

Guidance to HEFCW on Fee and Access Plans

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1. Introduction

Purpose

- 1.1. The purpose of this guidance is to assist HEFCW to prepare for implementation of the new regulatory system with particular reference to HEFCW's fee and access plan approval, monitoring and evaluation functions. This guidance should be read alongside guidance issued by Welsh Ministers in June 2015 that relates to the functions that HEFCW is to exercise from May 2015 onwards.
- 1.2. The Welsh Government wants fee and access plans to make a significant and lasting contribution to widening access to higher education in Wales. HEFCW's functions of approval, monitoring and evaluation of plans under the 2015 Act provide the necessary mechanisms to ensure that:
 - the measures to which institutions commit in their plans are sufficiently ambitious to improve access to higher education in light of the significant public subsidy derived from statutory student support;
 - individual institutions' performance against the measures in their plans and progress made across the regulated higher education sector as a whole is effectively monitored and evaluated; and
 - good practice is identified and communicated to institutions so that the effectiveness of fee and access plan measures and investments increases over time.
- 1.3. Further guidance concerning enforcement of fee and access plan commitments will be issued in due course together with guidance on the remainder of HEFCW's intervention functions.

Background

- 1.4. Under the Higher Education Act 2004 (the "2004 Act"), HEFCW was designated as the "relevant authority" for the approval and enforcement of fee plans in Wales. This statutory role was conferred on HEFCW, by regulations, in March 2011 as one of a number of changes introduced as part of the (then) new higher education funding and tuition fee arrangements in Wales. The Higher Education (Wales) Act 2015 (the "2015 Act") establishes a new regulatory framework in which HEFCW has functions to approve, monitor, evaluate and enforce fee and access plans.

- 1.5. Fee plans have been a statutory requirement in Wales for HEFCW-funded institutions in respect of higher education courses which commenced from the 2012/13 academic year where tuition fees exceed £4,000. The outcomes of institutions' activities and investments in support of fee plan objectives will take time to become evident and it has not been possible to date to evaluate the effectiveness of the plans. Therefore, the 2015 Act does not make significant amendments to the content of fee plans. However, the Welsh Government has taken the opportunity to strengthen specific elements of the plans. Additionally, the plans have been renamed to reflect the contribution they are intended to make to improving equality of opportunity in connection with access to higher education. The 2015 Act therefore makes provision for '*fee and access plans*'.
- 1.6. Students from groups which are under-represented in higher education may require additional support, whether financial, academic or pastoral, in order to complete their courses. While guidance issued under the 2004 Act by the Welsh Ministers to HEFCW concerning fee plan approval included the expectation that institutions will include measures in their plans to address the retention of students from groups that are under represented in higher education, the 2015 Act allows regulations to be made which can require fee and access plans to include such provision. To this end Welsh Ministers have made regulations that specify that a fee and access plan must include, amongst others, provisions requiring the governing body of an institution to take, or secure the taking of, measures to retain students who are members of under-represented groups.
- 1.7. The 2015 Act strengthens HEFCW's monitoring, evaluation and enforcement functions. For example, it confers an express function on HEFCW to evaluate the effectiveness of fee and access plans. HEFCW may use the evaluation findings to develop good practice, information and advice. The 2015 Act also enables HEFCW, by way of directions, to enforce compliance with relevant fee limits and compliance with the general requirements of an approved plan.

2. Summary of HEFCW's functions relating to fee and access plans

- 2.1. The functions to be exercised by HEFCW relating to fee and access plans are summarised below together with the relevant sections of the 2015 Act.
- Under sections 54(3) and (4) HEFCW may provide information and guidance to prospective fee and access plan applicants in order to allow those applicants to make decisions about entry to the new regulatory system.

- In order to approve a proposed fee and access plan, HEFCW must be satisfied that the applicant satisfies the requirements of section 2(3). HEFCW cannot approve a fee and access plan unless it is satisfied that the applicant institution is an institution in Wales that provides higher education and is a charity.
- Where the governing body of an institution applies to HEFCW under section 2 for approval of a fee and access plan, it is for HEFCW, under section 7(1), to either approve or reject the fee and access plan.
- Section 11 enables HEFCW to give a direction to the governing body of an institution where it is satisfied that the governing body has failed to ensure that regulated course fees do not exceed the applicable fee limit under section 10(1). HEFCW may direct the governing body to comply with section 10(1) and/or reimburse fees that have been paid to the institution to the extent that they exceed the applicable fee limit.
- Section 12 enables HEFCW to issue guidance about steps to be taken by institutions for the purpose of complying with a compliance and reimbursement direction (a direction under section 11).
- Section 15 requires HEFCW to monitor institutions' compliance with section 10(1) (the requirement to ensure that regulated course fees do not exceed the applicable fee limit) and to monitor regulated institutions' compliance with the general requirements of their plans.
- Section 15 also requires HEFCW to evaluate the effectiveness of each plan, and plans generally, in promoting equality of opportunity in connection with access to higher education and promoting higher education. HEFCW needs to evaluate the effectiveness of approved plans in order to exercise its function of giving good practice information and advice under section 54.
- The 2015 Act makes provision for the circumstances in which HEFCW may give notice that it will refuse to approve a new fee and access plan for an institution (section 37) and the circumstances in which HEFCW must, or may, withdraw their approval of a fee and access plan (sections 38 and 39).
- Section 49 places a duty on HEFCW to take Welsh Ministers' guidance into account. Welsh Ministers may for example issue guidance to HEFCW as to the exercise of its monitoring and evaluation functions under section 15 relating to fee and access plans.

3. Entry to the regulatory system

Introduction

- 3.1. Entry into the new regulatory system will be optional. Governing bodies of institutions that satisfy the requirements of section 2(3) of the 2015 Act may apply to HEFCW for approval of a fee and access plan. Approval of a fee and access plan will lead to the automatic designation of an institution's courses for the purposes of the Welsh Government's statutory student support¹.
- 3.2. The Welsh Government expects that the majority of applicants for approval of fee and access plans will be institutions that have previously had a fee plan approved by HEFCW under the 2004 Act. However, HEFCW may also receive applications for approval of fee and access plans from providers of higher education courses which have not previously been in receipt funding under section 65 of the Further and Higher Education Act 1992 (the "1992 Act") or section 86 of the Education Act 2005 (the "2005 Act"). HEFCW will therefore need to be prepared for applications from such providers and the advice which follows is intended to assist with putting the necessary arrangements in place.

Applications for approval of a fee and access plan

- 3.3. Fee and access plans may be submitted to HEFCW for approval by institutions which satisfy the requirements of section 2(3) of the 2015 Act. Those requirements are that the institution:

- | |
|--|
| <ol style="list-style-type: none">(a) is an institution in Wales;(b) provides higher education; and(c) is a charity. |
|--|

It will be for HEFCW to determine if an applicant satisfies the above criteria. As part of the information and advice provided to prospective applicants HEFCW may also wish to communicate the criteria which must be satisfied in order to make an application for a fee and access plan. The purpose of the following sections of this guidance is to provide assistance with such determinations.

