

*These notes refer to the Further and Higher Education (Governance and Information) (Wales) Act 2014 (c.1) which received Royal Assent on 27 January 2014*

# **FURTHER AND HIGHER EDUCATION (GOVERNANCE AND INFORMATION) (WALES) ACT 2014**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes are for the Further and Higher Education (Governance and Information) (Wales) Act 2014 which was passed by the National Assembly for Wales on 03 December 2013 and received Royal Assent on 27 January 2014. They have been prepared by the Department for Education and Skills of the Welsh Government in order to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it.
2. They are not and not meant to be a comprehensive description of the Act. Where a section or part of a section is self explanatory, no further explanation or comment is provided.
3. The powers to make the Act are contained in Part 4 and paragraph 5 of Part 1 of Schedule 7 to the Government of Wales Act 2006. The National Assembly for Wales has the requisite legislative competence to make provision for and in connection with the Act by virtue of Schedule 7, paragraph 5 (Education and training).

### **BACKGROUND**

4. The Act makes provision to give effect to proposals to increase college freedoms, giving them greater control over their own governance and dissolution arrangements.  
  
It does not change the principal powers of colleges to provide further, higher and (within some limits) secondary education. A key consideration informing the provisions is the decision by the ONS to reclassify FEIs as part of central government for the purpose of National Accounts.
5. The Welsh Government is also modernising the delivery of student finance by making it more efficient. The Act will contribute to this by establishing a legal basis for Her Majesty's Revenue and Customs (HMRC) to supply information to the Welsh Ministers (and others acting on behalf of or exercising functions for the Welsh Ministers) in connection with student loans and grants.
6. A White Paper setting out the Welsh Government's policy was published on 2 July 2012 and a summary of the responses received to the White Paper was published in March 2013.

### **LIST OF TERMS AND ABBREVIATIONS USED IN THE EXPLANATORY NOTES**

7. The following terms and abbreviations are used in the Explanatory Notes.

*These notes refer to the Further and Higher Education  
(Governance and Information) (Wales) Act 2014 (c.1)  
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FEC – further education corporation  
FEI – further education institution

HMRC – Her Majesty’s Revenue and Customs

ONS – Office for National Statistics

FHEA 1992 – the Further and Higher Education Act 1992

THEA 1998 – the Teaching and Higher Education Act 1998

## **COMMENTARY ON SECTIONS AND SCHEDULES**

### ***Section 1 – Borrowing and investing by further education corporations***

8. Section 19 of FHEA 1992 makes provision for FECs to have various supplementary powers. The effect of the amendments made by this section to section 19 is to remove the requirement for FECs in Wales to obtain the consent of the Welsh Ministers before they exercise certain supplementary powers. These are their powers to borrow money, to form or invest in a company or become a member of a charitable incorporated organisation for the purposes of conducting an educational institution.

### ***Section 2 – Instrument and articles of government of further education corporations***

9. This section amends section 20 of FHEA 1992 which requires the instruments and articles of government of FECs to comply with specified requirements. It introduces Schedule 1 (which substitutes Schedule 4 to FHEA 1992) to make new, less prescriptive, provision about the content of instruments and articles of government of FECs in Wales.
10. The section also substitutes a new section for current section 22 and 22ZA of FHEA 1992. The effect of this is to remove the Welsh Ministers’ power to modify, revoke or replace the instruments and articles of government of FECs in Wales and to give FECs in Wales the power to modify or replace their instruments and articles of government.

### ***Schedule 1 - Instrument and articles of government***

11. **Schedule 1** replaces Schedule 4 to FHEA 1992. The new Schedule 4 sets out the essential elements that FEIs are required to include in their instruments and articles of government. These will require FEIs to set out, for example, the roles and responsibilities of key personnel and how a FEI can change its instrument and articles of government. Governing bodies of FEIs will have to include staff and student governors as well as representatives of local businesses or local employers. An FEI will also have to consult persons in its locality about the education it provides and the planning of its curriculum.

### ***Section 3 – Dissolution of further education corporations***

12. This section makes provision relating to the dissolution of FECs by substituting new sections 27 to 27B for existing sections 27 to 27C of FHEA 1992. The effect of this is to remove the Welsh Ministers’ power to dissolve FECs and transfer their property, rights and liabilities to another education provider. Instead, FECs will have the power to dissolve themselves, provided they have published proposals and conducted a full consultation and taken account of the views of those consulted, in accordance with regulations. It also gives FECs the ability to transfer their property, rights or liabilities to another body for educational purposes, and with that body’s consent. The type of body will be specified in regulations.

