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Consultation Document

Regulations as provided for by the Higher Education (Wales) Act 2015

Date of issue: 17 March 2015

Action required: Responses by 12 May 2015

Regulations as provided for by the Higher Education (Wales) Act 2015

Overview	This consultation seeks views on proposed regulations as provided for by the Higher Education (Wales) Act 2015.
How to respond	Responses to this consultation should be e-mailed/posted to the address below to arrive by 12 May 2015 at the latest.
Further information and related documents	<p>Large print, Braille and alternate language versions of this document are available on request.</p> <p>The Higher Education (Wales) Act (2015) www.senedd.assembly.wales/mgIssueHistoryHome.aspx?lId=9722</p> <p><i>The Higher Education (Wales) Bill: Explanatory Memorandum</i> (2014) http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs/pri-ld9758-em-e.pdf?langoption=3&ttl=PRI-LD9758-EM%20-%20Higher%20Education%20%28Wales%29%20Bill%20-%20Explanatory%20Memorandum</p> <p><i>The Higher Education (Wales) Bill: Policy intent for regulations to be made under the Bill</i> (2014) http://www.senedd.assemblywales.org/documents/s27572/Policy%20Intent%20Statement.pdf</p>
Contact details	<p>For further information: Higher Education Division Department for Education and Skills Welsh Government Cathays Park Cardiff CF10 3NQ</p> <p>e-mail: HEDConsultationsMailbox@wales.gsi.gov.uk</p>

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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Background

Introduction

The Higher Education (Wales) Bill was introduced to the National Assembly for Wales on 19 May 2014 and was passed on 27 January 2015. It became an Act of the National Assembly on 12 March 2015. The Welsh Government intends to make regulations to ensure that the regulatory framework provided for by the Higher Education (Wales) Act 2015 ('the Act') can operate effectively.

Five sets of regulations are initially necessary.

- The Higher Education (Designation of Providers of Higher Education) (Wales) Regulations 2015
- The Higher Education (Qualifying Courses and Persons) (Wales) Regulations 2015
- The Higher Education (Fee and Access Plans) (Wales) Regulations 2015
- The Higher Education (Fee and Access Plans) (Notices and Directions) (Wales) Regulations 2015
- The Higher Education (Amounts) (Wales) Regulations 2015.

It is intended that these Regulations will come into force in July 2015.

Copies of the draft regulations are available on the Welsh Government's website (<http://wales.gov.uk/consultations/education/?lang=en>).

The Higher Education (Wales) Act 2015

The Act makes provision for a revised regulatory framework for higher education in Wales. The Welsh Government's primary policy objectives are to:

- ensure robust and proportionate regulation of institutions in Wales whose courses are supported by Welsh Government higher education grants and loans;
- safeguard the contribution made to the public good from the Welsh Government's financial subsidy of higher education;
- maintain a strong focus on fair access to higher education; and
- preserve and protect the institutional autonomy and academic freedom of universities.

The Act will achieve these objectives by:

- establishing a new regulatory framework applicable to all providers of higher education in Wales which seek automatic designation of their higher education courses for the purpose of student support;
- ensuring the new regulatory controls no longer rely on the Higher Education Funding Council for Wales ('HEFCW') providing funding to those institutions and providers;
- requiring all higher education providers that benefit from the Welsh Government's financial subsidy in the form of statutory student fee loans or grants to have charitable status;
- requiring all higher education providers whose courses are automatically designated for statutory student support to commit to activity in support of equality of access to higher education; and
- building on the existing system of controls established by HEFCW under its terms and conditions of funding.

The Regulations

The Act provides the Welsh Ministers with the power to make regulations on a range of matters¹. The Welsh Government intends initially to make five sets of Regulations. These are considered necessary to ensure that the regulatory framework provided for by the Act can operate as intended. It is currently intended that these regulations will come into force in July 2015.

The regulation making powers relevant to the five sets of Regulations are summarised in table 1. These are also discussed in more detail in the following sections.