¹ Provisions for the automatic designation of courses for a regulated institution will be included in the HE student support regulations for AY 2017/18.

Applications by non-institutional providers

- 3.4. The Welsh Government's intention is that the new regulatory system should not exclude an applicant from submitting a fee and access plan for HEFCW's approval on the grounds that the applicant is constituted in a particular way. Instead, the focus is on whether the applicant meets the requirements in section 2(3) of the 2015 Act.
- 3.5. The 2015 Act does not define the term "institution". However, under sections 57(1) and (2) of the Act the term includes persons who provide training for members of the school workforce (namely those who work in schools and others who are teachers or who carry out work that consists of or includes teaching), whether or not those training providers would otherwise be regarded as an institution.
- 3.6. Given the ordinary meaning of "institution" it is likely that a significant majority of prospective applicants for fee and access plans will be considered to be institutions. For example, universities formed by Royal Charter, Higher Education Corporations and Further Education Corporations are all institutions for the purposes of the 2015 Act. The Welsh Government is aware that certain other providers of higher education might not regard themselves as institutions and neither might they be regarded by HEFCW as such. Such providers might, for example, be companies limited by guarantee which provide higher education. Consequently it may in some cases be necessary for a non-institutional provider to be designated by the Welsh Ministers as an institution for the purposes of the 2015 Act in order for the provider to seek approval of a fee and access plan.
- 3.7. Section 3 of the 2015 Act enables the Welsh Ministers to designate as an "institution" a provider which is a charity and which provides higher education in Wales, which would not otherwise be regarded as an institution for the purposes of the Act. This power of designation is a means of ensuring that any doubts as to whether a provider is "an institution" for the purpose of applying to HEFCW for approval of a fee and access plan are avoided. A provider designated as an institution by the Welsh Ministers under section 3 of the Act will still need to satisfy all of the elements of section 2(3) of the Act in order to apply to HEFCW for approval of a fee and access plan.
- 3.8. Determination of a designation under section 3 of the 2015 Act will be made by the Welsh Government following consideration of an application by the provider concerned. HEFCW may receive enquiries concerning approval of fee and access plans from providers of higher education which it does not consider to be institutions. Should this be the case then HEFCW is advised

to inform the prospective applicant to contact the Welsh Government in the first instance via: HEPolicy@Wales.GSI.Gov.UK
Once designated as an “institution” the provider may then apply to HEFCW for approval of a fee and access plan under section 2.

- 3.9. It is expected that the Welsh Ministers’ powers of designation under section 3 of the 2015 Act will be used infrequently. The Welsh Government’s view is that all those bodies which currently have approved fee plans in place under the 2004 Act would be “institutions” for the purposes of section 2 of the 2015 Act and would be able apply to HEFCW for approval of a fee and access plan if they so wished. It is likely that designations under section 3 will only be relevant for a limited number of providers who decide to apply to HEFCW for approval for the very first time (and were previously not regulated by the 2004 Act).

Institutions in Wales

- 3.10. An institution will be “in Wales” if its activities are either principally or wholly carried on in Wales as defined by section 57(3)(a) of the 2015 Act. For these purposes “principally” means the majority of an institution’s activities. This formulation follows that of section 62(7)(a) of the 1992 Act used to determine an institution’s eligibility to receive funding from HEFCW. Consequently, institutions in receipt of funding from HEFCW under section 65 of the 1992 Act should, under most circumstances, satisfy the requirement of being “in Wales”. (The formulation also follows section 85(4) of the Education Act 2005).
- 3.11. In the case of new applicants and given HEFCW’s role in considering applications under section 7 of the 2015 Act, HEFCW will need to ascertain the geographic location of an applicant’s activities to determine whether the institution satisfies the requirement of being “in Wales”. In order to do this HEFCW may wish to request information relating to:
- the applicant’s name and principal address;
 - any other names under which the applicant operates;
 - the geographic location of the applicant’s activities.

Provision of higher education

- 3.12. For the purpose of the 2015 Act higher education is defined as education provided by means of a course of any description mentioned in Schedule 6

to the Education Reform Act 1988² (section 57(1) of the 2015 Act), as follows:

Courses of higher education

- (1)
 - (a) a course for the further training of teachers or youth and community workers;
 - (b) a post-graduate course (including a higher degree course);
 - (c) a first degree course;
 - (d) a course for the Diploma of Higher Education;
 - (e) a course for the Higher National Diploma or Higher National Certificate of the Business & Technician Education Council, or the Diploma in Management Studies;
 - (f) a course for the Certificate in Education;
 - (g) a course in preparation for a professional examination at higher level;
 - (h) a course providing education at a higher level (whether or not in preparation for an examination).

- (2) For the purposes of paragraph 1(g) above a professional examination is at higher level if its standard is higher than the standard of examinations at advanced level for the General Certificate of Education or the examination for the National Certificate or the National Diploma of the Business & Technician Education Council.

- (3) For the purposes of paragraph 1(h) above a course is to be regarded as providing education at a higher level if its standard is higher than the standard of courses providing education in preparation for any of the examinations mentioned in paragraph 2 above.

3.13. In the case of new applicants HEFCW will need to request information to determine whether the institution satisfies the requirement of providing higher education. HEFCW may wish to request information relating to:

- a description of the higher education provided by the applicant in Wales;
- a description of the award that may be conferred on a person as a result of the higher education provided in Wales by the applicant;
- a copy of any prospectus published by the applicant that relates to the provision of higher education in Wales by that applicant;
- the number of persons in Wales undertaking that higher education as at the date of the application;
- the locality in Wales where higher education is provided; and
- an address of any website maintained by the applicant relating to the provision of higher education in Wales by that applicant.

² Schedule 6 to the Education Reform Act 1988 – Courses of Higher Education.

Charitable status

- 3.14. Institutions applying to HEFCW for approval of a fee and access plan must be charities. All Higher Education Corporations (HECs)³ are charities as are all Further Education Corporations (FECs)⁴. Chartered universities in Wales which receive funding from HEFCW are registered with the Charity Commission for England and Wales. Consequently all institutions which have had a fee plan approved by HEFCW under section 34 of the 2004 Act are charities.
- 3.15. In the case of new applicants HEFCW will need to be satisfied that an applicant is a charity and may wish to request information as follows:
- the applicant's charity registration number and the name and address of a charity regulator⁵ with whom the applicant is registered; or
 - if the applicant is not registered with a charity regulator the reason why registration with a charity regulator is not required (for example, where the charity is "exempt" from registration with the Charity Commission, where the charity is exempted by way of order or regulations and gross income does not exceed £100,000, or where the charity's gross income does not exceed £5,000) together with a copy of the applicant's governing document.

In respect of charities in England and Wales that are exempt from registration with the Charity Commission, HEFCW may also wish to request details of the applicant's Principal Regulator in order that its status as a charity can be confirmed.