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#### ***Section 4 – Designated institutions: instrument and articles of government***

13. Sections 29B and 29C of FHEA 1992 make provision about the instruments and articles of designated institutions (except those conducted by a company or that are exempt under the designating order). This section replaces current sections 29B and 29C with a new section 29B. The effect of this is to remove the requirement for the Welsh Ministers' consent before designated institutions can modify or replace their instruments and articles of government and to remove the Welsh Ministers' power to modify and replace articles and instruments of government. Instead designated institutions in Wales will have the power to modify or replace their own instruments and articles of government. The requirements of the new Schedule 4 to FHEA 1992 (as replaced by Schedule 1 of this Act) will apply to the instruments and articles of government.
14. This section also amends sections 29A and 31 of the FHEA 1992 so that designated institutions' first post-designation instruments and articles of government no longer have to contain provision about members appointed by the Welsh Ministers.

#### ***Section 5 – Intervention by Welsh Ministers in respect of institutions within further education sector***

15. This section amends section 57 of FHEA 1992 which enables the Welsh Ministers to intervene in a FEI (by making changes to the governing body or issuing directions), if they consider that the FEI is being mis-managed or otherwise failing. The amendment means the Welsh Ministers, when using their intervention powers, will be able to direct the governing body of a FEC to use its new powers to dissolve itself. If this happens, the FEC will be treated as if they had followed the publication and consultation procedures set out in section 27 of FHEA 1992 (as substituted by section 3 of the Act).
16. This section also repeals section 57A of the FHEA 1992. That section requires the Welsh Ministers to prepare, publish and keep under review a statement of their policy with respect to the exercise of their intervention powers.

#### ***Section 6 – Abolition of duties of further education institutions to comply with directions***

17. This section amends sections 33J and 33L of the Learning and Skills Act 2000 and sections 116I and 116K of the Education Act 2002. Those provisions are concerned with planning and delivering local curricula in Wales, which are local authority-wide curricula established by local authorities or the Welsh Ministers. The effect of the amendments is to remove the requirement for FEIs to comply with directions made by the Welsh Ministers relating to the planning of local curricula and joint working to deliver local curricula. FEIs must however still have regard to guidance given by Welsh Ministers in respect of planning and delivering local curricula.

#### ***Section 7 – Abolition of power to regulate higher education courses in further education sector***

18. This section repeals section 139 of the Education Act 2002 so the Welsh Ministers may no longer make regulations that prohibit the provision of higher education courses by FEIs without their approval and that regulate the numbers and categories of students on such courses.

#### ***Section 8 – Minor and consequential amendments***

19. This section introduces Schedule 2 which makes minor and consequential amendments to various Acts and an Order and a Measure, as a result of other sections in this Act.

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### **Section 9 – Supply of information in connection with student loans and grants**

20. Part 2 of THEA 1998 makes provision about financial support to students in further and higher education. Section 24 of that Act enables HMRC to provide information in relation to the operation of the student loan scheme to the Secretary of State and the Department of Education for Northern Ireland (and to those to whom they have transferred or delegated certain functions), but not to the Welsh Ministers.
21. The Welsh Ministers carry out functions in relation to student support in Wales and can delegate those functions under section 23 of THEA 1998 (e.g. to the Student Loans Company).
22. In the absence of a legal basis for HMRC to supply such information to the Welsh Ministers, applicants for student support must submit documentary evidence of household income when applying for student support. The existing arrangement does not allow for the evidence of household income to be verified with HMRC.
23. This section amends section 24 of THEA 1998 so as to add the Welsh Ministers and those persons or bodies acting on behalf of the Welsh Ministers or exercising student support functions on their behalf, as persons to whom HMRC can supply information. HMRC will supply information under this provision on household income so that those receiving the information will be able to verify figures supplied in applications for means tested financial support without the need for applicants to provide documentary evidence.
24. This section also extends section 24 of THEA 1998 so that HMRC's power to share information relates to grants made by the Welsh Ministers as well as loans.

### **Section 10 – Review of operation of Act**

25. This section provides that the Welsh Ministers must no later than 31 July 2016 review the operation of the Act. In particular the Welsh Ministers must consider the Act's impact on the funding of education provided to those aged 16 to 18 at Welsh FEIs. The Welsh Ministers must also consider the Act's impact on the provision for Welsh language and additional learning needs in Welsh FEIs. The Welsh Ministers may also include other areas in the review.

### **Schedule 1**

26. **Schedule 1** is introduced by section 2.

### **Schedule 2**

27. **Schedule 2** is introduced by section 8.

## **RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES**

28. The following table sets out the dates for each stage of the Act's passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales' website at:

<http://www.assemblywales.org/bus-home/bus-legislation.html>

<i>Stage</i>	<i>Date</i>
Introduced	29 April 2013
Stage 1 - Debate	24 September 2013
Stage 2 Scrutiny Committee – consideration of amendments	24 October 2013

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<b><i>Stage</i></b>	<b><i>Date</i></b>
Stage 3 Plenary - consideration of amendments	3 December 2013
Stage 4 Approved by the Assembly	3 December 2013
Royal Assent	27 January 2014