

# Cylchlythyr | Circular

## Consultation on Transitional Statement of Intervention

**Date:** 2 October 2015  
**Reference:** W15/23HE  
**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:** **Friday 13 November 2015**  
**Response to:** [assurance@hefcw.ac.uk](mailto:assurance@hefcw.ac.uk)  
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Telephone: 029 2068 2291

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 powers of intervention under the Higher Education (Wales) Act 2015, which is to be put in place for a transitional period from 1 September 2015 until 31 August 2017.

If you require this document in an alternative accessible format, please telephone us on (029) 2068 2225 or email [info@hefcw.ac.uk](mailto: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 institutions<sup>1</sup> and other interested parties. It seeks views on the Statement of Intervention outlining HEFCW's intervention powers in respect of providers regulated under the Higher Education (Wales) Act 2015, which is to be put in place for the transitional period from 1 September 2015 until 31 August 2017.
2. The Transitional Statement of Intervention under consultation is attached as **Annex A**.

## Background

3. Section 52 of The Higher Education (Wales) Act 2015 ('The 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 Act came into force on 1 September 2015, with this consultation document representing this formal consultation process.
4. HEFCW's functions, duties and powers under The Act come into force at different times, with several intervention powers in force under the transitional arrangements which operated from 1 September 2015. These are: the provisions in The Act 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. It is anticipated that the remaining provisions of The Act 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) will come into force by 1 September 2017.
5. HEFCW has prepared this Transitional Statement of Intervention for the purposes of section 52 of The Act to provide a public and transparent framework within which HEFCW will operate for the transitional period from 1 September 2015 until 31 August 2017. It is envisaged that this Transitional Statement of Intervention will be superseded by a full Statement of Intervention, in relation to the full commencement of HEFCW's intervention powers, from 1 September 2017.

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<sup>1</sup> Regulated institutions are institutions in Wales which have an approved fee and access plan in force (formerly known as fee plans under the 2004 Act) that will be subject to the requirements of the new regulatory framework. These institutions are universities in Wales and some directly funded further education institutions.

### *Proposed effective date*

6. We are proposing to introduce this Transitional Statement of Intervention with an effective date from the point of its finalisation in November 2015.

### *Responding to the consultation*

7. Please respond electronically. Responses should be e-mailed to [assurance@hefcw.ac.uk](mailto:assurance@hefcw.ac.uk). The consultation closes on **13 November 2015 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 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 Act is available at [www.ico.org.uk](http://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.
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 Transitional Statement of Intervention

### *Consideration of responses and ratification by HEFCW's Council*

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 Transitional Statement of Intervention in November 2015.

### Further information

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

### Consultation

14. The Transitional Statement of Intervention (The Statement) sets out HEFCW's intervention powers and processes for the transitional period, which are drawn from the provisions set out in The Act and the Higher Education (Fee and Access Plans (Notices and Directions) (Wales) Regulations 2015. The Transitional Statement of Intervention also sets out the purpose of intervention and the principles to be adhered to by HEFCW when exercising its intervention powers.

#### ***Question 1: Are the principles set out on page 4 of the Statement reasonable; are there any others that should be included?***

15. The Statement sets out the basis for intervention under The Act in respect of the charging of excess fees, inadequate quality and quality that is likely to become inadequate. It makes it clear that HEFCW will normally engage with regulated institutions through a partnership approach in the first instance, when an issue is identified, prior to the initiation of formal intervention under the provisions of The Act. The Statement also sets out the triggers for formal intervention under The Act in broad terms, making it clear that HEFCW will be mindful of the circumstances of each case when considering the initiation of formal intervention.
16. The Statement highlights the need for HEFCW to liaise with other relevant bodies, such as the Office of the Independent Adjudicator for Higher Education (OIA), Competition and Markets Authority (CMA), Student Loans Company (SLC) and Quality Assessment Agency (QAA), as necessary. Such liaison with other bodies would take place either prior to, or in parallel with, the formal intervention process. Where an issue of relevance to The Act has been referred to a body such as the OIA and CMA, the Statement makes it clear that HEFCW may not always be able to await the outcome of these bodies' processes before initiating intervention.

**Question 2: Are there any issues with the approach to be taken by HEFCW prior to the initiation of formal intervention?**

**Question 3: Are there any issues that may arise in respect of other regulators (e.g. OIA)?**

17. Most of the process aspects of the formal intervention strands of The Statement are drawn from The Act and the associated Regulations. It has been HEFCW's intention to set out these intervention processes in an accessible stage-by-stage format, whilst retaining reference to the relevant provisions of The Act and Regulations throughout.
18. Most timescales associated with the formal intervention processes are as set out in the Regulations, with the exceptions being:
  - The timescale for HEFCW to send a notice to the governing body when a decision is taken not to issue a Direction (14 days); and
  - The timescale for the governing body to comply with a Direction (60 days).

