

## Cylchlythyr | Circular

# Higher Education (Wales) Act 2015: Preparation for full implementation of the new regulatory system for higher education in Wales

**Date:** 24 March 2016  
**Reference:** W16/10HE  
**To:** Regulated institutions and other interested parties  
**Response by:** No response required  
**Contact:** Name: Celia Hunt/Steve Williams  
Telephone: 029 2068 2224 / 029 2068 2285  
Email: [celia.hunt@hefcw.ac.uk](mailto:celia.hunt@hefcw.ac.uk);  
[steven.williams@hefcw.ac.uk](mailto:steven.williams@hefcw.ac.uk)  
[RegulationAdvice@hefcw.ac.uk](mailto:RegulationAdvice@hefcw.ac.uk)  
[CyngorRheoleiddio@hefcw.ac.uk](mailto:CyngorRheoleiddio@hefcw.ac.uk)

This circular provides a copy of further Welsh Government guidance to HEFCW in pursuit of the Higher Education (Wales) Act 2015 and preparation for full implementation of the new regulatory system for higher education in Wales.

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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## Introduction

1. This circular provides a copy of further Welsh Government guidance to HEFCW in pursuit of the Higher Education (Wales) Act 2015 (the 2015 Act) and preparation for full implementation of the new regulatory system for higher education in Wales.

## Background to the 2015 Act

2. The Higher Education (Wales) Act 2015<sup>1</sup> gained Royal Assent on 12 March 2015.
3. The Act makes provision for a new higher education (HE) regulatory system for Wales that is intended to ensure robust and proportionate regulation of institutions in Wales whose courses are supported by Welsh Government-backed HE grants and loans; safeguard the contribution made to the public good arising from the Welsh Government's significant financial subsidy of HE; maintain a strong focus on fair access to HE; and preserve and protect the institutional autonomy and academic freedom of Welsh universities.
4. The 2015 Act has eight parts comprising 60 sections and one schedule. Explanatory notes about the 2015 Act can be found here<sup>2</sup>. In summary it:
  - allows an institution in Wales which provides HE and which is a charity to apply to HEFCW for approval of a fee and access plan. The 2015 Act sets out the contents of a fee and access plan including a fee limit for courses which are to be prescribed in separate regulations.
  - requires HEFCW to monitor institutions' compliance with their fee and access plans and to monitor the effectiveness of plans. The 2015 Act also confers functions upon HEFCW which we may exercise where we are satisfied that a regulated institution<sup>3</sup> has failed to comply with a general requirement in its plan.
  - confers functions upon HEFCW relating to the assessment of the quality of education provided in Wales by or on behalf of a regulated institution, and in relation to the steps that HEFCW may take if we are satisfied that the quality of education is inadequate or likely to become inadequate.
  - requires HEFCW to prepare and publish a Financial Management Code (the Code) which will apply to regulated institutions. The 2015 Act requires HEFCW to monitor, or make arrangements for the monitoring of, institutions' compliance with the requirements of the Code. It also confers functions upon HEFCW which we may exercise

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<sup>1</sup> [www.legislation.gov.uk/anaw/2015/1/pdfs/anaw\\_20150001\\_en.pdf](http://www.legislation.gov.uk/anaw/2015/1/pdfs/anaw_20150001_en.pdf)

<sup>2</sup> [www.legislation.gov.uk/anaw/2015/1/notes/contents](http://www.legislation.gov.uk/anaw/2015/1/notes/contents)

<sup>3</sup> Regulated institutions are those institutions with a fee and access plan in place.

where we are satisfied that a regulated institution has failed, or is likely to fail, to comply with a requirement of the Code.

- makes provision for the circumstances in which HEFCW may refuse to approve a new fee and access plan for an institution and the circumstances in which HEFCW must, or may, withdraw our approval of a fee and access plan.
  - makes provision for the procedures to be followed by HEFCW in relation to the steps that we may take in respect of regulated institutions, including the giving of warning notices and the ability of institutions to apply for reviews.
  - confers functions on HEFCW in relation to the provision of reports to the Welsh Ministers and the provision of information and advice by HEFCW.
  - makes consequential amendments to other acts, including the Further and Higher Education Act 1992 and the Higher Education Act 2004.
5. Whilst the full implementation of the 2015 Act will occur on 1 September 2017, transitional arrangements are set out in the 2015 Act allowing for some functions to commence earlier than the date scheduled for full implementation, as set out below.
  6. The regulatory framework set out above applies to providers of higher education in Wales which seek automatic designation of their higher education courses for the purpose of student support, referred to as regulated institutions.
  7. An alternative 'specific designation' or 'case by case' (ie course by course rather than all courses) route is also available. This process is operated by the Welsh Government, which has consulted on new arrangements<sup>4</sup>.