Exit from the regulated higher education sector

- 3.16. 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 further guidance will follow on this function in due course.

³ As provided for by section 125A of the Education Reform Act 1988.

⁴ As provided for by section 22A of the Further and Higher Education Act 1992.

⁵ A charity regulator means the Charity Commission, the Office of the Scottish Charity Regulator or the Charity Commission for Northern Ireland.

Provision of information and advice to prospective applicants

- 3.17. Section 54(3) and (4) of the 2015 Act enables HEFCW to provide information and advice to the governing body of a regulated institution. This provision also allows HEFCW to provide information and advice to prospective applicants (prior to an application for approval of a fee and access plan). HEFCW will act as a first point of contact for such applicants and might provide information and advice regarding the requirements with which institutions must comply following approval of a fee and access plan. The aim is to ensure that all applicants are fully aware of their obligations prior to becoming a regulated institution and to minimise the administrative burdens on HEFCW and applicants from the outset of the application process.

Information to be provided with an application for approval of a fee and access plan

- 3.18. The Welsh Government's intention is that institutions operating within the regulated higher education sector which benefit from having their HE courses automatically designated for student support should be financially viable, well managed and provide high quality education. Sections 2(4) and 7(3) of the 2015 Act enable the Welsh Ministers to make regulations about the making of applications to HEFCW for approval of a fee and access plan and the matters which are to be taken in to account by HEFCW when determining an application.
- 3.19. To this end the Welsh Ministers have made regulations⁶ which require institutions to provide certain types of information in support of their applications. The regulations provide that an application by an institution for approval of a fee and access plan must include **information** relating to:
- the financial viability of the institution;
 - the arrangements for the organisation and management of the institution's financial affairs; and
 - the quality of education provided by, or on behalf of, the institution.

The regulations also require that HEFCW must, in making any determination to approve or reject a fee and access plan, **take into account** (amongst other things):

- the financial viability of the institution;

⁶ The Higher Education (Fee and Access Plans) (Wales) Regulations 2015, S.I No. 1498(W170).

- the arrangements for the organisation and management of the institution's financial affairs; and
 - the quality of education provided by, or on behalf of, the institution.
- 3.20. These pre-requisites will minimise the possibility of an institution receiving approval of its fee and access plan but subsequently failing to satisfy the requirements of the new regulatory system and potentially having approval of its plan withdrawn. Guidance in respect of determination of an application for approval of a fee and access plan is dealt with in section 5 below.
- 3.21. It will be for institutions to provide HEFCW with information as part of their applications for approval of fee and access plans. The Welsh Government is mindful that the requirements of the new regulatory system should not unnecessarily increase the administrative burdens on both HEFCW and institutions. Consequently, the expectation is that where information is already held by HEFCW as a result of ongoing financial assurance activities and as a consequence of recent quality assessments that HEFCW would be satisfied with an institution identifying the information already held by HEFCW in its application.
- 3.22. In the case of new applicants (i.e. those for whom HEFCW has not previously undertaken financial assurance or had responsibility for quality assessment of their education), HEFCW may wish to consider providing advice about the making of applications and the type of information that applicants should supply in support of their applications. For example, in order to take into account the financial viability of an applicant institution it is expected that HEFCW might wish to be supplied with audited accounts for a specified number of years; in respect of the organisation and management of financial affairs HEFCW might request information about the institution's financial procedures and audit arrangements; in respect of the quality of an applicant's education HEFCW may wish to require that an institution demonstrates an external assessment of its education by an accredited body. In the case of subsidiary institutions (for example, institutions which are owned by other institutions or providers) which provide their own qualifying courses (courses which are subject to a fee limit), they will need to supply information to HEFCW relating to the three matters specified in paragraph 3.19 above in a similar manner to other institutions. It is a matter for HEFCW to decide what information an applicant institution must provide in order that HEFCW can take these matters into account.

Transition into the regulated higher education sector

- 3.23. The higher education landscape is undergoing significant change with greater variety in the modes of provision, the type of courses and in the range of providers offering those courses. For example, growth in technology-enhanced and distance learning and a more differentiated provider base. The new regulatory system has been designed to operate in the context of this changing environment and HEFCW's new functions will allow regulatory controls to be administered in relation to the full range of courses which the Welsh Ministers automatically designate for statutory student support.
- 3.24. A key feature of the new regulatory system is that institutions that wish for their relevant higher education courses to be automatically designated for Welsh Government statutory student support will need to apply to HEFCW for approval of a fee and access plan. Subject to HEFCW's approval of an institution's plan the courses included in that plan will be automatically designated for student support purposes.
- 3.25. Under the regulatory system provided for by the 2004 Act, and during the transitional period provided for by the 2015 Act, only those institutions in Wales in receipt of funding from HEFCW under section 65 of the 1992 Act or section 86 of the 2005 Act are subject to HEFCW's regulatory controls. Such institutions must have a HEFCW approved fee plan in place if they wish to charge fees exceeding £4,000 for their relevant higher education courses. However, this situation will change under the new regulatory system as it does not distinguish between institutions on the basis of their funding arrangements.
- 3.26. When the new regulatory system is fully operational⁷, the current definitions of 'publicly funded' and 'non-publicly funded' institutions will no longer be applicable. As a consequence of this change those publicly funded institutions which have not previously needed to apply to HEFCW for approval of a fee plan under the 2004 Act regime will need to consider whether they wish to make an application for approval of a fee and access plan under the new regulatory system if they wish their relevant higher education courses to continue to be automatically designated for Welsh Government statutory student support. In the main this change will apply to Further Education (FE) institutions in Wales which are not in receipt of funding from HEFCW and / or institutions funded by HEFCW whose tuition fees have not exceeded £4,000.

⁷ Full implementation of the new regulatory system will occur from the 2017/18 academic year. The 2015/16 and 2016/17 academic years will be transitional years as institutions move into the regulatory regime.

- 3.27. It will therefore be important for all institutions in Wales which presently have their higher education courses automatically designated for Welsh Government statutory student support to be notified about the opportunity to apply to HEFCW for approval of a fee and access plan under the new regulatory system. In this regard the Welsh Government expects HEFCW to ensure that its call for the first round of applications for fee and access plan approval is widely publicised and that particular attention is given to informing institutions in the further education sector of the application arrangements. Although the decision to make an application is a matter for individual institutions HEFCW may wish to draw to prospective applicants' attention the requirement for approval of a fee and access plan in order for an institution's courses to continue to be automatically designated for Welsh Government statutory student support.⁸
- 3.28. Section 2(1) of the 2015 Act enables the governing body of an institution which satisfies the requirements of section 2(3) of the Act to make an application to HEFCW for approval of a fee and access plan. This means that establishments which are separate legal entities may need to make applications for fee and access plan approval in their own right. In the case of an institution which satisfies the requirements of section 2(3) and which happens to be a wholly owned subsidiary of another institution in Wales, which also satisfies the requirements of section 2(3), it does not necessarily follow that the "parent" institution is permitted to seek approval of a proposed fee and access plan for itself and on behalf of the subsidiary institution.
- 3.29. The regulatory system established by the 2015 Act has been designed to provide a line of sight between the regulated providers of higher education and the application of regulatory controls to protect the interests of students, the Welsh Government and tax payers. The 2015 Act provides clarity as to who is responsible if things go wrong, namely the governing body of the regulated institution whether that institution is providing the higher education directly or whether higher education is being provided on that institution's behalf. As such, there are two categories of provision recognised in the new regulatory system, namely:
- (i) higher education provided directly by a regulated institution; and
 - (ii) higher education provided on behalf of a regulated institution (whether by another regulated institution or by an external provider which may or may not be a subsidiary of the regulated institution).