Additional consultation matters

The Welsh Ministers do not propose to make regulations in July 2015 on all those matters which the Act provides for. Table 2 outlines those areas where the Welsh Ministers are seeking to engage before deciding on whether to make regulations, and if so the likely content. These areas are discussed in more detail in the following sections.

¹ These are discussed in some detail in the Higher Education (Wales) Bill Policy Intent Statement.

The transitional period

A transitional period is provided for by section 58 (and Part 2 of the Schedule) of the Act. This period ends on 31 August 2017. The operation of the regulations during the transitional period may have slightly different effect than when the period ends. Any notable difference has been highlighted.

Table 1: The purpose of the regulations

The Higher Education (Designation of Providers of Higher Education) (Wales) Regulations 2015

Act²	Relating to	Purpose
3(4)	Designation of other providers of higher education	To enable the designation of a charitable provider of higher education in Wales as an 'institution' for the purposes of the Act in those cases where a provider would not normally be regarded as such.

The Higher Education (Qualifying Courses and Persons) (Wales) Regulations 2015

Act	Relating to	Purpose
5(2)(b)	Description of 'qualifying courses'	A fee and access plan must specify or provide for the determination of the fee to be charged for a 'qualifying course' to a 'qualifying person'. These regulations will prescribe which courses are 'qualifying courses'.
5(5)	Description of 'qualifying persons'	To prescribe classes of persons who will be 'qualifying persons' for the purposes of the fee limit.

The Higher Education (Fee and Access Plans) (Wales) Regulations 2015

Act	Relating to	Purpose
2(4)	Applications for approval of a fee and access plan	To specify the information and documentation that institutions applying for approval of a fee and access plan will need to provide to HEFCW.

² Numbering refers to sections of the Act.

6(1)	The promotion of equality of opportunity and the promotion of higher education	To prescribe the information on the promotion of equality of opportunity and promotion of higher education that a fee and access plan must contain.
7(3)	Approval or rejection of a fee and access plan	To specify the matters to be taken into account by HEFCW in determining whether to approve or reject an application for a fee and access plan.
8(1)	Publication of approved plans	Provision on how and when an approved fee and access plan is to be published by a regulated institution.
9(1)	Variation of approved plans	To enable a regulated institution to vary a fee and access plan that has previously been agreed. Regulations describe the process for variation, and for a variation to take effect only once it has been approved by HEFCW.

The Higher Education (Fee and Access Plans) (Notices and Directions) (Wales) Regulations 2015

Act	Relating to	Purpose
11(5)	Copies and publication of compliance and reimbursement directions	To make provision about how and when HEFCW are to publish any compliance and reimbursement directions and provide copies to the Welsh Ministers.
42(2)(d)	Requirement to give a warning notice	A notice or direction may be issued by HEFCW to regulated institution in certain circumstances (section 41). If HEFCW proposes to do this, it must first issue a warning notice to the regulated institution. Regulations make provision about the period within and way in which representations about a proposed notice or direction may be made by a regulated institution.
43(c)	Information to be given with notices and directions	To prescribe information which must be included in a statement accompanying a relevant notice or direction that is issued by HEFCW to a regulated institution.
44(3)	Reviews of notices and directions	Regulations make provision for the grounds on which an application for a review may be made and the procedure that will be followed including amongst other things the period within which an application for review maybe made and the procedure to be followed when a review is carried out.

The Higher Education (Amounts) (Wales) Regulations 2015

Act	Relating to	Purpose
5(3)	Maximum fee limits	A fee limit specified in, or determined in accordance with a fee and access plan, must not exceed a specified maximum amount. Regulations set the maximum amount.
5(9)	Fees payable to other persons	Regulations will ensure that the fees payable by qualifying persons do not exceed the fee limit when those fees are payable to a person other than a regulated institution, where that person is delivering the course on behalf of a regulated institution.

