
WELSH STATUTORY INSTRUMENTS

2024 No. 806

**The Tertiary Education and Research (Wales)
Act 2022 (Commencement No. 4 and Transitory
and Transitional Provisions) Order 2024**

PART 5

**TRANSITIONAL PROVISIONS IN CONNECTION
WITH THE DISSOLUTION OF HEFCW**

General

28.—(1) Anything done (or having effect as if done) before the coming into force of section 23 of the Act by, in relation to, or on behalf of HEFCW in connection with a function of HEFCW that is made exercisable by the Commission by—

- (a) virtue of this Order, or
- (b) the coming into force of a provision of the Act by virtue of this Order,

has effect, as far as necessary for continuing its effect from the coming into force of section 23 of the Act, as if done by, in relation to, or on behalf of the Commission.

(2) Anything (including legal proceedings) which, immediately before the coming into force of section 23 of the Act is in the process of being done by, in relation to, or on behalf of HEFCW in connection with a function of HEFCW that is made exercisable by the Commission by—

- (a) virtue of this Order, or
- (b) the coming into force of a provision of the Act by virtue of this Order,

may, from the coming into force of section 23 of the Act, be continued by, in relation to, or on behalf of the Commission.

(3) Any guidance, information, advice or other document approved, given or made before the coming into force of section 23 of the Act is to have effect, in so far as necessary for the purposes of, or in connection with, paragraphs (1) and (2) as if any references to “HEFCW” (however expressed) in that guidance, information, advice or other document were references to “the Commission”.

- (4) This article does not—
 - (a) apply in relation to articles 11 to 13, 30 to 42, 44 or 45;
 - (b) affect the validity of anything done (or having effect as if done) by, in relation to, or on behalf of HEFCW before 1 August 2024.

HEFCW’s final statement of accounts

29.—(1) The Commission must prepare a statement of accounts for HEFCW in respect of the period beginning with 1 April 2023 and ending with 31 July 2024 (“HEFCW’s statement of accounts”).

(2) HEFCW's statement of accounts must be prepared in accordance with any directions given by the Welsh Ministers to the Commission which may make provision as to the—

- (a) information to be contained in it,
- (b) manner in which the information is to be presented,
- (c) methods and principles according to which the statement is to be prepared, or
- (d) additional information that is to accompany the statement.

(3) The Commission must submit HEFCW's statement of accounts to the Welsh Ministers and the Auditor General for Wales by 30 November 2024.

(4) The Auditor General for Wales must examine, certify and report on HEFCW's statement of accounts and lay a copy of that report and statement before Senedd Cymru.

Fee and access plans

30.—(1) A fee and access plan within paragraph (2)—

- (a) continues in force on and after 1 August 2024, and
- (b) has effect as if it has been approved by the Commission.

(2) A fee and access plan is within this paragraph if it—

- (a) has been approved by HEFCW under section 7 of the 2015 Act, and
- (b) is, immediately before 1 August 2024, in force for the purposes of section 7(4) of the 2015 Act.

(3) For the purposes of paragraph (2)(a) a fee and access plan approved by HEFCW includes a fee and access plan which is subject to a variation approved by HEFCW under section 9 of the 2015 Act.

(4) In so far as necessary for the purpose of the exercise by the Commission of its functions pursuant to the 2015 Act, references to “HEFCW” or to “the Higher Education Funding Council for Wales” in a fee and access plan within paragraph (1) have effect as if they were references to “the Commission” and related expressions are to be interpreted accordingly.

Warning notices

31.—(1) A warning notice given by HEFCW which is in effect immediately before 1 August 2024—

- (a) continues in effect on and after 1 August 2024, and
- (b) has effect as if it has been given by the Commission.

(2) For the purposes of paragraph (1) a warning notice is in effect if the period for making representations in respect of that notice has not expired.

(3) In paragraph (2) the period for making representations means the period specified—

- (a) in regulation 3 of the 2015 Regulations, or
- (b) in the case of a warning notice given in relation to section 38 of the 2015 Act, in regulation 3 of the 2015 Regulations as applied by regulation 5 of the 2016 Regulations.