⁸ Provisions for the automatic designation of courses for a regulated institution will be included in the HE student support regulations for AY 2017/18.

- 3.30. As regards the provision of courses on behalf of a regulated institution by an external provider, the term “external provider” is defined in section 17(3) of the 2015 Act as being a person who (a) is not a regulated institution, but (b) is responsible for providing all or part of a course of education on behalf of a regulated institution.
- 3.31. Where a course is provided on behalf of a regulated institution the regulated institution normally has overall responsibility for the content and delivery of the course (including quality assessment arrangements), but the teaching and supervision is provided either in part or in whole by another institution or provider. Such arrangements may include courses delivered on behalf of a regulated institution by a subsidiary institution (which is not itself a regulated institution) which operates within a group structure.
- 3.32. Where courses are provided on behalf of an institution, it is that institution which will need to apply to HEFCW for approval of a fee and access plan if it wants its courses to be automatically designated for Welsh Government student support. Subject to approval of the fee and access plan, that institution (namely the institution which has overall responsibility for the provision) will be a regulated institution under the 2015 Act and will be subject to HEFCW’s regulatory functions. Regulated institutions will be responsible for compliance with: applicable fee limits, fee and access plan commitments, HEFCW’s quality assessment requirements and HEFCW’s financial management code. To ensure that there is clarity about who is responsible for providing a course it is anticipated that HEFCW may wish to see documentary evidence of arrangements concerning the overall responsibility for the courses irrespective of whether they apply between “parent” and subsidiary institutions within a group structure or to arrangements with providers outside the group structure. The nature of that evidence will be a matter for HEFCW to determine but should demonstrate where responsibility for the content, delivery, teaching and supervision of the courses lies.
- 3.33. Where, for example, a subsidiary institution which satisfies the requirements of section 2(3) of the 2015 Act provides its own qualifying courses (i.e. courses for which it has responsibility in terms of content, delivery, teaching and supervision and which it is not providing on behalf of another institution) then it would be for that subsidiary institution, if it wanted those courses to be automatically designated for student support, to apply for fee and access approval.
- 3.34. In light of a number of structural changes in the further and higher education landscape in Wales in recent years, including a number of institutional mergers, particular attention will need to be given to the legal status of

prospective applicants. HEFCW will need to consider each case individually (for instance, whether or not a subsidiary is a separate legal entity, as opposed to a branch of a single institution). By way of further example, where an FE college which provides higher education courses is a wholly owned subsidiary of a “parent” higher education institution, the FE college, if it is not providing those courses on behalf of its parent institution will need to make its own application to HEFCW for approval of a fee and access plan if it wishes those courses to be automatically designated for Welsh Government student support.

4. Content of Fee and Access Plans

Duration of plans

- 4.1. Fee and access plans must specify the period in respect of which they are to have effect; this is the period to which a plan “relates”. Section 4(2) of the 2015 Act provides that the period must not exceed two years. Regulations may substitute a different period, but before making such regulations, the Welsh Ministers must consult the bodies and persons referred to in section 4(4).
- 4.2. The intention in the long term is to explore whether the period to which a plan relates could be extended up to 5 years to reduce the administrative burdens on both HEFCW and institutions, particularly in light of HEFCW’s new power to monitor institutions’ compliance with the provisions of approved plans and to evaluate the effectiveness of those plans. However, due to the need for the new system to embed and to provide institutions with certainty about the duration of their plans it is expected the maximum duration of fee and access plans will not be extended during the initial period of operation of the new regulatory system. It envisaged that HEFCW will continue to operate the fee and access plan cycle on an annual basis in the first few years of operation.
- 4.3. The 2015 Act defines the term “approved plan” as a plan which has been approved by HEFCW under section 7 of the Act and which is “in force”. The 2015 Act also states that a regulated institution is an institution to which an approved plan relates. The period in which a plan is “in force” is the period beginning with the day on which it is approved and ending: either the day on which the period to which the plan relates expires (i.e. the end of the academic year in respect of which the plan has effect); or the date of a withdrawal notice under section 38 or 39, whichever of those occurrences is the earlier. As such, the period in respect of which the plan has effect will

generally be shorter than the period in which the plan is in force. By way of example, if an institution's plan for 2017/18 is approved by HEFCW in July 2016 the plan is in force from the date that is approved but it does not have effect until 2017/18. That said, the institution is a regulated institution from the point at which the plan is approved and this is relevant for the purposes of Parts 3 and 4 of the 2015 Act. An approved plan for 2017/18 would cease to be in force at the end of August 2018. In respect of approved plans the term "academic year" means a period of 12 months and is not tied to any specific start or end dates. The relevant academic year must be specified in a fee and access plan.

- 4.4. Under the 2015 Act and in terms of the regulation of fee limits, fee and access plans will have effect for specific academic years of a course which begin during the period in respect of which the plan has effect. Initially, Welsh Government's intention is that plans will be limited to 12 month periods. So if an approved fee and access plan has effect for the period 1 September 2017 – 31 August 2018 then fee limits for academic years of qualifying courses which begin during that period will be regulated under the 2015 Act. Fee limits will generally be regulated only for the period in respect of which the plan has effect. For example, fee limits and provisions included in the 2017/18 plan will apply only to academic years of courses beginning within the 12 month period of September 2017 – August 2018 and the plan should not include fee limits and provisions for future academic years. In relation to quality of education and the financial management code, the provisions in Parts 3 and 4 of the 2015 Act generally⁹ apply in relation to regulated institutions. An institution becomes a regulated institution from the point at which its fee and access plan is approved.

Fee limits

- 4.5. Section 5 of the 2015 Act requires a fee and access plan to specify, or provide for the determination of, a fee limit in relation to each "qualifying course" and in respect of each academic year of the course which begins during the period to which the plan relates (i.e. the period during which the plan has effect).
- 4.6. As with the regulatory system established under the 2004 Act, fee limits will apply in relation to 'qualifying persons' undertaking 'qualifying courses'. A

⁹ Section 26 of the 2015 Act provides for the quality assessment functions in Part 3 of the Act to continue in certain circumstances following an institution's fee and access plan ceasing to be in force (either at the end of the period to which the plan relates or as a result of HEFCW withdrawing the plan's approval). Section 27 (8) of the 2015 Act specifies that for Part 3 of the Act the Open University is not to be treated as a regulated institution.

qualifying course is a course that is wholly or principally provided in Wales¹⁰ and which is described in regulations made by the Welsh Ministers under section 5(2) of the 2015 Act.¹¹ In general, and as with the system established under the 2004 Act, 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.