These timescales have been proposed by HEFCW.

**Question 4: Are there any gaps or issues in relation to the way the intervention processes are set out?**

**Question 5: Are the proposed process timescales that are not set out under Regulation reasonable?**

19. HEFCW will seek to implement the Statement as soon as it is finalised following this consultation process. The Statement will then remain in effect until such time as it is superseded by the full Statement of Intervention, which it is anticipated will come into effect from 1 September 2017.

**Question 6: Are there any issues with the way that HEFCW is planning to implement the Transitional Statement of Intervention?**

**Question 7: Are there likely to be any unintended consequences that may arise as a result of any aspect of the Transitional Statement of Intervention?**

**Question 8: Are there any other issues in relation to the Statement which you would like to highlight?**

20. The draft Transitional Statement of Intervention is attached to this consultation at **Annex A**.

# Transitional Statement of Intervention

Draft for consultation

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



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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 funding<sup>1</sup>, 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 quality<sup>2</sup>. 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 Act) 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 Act sets out the regulatory functions of HEFCW and makes provision for a new higher education regulatory system for Wales.  
**Institutions regulated under The Act are those institutions to which an approved fee and access plan relates** (see Section 7(5)(b) of The Act)<sup>3</sup>. The 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.

The 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

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<sup>1</sup> Financial Memorandum (parts 1 and 2).

<sup>2</sup> Unsatisfactory Quality Procedures

<sup>3</sup> See also Sections 26 and 27(8) of The Act

management. These powers include those in relation to intervention by HEFCW where necessary to ensure compliance with the Act.

4. The 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 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 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 Act, to provide a public and transparent framework within which HEFCW will operate for the period from 1 September 2015 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 Act:
  - Section 11 provides for intervention in respect of a failure to comply with Section 10(1) of the 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 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 2015<sup>4</sup>.

### **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 Chairs<sup>5</sup> (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 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.

#### **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.

<sup>4</sup> <http://gov.wales/docs/dcells/consultation/150317-fee-access-regs.pdf>

<sup>5</sup> [www.universitychairs.ac.uk/wp-content/uploads/2015/02/Code-Final.pdf](http://www.universitychairs.ac.uk/wp-content/uploads/2015/02/Code-Final.pdf)

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

- **HEFCW will seek to work in partnership with institutions in the first instance.** Prior to any intervention under The Act, HEFCW will normally seek to address issues through dialogue and the provision of advice or support where necessary.
- **HEFCW will only intervene under The 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.
- **Any intervention will be proportionate to the severity of the issue that HEFCW is seeking to address.** HEFCW will tailor its intervention to the approach that is most appropriate to address an issue.
- **HEFCW will always act reasonably.** For example, HEFCW will give due regard to institutional autonomy at all times.
- **HEFCW will always act fairly.** For example, when intervening, HEFCW will base its decisions on 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).
- **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.
- **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.

## Continued

- **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 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 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 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 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.
- **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 (Fol) 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 Fol 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, either through disclosure under the Fol Act, we will consult with the institution(s) concerned prior to its release in accordance with our Fol procedures.

10. When exercising its intervention functions, Section 47 of The Act, requires that HEFCW doesn't intervene in a way that demands a governing body do anything that is incompatible with any obligations or restrictions as a charitable organisation. Where necessary, HEFCW will liaise with the Charity Commission prior to initiating any intervention. Similarly, HEFCW will not intervene in a way that is incompatible with the governing documents of an institution. For chartered institutions these 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.

11. The Act (Section 48) also requires that HEFCW take into account the importance of protecting academic freedom when exercising its intervention powers. This 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 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.

12. In addition, Section 49 of The Act requires that HEFCW take account of any guidance issued by Welsh Ministers when exercising its functions under The Act.

## Intervention in relation to limits on student fees

### Basis for intervention

13. 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 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 Higher Education (Wales) 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).

14. 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 institutions<sup>6</sup>, 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 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 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.

15. Where HEFCW is satisfied that the governing body of an institution has failed to comply with section 10(1) of The 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 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.
16. The stages of this intervention process that are provided for under sections 42 to 44 of The Act and the Fee and Access Plans (Notices and Directions) (Wales) Regulations 2015 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**

17. 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 the issue and to clarify what actions have already been taken to comply and to reimburse any excess fees. 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

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<sup>6</sup>[www.hefcw.ac.uk/working\\_with\\_he\\_providers/institutional\\_assurance/allegations\\_concerning\\_institutions.aspx](http://www.hefcw.ac.uk/working_with_he_providers/institutional_assurance/allegations_concerning_institutions.aspx)



institution's view regarding the reasonableness of any timescale with the need to reimburse students and their sponsors at the earliest reasonable opportunity.

