



Higher Education (Wales) Act 2015

2015 anaw 1

PART 2

FEE AND ACCESS PLANS

Application for approval of fee and access plan

2 Application by institution for HEFCW's approval of fee and access plan

- (1) The governing body of an institution within subsection (3) may apply to HEFCW for HEFCW's approval of a proposed fee and access plan relating to the institution.
- (2) A fee and access plan is a plan that complies with sections 4 to 6.
- (3) An institution within this subsection is an institution in Wales that—
 - (a) provides higher education, and
 - (b) is a charity.
- (4) Regulations may make provision about the making of applications for approval of a fee and access plan.

3 Designation of other providers of higher education

- (1) The Welsh Ministers may, on the application of a provider of higher education within subsection (2), designate the provider for the purposes of this section.
- (2) A provider of higher education within this subsection is one that—
 - (a) provides higher education in Wales and is a charity, but
 - (b) would not (but for the designation) be regarded as an institution for the purposes of this Act.
- (3) Subject to any provision made under subsection (4)(d), a provider of higher education designated under this section is, unless the designation is withdrawn, to be treated for the purposes of any provision made by or under this Act as being an institution.

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- (4) Regulations may make provision about—
- (a) the making of applications for designation;
 - (b) the making of designations under this section (including provision about matters to be taken into account in determining whether to make a designation);
 - (c) the withdrawal of a designation (including provision about matters to be taken into account in determining whether to withdraw a designation);
 - (d) the effect of a withdrawal of a designation (including provision for a provider whose designation is withdrawn to continue to be treated as an institution for prescribed purposes).

Contents of fee and access plan

4 Period to which plan relates

- (1) A fee and access plan relating to an institution must specify a period in respect of which it is to have effect.
- (2) The period specified must not exceed two years.
- (3) Regulations may amend subsection (2) to substitute a different period for the period for the time being mentioned in that subsection.
- (4) Before making regulations under subsection (3), the Welsh Ministers must consult—
 - (a) HEFCW,
 - (b) the governing body of each regulated institution, and
 - (c) any other persons they think appropriate.
- (5) References in this Act to the period to which a plan relates are to the period specified in it under this section.

5 Fee limit

- (1) A fee and access plan relating to an institution must—
 - (a) specify, or
 - (b) provide for the determination of,
 a fee limit, in relation to each qualifying course and in respect of each relevant academic year (and for this purpose may specify, or provide for the determination of, different fee limits in relation to different courses and in respect of different relevant academic years).
- (2) For this purpose—
 - (a) a fee limit, in relation to a course, is a limit that the fees payable to the institution by a qualifying person, in connection with the person's undertaking the course, may not exceed;
 - (b) a qualifying course is a course, of any prescribed description, that is wholly or principally provided in Wales;
 - (c) a relevant academic year, in relation to a course, is an academic year that is applicable to the course, and in respect of which fees are payable to the institution, and which begins within the period to which the fee and access plan relates.

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- (3) Where a fee and access plan specifies a fee limit in relation to a year and course, the fee limit specified must not exceed whatever amount is prescribed for the purposes of this section (“the maximum amount”).
- (4) Where a fee and access plan provides for the determination of a fee limit in relation to a year and course, the plan must specify that the fee limit determined in accordance with the plan is not to exceed the maximum amount.
- (5) A qualifying person, for the purposes of subsection (2)(a), is a person who—
 - (a) is not an international student, and
 - (b) falls within any class of persons prescribed for the purposes of this section.
- (6) The power to prescribe a description of course under this section may not be exercised so as to prescribe a postgraduate course, unless it is a course of initial teacher training.
- (7) Nor may the power to prescribe a description of course under this section be exercised so as to discriminate—
 - (a) in relation to courses of initial teacher training, between different courses on the basis of the subjects in which such training is given;
 - (b) in relation to other courses, between different courses at the same or a comparable level on the basis of the areas of study or research to which they relate.
- (8) An international student is a person who does not fall within any class of persons prescribed under section 1 of the Education (Fees and Awards) Act 1983 (charging of higher fees in case of students not having prescribed connection with the United Kingdom) for the purposes of subsection (1) or (2) of that section.
- (9) Regulations may make provision for circumstances in which fees payable to a person, in connection with a qualifying person’s undertaking a course, or part of a course, provided on behalf of an institution, are to be treated for the purposes of subsection (2)
 - (a) as being payable to that institution in connection with the qualifying person’s undertaking the course.