- 4.7. The fees payable by a qualifying person in connection with a qualifying course for an academic year of the course which begins during the period to which the plan has effect must not exceed the fee limits specified or determined for the course. The fees that are to be taken into account for the purposes of the fee limit are fees that are payable to the institution by a “qualifying person”, namely a person (excluding international students) who is described in regulations. Section 5(5) of the 2015 Act enables the Welsh Ministers to prescribe classes of person for these purposes. The Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015 prescribe the ‘qualifying course’ and ‘qualifying persons’ for the purpose of the fee limit. The categories of ‘qualifying person’ established under the 2004 Act continue for the purposes of the 2015 Act and include persons in the following categories who are ordinarily resident in the United Kingdom: persons who are settled in the United Kingdom, refugees and their family members and European Union nationals. “Fees” for these purposes are course fees, including admission, registration and tuition fees (see section 57(1) of the 2015 Act).
- 4.8. In providing for the determination of a fee limit, rather than specifying a fee limit, a fee and access plan which relates to more than one academic year might, for instance, specify that an inflationary increase is to apply to course fees from one academic year to the next. Alternatively, a plan might provide for a fee limit by reference to the maximum fee amount which is prescribed in regulations. A fee limit in a plan must in any event not exceed the maximum amount which is to be prescribed in regulations. Welsh Ministers

¹⁰ The Secretary of State for Wales has made an order under section 150 of the Government of Wales Act 2006 (the Higher Education (Wales) Act 2015 (Consequential Provision) Order 2015), the effect of which is that courses which are wholly or principally provided in England by, or on behalf of, a regulated institution in Wales are to be treated as being courses wholly or principally provided in Wales. This maintains the current Wales / England cross-border arrangements for higher education regulation which have existed between HEFCW and HEFCE to date.

¹¹ Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015, S.I No 1484 (W.163).

have prescribed a maximum fee of £9000 in the Higher Education (Amounts) (Wales) Regulations 2015¹². Regulations 4, 5 and 6 of the Regulations prescribe lower maximum amounts in respect of certain courses.

- 4.9. Regulation 7 of the Higher Education (Amounts) (Wales) Regulations 2015 provides that, where a course is provided on behalf of an institution, fees are to be treated as payable to the institution on whose behalf the course is provided. As such, the applicable fee limit includes fees paid to another person providing the qualifying course on behalf of the regulated institution (and the applicable fee limit as specified in or determined by the fee and access plan must in any event not exceed the maximum fee amount prescribed in the above Regulations).
- 4.10. The guidance issued by Welsh Ministers to HEFCW in June 2015 provided information on excess fees, compliance and reimbursement directions, procedural requirements, guidance that may be issued by HEFCW and monitoring compliance with fee limits.

Validity of contracts

- 4.11. The legal relationship between an institution and its students is principally a contractual relationship (albeit that the relationship is not solely defined by contract law). Section 14 of the 2015 Act applies where a contract between an institution and a qualifying person in respect of that person undertaking a qualifying course provides for the payment of fees by that person which exceed the applicable fee limit.
- 4.12. Section 14(2) provides that such a contract is to be treated as providing for the payment of fees which are equivalent to the applicable fee limit. So where a student refuses to pay any excess fees specified in a contract, the institution will not be able to recover the excess fees. But the contract will remain otherwise enforceable, in terms of the institution's duty to provide education to the student, despite the contract providing for the payment of fees which exceed the applicable fee limit (section 14(3)).
- 4.13. Section 14 does not impact on HEFCW's functions under the 2015 Act but HEFCW may wish to include reference to Section 14 in its guidance to institutions.

Promotion of equality of opportunity and higher education

¹² The Higher Education (Amounts) (Wales) Regulations 2015, SI No. 1496 (W. 168).

- 4.14. The 2015 Act does not significantly alter the commitments which institutions will be required to include in their plans. The 2015 Act builds on the provisions of the 2004 Act which concern the promotion of equality of opportunity and the promotion of higher education. Section 6 of the 2015 Act requires a fee and access plan to include provisions relating to the promotion of equality of opportunity in connection with access to higher education or the promotion of higher education which are prescribed by regulations.
- 4.15. Regulations 5 and 6 of the Higher Education (Fee and Access Plans) (Wales) Regulations 2015 prescribe for the purposes of section 6(1) of the 2015 Act the provisions relating to the promotion of equality of opportunity and the promotion of higher education that a fee and access plan must include. Regulation 5 specifies that a fee and access plan must:
- (a) set out the objectives of the institution, determined by the governing body, relating to the promotion of equality of opportunity and the promotion of higher education; and
 - (b) specify the proportion of fees payable by qualifying persons undertaking qualifying courses that the governing body will spend on the objectives in paragraph (a).
- 4.16. The terms ‘promotion of equality of opportunity in connection with access to higher education’ and the ‘promotion of higher education’ are not defined in the 2015 Act nor were they in the 2004 Act. However, reference to promotion of equality of opportunity in connection with access to higher education in this guidance relates to removing barriers to higher education that members of under-represented groups experience.
- 4.17. Section 6(6)(b) of the 2015 Act defines under-represented groups in relation to a fee and access plan as groups that as at the date of the plan’s approval are under-represented in higher education .
- 4.18. Guidance provided by Welsh Ministers to HEFCW under the 2004 Act included clarification on what was considered to fall within these terms. The clarification is relevant to the 2015 Act. The promotion of equality of opportunity in relation to access to higher education includes:
- measures aimed at promoting and safeguarding fair access to higher education, including identifying individuals with the greatest potential from disadvantaged backgrounds;
 - measures to attract and retain students and prospective students from under-represented groups, which may include students from less

advantaged backgrounds, students with disabilities and students from minority ethnic groups;

- measures which seek to raise educational aspirations and develop skills which prepare students from under-represented groups for higher education study;
- measures aimed at supporting and increasing student retention and completion, particularly those from low participation neighbourhoods, looked after children, care leavers and carers;
- measures which aim to improve the experience of higher education of students from under-represented groups including activities to promote an international experience;
- measures which provide effective provision of information to students from under-represented groups before and during their courses;
- measures which provide high quality academic and welfare support to students from under-represented groups; and
- measures to support students from under-represented groups to progress to employment or further study.

Groups that are under- represented in higher education may include individuals who share protected characteristics, as recognised by the Equality Act 2010 (section 4).

