

HIGHER EDUCATION (WALES) ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS OF THE ACT

Part 7 – Supplementary provision about functions of HEFCW

Section 47 – Compatibility with charity law and governing documents of institutions

134. **Section 47(1)(a)** and (b) place general restrictions on the exercise of HEFCW's functions under the Act.
135. The effect of section 47(1)(a) is that any requirements that HEFCW may impose on the governing bodies of institutions under the Act cannot require those governing bodies to act in breach of their obligations as charity trustees. (HEFCW might for instance impose requirements where HEFCW give a direction to an institution or as a provision of the financial management Code.)
136. Section 47(1)(b) provides that HEFCW cannot require the governing body of an institution to do anything that is incompatible with its governing documents. For these purposes, the governing documents of an institution are defined in section 47(2) in relation to an institution established by Royal charter, institutions conducted by higher education corporations or further education corporations, institutions designated under section 129 of the Education Reform Act 1988 or section 28 of the Further and Higher Education Act 1992 and other institutions conducted by companies.

Section 48 – Duty to take into account importance of protecting academic freedom

137. **Section 48** imposes a general duty on HEFCW to take into account the importance of protecting academic freedom in exercising their functions under the Act. In particular, HEFCW must take into account the importance of protecting the freedom of institutions to determine the matters listed in section 48(a) to (c). Where the exercise by HEFCW of a function under the Act has no relevance to the protection of institutional freedoms, or where the exercise of a function involves no choice on the part of HEFCW, the duty in section 48 will not, in practice, require HEFCW to take any additional action.

Section 49 – Duty to take Welsh Ministers' guidance into account

138. The Welsh Ministers may issue guidance to HEFCW relating to the exercise of HEFCW's functions under the Act. For instance, the Welsh Ministers might issue guidance to HEFCW as to the exercise of their monitoring and evaluation functions under section 15 relating to fee and access plans, or in relation to their duty under section 17 (assessment of quality of education). Similarly, the Welsh Ministers might issue guidance to HEFCW in connection with the preparation of the financial management Code or the statement of intervention policy (see section 52).

Section 50 – Annual reports

139. Existing provision in section 40A of the Higher Education Act 2004 requires HEFCW to provide an annual report to the Welsh Ministers on how HEFCW have performed their functions under that Act.
140. **Section 50** of the Act requires HEFCW to provide an annual report to the Welsh Ministers on how HEFCW have exercised their functions by virtue of the Act. HEFCW have flexibility to determine when the first reporting period should end, which will set the annual reporting period thereafter. The Welsh Ministers are able to specify requirements with which such a report must comply. Such a requirement might relate to the publication of the report but may also relate to the form and content of the report. As soon as possible after an annual report has been submitted to the Welsh Ministers by HEFCW, the Welsh Ministers must lay a copy of the report before the National Assembly for Wales.

Section 51 – Special reports

141. **Section 51** is similar to section 40A(2) of the Higher Education Act 2004. It requires HEFCW to provide a special report to the Welsh Ministers when directed to do so.
142. The Welsh Ministers might wish to receive a special report regarding the extent to which the governing body of an institution is complying with the fee limits set out in its approved plan or the quality of education provided at an institution (perhaps where concerns have been raised in relation to a particular institution). Equally, the Welsh Ministers might, given HEFCW's evaluation functions under section 15, wish to receive a report on the effectiveness of approved plans generally in promoting equality of opportunity in connection with access to higher education and in promoting higher education.

Section 52– Statement in respect of intervention functions

143. **Section 52** requires HEFCW to prepare and publish a statement which sets out how they propose to exercise certain of their functions. Those functions are described in section 52(5). Section 52(5) does not extend to HEFCW's powers of direction under sections 16, 21 or 35 which concern a governing body's duty to co-operate.
144. **Section 52(3)** requires HEFCW to consult the governing body of each regulated institution and any other persons they think appropriate before publishing the statement or revising the statement. Those other persons might include institutions which have previously been, but which no longer are, regulated institutions.

Section 53 – Information and advice to be given by HEFCW to Welsh Ministers

145. **Section 53** is similar to the existing provisions in section 40A(3) of the Higher Education Act 2004. It provides that the Welsh Ministers can require HEFCW to provide such information and advice relating to the promotion of equality of opportunity in connection with access to higher education and the promotion of higher education as the Welsh Ministers may require. It also allows HEFCW to provide other information or advice relating to those matters to the Welsh Ministers.

Section 54 – Other information and advice

146. The provisions in section 54(1) are similar to the existing provisions in section 40A(4) of the Higher Education Act 2004. Under section 54(1), HEFCW are able to identify good practice relating to the promotion of equality of opportunity in connection with access to higher education and the promotion of higher education and give information and advice about such practice to the governing body of a regulated institution, or to the governing bodies of such institutions generally. In developing any information and advice for these purposes, HEFCW will be able to take into account their evaluations

*These notes refer to the Higher Education (Wales) Act
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made under section 15 of the Act. Section 54(2) requires the governing body of a regulated institution to take any information and advice given by HEFCW under section 54(1) into account in exercising its functions.

147. Section 54(3) and (4) enables HEFCW to provide other information and advice. This could include providing information and advice to the governing body of an institution prior to that governing body making an application for approval of a fee and access plan under section 2. HEFCW might, for instance, provide information and advice regarding the requirements with which governing bodies of institutions must comply following the approval of a fee and access plan. Information and advice provided under these powers could also relate to the financial management of regulated institutions and their other functions.