18. 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. 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.
19. 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 or widespread instances of the charging of excess fees, 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**

### **Stage 1: Warning Notice**

20. 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. 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

21. From issue of the warning notice, institutions will have up to 40 days to make representations to HEFCW, with all representations to be sent to the HEFCW Chief Executive. No Compliance and Reimbursement Direction will be issued until after the completion of this 40 day period.
22. Where representations are received, HEFCW will undertake to review these and decide on whether to issue a Compliance and Reimbursement

Direction within 60 days of receipt of the representations. Where necessary, HEFCW may require the submission of additional information in order to be able to adequately consider representations. In such instances, the additional information 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.

23. 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**

24. When issuing the Compliance and Reimbursement Direction to an institution, Section 43 of The 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.

A copy of the Compliance and Reimbursement Direction will be provided to Welsh Ministers upon being issued.

25. 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.

26. Regulation 4 under the Fee and Access Plans (Notices and Directions) (Wales) Regulations 2015<sup>7</sup> states that a notice or Direction specified in

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<sup>7</sup> <http://gov.wales/docs/dcells/consultation/150317-fee-access-regs.pdf>

Section 41(1) of The 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 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 Act has concluded and HEFCW has notified the governing body in writing that the Direction stands.
27. Once a Compliance and Reimbursement Direction is given (see paragraph 26 above) HEFCW must publish the Direction. The Compliance and Reimbursement Direction will be published on the HEFCW website [www.hefcw.ac.uk](http://www.hefcw.ac.uk) within seven days of being given and 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

28. Where HEFCW issues an institution with a Compliance and Reimbursement Direction, Section 44 of The Act provides the ability for the governing body of that institution to apply for a review of the Direction.
29. The Higher Education Fee and Access Plans (Notices and Directions) (Wales) Regulations 2015 specify that an application for a review may be made only on 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 notice or 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 notice or direction to be reviewed; a copy of the statement issued in accordance with Section 43 of The Act; 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.

30. 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. 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.
31. The review Panel will take account of all 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 the outcome of the review is that the Direction should stand, that decision will be binding on the governing body of the institution.
32. Under Section 12 of The 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 or 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**

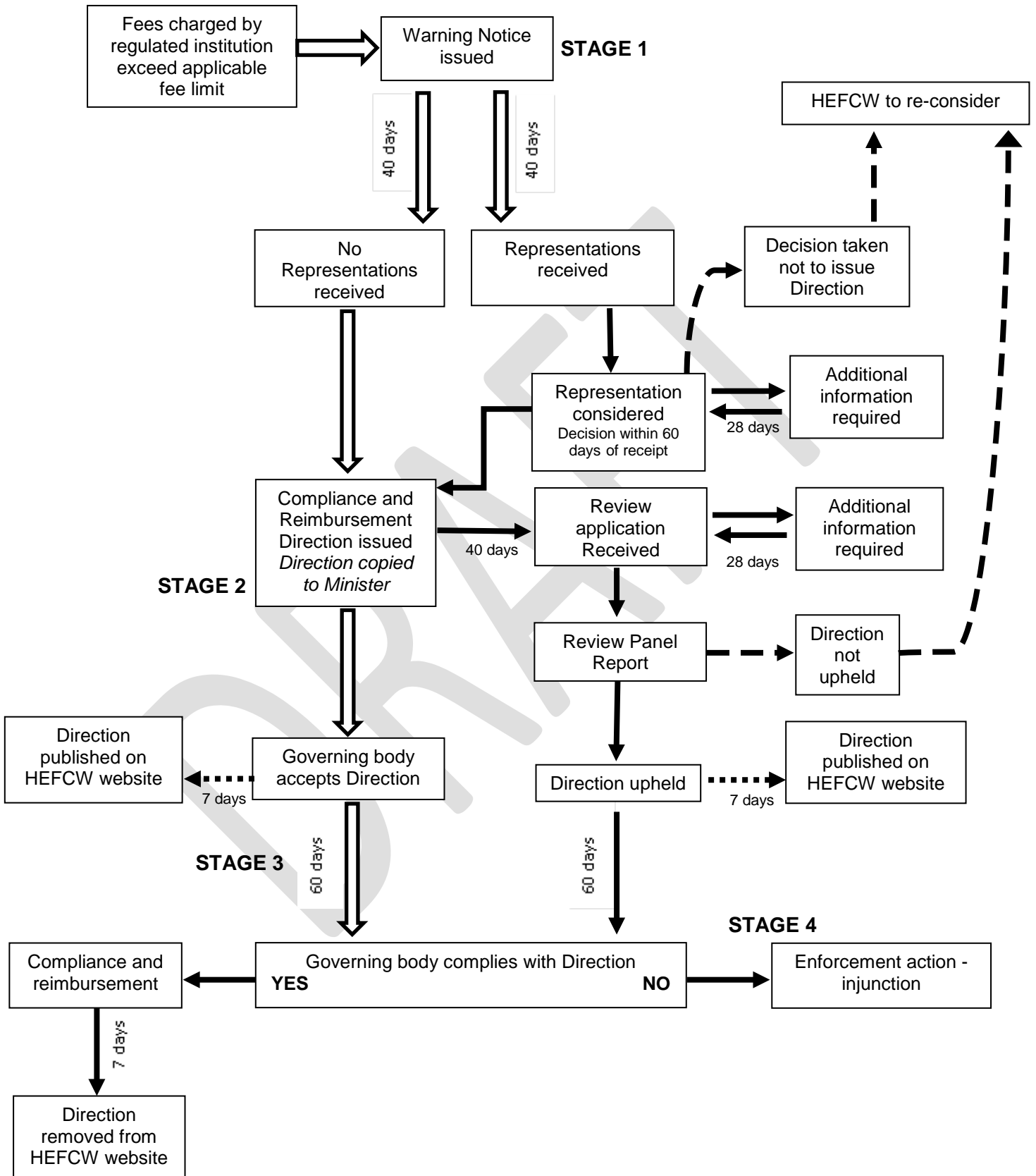
33. The governing body of the institution will be expected to consider the Compliance and Reimbursement Direction at the earliest possible opportunity, in order that it can agree measures to reduce the fee level to ensure that it complies with Section 10(1) of The Act (i.e. that the fee level does not 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 26).

