliance with fee limits.
36. If HEFCW is satisfied that the governing body of a regulated institution has failed to comply with this cooperation duty, it is anticipated that HEFCW's initial course of action would be to attempt to resolve the situation through discussion with the institution's senior management. However, should such an approach fail to resolve the situation then HEFCW may direct the governing body to take (or not to take) specified steps for the purpose of securing the provision of information, assistance or access for the purpose of monitoring compliance with regulated fees.
37. A direction to enforce compliance with the duty to cooperate for the purpose of monitoring fee limits is **not** subject to the warning notice and review procedures set out in Part 6 of the 2015 Act. Should an institution fail to comply with such a direction then HEFCW will be able to apply to the courts for an injunction to enforce the terms of the direction.

### **Quality Assessment**

38. Part 3 of the 2015 Act makes provision for HEFCW's quality assessment functions. Under the new regulatory system HEFCW will be required to assess or make arrangements for the assessment of the quality of education in Wales provided by and on behalf of regulated institutions.

39. During the transitional period, education provided by institutions which are subject to a fee plan approved by HEFCW under section 34 of the Higher Education Act 2004 will fall within the scope of HEFCW's new quality assessment duty under the 2015 Act. This arrangement ensures that the quality of education will be regulated during the transitional period.

40. The following provisions will come into force on 1 September 2015:

HEFCW's quality assessment duty and associated powers of direction, advice and assistance where quality is deemed to be inadequate or likely to become inadequate (**sections 17-20**);

the duty of regulated institutions and external providers to cooperate with quality assessment activity, the carrying out of reviews and associated powers of direction (**section 21**);

HEFCW's powers of entry and inspection in relation to quality assessment (**section 22**);

HEFCW's powers to issue or approve guidance about matters relating to quality and regulated institutions' duty to take such guidance into account (**section 23**); and

HEFCW's powers to issue or approve guidance about criteria for assessing quality (**section 24**).

41. During the transitional period HEFCW will not be able to exercise its functions under section 39 of the 2015 Act to withdraw approval of a fee plan approved under the Higher Education Act 2004. This provision will not come into force until September 2017 and further guidance on full implementation of the 2015 Act will be issued in due course.

42. **Section 17** of the 2015 Act replaces HEFCW's existing statutory duty under section 70 of the Further and Higher Education Act 1992 to secure that provision is made for assessing the quality of education provided in institutions for whose activities it provides, or is considering providing financial support. The duty under section 17 requires HEFCW to assess or make arrangements for the assessment of the quality of *education provided in Wales* by or on behalf of regulated institutions. For this purpose, *education provided in Wales* includes education provided outside Wales, if that education forms part of a course that is provided principally in Wales<sup>4</sup>.

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<sup>4</sup> It is proposed that the Secretary of State for Wales will make an order under section 150 of the Government of Wales Act 2006, the effect of which will be that where education in England is provided by or on behalf of a

43. Currently HEFCW has arrangements in place for other bodies to undertake quality assessments of the education provided by the institutions it funds such as the Quality Assurance Agency for Higher Education (QAA). Under the 2015 Act, HEFCW is empowered to continue to make similar arrangements with the QAA and other bodies to assess the quality of education provided by and on behalf of regulated institutions.
44. As of the date of this guidance issuing, HEFCW is participating in the HEFCE review of future quality assurance arrangements. HEFCW should keep Welsh Government officials fully updated on the progress of that review. As indicated above, the effect of section 17 of the 2015 Act is that it is for HEFCW to determine how its quality assessment duty is discharged, whether that be through the QAA or any other body. However, HEFCW should ensure that any new arrangements meet the specific needs of Wales. A consistent approach to quality assessment across England and Wales is extremely beneficial; however, this should not be at the cost of a robust, well-recognised and well-respected quality regime that addresses the needs of Welsh higher education.
45. HEFCW will be aware that a statutory inspection regime exists in respect of certain education provided by institutions delivering higher education. For example, courses of initial teacher training and some higher level apprenticeships currently fall within Estyn's remit. The 2015 Act does not affect that separate statutory inspection regime. As with the assessment system established under section 70 of the Further and Higher Education Act 1992, there may in practice be some overlap between the quality assessment reviews currently undertaken on behalf of HEFCW by the QAA and the statutory inspections undertaken by Estyn. Whilst it is a matter for HEFCW to make arrangements for the purposes of section 17, the 2015 Act does not impact on the existing statutory inspection arrangements and it is expected that HEFCW will continue to liaise with Estyn in order to minimise duplication and overlap.
46. HEFCW's quality assessment duty under section 17 of the 2015 Act will continue to encompass all of the education provided by a regulated institution irrespective of whether that provision formally constitutes a course that results in a qualification, including modules and bite-size provision.