6 Promotion of equality of opportunity and higher education

- (1) A fee and access plan relating to an institution must include such provisions relating to the promotion of equality of opportunity or the promotion of higher education as may be prescribed.
- (2) A fee and access plan may also include further provisions relating to the promotion of equality of opportunity or the promotion of higher education.
- (3) The provisions that may be prescribed under subsection (1) for inclusion in a plan include provisions requiring the governing body—
 - (a) to take measures to attract applications from prospective students who are members of under-represented groups (or to secure the taking of such measures);
 - (b) to take measures to retain students who are members of under-represented groups (or to secure the taking of such measures);
 - (c) to provide financial assistance to students (or to secure the provision of such assistance);

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- (d) to make available to students or prospective students information about financial assistance available to students from any source (or to secure that such information is made available).
- (4) The provisions that may be prescribed for inclusion in a plan also include provisions—
- (a) setting out objectives relating to the promotion of equality of opportunity and the promotion of higher education;
 - (b) setting out information about expenditure in respect of those objectives;
 - (c) relating to the monitoring by the governing body of—
 - (i) compliance with the provisions of the plan;
 - (ii) progress in achieving any objectives set out in the plan by virtue of paragraph (a).
- (5) But the power to prescribe provisions for inclusion in a fee and access plan may not be exercised so as to require a plan relating to an institution to include provision—
- (a) referring to particular courses or to the manner in which courses are taught, supervised or assessed,
 - (b) relating to the criteria for the admission of students, or
 - (c) requiring the institution to incur expenditure, in any academic year, of an amount exceeding the amount of the qualifying fee income of the institution that is attributable to that academic year.
- (6) For the purposes of this section—
- (a) the amount of the qualifying fee income of an institution that is attributable to an academic year is the aggregate amount of those fees payable to the institution, in respect of that academic year, in relation to which a fee limit applies that is specified in the fee and access plan relating to the institution, or for the determination of which the fee and access plan relating to the institution provides;
 - (b) “under-represented groups”, in relation to a fee and access plan, are groups that, as at the date of the plan’s approval under section 7, are under-represented in higher education.
- (7) References in this Act to the general requirements of a fee and access plan are to provisions included in the plan by virtue of this section which require the governing body of the institution to do (or not to do) specified things.

Approval etc of fee and access plan

7 Approval of fee and access plan

- (1) If an application for approval of a fee and access plan is made to HEFCW under section 2, HEFCW must by notice to the governing body concerned either—
- (a) approve the plan, or
 - (b) reject the plan.
- (2) But HEFCW may not approve a plan unless satisfied that the institution to which it relates is within section 2(3).
- (3) Regulations may make provision about matters to be taken into account by HEFCW in making any determination in respect of approval or rejection of a plan under this section.

- (4) For the purposes of this Act, the period within which a fee and access plan relating to an institution and approved under this section is in force is the period beginning with the day of its approval under this section, and ending with the earlier of the following—
- (a) the day on which the period to which it relates expires;
 - (b) if HEFCW’s approval of it is withdrawn by notice given under section 38 or 39, the date of the notice.
- (5) In this Act—
- (a) references to an approved plan are to a fee and access plan relating to an institution that has been approved under this section and is currently in force;
 - (b) references to a regulated institution are to an institution to which an approved plan relates (but see sections 26 and 27(8)).
- (6) This section is subject to section 37(5) (no approval of new fee and access plan).
- (7) For procedural provision about notice under subsection (1)(b), see sections 41 to 44.

8 Publication of approved plan

- (1) Regulations may require the governing body of a regulated institution to publish the institution’s approved plan.
- (2) The provision that may be made by regulations under this section includes provision about how and when a plan is to be published.

9 Variation of approved plan

- (1) Regulations may make provision permitting the governing body of a regulated institution to vary the institution’s approved plan.
- (2) The regulations must provide for a variation to take effect only if approved by HEFCW.
- (3) The regulations may make provision about the making and determination of applications for approval of a variation.

Compliance with fee limit

10 Limits on student fees

- (1) The governing body of an institution within subsection (2) must ensure that regulated course fees do not exceed the applicable fee limit.
- (2) An institution is within this subsection if a fee and access plan relating to it has been approved under section 7 (whether or not that plan is still in force).
- (3) “Regulated course fees” are fees payable to the institution by a qualifying person—
- (a) in connection with the person’s undertaking a qualifying course, and
 - (b) in respect of an academic year applicable to that course, where that year begins at a time within the period specified under section 4 in the institution’s most recent fee and access plan (whether or not the plan is still in force).