34. In instances where the Compliance and Reimbursement Direction is not issued 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.
35. 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 26).
36. 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, 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 within 7 days.

#### **Stage 4: Enforcement**

37. 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 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 in relation to inadequate quality

### Basis for intervention

38. 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 Act outline those interventions that apply where HEFCW is satisfied that, in accordance with Section 18 of The 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 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 **Annex A**. Further information is also available at [www.hefcw.ac.uk](http://www.hefcw.ac.uk).

**The quality of education** or of a course of education, under the terms of section 18 of The 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 **Annex A**.

**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.

39. As the relevant provisions of The 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 requiring all regulated institutions to update their partnership agreements with external providers.
40. 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 process<sup>8</sup>; the statutory inspection of certain courses by Estyn (e.g. initial teacher training); liaison with professional, statutory and regulatory bodies; strategic engagement with institutions<sup>9</sup>; and institutional assurance work including the monitoring of allegations against institutions<sup>10,11</sup>.
41. 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.
42. In respect of the quality assessment being undertaken on behalf of HEFCW, Section 24 of The 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.

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 or that are charities, which HEFCW considers to be appropriate.

<sup>8</sup> [www.hefcw.ac.uk/policy\\_areas/learning\\_and\\_teaching/teaching\\_quality\\_assurance.aspx](http://www.hefcw.ac.uk/policy_areas/learning_and_teaching/teaching_quality_assurance.aspx)

<sup>9</sup> [www.hefcw.ac.uk/working\\_with\\_he\\_providers/strategic\\_engagement/strategic\\_engagement.aspx](http://www.hefcw.ac.uk/working_with_he_providers/strategic_engagement/strategic_engagement.aspx)

<sup>10</sup> [www.hefcw.ac.uk/working\\_with\\_he\\_providers/institutional\\_assurance/institutional\\_assurance.aspx](http://www.hefcw.ac.uk/working_with_he_providers/institutional_assurance/institutional_assurance.aspx)

<sup>11</sup> [www.qaa.ac.uk/concerns](http://www.qaa.ac.uk/concerns)



43. More generally in respect of quality, Section 23 of The 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 or that are charities, which HEFCW considers to be appropriate. The governing bodies of regulated institutions are required to take this advice into account.
44. As outlined at Sections 21(1) and 21(2) of The Act, all regulated institutions and external providers have a duty to cooperate with HEFCW, or an agency working on behalf of HEFCW, for quality assessment purposes. 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.
45. 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 Act, Section 21(3) of The 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 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.
46. 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 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 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.
47. The stages of these intervention processes that are provided for under Sections 42 to 44 of The 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**

48. 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. 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 at **Annex A** and on the HEFCW website [www.hefcw.ac.uk](http://www.hefcw.ac.uk). The arrangements at **Annex A** 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.
49. Where HEFCW, or its agents, are satisfied that, after a reasonable period, a regulated institution has failed to address identified quality issues through the process at **Annex A**, 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.