Table 2: Further regulations

Act	Relating to	Purpose
		Refusal to approve a new fee and access plan; withdrawing approval of an existing fee and access plan
37(7)	Notice of refusal to a approve a new fee and access plan	Make provisions relating to notice by HEFCW not to approve a new fee and access plan and the matters to be taken into account by HEFCW when deciding whether to give or withdraw notice.
38(2)	Duty to withdraw approval	Set out the matters to be taken into account by HEFCW in determining whether to withdraw approval of a fee plan
39(4)	Power to withdraw approval of a fee and access plan	Set out the matters which HEFCW is to take into account when deciding whether to give notice of their intention to withdraw approval of a fee and access plan
40(2)	Publication of notices issued under Part 5	Specify the manner and time in which HEFCW is to publish notices in respect of sections 37, 38 or 39.
		Statement of HEFCW's intervention functions
52(4)	Statement of intervention functions	Make provision about HEFCW's statement, including its preparation, form and content, publication and consultation requirements

The Higher Education (Designation of Providers of Higher Education) (Wales) Regulations 2015

Respondents may wish to refer to the Explanatory Note which accompanies the draft Regulations.

Policy intent

The Welsh Ministers may designate a charitable provider of higher education in Wales as an 'institution' for the purposes of the Act and any subordinate legislation made under it. Such a provider would not otherwise be normally regarded as an institution for the purposes of the Act. This power might, for example, be exercised to designate a provider which is not able to award degrees but which provides other courses of higher education at a lower level on the credit and qualifications framework. Alternatively, the power might be exercised to designate a provider which is a charitable company limited by guarantee which provides courses of higher education.

The Regulations

The Act enables the Welsh Ministers to make regulations providing the detail connected with the making of applications for designation, the making and withdrawing of a designation (including provision on the matters to be taken into account) and the effect of withdrawal.

Regulation 2(1) requires an applicant to provide information about the organisation. Regulation 2(2) requires an applicant to provide information that will establish its charitable status including whether the charity is registered or not. Regulation 2(3) establishes the extent to which an applicant provides higher education in Wales. Regulation 3 requires applicants to submit a copy of their prospectus for higher education. Regulation 4 requires a copy of an applicant's governing document if it is not a registered charity.

Regulation 5(1) makes provision for the Welsh Ministers to withdraw a designation. Regulation 5(2) provides for notification of reasons and a date when designation will be withdrawn. Regulation 5(3) provides for the matters to be taken into account when withdrawing a designation.

Regulation 6 ensures that a provider whose designation has been withdrawn remains subject to those sections of the Bill relating to fee limits (sections 10 – 12), directions in respect of failure to comply with general requirements of approved plan (section 13), validity of contracts (section 14) and quality (section 26).

- 1 Is there other information that you believe should accompany an application for designation?
- 2 Do you have any comments on The Higher Education (Designation of Providers of Higher Education) (Wales) Regulations 2015?

The Higher Education (Qualifying Courses and Persons) (Wales) Regulations 2015

Respondents may wish to refer to the Explanatory Note which accompanies the draft Regulations.

Policy intent

The Regulations prescribe 'qualifying courses' and 'qualifying persons' for the purpose of the fee limit.

A fee and access plan must specify or provide for the determination of a fee limit in respect of each qualifying course. The tuition fees charged by institutions to qualifying persons undertaking qualifying courses may not exceed the fee limit specified in the plan. The Welsh Ministers specify a maximum fee limits in the Higher Education (Amounts) (Wales) Regulations 2015 (see later in this document) that can be charged to qualifying persons undertaking qualifying courses.

The Regulations

The Regulations prescribe qualifying courses and qualifying persons.

Regulation 3(1) prescribes qualifying courses. Regulation 3(2) and (3) describe circumstances where courses are not qualifying courses.

Regulation 4(1) prescribes qualifying persons. Regulations 4(2) – 4(3) sets out persons who are not to be treated as qualifying persons, and regulations 4(4) – 4(7) describe exceptions.