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- (4) The institution's most recent fee and access plan is the fee and access plan most recently approved under section 7 in relation to the institution.
- (5) The applicable fee limit is—
 - (a) in a case where the institution's most recent fee and access plan specifies a fee limit for the course and year in question, that limit;
 - (b) in a case where the institution's most recent fee and access plan provides for the determination of a fee limit for the course and year in question, that limit as determined in accordance with the plan.

11 Compliance and reimbursement directions

- (1) This section applies where HEFCW are satisfied that the governing body of an institution has failed to comply with section 10(1).
- (2) HEFCW may direct the governing body to do either or both of the following—
 - (a) to comply with section 10(1);
 - (b) to reimburse excess fees paid to the institution.
- (3) A direction under this section (a “compliance and reimbursement direction”) may specify—
 - (a) steps that are (or are not) to be taken by the governing body for the purpose of compliance with section 10(1);
 - (b) the manner in which reimbursement of excess fees is to be, or may be, effected.
- (4) If HEFCW give a direction under this section, they must—
 - (a) give a copy of the direction to the Welsh Ministers;
 - (b) publish the direction.
- (5) Regulations may make provision about how and when HEFCW are to comply with subsection (4).
- (6) “Excess fees” are regulated course fees, to the extent that those fees exceed the applicable fee limit (as quantified for the purposes of the duty under section 10(1) with which the governing body has failed to comply).

12 Supplementary provision about compliance and reimbursement directions

- (1) HEFCW may issue guidance about steps to be taken for the purpose of complying with a compliance and reimbursement direction.
- (2) Before issuing guidance under this section HEFCW must consult the governing body of each regulated institution; and may consult the governing body of any other institution within section 2(3) as they think appropriate.
- (3) A governing body to which a compliance and reimbursement direction has been given must, in complying with the direction, take into account any guidance issued under this section.
- (4) For procedural provision about compliance and reimbursement directions, see sections 41 to 44.

Compliance with general requirements of approved plan

13 Directions in respect of failure to comply with general requirements of approved plan

- (1) If the condition in subsection (2) or (3) is met, HEFCW may give the governing body of an institution a direction within subsection (4).
- (2) The condition is that HEFCW are satisfied that—
 - (a) there has been a failure by the governing body to comply with a general requirement of a fee and access plan relating to the institution, and
 - (b) at the time of the failure, the fee and access plan was approved under section 7.
- (3) The condition is that HEFCW are satisfied that the governing body is likely to fail to comply with a general requirement of the institution's approved plan.
- (4) A direction within this subsection is a direction requiring the governing body to take (or not to take) specified steps for the purpose of dealing with or preventing the failure to comply.
- (5) But HEFCW may not give a direction under this section if they are satisfied that the governing body has taken all reasonable steps to comply with the requirement in question.
- (6) For procedural provision about directions under this section, see sections 41 to 44.

Contracts

14 Validity of contracts

- (1) This section applies to a contract that provides for the payment of regulated course fees to an institution, by a qualifying person and in connection with the person's undertaking a qualifying course, that exceed the applicable fee limit.
- (2) For the purposes of any rights and liabilities arising under the contract, and any proceedings in respect of those rights and liabilities, the contract is to be treated as providing for the payment of fees in an amount equivalent to the applicable fee limit.
- (3) Except as provided in subsection (2), the contract is not void or unenforceable in consequence of providing for the payment of fees exceeding the applicable fee limit.

Approved plans: compliance and effectiveness

15 HEFCW's duty to monitor and evaluate compliance and effectiveness

- (1) HEFCW must—
 - (a) monitor compliance with section 10(1);
 - (b) monitor compliance with the general requirements of approved plans;
 - (c) evaluate the effectiveness of each approved plan;
 - (d) evaluate the effectiveness of approved plans generally.
- (2) For the purposes of this section, the effectiveness of an approved plan is its effectiveness in promoting—

- (a) equality of opportunity, and
- (b) higher education.

16 Monitoring and evaluating compliance and effectiveness: duty to co-operate

- (1) The governing body of a regulated institution must ensure the provision to HEFCW of such information, assistance and access to the institution's facilities as HEFCW reasonably require for the purpose of their functions under section 15.
- (2) If HEFCW are satisfied that a governing body has failed to comply with subsection (1), they may direct it to take (or not to take) specified steps for the purpose of securing the provision of information, assistance or access as described in that subsection.