### **The Intervention Process: Other Measures in Respect of Inadequate Quality**

50. 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 48), Section 20 of The 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**

51. Following consultation with the governing body of an institution, 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. The cost of this advice or assistance may be charged to the institution. Section 20(3) of The 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**

52. 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 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.
53. Where HEFCW is satisfied that a regulated institution's governing body has not complied with its duty to cooperate at Sections 21(1) and 21(2) of The Act, Section 21(3) of The 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 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 external provider.

## **The Intervention Process: Directions in Respect of Inadequate Quality**

### **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 Act and in line with the process at **Annex A**, 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. 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, regulated institutions will have up to 40 days to make representations to HEFCW, with all representations to be sent to the HEFCW Chief Executive. 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 60 days of receipt of the representations. Where necessary, HEFCW may require the submission of additional information in order to be able to adequately consider representations. In such instances, the additional information 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 representation.
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 2015<sup>12</sup> 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 Act has expired and the governing body has not applied for a review;
  - A review of the Direction under section 44 of The 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 a regulated institution, Section 43 of the Act requires that HEFCW provide a statement to the governing body of that regulated institution. The statement will:
- 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.

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<sup>12</sup> <http://gov.wales/docs/dcells/consultation/150317-fee-access-regs.pdf>

## Checks and balances

61. If HEFCW issues an institution with a Direction in Respect of Inadequate Quality, section 44 of the 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 only on 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 notice or 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 notice or direction to be reviewed; a copy of the statement issued in accordance with Section 43 of The 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. 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 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 the outcome of the review is that the Direction should stand, that decision will be binding on the governing body of the regulated institution.

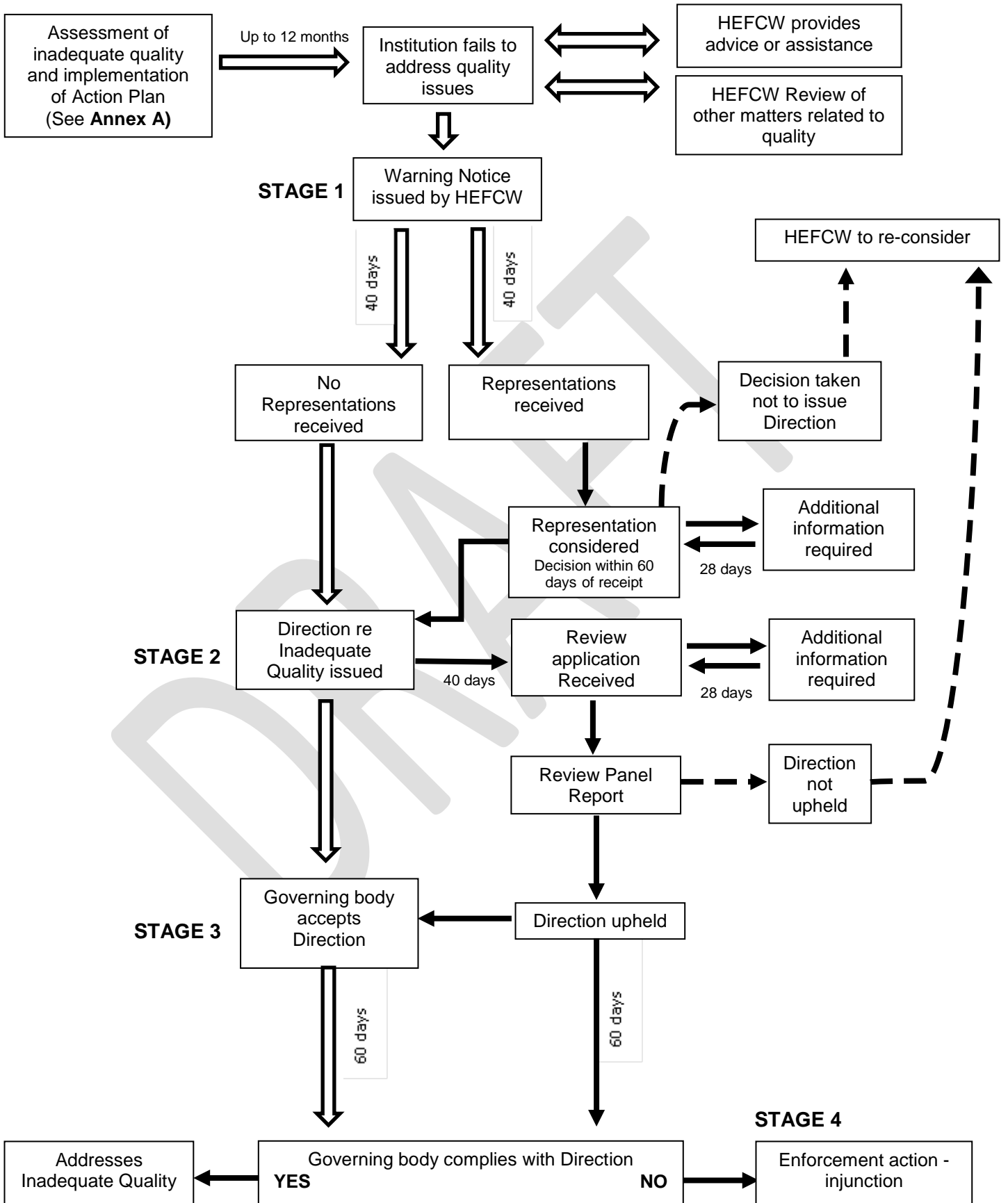
### **Stage 3: Addressing inadequate quality**

