

HIGHER EDUCATION (WALES) ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS OF THE ACT

Part 3 – Quality of Education

Section 17 – Assessment of quality of education

48. This section requires HEFCW to assess or make arrangements to assess the quality of education in Wales provided by and on behalf of regulated institutions. (For this purpose, education in Wales includes education provided outside Wales, if the education forms part of a course that is provided principally in Wales.)
49. Currently HEFCW may arrange for other bodies to undertake assessments of institutions it funds on matters relating to the quality of education. This includes arrangements that HEFCW makes with the Quality Assurance Agency for Higher Education (QAA) and Estyn (in respect of teacher training). This section will permit HEFCW to make similar arrangements with the QAA, Estyn or other bodies to assess the quality of education provided by and on behalf of regulated institutions.
50. This section also defines “external provider” for the purpose of the Act. It also enables the Welsh Ministers to prescribe by way of regulations the circumstances in which a person is or is not to be treated as being responsible for providing a course of education on behalf of a regulated institution. It also provides that a course is not to be classified as being provided on behalf of a regulated institution if the arrangements under which it is provided were made before the section comes into force.
51. An “external provider” is likely to be another institution or provider which delivers all or part of a course on behalf of a regulated institution under franchise arrangements.
52. It is likely that regulations will provide that individual lecturers or tutors will not be treated as being responsible for providing a course of education on behalf of a regulated institution.
53. Guidance issued or approved by HEFCW under section 24 may include criteria to be applied by a person assessing the quality of education.

Sections 18 to 20 – Education of inadequate quality

54. **Section 18** sets out the meaning of inadequate quality.
55. HEFCW may issue or approve guidance about factors that they may take into account when determining whether quality of education is inadequate (see section 24).
56. **Section 19** provides for HEFCW to give directions to the governing body in the case of inadequate quality.
57. A direction may require a governing body to take steps (or not take steps) to improve the quality of education or of a course, or to prevent the quality of education or a course from becoming inadequate. For example, a direction might include a requirement to:

*These notes refer to the Higher Education (Wales) Act 2015 (c.1)
which received Royal Assent on 12 March 2015*

- improve aspects of an institution's quality assurance procedures; or
 - address deficiencies in the academic standards of degrees.
58. A direction might also require improvements to the quality of education provided on behalf of a regulated institution by partner institutions under franchise agreements.
59. The warning notice and review procedures in sections 41 to 44 apply to directions under section 19.
60. **Section 20** permits HEFCW, in the case of inadequate quality, to give advice or assistance to the governing body of a regulated institution or to carry out or arrange a review of an institution. This will permit HEFCW to provide support to regulated institutions in a similar way to the support they provide to institutions that they currently fund.
61. Advice and assistance given by HEFCW is to be with a view to improve the quality of education or a course of education; or to prevent the quality of the education or course of education from becoming inadequate.
62. It is anticipated that HEFCW might use this power to arrange for a support team to assist an institution to improve the quality of education; for example a team consisting of peer reviewers or management specialists. Alternatively HEFCW might arrange for a targeted review of a particular institution, for example to identify whether there are wider operational issues contributing to inadequate quality.

Section 21 – Quality assessment etc: duty to co-operate

63. This section requires governing bodies of regulated institutions and external providers (see section 17 for the definition of “external provider”) to co-operate with persons exercising functions under section 17 (assessment of quality of education) and section 20 (advice, assistance and reviews in cases of inadequate quality).
64. The duty to co-operate requires governing bodies to ensure the provision of information, assistance and access to facilities required by a person for the purposes of those functions.
65. HEFCW may give a direction to a governing body if HEFCW are satisfied that a governing body has failed to comply with its duty to co-operate. The direction may require a governing body to take, or not take, steps to secure the provision of information, assistance or access to facilities. A direction given under this section is not subject to the warning notice and review procedures set out in sections 41 to 44.

Section 22 – Quality assessment etc: powers of entry and inspection

66. **Section 22** provides for a right of entry and inspection for the purpose of exercising functions under sections 17 (assessment of quality of education) or 20(2) (review of matters relating to the quality of education).
67. A person authorised in writing by HEFCW may enter the premises of a regulated institution or external provider and may inspect, copy or take away documents found on the premises.
68. The power of entry and inspection may only be exercised after giving the governing body reasonable notice except in cases of urgency or where giving notice would defeat the object of exercising the power of entry or inspection. Entry without notice might be appropriate where HEFCW consider that relevant documents are likely to be removed from the institution's premises or destroyed if notice is given.

69. The power of entry and inspection may only be exercised at reasonable times and does not include a power to enter a dwelling (such as student or staff accommodation) without the agreement of the occupier.
70. Before exercising a power under this section a person must produce a copy of their authorisation from HEFCW if required to do so.

Section 23 – Guidance about matters relevant to quality

71. This section permits HEFCW to issue or approve guidance about matters relating to improving or maintaining the quality of education provided by or on behalf of regulated institutions. It is considered that it may not always be necessary for HEFCW to issue guidance but they may wish to rely on guidance issued by bodies with expertise of quality in education. For example this would allow HEFCW to approve guidance issued by the QAA.

Section 24 – Guidance about criteria for assessing quality

72. This section permits HEFCW to issue or approve guidance on certain matters relating to the assessment of quality. As with section 23 it allows HEFCW to approve guidance issued by other bodies where they think appropriate. HEFCW cannot issue or approve guidance or revised guidance under section 24 without first consulting the governing body of each regulated institution and any other person that they think appropriate. This reflects the requirement in respect of guidance issued or approved by HEFCW under section 23.
73. The guidance may be about criteria to be applied by a person assessing the quality of education under section 17 and may also set out matters that HEFCW will take into account in determining whether the quality of education, or of a course of education, is inadequate.

Section 25 – Committee to advise HEFCW about exercise of quality assessment functions

74. HEFCW in exercising their current functions under the Further and Higher Education Act 1992 are required by section 70(1)(b) of that Act to establish a committee to advise on the exercise of its quality assessment duty.
75. **Section 25** requires HEFCW to establish a committee to advise on the exercise of their quality assessment functions under the Act.
76. Subsections (3) and (4) set out the requirements for membership of that committee. Subsection (4) makes provision for what HEFCW must take into account when appointing members who fall within subsection (4) to that committee. One member of the committee must be a person who appears to HEFCW to represent the interests of students (subsection (3)). As for the other members, the effect of subsection (4) is that the requirements for membership are similar to that for the Quality Assessment Committee established by HEFCW under section 70(1)(b) of the Further and Higher Education Act 1992. Members of that committee on the date on which this section comes into force will become members of the committee established by HEFCW under this section: see paragraph 31 of the Schedule to the Act (which contains consequential and transitional provisions).
77. Schedule 1 to the Further and Higher Education Act 1992 (which contains supplementary powers for HEFCW) applies to the committee established by this section as it does to committees established by HEFCW under paragraph 8 of that Schedule. For example, it will allow HEFCW to pay travel and other allowances to members of the committee who are not members of HEFCW's council.

Section 26 – Application of Part 3 where institution ceases to have approved plan

78. **Section 26** 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).
79. HEFCW's quality assessment duty will continue for as long as an institution is providing courses for which students are eligible to receive statutory student support provided by the Welsh Ministers. It is proposed that the Welsh Ministers will continue to designate courses for student support purposes in respect of those students who began a course before the fee and access plan ceased to be in force.
80. The ongoing duty on HEFCW under this section to quality assess education seeks to offer ongoing protection for students who commenced their courses at a time when an institution had a fee and access plan in place.