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regulated institution, HEFCW's functions in relation to the assessment of the quality of the education provided by that institution apply to that education in the same way as they apply to the education provided by that institution in Wales.

## **Part-time courses**

47. The fees of part-time HE courses are not presently regulated and thus fall outside the scope of fee plans and the new arrangements for automatic course designation that will apply to full-time courses. However, part-time courses delivered by regulated institutions will fall within the scope of HEFCW's new quality assessment duty, as the duty will apply across the range of courses delivered by these institutions. This will cover the majority of part-time courses currently delivered in Wales. There may be a small number of institutions, including the Open University in Wales, and possibly some FE institutions which deliver only part-time HE courses. Part-time provision delivered by these providers will fall outside the scope of HEFCW's new quality assessment duty, which relates only to education provided by, or on behalf of, regulated institutions. However, we anticipate that HEFCW will be able to maintain quality assessment arrangements at these institutions through relevant terms and conditions of funding.
48. The Funding Council may wish to detail the scope of its duty in guidance to its current contracted quality assessor and institutions providing higher education in Wales.

## **Franchised courses**

49. Courses that are franchised by a regulated institution will also be included within the new quality assessment duty – that is courses that are provided wholly or partly by another institution (regulated or otherwise) on behalf of a regulated institution. Section 17 provides that a course is not to be classified as being provided on behalf of a regulated institution if the arrangements under which it is provided were made before 1 September 2015, the date on which section 17 comes into force. Therefore the Council may wish to advise regulated institutions that it would be good practice to renew existing franchise agreements to ensure that they are captured by the new quality assessment duty in guidance that the Council may issue under section 23 of the 2015 Act (see below).
50. The new quality assessment duty will not apply in respect of validation-only arrangements - if an institution in Wales validates the HE courses of another provider then it will be for that provider to apply for a fee and access plan if it wishes its courses to be automatically designated for Welsh Government statutory student support, and if successful, to comply with HEFCW's quality assessment requirements.
51. Section 17 defines “external provider” for the purpose of the Act. An “external provider” is likely to be another institution or provider which delivers all or part

of a course on behalf of a regulated institution under franchise arrangements. This section also enables the Welsh Ministers to prescribe by way of regulations the circumstances in which a person is, or is not, to be treated as being responsible for providing a course of education on behalf of a regulated institution. Whilst there are no immediate intentions to make regulations concerning this matter it is considered that individual lecturers or tutors should not be treated as being responsible for providing a course of education on behalf of a regulated institution.

### **Inadequate Quality**

52. Ensuring that higher education in Wales is of a high quality remains a Welsh Government priority. Therefore, it is essential that any quality issues are promptly identified and measures taken to address them. The aim should be to avoid disruption for learners and reputational damage to both the individual provider and Welsh higher education in general.
53. **Section 18** sets out the meaning of inadequate quality, i.e. that the quality of education or of a course of education is inadequate if it is not adequate to meet the reasonable needs of those receiving the education or undertaking the course. The Council may wish to inform regulated providers of the matters that it will take into account in determining whether quality is inadequate for the purposes of using the inadequate quality provisions in sections 19 and 20 (see also section 24). It would be advisable to ensure that these matters align with the matters that the Council will take into account in determining whether education is adequate for the purposes of applications for fee and access plan approval.
54. If HEFCW is satisfied that the quality of education provided by or on behalf of a regulated institution is inadequate or likely to become inadequate, then the Council is able to make use the powers of intervention provided for by **sections 19 and 20**. As is currently the case, HEFCW should initially seek to support an institution to rectify shortcomings in the quality of its education. However, if this support does not result in improvements, the Council may consider it appropriate to give directions to the governing body. HEFCW will also be able to issue directions in respect of education delivered by partner institutions on behalf of a regulated institution under franchise agreements. Such directions must be addressed to the regulated institution as it is responsible for ensuring that courses delivered on its behalf comply with HEFCW's quality assessment requirements.
55. A direction may require a regulated institution to take (or not to take) specified steps in order to improve the quality of education or to prevent the quality of

education from becoming inadequate. For example, such directions might require an institution to:

- improve its quality assurance procedures;
- address deficiencies in the academic standards of its degrees;
- improve the student learning experience;
- take action to address shortcomings identified from the outcomes of the quality assessment arrangements that HEFCW has in place; or
- address risks to the quality of education identified by HEFCW.