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, 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 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: The Intervention Process in Respect of Inadequate Quality**





## **Annex A: Inadequate Quality Processes Prior to Intervention**

### **Introduction**

1. If, as a result of exercising our functions under section 17 of The Act, we are satisfied that the quality of education provided by, or on behalf, of a regulated institution, or the quality of a particular course of education so provided, is inadequate or likely to become inadequate, then sections 19 and 20 of the Higher Education (Wales) Act 2015 ('The Act') will apply.
2. This annex clarifies actions we will take to deal with inadequate quality prior to the initiation of statutory intervention under the processes outlined in the Transitional Statement of Intervention. It replaces the former Unsatisfactory Quality Procedures for regulated institutions and links to our Transitional Statement of Intervention. It aims to ensure that the interests of students, the provider and the wider higher education sector are protected.
3. This annex applies for the period from 1 September 2015 until further notice, which is anticipated to lapse on 31 July 2016, and may be extended for a further period, subject to any changes to be implemented in relation to quality assessment arrangements. Any further update will be taken forward as part of the development of new quality assessment arrangements.

### **Background**

4. Under the Higher and Further Education Act, 1992, HEFCW had a statutory responsibility to secure that provision was made for assessing the quality of education provided in providers for whose activities it provided, or was considering providing, financial support.
5. We deliver our statutory responsibilities for quality assessment through contracting with the Quality Assurance Agency for Higher Education (QAA). We have extended our Service Level Agreement with the QAA and Universities Wales to 31 July 2016, to take account of the review of quality assessment in England, Wales and Northern Ireland.
6. From 2012/13, a higher education institution (HEI) or further education institution (FEI) with directly funded higher education (HE) provision receives judgements on four categories within the Quality Assurance Agency (QAA) review process for Wales. The process was known as 'Institutional Review: Wales,' and from 2014/15 was renamed 'Higher Education Review: Wales (HERW).'<sup>13</sup> The overall aim of HERW is to inform students and the wider public whether a provider meets UK

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<sup>13</sup> [www.qaa.ac.uk/en/ReviewsAndReports/Pages/Higher-Education-Review-Wales.aspx](http://www.qaa.ac.uk/en/ReviewsAndReports/Pages/Higher-Education-Review-Wales.aspx)

expectations. These expectations are set out in the UK Quality Code for Higher Education<sup>14</sup>.

7. HERW provides accountability to students and others with an interest in higher education, and encourages improvement. The process is carried out by peer reviewers, who are staff and students from other providers. A report on the judgements and findings is published after the review. The judgements and possible outcomes from the review method are as follows:

Judgement	Outcomes
<ul style="list-style-type: none"> <li>The threshold standards of awards</li> </ul>	<ul style="list-style-type: none"> <li>Meet/do not meet UK expectations</li> </ul>
<ul style="list-style-type: none"> <li>The quality of students' learning opportunities</li> </ul>	<ul style="list-style-type: none"> <li>Commended</li> <li>Meets UK expectations</li> <li>Requires improvement to meet UK expectations</li> <li>Does not meet UK expectations</li> </ul>
<ul style="list-style-type: none"> <li>The enhancement of students' learning opportunities</li> </ul>	
<ul style="list-style-type: none"> <li>The quality of public information, including that produced for students and applicants.</li> </ul>	

8. A published action plan is prepared as a result of all reviews, addressing the recommendations and affirmations, and giving any plans to capitalise on the identified good practice. The provider updates the action plan annually until all actions have been completed, and posts the updated plan to its website.
9. The review is completed when it is formally 'signed off'. Where 'commended' or 'meets' judgements are achieved in all four areas, the review is formally signed off by the QAA on publication of the initial action plan.

### Definition of quality

10. **The quality of education** or of a course of education, under the terms of section 18 of The 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.
11. In the period covered by this agreement we will contract with the QAA to assess the quality of education provided in Wales, as enabled under The Act. The reasonable needs will be considered to be met for these purposes if a provider obtains judgements of 'Meet(s) UK expectations' or 'Commended' in all four judgement categories in QAA review. In every case, a regulated institution receiving a 'requires improvement' or 'does not meet' outcome will be deemed to have inadequate quality. It will be subject to the procedures detailed in this Annex, before

<sup>14</sup> [www.qaa.ac.uk/assuring-standards-and-quality/the-quality-code](http://www.qaa.ac.uk/assuring-standards-and-quality/the-quality-code)

becoming subject to the inadequate quality interventions outlined in the Transitional Statement of Intervention.

