

HIGHER EDUCATION (WALES) ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS OF THE ACT

Part 5 – Fee and Access Plans: Withdrawal of Approval etc

Section 39 - Power to withdraw approval

114. This section permits HEFCW to withdraw their approval of a fee and access plan where:
- a governing body has persistently failed to comply with limits on student fees or has failed to comply with a compliance and reimbursement direction;
 - a governing body has persistently failed to comply with the general requirements of an institution's approved plan or has failed to comply with a direction given under section 13;
 - the quality of education provided by or on behalf of the institution is seriously inadequate; or
 - there has been serious failure by the governing body of an institution to comply with the Code.
115. Persistent failure could (in the context of student fees and general requirements of an approved plan) consist of a number of separate failures or the repetition or continuation of the same failure. Section 39(3) reflects the provision at section 37(4). Section 39(3) provides that where HEFCW are satisfied that a governing body has taken all reasonable steps to comply with a general requirement of its approved plan, that governing body is not to be treated for the purposes of section 39(2)(b) as having failed to comply with that requirement. For example, the governing body of an institution may commit in its approved plan to provide bursary assistance to a certain number of students. The actual number of students which subsequently receive a bursary is lower than the number set out in the plan because the number of eligible students applying for the bursary is lower than expected, despite the bursary being widely publicised. HEFCW may, in that scenario, be satisfied that the governing body has taken all reasonable steps to comply with the general requirement.
116. The Welsh Ministers may by regulations make provision about what HEFCW must take into account when deciding whether to give notice that they are withdrawing their approval of a plan under this section. For instance, this might include a requirement for HEFCW to take account of the effect of inadequate quality of education on students or the effect of non-compliance with the Code on the financial stability of an institution.
117. The warning notice and review procedures in sections 41 to 44 apply to notice given by HEFCW under this section.