Regulations concerning qualifying courses and persons have been made previously. Respondents may wish to note that the schedule is unchanged (save for minor updating).

The Welsh Government recognises that regulated institutions will offer a variety of provision to a range of learners and that it might not always be appropriate for the prescribed fee limit to apply. The Welsh Government would be interested to hear about circumstances where deliberate policy exemptions from the fee limit might be considered. As an example, the Welsh Government would not wish to limit the discretion of a regulated institution in setting the fees to be charged in the provision of higher education to a company.

- 3 Are there specific circumstances in which the fee limit should not apply to particular courses that would otherwise be a qualifying course?
- 4 Do you have any other comments on the Higher Education (Qualifying Courses and Persons) (Wales) Regulations 2015?

The Higher Education (Fee and Access Plans) (Wales) Regulations 2015

Respondents may wish to refer to the Explanatory Note which accompanies the draft Regulations.

Policy intent

The Regulations provide for the content, approval, publication and variation of fee and access plans.

If a fee and access plan is approved an institution's courses will be automatically designated for the purpose of student support. It is the intention to protect the interests of students by minimising the risk of an institution having financial problems that might affect the delivery of courses and by ensuring the quality of provision is adequate.

Applicants will be required to specify objectives relating to the promotion of equality of opportunity and the promotion of higher education in their fee and access plan. Among other things, this will include specifying what proportion of fees will be expended on these objectives. In addition, a fee and access plan must include provisions requiring the governing body of an institution to take, or secure the taking of, certain measures. This includes attracting applications from and retaining students who are members of underrepresented groups.

The Regulations

Regulation 3 provides that an application for a fee and access plan must include information on financial viability, arrangements for financial management and the quality of provision at the applicant institution. Regulation 3(a) requires an institution that is applying for the approval of a fee and access plan to demonstrate that it is financially viable. The regulation does not specify the detail of what should be provided to HEFCW. There are two reasons for this:

- The financial situation of institutions in Wales in receipt of funding from HEFCW is known through current regulatory activity. There is not thought to be any benefit to changing HEFCW's existing ability and flexibility to assess financial matters in a fair and reasonable manner by further specifying the information to be provided in these Regulations; and
- It maintains HEFCW's and regulated institutions' flexibility to respond to changes in accounting practice and the financial environment.

Regulations 4, 5 and 6 prescribe those matters that a fee and access plan must include. Regulation 5(a) requires that a fee and access plan must set out objectives relating to the promotion of equality of opportunity and the promotion of higher education. Regulation 6 requires an institution to include provisions in its fee and access plan the measures it will take (or secure the taking of) in relation to aspects of the promotion of equality of opportunity.

Regulation 7 provides for the matters that HEFCW must take into account when considering whether to approve or reject an application for the approval of a fee and access plan.

Regulation 7(c) requires HEFCW to take into account the fees payable by qualifying persons on qualifying courses when determining whether to approve or reject a fee plan. This is to enable an assessment of whether the applicant's objectives for the promotion of equality of opportunity and the promotion of higher education are adequate given the level of fees it proposes to charge.

Regulation 7(d) requires HEFCW to take into account the proportion of fee income derived from qualifying persons undertaking qualifying courses which the institution intends to invest in the promotion of equality of opportunity and the promotion of higher education. This is to enable an assessment of whether the institution has allocated meaningful resource to achieve its objectives. The Welsh Ministers would usually expect institutions proposing to charge higher fees to make greater provision for the promotion of equality of opportunity and the promotion of higher education.

Regulation 8 specifies the arrangements that must be made for the publication of an approved plan so that it is accessible to students and prospective students.

The Welsh Ministers wish to allow a regulated institution to be able to vary an approved fee and access plan should the need arise. Regulation 9 enables a fee and access plan to be varied.

- 5 Do you think the Regulations should be more prescriptive in terms of what should be included in a fee and access plan relating to the promotion of higher education? What else might be included?
- 6 Do you have any other comments on the Higher Education (Fee and Access Plans) (Wales) Regulations 2015?