4.19. The promotion of higher education includes:

- more effective engagement with private, public or voluntary bodies and communities in Wales;
- investments in improving the quality of learning and teaching, with reference to the quality of the student experience;
- activities which strengthen the employability of Welsh graduates;
- actions which promote Welsh higher education more effectively internationally;
- actions which improve delivery of sustainable higher education; and
- activities which raise awareness of the value of higher education amongst potential learners.

4.20. Regulation 6 of the Higher Education (Fee and Access Plans) (Wales) Regulations 2015 specifies that a fee and access plan **must** include provisions requiring the governing body of an institution:

- a) to take, or to secure the taking of, measures to attract applications from prospective students who are members of under-represented groups;
- b) to take, or to secure the taking of, measures to retain students who are members of under-represented groups;

- c) to provide, or to secure the provision of, financial assistance to students;
- d) to make available to students or prospective students information about financial assistance available to students from any source, or to secure that such information is made available;
- e) to inform any prospective student, before the student commits to undertaking a course, of the aggregate amount of fees that the institution will charge for the completion of the course, or to secure that any prospective student is so informed;
- f) to monitor compliance with the provisions of the plan; and
- g) to monitor progress in achieving the objectives set out in the plan.

4.21. A governing body of an institution **may** include in a fee and access plan further provisions relating to the promotion of equality of opportunity or promotion of higher education but it would be a matter for the governing body to determine what measures it intends to include its plan. Provisions included in a fee and access plan related to the promotion of higher education should complement the institution's strategic objectives.

4.22. As noted in paragraph 4.15 institutions must specify the proportion of fees payable by qualifying persons undertaking qualifying courses that the governing body will spend on objectives relating to the promotion of equality of opportunity and the promotion of higher education. This will allow HEFCW to determine whether an institution is investing sufficient funding to support its objectives.

Financial support for students

4.23. It is for each institution to determine the detail of the package of financial support it offers to its students. Those institutions that are already performing well in attracting students from under-represented groups may wish to focus their attention on measures to support the retention of students from under-represented groups. HEFCW should consider setting minimum levels of financial support. When considering the appropriateness of this provision HEFCW should take into account relevant good practice, research, and intelligence gained from its own monitoring and evaluation of plans. It is recognised that it may take a number of years for HEFCW to gather evidence from its own monitoring and evaluation activities. HEFCW should ensure that institutions demonstrate in their plans how they will measure the impact of their financial support package in terms of access and retention.

Information provided to students or prospective students on financial support and fees

- 4.24. Institutions' plans should include a commitment to publish clear and accessible information regarding financial support available from the institution, the Welsh Government and other relevant sources. Institutions also need to ensure that prospective students are aware, before committing to undertake a course, of the aggregate amount of fees that the institution will charge for the completion of the course. It is expected that HEFCW will issue guidance to institutions on the information that they should provide to prospective students, HEFCW may wish to include reference to institutions' compliance with consumer protection obligations in such guidance.
- 4.25. Advice and guidance to promote financial literacy skills should be an integral component of the pastoral and welfare services that institutions offer their students. We recognise that institutions currently provide a broad range of information and guidance relating to financial management to their students and prospective students, often in partnership with institutional student unions. This includes online information and support, workshops and one to one advice sessions. We expect HEFCW to encourage institutions to include activities to promote the development of financial literacy skills and provide advice and guidance on financial management to their students and prospective students.

Development of fee and access plans

- 4.26. HEFCW is expected to issue guidance to support the development of fee and access plans. There is no statutory requirement for HEFCW to consult on the guidance; however, HEFCW may wish to involve relevant stakeholders, including the National Union of Students (NUS) Wales in the preparation of the guidance. HEFCW is expected to encourage institutions to embed their plans at a strategic level across the operation of the whole institution and not limit their measures to a particular unit or department. Provisions within plans must meet the requirements prescribed in regulations by Welsh Ministers but should also complement the institution's own strategic objectives. Institutions should ensure that their fee and access plan commitments are consistent with, and support as appropriate, their duties under the Equality Act 2010 and their Strategic Equality Plan. HEFCW should encourage institutions to consider including targets on improving equality and diversity in their fee and access plans.
- 4.27. Institutions are expected to not only support students who have already expressed an interest in entering higher education but also undertake a

range of outreach measures in collaboration with schools or colleges to raise awareness of the opportunities available with the intention of contributing to widening access by attracting students who might otherwise not consider entering higher education.

- 4.28. It is expected that institutions will provide a greater focus on the retention, success and progression to further study/work of students from groups that are under-represented in higher education. Students should not only be encouraged into higher education but also be supported to succeed and fulfil their potential in that environment. Governing bodies' approaches to institutional planning should be informed by research on what intervention strategies are effective and could include both academic and pastoral support such as study skills support or coaching and mentoring programmes which are tailored to meet the specific needs of under-represented groups in higher education.
- 4.29. Institutions should be encouraged to collaborate to deliver measures where beneficial and appropriate. For example, when collaboration would lead to increased engagement with potential applicants, economies of scale or avoids unnecessary duplication of effort. Fee and access plans should build on and refer to existing collaborative work, where relevant. HEFCW should recognise that access work by one institution may lead to a student applying to a different institution.
- 4.30. To aid the application, approval and monitoring processes, HEFCW should develop a template to be issued to applicants. Institutions will be expected to clearly connect measures to overarching objectives in their plans. For example, an institution may plan to undertake a number of measures to support the objective of increasing the number of students from Communities First Areas that successfully complete their studies.
- 4.31. Measures should be SMART (Specific, Measurable, Achievable, Realistic and Time bound) to enable HEFCW to effectively monitor fee and access plan commitments. For example, where an institution plans to offer a series of subject tasters to a specific group of school pupils it should provide details to quantify this measure, such as the number of schools or pupils that will benefit from the activity. Ensuring that measures are SMART will enable HEFCW to determine whether an institution has undertaken the measures that it has committed to in its plan. Whilst the plans should not be unnecessarily burdensome for institutions to complete, they should enable HEFCW to effectively monitor progress against measures that the institutions have committed to undertake.

- 4.32. Institutions should consider part-time and mature students within their overall approach to access, and HEFCW should take account of these groups when considering fee and access plans. All UK and EU students studying at regulated institutions in Wales should be taken into account, wherever they are ordinarily resident.
- 4.33. We expect that institutions will take account the views of students and prospective students when developing their plans. The development of fee and access plans should also be informed by the intelligence gathered by institutions as part of their monitoring and evaluation of previous plans.

Courses provided on behalf of regulated institutions

- 4.34. Under the new regulatory framework, where a regulated institution enters into arrangements with another institution or provider whereby all or part of a course is provided on behalf of the regulated institution by that other institution or provider, the regulated institution will be responsible for ensuring that any qualifying courses which are provided under such arrangements are included in its fee and access plan and that the relevant fee limits for those courses are complied with.