### **Procedural requirements**

56. The warning notice and review procedures in sections 41 to 44 of the Act will apply to directions under section 19. These procedural requirements are designed to ensure a robust and transparent approach to the issuing of notices and directions as well as to the process of review which is available to institutions. The requirements are set out below and do not apply to a direction given by HEFCW where that direction only revokes an earlier direction which HEFCW has issued to an institution.
57. HEFCW must issue a warning notice to a regulated institution indicating its intention to issue a direction to that institution. The warning notice must inform the regulated institution of its right to make representations on the proposed direction and the period in which such representations should be made. The warning notice should also set out the proposed direction and the reasons why HEFCW proposes to issue it.
58. Before proceeding with a direction HEFCW will be required to take into account any representations received from the regulated institution. It will then be a matter for HEFCW to determine whether or not the direction should be issued. If HEFCW determines that the direction should be issued, the Council will be required to set out the reasons for issuing the direction and inform the regulated institution of its right to seek a review by an independent person or panel. The Council must also include any other information that is required to be included by regulations. The Welsh Government intends to make regulations concerning these arrangements and when made HEFCW will be required to comply with their requirements.
59. If an institution fails to comply with a direction relating to inadequate quality, HEFCW may, on application to the courts, seek an injunction to enforce the direction.
60. The actions that HEFCW may currently take in respect of inadequate quality are set out in the Council's Unsatisfactory Quality Procedure. **Section 20**

builds on HEFCW's existing practice and provides new interventions that HEFCW may take when HEFCW is satisfied that the quality of education provided by, or on behalf of a regulated institution, is inadequate or at risk of becoming inadequate. This includes a power for HEFCW to arrange for another person or body, to carry out a further review on its behalf.

61. Section 20 enables HEFCW to give advice or assistance to regulated institutions with the aim of improving the quality of their education or preventing the quality of their education becoming inadequate. Such action might include:

requesting institutions to develop and implement action plans to address the failures/weaknesses found in a quality assessment (such plans would be subject to HEFCW's 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 systematic 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.

### **Duties of regulated institutions**

62. Regulated institutions must take into account any advice given to them by HEFCW (section 20(3))
63. **Section 21** places regulated institutions under a duty to provide HEFCW or the Council's agents, with the necessary information, assistance and access as required in relation to quality assessment activity (under section 17 or 20) including for the purpose of exercising any power of entry and inspection under section 22 (see below). External providers who provide courses on behalf of regulated institutions will also be subject to the cooperation duty.

### **Rights of entry and inspection**

64. Section 22 of the Act provides HEFCW or the Council's agents with the power to enter the premises of a regulated institution or external provider, as well as a power to inspect, copy and take away documents. Discussions with staff and students are provided for as part of the duty on institutions to provide information, assistance and access as referred to above.
65. The Act requires any person exercising this power of entry and inspection (whether a HEFCW staff member or agent) to be authorised in writing by HEFCW. The power of entry and inspection may only be exercised at

reasonable times and does not include a power to enter a dwelling (such as student or staff accommodation) without the agreement of the occupier.

