

## Summary of Consultation Responses

The key points from responses to the consultation are provided below, together with HEFCW's decision in respect of each of the points.

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

- Respondents highlighted that the warning and review procedures outlined at Sections 42 to 44 of The 2015 Act do not apply in relation to issuing formal compliance directions to enforce compliance with HEFCW's monitoring functions and the regulated institution's duty to cooperate with these. HEFCW's monitoring functions pertain to monitoring compliance with: fee limits, the general requirements of Fee and Access Plans, the effectiveness of Fee and Access Plans, quality assessment, and the Financial Management Code. Given the lack of any warning and review procedure in respect of compliance with these monitoring functions, it was suggested that HEFCW set out pre-direction protocols which would ensure that formal compliance directions were only issued as part of a well-defined and appropriate escalation procedure.

**HEFCW decision:** Some brief additional text has been provided to further clarify processes.

- Respondents highlighted the need for greater consistency and clarity across the various sections of the Statement of Intervention in respect of how HEFCW would request institutions provide information, assistance or access in support of its monitoring functions.

**HEFCW decision:** The sections of the Statement have been reviewed and amended, as necessary, to clarify and to ensure consistency.

- In respect of HEFCW's powers with regard to securing information, assistance or access, respondents noted that, under The 2015 Act, a regulated institution has a duty to provide a person exercising HEFCW's functions with information, assistance, and access to its facilities as reasonably required for the purposes of exercising the function. It was requested that the Statement be amended to make it clear that the access duty was only in relation to access to facilities and that requests for information, assistance, and access to facilities would be as reasonably required for specific purposes. It was also requested that HEFCW set out what it meant by 'reasonably required'.

**HEFCW decision:** The relevant sections of the Statement have been amended to reflect the fact that access is to 'facilities' and to emphasise that information, assistance or access to facilities is only to be sought as 'reasonably required' for specific purposes. However, a definition of 'reasonably required' has not been provided as this was considered unnecessary in the context of HEFCW's adherence to the general principle of reasonableness.

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

- Respondents noted that the Statement appeared to confuse the separate thresholds for escalation of intervention under Sections 37 and 39 of The 2015 Act, with the relevant text needing to be revised to clarify the circumstances under which HEFCW's powers under Sections 37 and Sections 39 would respectively be employed.

**HEFCW decision:** Relevant sections of the Statement have been amended as appropriate to clarify and to ensure that the correct statutory tests are being applied throughout in respect of escalation of intervention under Sections 37 and 39 of The 2015 Act.

- Respondents requested that the serious failure to comply be similarly defined in the Statement and the Financial Management Code.

**HEFCW decision:** The Code and Statement have been reviewed and amended, as necessary, to ensure consistency.

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

- Respondents noted that the Statement appeared to confuse the basis for use of HEFCW's powers under Sections 37 and 39 of The 2015 Act, with the relevant text needing to be revised to clarify the basis for use of HEFCW's powers under Sections 37 and Sections 39.

**HEFCW decision:** Relevant sections of the Statement have been amended as appropriate to clarify and to ensure that the basis for use of the respective powers under Sections 37 and 39 of The 2015 Act is outlined correctly.

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

- Respondents noted that the Statement appeared to confuse the respective processes for use of HEFCW's powers under Sections 37 and 39 of The 2015 Act, with the relevant text needing to be revised to clarify these processes.

**HEFCW decision:** Relevant sections of the Statement have been amended as appropriate to clarify the respective processes to be applied in respect of HEFCW's powers under Sections 37 and 39 of The 2015 Act.

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

- Whilst the description of the process in respect of the use of HEFCW's powers under Section 38 of The 2015 Act was considered to be generally clear, respondents requested that HEFCW clarify how it would interpret the requirements under section 2(3) of The 2015 Act that a regulated institution is 'in Wales', provides higher education, and is a charity.

**HEFCW decision:** A section has been included within the Statement to re-iterate the information previously provided in Fee and Access Plan Guidance regarding how HEFCW will determine compliance with the eligibility criteria set out at Section 2(3) of The 2015 Act.

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

- No issues were raised by respondents.

**HEFCW decision:** No changes were required in respect of the explanation of the intervention process relating to HEFCW's duties under Section 38 of The 2015 Act.

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

- Respondents noted that the Statement appeared to confuse the separate thresholds for escalation of intervention under Sections 37 and 39 of The 2015 Act, with the relevant text needing to be revised to clarify the circumstances under which HEFCW's powers under Sections 37 and Sections 39 would respectively be employed.

**HEFCW decision:** Relevant sections of the Statement have been amended as appropriate to clarify and to ensure that the correct statutory tests are being applied throughout in respect of escalation of intervention under Sections 37 and 39 of The 2015 Act.

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

- Respondents noted that the Statement appeared to confuse the basis for use of HEFCW's powers under Sections 37 and 39 of The 2015 Act, with the relevant text needing to be revised to clarify the basis for use of HEFCW's powers under Sections 37 and Sections 39.

**HEFCW decision:** Relevant sections of the Statement have been amended as appropriate to clarify and to ensure that the basis for use of

the respective powers under Sections 37 and 39 of The 2015 Act is outlined correctly.

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

- No issues were raised by respondents.

**HEFCW decision:** No changes were required in respect of the explanation of the intervention process relating to HEFCW's powers under Section 39 of The 2015 Act.

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

- Respondents requested that guidance be included on Fee and Access Plans and partnership arrangements within the Statement.

**HEFCW decision:** A section has been included within the Statement to re-iterate the information previously provided in the Fee and Access Plan Guidance regarding how HEFCW will determine compliance with the eligibility criteria set out at Section 2(3) of The 2015 Act, including in relation to partnerships. It is considered that this information is sufficiently clear and does not warrant further explanation.

- Respondents requested that HEFCW revisit the flow-chart overview of intervention processes provided on p13, due to some legal inaccuracies in terms of linkage between the various processes, in order to ensure that it had balanced legal accuracy with presentational simplicity.

**HEFCW decision:** The overview flow-chart of the range of intervention processes has been amended to address any issues of legal inaccuracy in terms of linkages between the various processes. In addition, as this diagram represents a simplified overview of the various processes, this point has been emphasised in the accompanying text.

- One respondent noted that the proposed frameworks in the Statement appeared to be confrontational. A particular example cited was that the flow-charts in the Statement in relation to intervention in respect of Inadequate Quality and Failure to Comply with the Financial Management Code only referred to provision of advice or assistance at the earliest stage of intervention.

**HEFCW decision:** No changes are required. The provision of advice or assistance, in respect of Inadequate Quality and Failure to Comply with the Code, represent specific formal interventions under The 2015 Act. Whilst HEFCW will seek to work constructively with institutions wherever possible, including through dialogue to help address any compliance

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issues, it would not be appropriate for HEFCW to commit to provide advice and assistance at all stages of all interventions.

- One respondent raised the need for effective liaison between HEFCW and the Office of the Independent Adjudicator for Higher Education (OIA), in order to ensure appropriate sharing of information and to avoid unnecessary duplication or delay of regulatory action.

**HEFCW decision:** This has been addressed through the agreement of a Memorandum of Understanding with the OIA.