Academic and institutional freedom

- 4.35. Section 48 of the 2015 Act imposes a general duty on HEFCW to take into account the importance of protecting academic freedom in exercising their functions under the Act. In particular, HEFCW must take into account the importance of protecting the freedom of institutions:
- (a) to determine the contents of particular courses and the manner in which they are taught, supervised or assessed;
 - (b) to determine the criteria for the admission of students and to apply those criteria in particular cases; and
 - (c) to determine the criteria for the selection and appointment of academic staff and to apply those criteria in particular cases.
- 4.36. In addition to section 48, section 6(5) of the 2015 Act prevents the Welsh Ministers from making regulations which would require a fee and access plan to include provision referring to particular courses or the manner in which courses are taught, supervised or assessed or which relate to the criteria for the admission of students. Consequently, HEFCW should not require a plan to include provision referring to particular courses or the manner in which courses are taught, supervised or assessed or which relate to the criteria for the admission of students. HEFCW will need to be

particularly mindful of its duty under 48 of the 2015 Act to take into account the importance of protecting academic freedom and will need to give careful consideration to the exercise of any of its functions which may interfere with an institution's freedom to determine the criteria for the admission of students.

- 4.37. Section 47 of the 2015 Act is concerned with compatibility with charity law and the governing documents of institutions. In the discharge of any of its functions under the 2015 Act HEFCW must not require the governing body of an institution to do anything that is incompatible with any legal obligation or legal restriction that applies to a 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.
- 4.38. Section 47 also places a general restriction on the exercise of all of HEFCW's functions in the Act which prevents HEFCW 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).
- 4.39. It is unlikely that HEFCW would need to exercise any of its fee and access plan 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 discharging its functions of approval and monitoring of plans.

5. Approval of fee and access plans

- 5.1. Where the governing body of an institution applies to HEFCW under section 2 for approval of a fee and access plan, it is for HEFCW to either approve the plan or reject the plan. HEFCW cannot approve a plan unless they are satisfied that the applicant institution is an institution in Wales that provides higher education and is a charity. HEFCW will either approve or reject a plan by giving notice to the governing body of the institution concerned. Sections 41 to 44 of the Act provide for the procedure that is to apply in respect of a notice rejecting a plan. The Higher Education (Fee and Access Plans) (Notices and Directions) (Wales) Regulations 2015 make provision in

respect of the issue and review of those notices and directions specified in section 41(1) of the 2015 Act.

5.2. Section 7(3) enables regulations to provide for matters which are to be taken into account by HEFCW when determining whether to approve or reject a plan under this section. The Higher Education (Fee and Access Plans) (Wales) Regulations 2015 require that HEFCW must, in making any determination to approve or reject a fee and access plan, take into account the:

- (a) need to safeguard fair access to higher education;
- (b) provisions included in the fee and access plan relating to the promotion of equality of opportunity and the promotion of higher education;
- (c) fees payable by qualifying persons undertaking qualifying courses;
- (d) proportion of fees payable by qualifying persons undertaking qualifying courses that the governing body will spend on the promotion of equality of opportunity and the promotion of higher education;
- (e) financial viability of the institution;
- (f) arrangements for the organisation and management of the institution's financial affairs; and
- (g) quality of education provided by, or on behalf of, the institution.

5.3. Whilst considering whether the proposed measures in a plan are sufficient to safeguard fair access and promote equality of opportunity and higher education ((a) and (b) above), HEFCW should consider both the progress made to date by institutions that have been previously regulated, what more is required to meet the governing body's objectives and the sustainability of the planned activities/measures. HEFCW should also consider whether the proposed measures meet or are likely to deliver the governing body's objectives. HEFCW should refer to current research and good practice on increasing the number of students from under-represented groups entering and successfully completing higher education.

5.4. In reaching a decision as to whether or not to approve a fee and access plan HEFCW should consider the adequacy of the expenditure committed to in the plan. HEFCW is expected to take account of both the aggregate fees payable by qualifying persons undertaking qualifying courses and the aggregate proportion of fees payable by qualifying persons undertaking qualifying courses that the governing body will spend on the promotion of equality of opportunity and the promotion of higher education ((c) and (d) above).

- 5.5. It is expected that HEFCW will consider specifying a minimum level of investment by institutions in support of the activities covered by their plans. HEFCW's guidance to institutions on their fee plans for 2016/17 (issued under the 2004 Act) did not specify the exact proportion of fee income above the basic fee level that should be invested in equality of opportunity and the promotion of higher education but stated that HEFCW's expectation is that it would be at least 30%. Although the basic fee level no longer applies under the 2015 Act, we expect HEFCW to indicate to institutions that their current level of expenditure should be the baseline for future plans.
- 5.6. It is expected that HEFCW will be robust in expecting more, in terms of financial support and outreach activity, from those institutions which have previously been regulated and whose records suggest that they have furthest to go in securing an increased proportion of students from under-represented groups.
- 5.7. It is expected that HEFCW will base its assessment of points (e) to (g) on the information provided to it by institutions in support of their applications as referred to in paragraphs 3.21 and 3.22. It is envisaged that HEFCW will enter into a dialogue with the institution if it has not provided sufficient information for HEFCW to make its determination. Also, it is envisaged that HEFCW will discuss with the institution if there are areas which need to be addressed in terms of financial viability, its arrangements for managing its financial affairs and the quality of education provided. For example, if a recent quality review has identified areas of concern regarding the quality of the courses provided by an institution we would expect HEFCW to deal with this through its procedures to address the quality of education which has become inadequate or is likely to become inadequate, if the institution, at the time of the making of the application, is a regulated institution. It is for HEFCW to determine whether any issues with the quality of courses being provided by an institution would be sufficiently serious to warrant the refusal to approve a fee and access plan.

6. Student voice

- 6.1 In HEFCW's Fee Plan Guidance 2016/17 HEFCW states that fee plans should clearly articulate the depth and breadth of engagement with the student body. It is expected that this practice of engaging the student body in the development and assessment of an institution's plan will continue in the new regulatory environment. It is envisaged that HEFCW should encourage institutions to build on existing good practice and take account of the Wise Wales statement on *Partnership for Higher Education in Wales*.¹³
- 6.2 Section 54(1) of the 2015 Act provides for HEFCW to identify good practice relating to the promotion of equality of opportunity and the promotion of higher education. It is expected that HEFCW will consult with NUS Wales and regulated institutions prior to issuing information and advice related to good practice.

7. Publication of approved plans

- 7.1 Regulation 8 of the Higher Education (Fee and Access Plans) (Wales) Regulations 2015 requires governing bodies to publish a plan that has been approved by HEFCW in a manner which makes it conveniently accessible to students and to prospective students. HEFCW may wish to provide advice to institutions on the manner in which fee and access plans should be published, taking into account current good practice on student engagement.

8. Variation of approved plans

- 8.1 If an institution wishes to make changes to its approved plan it will need to seek agreement from HEFCW. This will constitute a variation to the institution's plan. In assessing proposed changes HEFCW should have regard to the key principle that students know before committing to a course the aggregate amount of fees that the institution will charge and what they can expect to pay. Students should be protected against changing fee levels where the possibility of that change has not been notified to them at the time of their application to the course. HEFCW may wish to remind institutions of their consumer protection obligations requirements and the Competition and Market Authority's guidance to higher education providers in this regard¹⁴.