## **Implementation arrangements**

8. The 2015 Act provides for a transitional period to allow both HEFCW and institutions time to prepare for implementation of the full regulatory arrangements in the 2017/18 academic year. Some of HEFCW's new functions, specifically concerning fee limits and quality assessment, were brought into force at the beginning of the transitional period, on 1 September 2015. HEFCW's functions relating to acceptance and rejection of fee and access plans were brought into force in January 2016. Commencement orders have been published which will bring further HEFCW functions into force in 2016.<sup>5</sup>

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<sup>4</sup> <http://gov.wales/consultations/education/designation-of-higher-education-courses-at-alternative-providers/?lang=en>

<sup>5</sup> [www.legislation.gov.uk/wsi/2015/1327/made](http://www.legislation.gov.uk/wsi/2015/1327/made)

9. Five sets of regulations made under provisions of the 2015 Act came into force in July 2015. A further set of regulations were laid in the National Assembly in February 2016 and are due to come into force in March 2016.
10. One set of regulations that came into force in July 2015, Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales), was amended in March 2016. The amendment sets out that courses provided on behalf of a regulated institution by another body will only be qualifying courses if that body is a charity.
11. The Welsh Government provided HEFCW with guidance in respect of the first functions to be conferred on the Council in June 2015. Further guidance in respect of its remaining functions has been provided in March 2016. A copy of the further guidance can be found at **Annex A**. A separate set of guidance specifically related to the fee and access plan process has also been published.<sup>6</sup>

### **HEFCW's role**

12. The 2015 Act could be seen to alter HEFCW's role from one of 'funding' to one of 'regulation' of the sector. New regulatory provisions will apply in the areas of quality assessment, fair access, fee limits and financial management, enforceable through the fee planning arrangements rather than through funding sanctions. These arrangements will also serve to enforce compliance with fee limits. In practice, we have always had a regulatory role alongside our funding role. Accordingly, the vision, aims and strategic objectives of HEFCW, as set out in our Corporate Strategy<sup>7</sup> continue to apply.

### **Timetable**

13. The full implementation of the 2015 Act will be from 1 September 2017 and HEFCW will work with regulated institutions and other providers of higher education to develop the regulatory arrangements through consultation. The timetables for these consultations are not yet confirmed but interested parties should check our website for further information [www.hefcw.ac.uk](http://www.hefcw.ac.uk).

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<sup>6</sup>

[www.hefcw.ac.uk/documents/publications/circulars/circulars\\_2016/W16%2003HE%20Annex%20A%20Part%202%20Guidance%20to%20HEFCW%20on%20Fee%20and%20Access%20Plans.pdf](http://www.hefcw.ac.uk/documents/publications/circulars/circulars_2016/W16%2003HE%20Annex%20A%20Part%202%20Guidance%20to%20HEFCW%20on%20Fee%20and%20Access%20Plans.pdf)

[www.hefcw.ac.uk/documents/publications/corporate\\_documents/Corporate%20Strategy%202013-14-2015-16.pdf](http://www.hefcw.ac.uk/documents/publications/corporate_documents/Corporate%20Strategy%202013-14-2015-16.pdf)

## **Further information / responses to**

14. For further information, contact Celia Hunt (029 2068 2224, [celia.hunt@hefcw.ac.uk](mailto:celia.hunt@hefcw.ac.uk)) or Steve Williams (029 2068 2285, [steven.williams@hefcw.ac.uk](mailto:steven.williams@hefcw.ac.uk)) or [RegulationAdvice@hefcw.ac.uk](mailto:RegulationAdvice@hefcw.ac.uk) / [CyngorRheoleiddio@hefcw.ac.uk](mailto:CyngorRheoleiddio@hefcw.ac.uk).

## **Assessing the impact of our policies**

15. We will be carrying out equality impact assessments (EIA) as we develop the regulatory arrangements to help safeguard against discrimination and promote equality. We will also consider the impact of policies on the Welsh language, and Welsh language provision within the HE sector in Wales. The well-being and sustainability requirements, which arise as a result of the [Well-being of Future Generations Act 2015](#), ensure that impact assessments consider the impact that HEFCW's work could have on people in Wales in the future. Contact [equality@hefcw.ac.uk](mailto:equality@hefcw.ac.uk) for more information about EIAs.