The Higher Education (Fee and Access Plans) (Notices and Directions) (Wales) Regulations 2015

Respondents may wish to refer to the Explanatory Note which accompanies the draft Regulations.

Policy intent

Part 6 of the Act deals with 'notices and directions' given by HEFCW. HEFCW may issue notices and directions in the circumstances set out in the Act. The Regulations provide for the procedure to be followed when HEFCW proposes to give certain notices or directions.

The Regulations detail the procedure for making representations about a proposed notice or direction, the information that must accompany a notice or direction, the grounds and procedure for applying for a review of a notice or direction, and what HEFCW must do with the results of any review.

The Regulations

Regulation 3 requires HEFCW to provide a copy of a compliance and reimbursement direction (issued in connection with section 11 of the Act) to the Welsh Ministers and publish it for a period of time on its website.

The Act requires HEFCW to give a governing body a warning notice if it proposes to give certain notices or directions (listed in section 41(1)). Regulation 4 specifies how and in what period representations may be made.

Regulation 5 specifies when a notice or direction should be treated as given.

It is intended that when HEFCW issues a notice or direction it must supply certain information to the regulated institution which enables the institution to understand why the notice or direction has been issued and how a review may be applied for. Regulation 6 sets out information that must be included in a statement given by HEFCW (in addition to that provided for in the Act). Regulation 7 specifies the grounds on which a regulated institution may apply for a review and regulation 8 sets out the procedure for doing so.

The review procedure is designed to be robust and transparent. The procedure at regulation 9 is designed to ensure that the panel will have available at the outset i) the notice or direction and HEFCW's reasons for issuing it and ii) the regulated institution's reasons for applying for a review.

The review panel is able to request information from HEFCW and/or the regulated institution to further inform a review. Any request must be copied to the other body, as must the information received in response.

Including an opportunity to respond to any further evidence was considered. Such an opportunity is not included in the draft Regulations as the procedure should be sufficient to ensure an informed review of the facts by the panel without further input.

Regulation 10 specifies what HEFCW must do, and by when, with the findings of the panel.

The following are of particular note:

- A number of regulations (3, 4, 8(a), 9(4) and 10(2)) specify the timescales to be observed in various procedures;
- Regulation 6 makes provision for the information that must be given by HEFCW with a statement;
- Regulation 7 specifies the grounds for review on which a regulated institution may apply;
- Regulation 9 covers a range of matters associated with the review of a notice or direction; and
- Regulation 10 directs HEFCW to take certain actions after the panel's report has been received.

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| <p>7 Has sufficient time been allowed for the various processes?</p> <p>8 Is the information to be supplied with a notice or direction sufficient? Is there any other information you think ought to accompany a notice or direction?</p> <p>9 Do you agree that the grounds on which a review may be made are sufficient to allow reasonable challenge?</p> <p>10 Will the review procedure achieve the objective of being transparent and sufficiently well-informed?</p> <p>11 Do you have any other comments on the Higher Education (Fee and Access Plans) (Review, Notices and Directions) (Wales) Regulations 2015?</p> |
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The Higher Education (Amounts) (Wales) Regulations 2015

Respondents may wish to refer to the Explanatory Note which accompanies the draft Regulations.

Policy intent

The Welsh Ministers will specify a maximum fee limit that can be charged to qualifying persons undertaking qualifying courses. This, together with the provision of financial support to meet the fee, is intended to ensure higher education is affordable.

The Act provides for a maximum fee limit to be contained in a fee and access plan, this limit will apply in relation to qualifying persons undertaking qualifying courses provided by regulated institutions. All institutions wishing to have their courses automatically designated for the purposes of student support must have an approved fee and access plan in place³. The fees for each qualifying course that institutions must specify (or provide for the determination of) in a fee and access plan may not exceed this maximum.