¹³ *Partnership for Higher Education in Wales* (<http://www.wisewales.org.uk/welsh-higher-education-sector-launches-partnership-statement/>)

¹⁴ UK higher education providers – advice on consumer protection law, Competition and Markets Authority, March 2015: <https://www.gov.uk/government/publications/higher-education-consumer-law-advice-for-providers>

8.2 Regulation 9 of the Higher Education (Fee and Access Plans) (Wales) Regulations 2015 provides for the variation of an approved plan. Regulation 9 specifies that:

- 1) A governing body may apply to HEFCW for approval of a variation to the approved plan whilst the approved plan is in force.
- 2) A variation to an approved plan is to take effect only if approved in writing by HEFCW.
- 3) In making any determination in respect of approval or rejection of a variation to the approved plan HEFCW must take into account: the need to safeguard fair access to HE; provisions included in the plan relating to the promotion of equality of opportunity and the promotion of HE; fees payable by qualifying persons undertaking qualifying courses; and the proportion of fees payable by such persons undertaking such courses that the governing body will spend on the promotion of equality of opportunity and the promotion of HE.
- 4) Where HEFCW has approved a variation to an approved plan, the governing body must publicise the variation in a manner which makes it easily accessible to students and prospective students.

9. Monitoring and evaluation

9.1 Section 15(1) (a) requires HEFCW to monitor regulated institutions' compliance with section 10(1) (the requirement to ensure that regulated course fees do not exceed the applicable fee limit). The function under section 15(1)(a) is in force as of 1 September 2015. Under section 15(1)(b), HEFCW is also required to monitor regulated institutions' compliance with the general requirements of their plans (the term "general requirements" is defined in section 6(7)). When the new regulatory system is fully operational, HEFCW will need to monitor institutions' compliance with section 10(1) in order to exercise its functions under section 11 of the 2015 Act. Similarly, HEFCW will need to monitor institutions' compliance with the general requirements of approved plans in order to exercise its functions under sections 37 and 39 of the 2015 Act.

9.2 Section 15 of the 2015 Act also requires HEFCW to evaluate the effectiveness of each plan, and plans generally, in promoting equality of opportunity in connection with access to higher education and promoting higher education. HEFCW will need to evaluate the effectiveness of approved plans in order to exercise their function of giving good practice information and advice under section 54. Welsh Government anticipates that section 15 (1) (c) and (d) will come into force from 2017/18.

- 9.3 Section 16 of the 2015 Act requires governing bodies of regulated institutions to co-operate with HEFCW for the purposes of HEFCW's monitoring and evaluation functions under section 15. The duty to co-operate requires governing bodies to ensure the provision of information, assistance and access to facilities as may be required by HEFCW for the purposes of those functions. Given that HEFCW's duty under section 15(1)(a) of the 2015 Act, to monitor compliance with section 10(1), is in force as of 1 September 2015, the corresponding duty on governing bodies of regulated institutions to co-operate with that monitoring is also in force as of that date.
- 9.4 Regulation 6 of the Higher Education (Fee and Access Plans) (Wales) Regulations 2015 specifies that a fee and access plan must include provisions requiring the governing body of an institution to monitor compliance with the provisions of the plan and to monitor progress in achieving the objectives set out in the plan. HEFCW may consider issuing guidance to institutions on these monitoring requirements, including publication of monitoring reports.
- 9.5 In order to assess the effectiveness of activities and / or investments that institutions undertake to deliver the measures to promote higher education and equality of opportunity in connection with access to higher education, HEFCW will require information on their outcomes. It is recognised that there may be a time lag for certain outcomes to become evident. HEFCW will be able to commission the gathering of information and the carrying out of research and analysis in support of its evaluation function. The intention is that HEFCW will utilise the findings of such evaluations to inform the production of good practice information and advice on the most effective fee and access plan activities and investments with the aim of improving fee and access plan outcomes. The Welsh Government considers that this will become an increasingly important component of HEFCW's role in future.

10. Annual reporting

- 10.1 Section 50 of the 2015 Act requires HEFCW to provide an annual report to the Welsh Ministers on how HEFCW has exercised its functions by virtue of the Act. As the annual reporting requirement extends to all of HEFCW's functions under the 2015 Act, further guidance on this matter will follow in connection with full implementation of the new regulatory system.

Appendix: Glossary

Term	Definition
Academic year	means a period of 12 months.
Approved plan	means a fee and access plan which has been approved by HEFCW and which is in force.
Equality of opportunity	means equality of opportunity in connection with access to higher education.
External provider	means a provider which is not a regulated institution but is responsible for providing all or part of a course of education on behalf of a regulated institution.
Governing body	<p>(a) in relation to a training provider who but for this section would not be regarded as an institution, means any persons responsible for the provider's management;</p> <p>(b) in relation to a provider designated under section 3, means any persons responsible for the provider's management;</p> <p>(c) in relation to any other institution, has the meaning given by section 90(1) of the Further and Higher Education Act 1992, but subject to any provision made by virtue of section 90(2) of that Act;</p> <p>(d) in relation to an external provider that is not an institution, means any persons responsible for the provider's management.</p>
In force (in relation to fee and access plans)	The period in which a plan is "in force" is the period beginning with the day on which it is approved and ending: either the day on which the period to which the plan relates expires (i.e. the end of the academic year in respect of which the plan has effect); or the date of a withdrawal notice under section 38 or 39, whichever of those occurrences is the earlier. As such, the period in respect of which the plan has effect will generally be shorter than the period in which the plan is in force.
Measures (in relation to fee and access plans)	Measures are specific activities and / or investments that an institution will undertake to meet objectives.
Outcomes (in relation to fee and access plans)	<p>In respect of an individual plan 'outcomes' would include:</p> <ul style="list-style-type: none"> - delivery of the measures specified in an approved

	<p>plan; and</p> <ul style="list-style-type: none"> - progress made against achieving objectives in an approved plan (i.e. has the delivery of the measures above achieved progress against the linked objective.)
Period in which an approved plan has effect	Section 4 of the 2015 Act requires each plan to specify the period in which it is to have effect e.g. the 2017/18 AY or in theory 2017/18 – 2018/19 AYs (2 year plans). This is the period to which a plan “relates”. Fee limits and the delivery of measures specified in the plan will apply during the period in which the plan has effect.
Regulated institution	Institutions in Wales which have an approved fee and access plan in force that will be subject to the requirements of the new regulatory framework.
Relevant academic year	Academic year means a period of 12 months in the 2015 Act and is not tied to any specific start / end dates. The relevant academic year must be specified in a fee and access plan.
Under-represented groups	Section 6(6)(b) of the 2015 Act provides that “under-represented groups”, in relation to a fee and access plan, are groups, that as at the date of approval under section 7, are under-represented in higher education.