66. The power of entry and inspection may only be exercised after giving the governing body reasonable notice except in cases of urgency or where giving notice would defeat the object of exercising the power of entry or inspection. Entry without notice might be appropriate, for example, where HEFCW considers that relevant documents are likely to be removed from the institution's premises or destroyed if notice is given.
67. While regulated providers have a reputational interest in complying with the quality assessment requirements, the Act provides HEFCW with a means of enforcing compliance if proven necessary. In cases of obstruction, the Act will enable HEFCW to issue a direction to a regulated institution, or an institution providing a course on behalf of a regulated institution, to require them to provide the necessary information, assistance and access.
68. A direction to enforce compliance with the duty to cooperate for the purpose of quality assessment is **not** subject to the warning notice and review procedures set out in Part 6 of the 2015 Act. Should an institution fail to comply with such a direction then HEFCW will be able to apply to the courts for an injunction to enforce its rights of access and entry.
69. The Council will need to ensure that its current contractor (the Quality Assurance Agency) is aware of the new powers and ensures that assessors are compliant with the new statutory requirement to produce identification when carrying out an assessment.
70. While there is no specific statutory provision in the Act, the Council may also wish to ensure that the current Quality Assurance Agency processes in place, or those of any future new assessor, continue to sufficiently address the issues of use of information and conflict of interest. The Council may wish to ensure that systems are in place that provide regulated institutions with sufficient notice to enable them to inform HEFCW's agent of any potential conflicts of interest that members of the assessment team might have with the institution, and for that agent to make any necessary adjustments in light of this. Furthermore that assessor contracts contain a requirement that information accessed by assessors during the course of an assessment must be used *only in connection with* assessing the quality of courses of HE provided by that institution.

### **Guidance about matters relevant to quality and criteria for assessing quality**

71. **Section 23** permits HEFCW to issue or approve guidance about matters relating to improving or maintaining the quality of education provided by or on

behalf of regulated institutions. Regulated institutions are required to take into account any guidance issued or approved by HEFCW. This guidance should set out good practice for maintaining and improving the quality of education, as well as practical examples relevant to educational delivery. For this reason the Act requires that HEFCW consults each regulated institution, and any other person the Council thinks appropriate, before issuing or approving the guidance.

72. It may not always be necessary for HEFCW to issue guidance but the Council may wish to rely on guidance issued by bodies with expertise of quality in education. For example, this provision would allow HEFCW to approve guidance issued by the QAA.
73. **Section 24** permits HEFCW to issue guidance on the criteria to be applied by a person undertaking a quality assessment in fulfilment of the Council's quality assessment duty. This guidance may also set out the factors to be taken into account when determining whether the quality of education is inadequate, or, is likely to become inadequate (see section 18 above). This will give regulated institutions a clear picture of what is expected of them in advance of a quality assessment.
74. HEFCW is also enabled by section 24 to approve guidance issued by other bodies where the Council thinks appropriate. HEFCW is required to consult each regulated institution, and any other person it thinks appropriate, before issuing or approving guidance under this section.
75. HEFCW's guidance functions under sections 23 and 24 will be commenced as of 1 September 2015 at the start of the transitional period. During the initial period of operation of the new regulatory system it is anticipated that HEFCW will wish to continue to apply the existing criteria for quality assessment established under the UK Quality Code. Consequently, upon the coming into force of HEFCW's new guidance powers, the Council may wish to consider issuing guidance to regulated institutions that restates the current criteria in the context of the new regulatory system.

### **Committee to advise HEFCW about exercise of quality assessment functions**

76. **Section 25** requires HEFCW to establish a committee to provide advice on the exercise of its quality assessment functions under the 2015 Act. The Act requires that the majority of members of the Committee will remain independent of HEFCW and will have experience of the provision of higher education either within the UK or internationally as HEFCW considers appropriate. HEFCW will determine the number of members of the Committee and the terms on which

they hold and vacate office. HEFCW will be able to pay travel and other allowances to members of the committee through the supplementary powers contained in Schedule 1 of the Further and Higher Education Act 1992.

77. The Council may wish to note that subsection (3) does not restrict student representation to just one member. However, while the first student representative will not be subject to the majority requirements in section 25(4), any additional student representatives will be subject to these requirements.
78. In order to avoid unnecessary disruption to the work of the Council's existing Quality Assessment Committee, the 2015 Act provides transitional provision (paragraph 31 of the Schedule). This will allow for the appointments of existing Committee members to continue forward as if they had been originally appointed to the Committee under the new arrangements. This means that on transitioning across, existing committee members will do so on the same terms as their original appointment and for a period equivalent to the remaining period of their original appointment. The Act will not prevent HEFCW making changes to the committee composition or structure, post transition, subject to the terms of members' appointments.
79. Section 25 of the Act will be brought into force on 1 September 2015.