In order to protect the interest of students who are studying under some 'partnership' or 'franchise' arrangements, the Regulations make provision for situations where the fees payable by the student to an organisation (in the Regulations, a 'person') which is not the regulated institution, but is providing the course on behalf of the regulated institution, to be treated as though they are paid to the regulated institution. This is intended to ensure that the fee limit cannot be circumvented⁴.

The Regulations

Regulations 3 – 6 prescribe the maximum fee amount for different courses.

Regulation 7 provides for fees paid to a person in connection with a course offered by that person on behalf of a regulated institution to be treated as though paid to the regulated institution.

³ During the transitional period courses will continue to be designated in accordance with The Education (Student Support) (Wales) Regulations 2015.

⁴ It should be noted that during the transitional period this will apply to courses capable of being designated under regulation 5(1) of The Education (Student Support) (Wales) Regulations 2015, which is currently limited to courses provided by publicly funded providers. Thus, this will be limited to courses offered by publicly funded providers on behalf of providers that are subject to section 10 of the Act.

12 Do you have any comments on the Higher Education (Amounts) (Wales) Regulations 2015?

Additional consultation matters

Background

Part 5 of the Act makes provision for HEFCW to issue a notice to refuse to approve a new fee and access plan (section 37) and to withdraw approval of a fee and access plan (section 39). It also places HEFCW under a duty to withdraw approval of a fee and access plan in certain circumstances (section 38). Such notices must be published (section 40). Regulations may be made on a number of matters.

The Welsh Ministers intend to make regulations at some point in the future but wish to gauge views on certain aspects before doing so, notably the ‘matters’ that regulations may require HEFCW to take into account when making decisions. The Welsh Ministers may consult upon any draft regulations.

Section 52 of the Act requires HEFCW to publish a ‘statement of intervention functions’; a statement that sets out how they propose to exercise the functions listed in section 52(5) of the Act. Regulations may make provision on certain matters.

The Welsh Ministers are not minded to make regulations on these matters at this time but wish to take views on this position.

Part 5 – Fee and access plans: withdrawal of approval, etc.

Section 37 – Notice of refusal to approve a new fee and access plan

Section 37 enables HEFCW to issue a notice to refuse a new fee and access plan when certain conditions are met. Section 37(3) sets out the conditions:

37(3) The conditions are that the governing body of the institution has failed to comply with—

- (a) section 10(1) (duty to ensure that regulated course fees do not exceed applicable fee limit),*
- (b) a general requirement of the institution’s approved plan,*
- (c) a direction under section 13 (directions in respect of failure to comply with general requirements of approved plan),*
- (d) a direction under section 19 (directions in respect of inadequate quality), or*
- (e) a direction under section 33 (directions in respect of failure to comply with the Code).*

Notice to refuse to approve a new fee and access plan is one of a range of sanctions provided for in the Bill. Should refusal to approve be notified, the regulated institution will be aware that once its current fee and access plan expires new students would be ineligible for support.

The intention is three-fold: 1) to provide a strong signal to the institution that its behaviour in not complying with the matters at 37(3) is unacceptable 2) to protect public money, by limiting further expenditure, and reputation of higher education in Wales and 3) to provide the institution an opportunity to rectify failings before the next fee and access plan period.

Section 37(7) enables the Welsh Ministers to make provision in regulations relating to notices. This includes provision about 1) the period specified in a notice during which HEFCW will not approve a new fee and access plan, 2) the matters to be taken into account by HEFCW in deciding whether to give or withdraw such a notice and 3) the procedure to be followed if such a notice is withdrawn.

It is currently anticipated that regulations will establish the period specified in a notice as a maximum of one year.

Regulations may specify the matters to be taken into account by HEFCW when deciding whether to issue a notice.

Regulations may specify the matters to be taken into account by HEFCW when deciding whether to give or withdraw a notice. A notice is intended to ensure that failings are addressed. The basic requirement for a notice to be withdrawn should be that the failure has been rectified. It is not thought that there are any other matters to be taken into account.