12. The Higher Education Statistics Agency (HESA) maintains a list of Professional, Statutory and Regulatory Bodies (PSRBs) which accredits specific courses<sup>15</sup>. PSRBs may also review/inspect provision at designated providers, and will maintain their own definitions of quality. In addition, Her Majesty's Inspectorate for Education and Training in Wales (Estyn)<sup>16</sup> have statutory responsibility for inspecting Initial Teacher Training provision, FE in HE, and further education institutions which may also be offering higher education provision. HEFCW will consider the findings of these bodies where they consider that the quality of higher education provision is inadequate, or likely to become inadequate, and in so doing will use their definitions of quality.

### **Actions taken following unsatisfactory HERW outcomes**

13. Regulated institutions receiving unsatisfactory HERW outcomes are able to undertake remedial actions prior to any decision to implement the inadequate quality actions. The QAA will monitor the response of providers to the HERW outcomes on HEFCW's behalf, as enabled under Section 17 of The Act.
14. The actions following HERW are detailed in the handbook (on the QAA website [www.qaa.ac.uk](http://www.qaa.ac.uk)), and summarised below:
  - Following the review, the regulated institution produces an action plan in consultation with students, describing how it will respond to the findings. The QAA monitors the implementation of the action plan;
  - Where a review team makes a judgement of 'requires improvement to meet UK expectations' or 'does not meet UK expectations' in one or more areas of the review, there is a programme of follow-up activity, to address the area that has received either of these judgements;
  - A provider receiving one or more 'requires improvement' judgements submits its action plan, with a series of progress reports to be provided over the following year. If these reports show that progress has been made in dealing with the review findings, QAA arranges for a peer visit to establish whether the judgement can be changed to 'meets UK expectations';
  - A provider receiving a 'do/does not meet' judgement submits its development plan, with a series of progress reports to be provided over the following year. If reports show that progress has been made in dealing with the review findings, QAA will arrange for a second review to take place within twelve months. If the second review returns 'commended' or 'meets UK expectations' judgements in all areas, the judgement(s) will be changed and the review signed off.

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<sup>15</sup> [https://www.hesa.ac.uk/C14061/accreditation\\_list.html](https://www.hesa.ac.uk/C14061/accreditation_list.html)

<sup>16</sup> [www.estyn.gov.uk/](http://www.estyn.gov.uk/)

15. The initial judgement is formally communicated to the regulated institution by means of a letter from the QAA to the head of the regulated institution. We, and the QAA, expect that any HERW outcome will be discussed with the regulated institution's governors at the first available opportunity. It should be the aim of all stakeholders to ensure action is taken to rectify the identified problems.
16. The primary responsibility for drawing up the action plan rests with the regulated institution and we will encourage it to use other available sources of support and expertise where appropriate (e.g. the Higher Education Academy). While the QAA cannot act as a consultant to providers regarding action plans, it will be prepared to comment on proposals.
17. Regulated institutions which are not the awarding bodies will be expected to involve their awarding bodies where appropriate. Regulated institutions may need to involve their external providers if necessary, in order to ensure that there is no risk to quality of provision of other partners.
18. The QAA will request progress reports from the regulated institution on the implementation of the action plan at regular intervals and will monitor these to confirm that recommendations are being addressed. QAA staff will also meet with senior managers at the regulated institution.
19. The QAA will pay a follow-up visit to the regulated institution and will formally sign the review off when satisfied that the action plan has been implemented successfully, within a maximum of 12 months. The nature, scope and timing of the review are determined in accordance with the principle of proportionality, and through dialogue between the regulated institution, the QAA and us, and will normally focus on issues identified in the review. Throughout this period, the QAA will inform us of any concerns about the effectiveness of remedial action and discuss any additional actions required.

### **Implementation of interventions**

20. We will implement the interventions when we consider a regulated institution to be at risk in terms of the quality of their provision. This will normally be when the existing procedures have failed to result in sufficient improvement, and/or it is not considered that the regulated institution will be able to address the problem(s) within a suitable timescale.
21. Regulated institutions have the opportunity to undertake actions to ensure that their provision is of adequate quality, prior to us initiating our statutory interventions. In addition, following consultation with the governing body of a regulated institution, we may give advice or

assistance to the governing body. If these actions are unsuccessful, we will implement our statutory interventions [see para 38 to 65 of the Transitional Statement of Intervention].