### **Preparation of a draft Financial Management Code**

80. **Section 27** of the 2015 Act places HEFCW under a duty to prepare and publish a financial management code relating to the organisation and management of the financial affairs of regulated institutions.
81. **Section 28** of the Act sets out the procedure that HEFCW must follow before publishing the first code or a revised code. HEFCW must prepare a draft code and submit the draft code to the Welsh Ministers for approval. As part of the preparation of the draft code, HEFCW must consult the governing body of each regulated institution and may consult any other persons considered appropriate. For the purposes of any such consultation during the transitional period, an institution which is subject to the provisions of the 2015 Act because it has a fee plan approved under the Higher Education Act 2004 and which is treated as being approved under the 2015 Act is to be treated as a regulated institution. In terms of HEFCW consulting 'other persons' for the purposes of section 28(2) of the 2015 Act, it is expected that HEFCW will ensure that NUS Wales, Universities Wales and Colegau Cymru are consulted on the draft Code.

82. HEFCW's function of preparing a draft of the first code will be in force from 25 May 2015. The intention in bringing this particular function into force at that time is to allow HEFCW sufficient time in which to consider the preparation of the Code. HEFCW's duty under section 28(2) of the 2015 Act to undertake consultation in preparing a draft of the code will be brought into force on 1 September 2015, along with all the provisions in sections 28 and 29 of the 2015 Act. Section 29 provides for the procedure that is to apply in the event that the Welsh Ministers decide not to approve a draft of the first code (or a revised code) which has been submitted to them.
83. HEFCW will wish for the first code to be ready for publication in advance of academic year 2017/18. As such, HEFCW will need to ensure that consultation in respect of the preparation of the first code takes place in good time to allow the Welsh Ministers to consider the (post consultation) version of the Code submitted to them under section 28(1) of the 2015 Act. The post consultation version of the draft code must be accompanied by a report which sets out the reasons for the terms of the draft code and provides details of the consultation carried out by HEFCW, including a summary of the responses received by HEFCW during the consultation.
84. The 2015 Act provides that if the Welsh Ministers do not approve a draft of the first code, HEFCW will be obliged to submit a further draft of the first code, having carried out such further consultation that the Council thinks appropriate, accompanied by a report which complies with the requirements of section 29(7) of the 2015 Act. If the Welsh Ministers approve a draft of the first code submitted to them under either section 28 or 29, they must lay that approved draft before the National Assembly for a period of 40 days. Only if the National Assembly tacitly agrees to the draft code (i.e. the National Assembly does not resolve not to approve the draft) will HEFCW be obliged to publish the Code.
85. If the National Assembly resolves not to approve the draft code then HEFCW must submit a further draft of the code to the Welsh Ministers, having carried out any further consultation the Council thinks appropriate and accompanied by a report which complies with the requirements of section 30(4).
86. Given the various features of the above procedure, HEFCW will need to submit a draft of the first code to the Welsh Ministers under section 28(1)(b) of the 2015 Act during September 2016.
87. In developing the Code, HEFCW will wish to minimise administrative burdens on institutions and take into account existing data collection and financial return processes which may be in place for certain types of institution. In particular, consideration should be given to the financial assurance arrangements already

in place for Further Education institutions in receipt of funding from the Welsh Government.

## **Preparation of a statement in respect of intervention functions**

88. The 2015 Act confers a new range of regulatory functions on HEFCW. In order that regulated institutions and other institutions wishing to apply for entry to the system understand the circumstances in which HEFCW is likely to exercise its principal regulatory functions, the 2015 Act places HEFCW under a duty to prepare and publish a statement setting out how the Council proposes to exercise its “intervention functions” (section 52(1)). These intervention functions are listed in section 52(5) and relate to the following:

- compliance and reimbursement directions (**section 11**);
- directions in respect of failure to comply with general requirements of an approved plan (**section 13**);
- directions in respect of inadequate quality (**section 19**);
- the provision of advice and assistance to a governing body with a view to improving quality or preventing quality from becoming inadequate (**section 20(1)**);
- the carrying out of a review of matters relevant to the quality of education provided by or on behalf of an institution (**section 20(2)**);
- directions in respect of failure to comply with the Code (**section 33**);
- the provision of advice and assistance to a governing body with a view to improving the organisation or management of the financial affairs of an institution (**section 34(1)**);
- the carrying out a review of matters relevant to an institution’s compliance with the code (**section 34(2)**);
- refusal to approve new fee and access plan (**section 37**); and
- withdrawal of approval of existing fee and access plan (**sections 38 and 39**).