The procedure to be followed in connection with the withdrawal of a notice (37(7)(c)) is intended to provide simultaneous notice to the institution and the Welsh Ministers and for publishing on HEFCW's website within a short time period.

13 What matters might HEFCW be required to take into account when deciding to issue or withdraw a notice?

14 Do you have any other comments?

Section 38 – Duty to withdraw approval

HEFCW is under a duty to withdraw approval of a fee and access plan if the regulated institution no longer falls within section 2(3) of the Act i.e. is not a charity providing higher education in Wales.

Section 38(2) enables the Welsh Ministers to make regulations relating to the matters to be taken into account and procedure to be followed when withdrawing approval of an approved fee and access plan. Section 38(3) provides that regulations made under subsection (3) may provide for the procedure that HEFCW must follow. That includes amending, applying or modifying the requirements in sections 40 to 43 for the purposes of this section.

At this stage it is not intended that regulations would make provision for any other matters be taken into account.

It may be appropriate for sections 42 – 43 to be applied, allowing an institution subject to a notice of withdrawal of approval an opportunity to make representations. It is less clear whether section 44 should be applied; the duty to withdraw is based upon clear conditions and there is no proposal to make regulations on other matters at this time (which a review might address).

15 Do you agree regulated institutions should be able to make representations about a notice? Do you think a review process is necessary or desirable in connection with a notice?

16 Do you have any other comments?

Section 39 – Power to withdraw approval

HEFCW is able to withdraw approval of a fee and access plan by giving notice when certain conditions are met (section 39(2); below).

39(2) The conditions are that—

(a) the governing body of the institution has persistently failed to comply with section 10(1) (duty to ensure that regulated course fees do not exceed applicable fee limit) or has failed to comply with a compliance and reimbursement direction,

(b) the governing body has persistently failed to comply with the general requirements of the institution's approved plan or has failed to comply with a direction under section 13 (directions in respect of failure to comply with general requirements of approved plan),

(c) the quality of education provided by or on behalf of the institution is seriously inadequate, or Higher Education (Wales) Bill 21
(d) there has been serious failure by the governing body of the institution to comply with the Code.

The intention is similar to that for refusing to approve a new fee and access plan: 1) to provide a strong signal to the institution that its behaviour in not complying with the matters at 39(2) is unacceptable and 2) to protect public money, by limiting further expenditure, and reputation of higher education in Wales. An institution is not to be treated as having failed to comply with a general requirement. Section 39(3) establishes that in respect of 39(2)(b) if HEFCW are satisfied that the governing body has taken all reasonable steps to comply with the requirement of an approved plan a governing body is not to be treated as having failed to comply with a general requirement.

Section 39(4) enables the Welsh Ministers to make regulations about the matters to be taken into account by HEFCW when determining whether to give notice of withdrawal of approval.

17 What matters might HEFCW be required to take into account when deciding to issue a notice?

18 Do you have any other comments?

Section 40 – Publication etc. of notice

Section 40(1) provides that HEFCW must give a copy of any notice issued in connection with the above to the Welsh Ministers and publish the notice. Section 40(2) allows regulations to be made in connection with this.

The procedure to be followed is intended to provide simultaneous notice to the institution and the Welsh Ministers and for publishing on HEFCW's website within a short time period.

19 Do you have any comments?

Section 52 – Statement in respect of intervention functions

HEFCW must prepare, consult on and publish a statement on how they propose to exercise their intervention functions (listed in section 52(5)). They must keep this statement under review and may revise if they consider it necessary. Section 52(4) enables regulations to make provision for the

preparation of the statement, including its form and content, its publication, and consultation.

It is not anticipated that any regulations will be made at this time. Detailed guidance will be prepared and issued to HEFCW who must, in turn, consult upon a statement.

20 Do you agree with the intention not to make regulations at this time?
If not, what do you believe regulations should address?

21 Do you have any other comments?