



Llywodraeth Cymru
Welsh Government

Guidance for applicants seeking to be designated as institutions for the purpose of the Higher Education (Wales) Act 2015

2016

Background

Under the regulatory system provided for by the Higher Education (Wales) Act 2015 (“the 2015 Act”), institutions and other providers that want their higher education courses to be automatically designated by the student support regulations for the purpose of Welsh Government statutory student support, need to have a fee and access plan in force as approved by the Higher Education Funding Council for Wales (HEFCW).

Section 2 of the 2015 Act provides that the governing body of an institution in Wales that provides higher education, and is a charity, may apply to HEFCW for HEFCW’s approval of a proposed fee and access plan relating to the institution.

The Welsh Government’s intention is that the new regulatory system should not exclude an applicant from submitting a fee and access plan for HEFCW’s approval on the grounds that the applicant is constituted in a particular way. Instead, the focus is on whether the applicant meets the requirements in section 2(3) of the 2015 Act i.e. that the provider is a charity which provides higher education in Wales.

Given the ordinary meaning of “institution” it is likely that a significant majority of prospective applicants for fee and access plans will be considered to be institutions. For example, universities established by Royal Charter, Higher Education Corporations and Further Education Corporations are all institutions for the purposes of the 2015 Act. The Welsh Government is aware that certain other providers of higher education might not regard themselves as institutions and neither might they be regarded by HEFCW as such. Such providers might, for example, be certain companies limited by guarantee which provide higher education.

Section 3 of the 2015 Act enables the Welsh Ministers to designate as an “institution” a provider that is a charity and which provides higher education in Wales, which would not otherwise be regarded as an institution for the purposes of the Act. Providers that may not regard themselves as an “institution” for the purposes of section 2 or who are uncertain about their status as an “institution”, may nevertheless wish for their courses to be designated by student support regulations (for the purposes of student support from the Welsh Ministers). If a provider does not consider itself to be an institution it may wish to make an application to be designated as such for the purpose of making a fee and access plan application to HEFCW. This power of designation is a means of ensuring that any doubts as to whether a provider is “an institution” for the purpose of applying to HEFCW for approval of a fee and access plan are avoided.

Determination of a designation under section 3 of the 2015 Act will be made by the Welsh Ministers following the consideration of an application made by the provider concerned¹. Once designated as an “institution” the provider may then apply to HEFCW for approval of a fee and access plan under section 2 of the 2015 Act. Applicants are advised to contact HEFCW about the requirements for fee and access plan applications and to allow sufficient time for the Welsh Ministers to consider a designation application for the purpose of section 3 of the 2015 Act. Welsh Government officials will endeavour to process applications and provide advice to the Welsh Ministers within 6 weeks of receipt of the required information. Further information and advice on the application process for fee and access plans can be obtained from regulationadvice@hefcw.ac.uk.

The annex outlines the information that the providers must include in their applications for designation and the process that their applications will go through.

Withdrawal of designation

A designation may be withdrawn by notice in writing given by the Welsh Ministers to the provider in question. The notice must specify the reasons for the designation being withdrawn and the date on which the designation is withdrawn. In deciding whether to withdraw a designation, the Welsh Ministers must take account of whether the provider no longer falls into section 3(2) of the 2015 Act (i.e. is a charity that provides higher education in Wales).

Where a designation under section 3(1) of the 2015 Act has been withdrawn, a provider of higher education is to continue to be treated as an institution for the purposes of sections 10 to 14 and 26 of the 2015 Act (which relate to fee limits, compliance and reimbursement directions, compliance with general requirements of fee and access plans, validity of contracts and the quality of education).

¹ The Higher Education (Designation of Providers of Higher Education) (Wales) Regulations 2015 are the regulations which provide for the manner in which applications are to be made under section 3 of the 2015 Act: <http://www.legislation.gov.uk/wsi/2015/1497/contents/made>

Annex: Application process for designation as an institution for the purpose of the Higher Education (Wales) Act 2015 (“the 2015 Act”)

The following specifies what the applicant must include in their application for designation by the Welsh Ministers under section 3 of the 2015 Act.

1. General information

An application **must** be **in writing** and **must** contain:

- (a) the applicant’s name and principal address; and
- (b) any other names under which the applicant operates.

2. Charitable status

An application **must** contain information relating to the applicant’s charitable status; this **must** include **either**:

- (a) the applicant’s charity registration number and the name and address of a charity regulator with whom the applicant is registered²; **or**
- (b) if the applicant is not registered with a charity regulator the reason why registration with a charity regulator is not required (for example because it is an exempt or excepted charity). If the applicant is not registered with a charity regulator, then the applicant **must** include a copy of the applicant’s governing document³.

3. Provision of higher education in Wales

The information contained in an application **must** include:

- (a) a description of the higher education provided by the applicant in Wales;
- (b) a description of the award that may be conferred on a person as a result of the higher education provided in Wales by the applicant;
- (c) the number of persons in Wales undertaking that higher education as at the date of the application;
- (d) the locality in Wales where higher education is provided;
- (e) the address of any website maintained by the applicant relating to the provision of higher education in Wales by that applicant.

² “charity regulator” means the Charity Commission, the Office of the Scottish Charity Regulator or the Charity Commission for Northern Ireland.

³ In the case of a provider of higher education conducted by a company, the company’s memorandum and articles of association; in any other case a document providing for the constitution and conduct of the provider of higher education.

An application **must** be accompanied by a copy of any prospectus published by the applicant that relates to the provision of higher education in Wales by that applicant.

4. Application submission

The application, along with any required supporting documents, should be sent to:

Higher Education Division

Welsh Government

Cathays Park

Cardiff

CF10 3NQ

Email: CeisiadauAU.HEApplications@gov.wales

Further information can be obtained from the email address above.

An application form is available at

<https://beta.gov.wales/designation-higher-education-institution-application-guidance>