89. From 25 May 2015, HEFCW’s function of preparing a statement in respect of its intervention functions under section 52(1) will be in force. From 1 September 2015, HEFCW will be under a duty to consult in relation to the statement before its publication but for the purposes of the transitional period, HEFCW will only be obliged to publish a statement in relation to its functions of issuing a compliance and reimbursement direction (**section 11**); directions in respect of inadequate quality (**section 19**) and functions in respect of inadequate quality (**section 20(1) and (2)**). It is proposed that HEFCW’s duty to publish a

statement in relation to its other intervention functions will be brought into force nearer academic year 2017/18.

## **Purpose**

90. It is intended that a statement under section 52(1) will provide a clear and transparent explanation of how HEFCW proposes to exercise its intervention functions. The statement should set out HEFCW's proposed approach to intervention and enable institutions to understand how and when HEFCW may exercise those functions (intervene), how HEFCW will satisfy itself that intervention is necessary and the mechanisms that are in place to ensure that intervention occurs in a fair and proportionate manner.

## **Principles of intervention**

91. It is expected that HEFCW will exercise its intervention functions in accordance with the following principles:

where possible, HEFCW should seek to resolve issues through dialogue with institutions and through the provision of informal support and assistance;

intervention will only occur when necessary;

the action proposed by HEFCW will be proportionate to the regulatory failure or concern in question; and

where possible, HEFCW should discuss proposals to exercise an intervention function with the governing body, or the head of the institution or provider concerned.

## **Consultation and publication**

92. Under section 52(4) of the 2015 Act, the Welsh Ministers may make regulations concerning the preparation, publication of and consultation on HEFCW's statement of intervention. The Welsh Government does not at present intend to make regulations concerning these matters but HEFCW is required to take into account the Welsh Ministers' guidance in the exercise of its functions by virtue of the 2015 Act.
93. During the transitional period, and for the purposes of consultation in relation to the statement in respect of intervention functions under section 52(3) of the 2015 Act, an institution which is subject to the provisions of that Act because its 2004 Act plan is treated as having been approved under section 7 of the 2015

Act is to be treated as a regulated institution (paragraphs 28 (f) and 29(1)(d) of the transitional period refer). In terms of HEFCW consulting 'other persons' for the purposes of section 52(3)(b), it is expected that HEFCW will also ensure that NUS Wales, the Open University, Universities Wales and Colegau Cymru are consulted on the draft statement of intervention.

94. Having taken into account consultation feedback HEFCW should ensure that the finalised statement is published on its web site in a timely manner and that all regulated institutions and any other stakeholders who responded to the consultation are notified about the publication.

### **Entry to the regulated sector**

95. Under the 2015 Act entry to the regulated higher education sector will be via application to HEFCW for approval of a fee and access plan. During the transitional period only institutions which have fee plans approved by HEFCW under section 34 of the Higher Education Act 2004 will be regulated and only then for the purposes of fee limits and quality assessment. As the timescales for fee and access plan approval are well in advance of the academic year to which the plans apply, HEFCW will need to consider arrangements for entry to the regulated HE sector and be in a position to accept applications for fee and access plans in spring 2016 ahead of the full implementation of the new regulatory system in the 2017/18 academic year.
96. During the initial stages of implementation of the new regulatory system it is anticipated that the majority of applications for approval of fee and access plans will be made by institutions which have previously had a fee plan approved by HEFCW under the Higher Education Act 2004. Such institutions will be familiar with HEFCW's procedures for approval of fee plans; however, with the introduction of the new regulatory system HEFCW will need to ensure that those institutions are advised of the requirements for fee and access plans in sufficient time for the preparation of their applications in spring 2016. In addition, HEFCW may receive applications for approval of fee and access plans from institutions which have not previously had a relationship with HEFCW. It will therefore be necessary for HEFCW to make preparations for such potential new applicants.
97. HEFCW's functions under section 54(3) and (4) of the 2015 Act came into force in advance of the start of the transitional period on 25 May 2015. These functions will allow HEFCW to provide information and advice to institutions and others about the regulatory framework established by the 2015 Act, about the roles and responsibilities of regulated institutions and HEFCW's own functions

under the 2015 Act. HEFCW will provide institutions with information which will assist their understanding of the requirements of the new regulatory system as well as ensuring that applicants and prospective applicants for fee and access plans are fully informed about the criteria which they will need to satisfy. Further guidance on fee and access plans will be issued in due course.