22. The interventions will be implemented when:
- the peer visit or further HERW does not result in the review being signed off;
  - a regulated institution receives a 'do(es) not meet UK expectations judgement'<sup>17</sup> in two successive reviews, as even where an initial problem leading to the outcome has been addressed, and an action plan successfully implemented, two such judgements will indicate ongoing problems with quality and/or standards at that regulated institution.
23. We may also implement the interventions for regulated institutions which:
- Cannot agree an action plan with the QAA to address any 'requires improvement to meet UK expectations' judgement within a reasonable time frame.
  - Receive a 'requires improvement to meet UK expectations' judgement and fail to develop an appropriate action plan, or are deemed by the QAA to have made unsatisfactory progress against their action plan;
  - Receive a judgement of 'requires improvement to meet UK expectations' in any category in two successive reviews;
  - Receive any 'do(es) not meet UK expectations' outcome judgement followed by a 'requires improvement to meet UK expectations' judgement in any category, or vice versa;
  - Are identified via other assessments, inspections or reviews (eg by Estyn or other Professional, Statutory and Regulatory Bodies (PSRBs)) to be at risk in terms of quality of provision;
  - Are identified via our strategic engagement with providers to be at risk in terms of students and quality
  - Are not considered by HEFCW to have complied with their duty to cooperate under Section 21 of The Act, eg in relation to the provision of information, assistance and access to the regulated institution's facilities as reasonably required.
24. In implementing the interventions, the principles under para 9 of the Transitional Statement of Intervention will apply. The needs of the learners affected by any issues covered by the HERW will be paramount, and in taking any action we and the provider concerned will ensure that students continue to have access to high quality learning opportunities<sup>18</sup>. We will consider appropriate action on a case by case

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<sup>17</sup> i.e. 'do not meet' in relation to the threshold standards of awards, and 'does not meet' in relation to the quality of students' learning opportunities, enhancement of students' learning opportunities and the quality of public information

<sup>18</sup> Including for those learners with protected characteristics or who wish to learn through the medium of Welsh

basis in consultation with the QAA, the regulated institution, the regulated institution's awarding body(ies), and other relevant partners.

25. A decision regarding whether to implement the interventions will be made by us within a reasonable timescale (to be determined on a case-by-case basis) of the circumstances detailed above. We will involve the regulated institution in discussions and will consult with the QAA and/or other bodies which review/inspect quality at regulated institutions, if the reasons for implementation of the interventions result from their review/inspections, and/or are likely to impact on other provision of that regulated institution which they review/ inspect.
26. In the case of concerns regarding quality of provision being identified repeatedly, or failing to be addressed to the satisfaction of a body undertaking another assessment, inspection or review, we will take a decision in consultation with the body undertaking the assessment, inspection or review.
27. If any external providers are considered to be at risk in terms of sound and effective management of learning opportunities and academic standards, then we may ask the QAA to undertake an additional review of these external partners. This will be dealt with as a separate issue.
28. We will be concerned if a regulated provider is identified via another assessment, inspection or review (eg by Estyn or other PSRB) to be unsatisfactory and/or at risk of having accreditation of provision withdrawn. We will expect regulated institutions to keep us, as well as the organisation which carried out the assessment, inspection, review or strategic engagement, informed of the actions being taken in response to the unfavourable outcome. Should concerns regarding quality be identified repeatedly, or should they fail to be addressed to the satisfaction of the organisation concerned, we may choose to implement the interventions.

### **Concerns about standards and quality**

29. Our first step will be to ask the QAA to carry out a further investigation using their process for concerns about academic standards and quality, and about information that regulated institutions make available about their provision, where these may indicate serious systemic or procedural problems. Details of this process are available on the QAA website.<sup>19</sup> They will do this on our behalf, under Section 17 of The Act.
30. The concerns procedure includes screening; an initial inquiry, at which a regulated institution will be able to make a case for no further action; and a full investigation, should the initial inquiry provide sufficient evidence of a concern, or demonstrate that are still issues of concern outstanding.

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<sup>19</sup> [www.qaa.ac.uk/concerns/concerns-about-providers](http://www.qaa.ac.uk/concerns/concerns-about-providers)

31. In the event of a full investigation, the QAA will provide recommendations to the regulated institution regarding how they may ensure that the problems identified do not reoccur. The QAA normally also requests an action plan, with targets for the implementation of the recommendations.
32. Should the recommendations and/or action plan fail to be addressed to the satisfaction of HEFCW and/or the QAA, we may choose to implement our statutory interventions.

### **Preventing inadequate quality**

33. Where we have concerns that provision may become inadequate we will engage with the regulated institution and its governing body to address issues. If they are not addressed to our satisfaction we may choose to implement our statutory interventions, in order to require the governing body of a regulated institution to not/take steps to prevent the quality of education from becoming inadequate.

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