98. Under the 2015 Act, an institution must satisfy the requirements of section 2(3) of the Act to be eligible to apply to HEFCW for approval of a proposed fee and access plan. Those requirements are that the institution:
- (a) is an institution in Wales<sup>5</sup>;
  - (b) provides higher education<sup>6</sup>; and
  - (c) is a charity<sup>7</sup>.
99. In order to remain within the regulated HE sector it will be necessary for an institution to continue to satisfy the requirements of section 2(3) of the 2015 Act. It is currently proposed that HEFCW's duty under section 38 to withdraw approval of an approved fee and access plan if HEFCW is satisfied that a regulated institution no longer satisfies the requirements of section 2(3) will come into force during 2016 and, if so, further guidance will follow on this function in due course.

## **Institutional Freedoms**

100. The Welsh Government respects the autonomy of institutions including their academic freedom. It recognises their right to determine their own missions; design and deliver programmes of education; admit and examine students; develop and undertake programmes of research; engage in commercial activity; deploy income and other resources; determine governance, organisational structures and arrangements for the employment of staff.
101. Sections 47 and 48 of the 2015 Act concern the exercise of HEFCW's functions and the protection of institutional autonomy and academic freedom. Both of these sections will be in force prior to the start of the transitional period and will apply to all of HEFCW's functions in and under the 2015 Act as and when those

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<sup>5</sup> Namely, an institution whose activities are wholly or principally carried on in Wales (section 57(3)(a) of the 2015 Act). This follows the formulation in section 62(7)(a) of the Further and Higher Education Act 1992.

<sup>6</sup> For these purposes, higher education is defined as meaning education provided by means of a course of any description mentioned in Schedule 6 to the Education Reform Act 1988 (section 57(1) of the 2015 Act).

<sup>7</sup> For instance, section 125A of the Education Reform Act 1988 provides that all Higher Education Corporations are charities; and section 22A of the Further and Higher Education Act 1992 provides that all Further Education Corporations are charities. Chartered universities in Wales which receive funding from HEFCW are registered with the Charity Commission for England and Wales.

functions are brought into force. Consequently, HEFCW will need to ensure that it acts in accordance with section 47 and complies with section 48 from the outset, including in relation to any preparatory activities undertaken for delivery of the new regulatory system.

102. Section 47 deals with compatibility with charity law and the governing documents of institutions. In broad terms, charity trustees have ultimate responsibility for directing the affairs of a charity and ensuring that the charity is solvent, well-run and delivering the charitable outcomes for which it has been established. In particular, trustees must: ensure that the charity does not breach any requirements set out in the charity's governing document (they have compliance duties); they must use charitable funds in furtherance of the charity's objects (they have a duty of prudence); and they must use reasonable care and skill in their work as trustees (they have a duty of care).
103. Section 47(1)(a) of the 2015 Act is drafted by reference to HEFCW's powers. It provides that nothing in the Act enables HEFCW to require the governing body of an institution to do anything that is incompatible with any legal obligation or legal restriction that applies to governing body by virtue of the institution being a charity. As such, any requirements that HEFCW may impose on the governing bodies of institutions under the Act cannot require those governing bodies to act in breach of their obligations as charity trustees.
104. Section 47 also places a general restriction on the exercise of all of HEFCW's functions in the Act which prevents the Council from requiring the governing body of an institution to do anything which is incompatible with the governing documents of the institution. The governing documents of an institution are defined in section 47(2) of the 2015 Act. It should be noted that section 47 applies in relation to the exercise of HEFCW's functions in circumstances in which an institution might no longer be subject to an approved plan but continues to be treated as a regulated institution (for example, under section 10 or section 26 of the 2015 Act).
105. It is unlikely that HEFCW would need to exercise any of its functions in or under the 2015 Act in a way that might result in a conflict between governing bodies' charity trustees' duties or compliance with the governing documents of their institutions. However, HEFCW will need to be particularly mindful of the restrictions of sections 47(1)(a) and 47(1)(b) in the development of the financial management code and the statement of intervention policy as well as in respect of any proposed enforcement action.
106. Section 48 imposes on HEFCW a general duty to take into account the importance of protecting academic freedom and lists specific matters that are included within that general duty.

107. For the purposes of the regulatory system established under the Higher Education Act 2004, HEFCW, as the relevant authority<sup>8</sup>, has been obliged in making any determination relating to the approval of a proposed plan under section 34 of that Act to have regard to the desirability of protecting academic freedom and, in particular, the freedom of institutions to determine the contents of particular courses and the manner in which they are taught, supervised or assessed; and the criteria for the admission of students and to apply those criteria in particular cases.<sup>9</sup> The duty in section 48 of the 2015 Act is both wider and more onerous than the duty imposed by regulations under the Higher Education Act 2004. The section 48 duty extends beyond HEFCW's function of determining applications for approval under section 7 of the 2015 Act. It extends to any functions that HEFCW exercises in or under the 2015 Act. Where HEFCW considers that the exercise of a function in a particular way is relevant to the protection of academic freedom (in that the exercise of the function may interfere with an institution's academic freedom), HEFCW will need to do more than just think about the desirability of protecting that freedom. HEFCW will need to think about the importance of protecting it. In deciding to exercise the function, HEFCW will need to be satisfied that the interests in exercising that function outweigh the interests in protecting academic freedom.
108. Whilst the term 'academic freedom' is not defined in the Act, it is considered that this will include both 'institutional' academic freedom (an institution's ability to decide what courses to teach and to whom; and by whom and how the courses will be taught); and 'faculty' academic freedom (the protection of freedom of expression for the academic profession in its research and teaching). However, given the nature of HEFCW's functions in the Act, the effect of the exercise of those functions on 'faculty' academic freedom is likely to be very limited indeed. Whilst the exercise of HEFCW's functions is unlikely also to affect 'institutional' academic freedom, the duty nevertheless applies to the exercise by HEFCW of its functions in or under the 2015 Act. It is conceivable, for instance, that HEFCW's functions in respect of inadequate quality of education may be relevant to 'institutional' academic freedom.
109. Where the exercise by HEFCW of a function by virtue of the 2015 Act has no relevance to the protection of academic freedom or where the exercise of a function involves no choice on the part of HEFCW, the duty in section 48 will not, in practice, require HEFCW to take any additional action. HEFCW should, however, be mindful that the duty will apply, for example, in relation to its obligations to consult under the Act and in relation to any decisions about whether to give notices or directions. The duty could be relevant to HEFCW's

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<sup>8</sup> Section 30(3) of the 2004 Act and the Higher Education Act 2004 (Relevant Authority) (Designation) (Wales) Regulations 2011 (SI 2011/658) refer.

<sup>9</sup> Regulation 6 of the Student Fees (Approved Plans) (Wales) Regulations 2011 (SI 2011/884).

consideration of responses which the Council receives as a result of consultation. Where the exercise of a function does happen to be relevant to the protection of academic freedom, HEFCW must give careful consideration as to the appropriate balance to be struck between protecting the public and students' interests and the importance of protecting academic freedom. HEFCW will need to be able to demonstrate that the issue has been given due consideration.

### **Annual and special reports**

110. HEFCW will be exercising only a limited range of functions under the 2015 Act during the transitional period, specifically functions related to the enforcement of fee limits; quality assessment functions including functions concerning inadequate quality of education; and the approval of applications for fee and access plans. Consequently, HEFCW's duty under section 50 of the 2015 Act to prepare annual reports on the discharge of its functions will not be brought in force during the transitional period. Instead, this function will be commenced in the 2017/18 academic year and further guidance will be issued concerning annual reports in due course.
111. During the transitional period the Welsh Ministers may, however, direct HEFCW to prepare special reports under section 51 of the 2015 Act concerning institutions' compliance with fee limits and on the quality of education (section 51(1)(a) and section 51(1)(e) of the 2015 Act will come into force on 1 September 2015). Should the need for a special report arise HEFCW will be notified in writing by the Welsh Government. Such a direction may specify the form and content of the report and as well as the timescales in which the report is to be submitted to the Welsh Ministers.