(4) Representations made to HEFCW in accordance with the regulations referred to in paragraph (3) in relation to a warning notice within paragraph (1) have effect on and after 1 August 2024 as if they were representations made to the Commission.

(5) In so far as necessary for the purpose of the exercise by the Commission of its functions pursuant to the 2015 Act, references to “HEFCW” or to “the Higher Education Funding Council for Wales” in a warning notice within paragraph (1) have effect as if they were references to “the Commission” and related expressions are to be interpreted accordingly.

(6) In this article “warning notice” means a warning notice as set out in section 42 of the 2015 Act.

HEFCW directions which are not in force

32.—(1) A direction within paragraph (2) which is given by HEFCW before 1 August 2024 and to which paragraph (3) applies—

- (a) continues in effect on and after 1 August 2024, and
- (b) has effect as if it has been given by the Commission.

(2) A direction within this paragraph is a direction given to the governing body of an institution under any of the following sections of the 2015 Act—

- (a) section 11;
- (b) section 13;
- (c) section 19;
- (d) section 33.

(3) This paragraph applies to a direction given to the governing body of an institution where, immediately before 1 August 2024, that governing body has—

- (a) not notified HEFCW in writing that it accepts the direction and the time period for making an application for a review under regulation 8 of the 2015 Regulations has not expired, or
- (b) made an application to the review panel under regulation 8 of the 2015 Regulations and the review has—
 - (i) not concluded, or
 - (ii) concluded but HEFCW has not notified the governing body in writing that the direction has effect.

(4) In paragraph (3)(a), notification to HEFCW in writing means notification under regulation 4(a) of the 2015 Regulations.

(5) Nothing in this article affects the treatment of a direction for the purposes of the 2015 Regulations as set out in regulation 4 of those Regulations.

(6) In so far as necessary for the purpose of the exercise by the Commission of its functions pursuant to the 2015 Act, references to “HEFCW” or to “the Higher Education Funding Council for Wales” in a direction within paragraph (1) have effect as if they were references to “the Commission” and related expressions are to be interpreted accordingly.

Reviews

33.—(1) A review which is being carried out under section 44 of the 2015 Act immediately before 1 August 2024 continues on or after 1 August 2024 as if the direction or notice which is the subject of the review is a direction or notice from the Commission.

(2) For the purposes of paragraph (1) a review is not being carried out if, before 1 August 2024, the review panel has sent a copy of its written report in accordance with regulation 9(8)(g) of the 2015 Regulations.

HEFCW directions which are in force

34.—(1) A direction given by HEFCW under any of the sections of the 2015 Act referred to in article 32(2) and which is in effect immediately before 1 August 2024—

- (a) continues in effect on and after 1 August 2024, and
- (b) has effect as if it has been given by the Commission.

(2) For the purposes of paragraph (1) a direction is in effect if the governing body of the institution to which it has been given—

- (a) has notified HEFCW in writing under regulation 4(a) of the 2015 Regulations that it accepts the direction,
- (b) is not able to apply for a review under regulation 8 of the 2015 Regulations due to the time period for making an application to the review panel having expired, or
- (c) has received notification in writing from HEFCW that the direction has effect following the conclusion of a review in respect of that direction.

(3) A direction given by HEFCW to a governing body under any of the sections of the 2015 Act referred to in paragraph (4) and which is in effect immediately before 1 August 2024—

- (a) continues in effect on and after 1 August 2024, and
- (b) has effect as if it has been given by the Commission.

(4) The sections of the 2015 Act are—

- (a) section 16;
- (b) section 21;
- (c) section 35.

(5) For the purposes of paragraphs (1) and (3) a direction given by HEFCW—

- (a) includes a direction which has been varied by HEFCW before 1 August 2024 under section 46(b) of the 2015 Act;
- (b) is in effect to the extent that HEFCW has not given notice under section 45(3) of the 2015 Act to the governing body in receipt of the direction stating that HEFCW is satisfied that the body has complied—
 - (i) with the direction, or
 - (ii) with a particular requirement of the direction;
- (c) is not in effect if HEFCW has revoked the direction under section 46(b) of the 2015 Act.

(6) In so far as necessary for the purpose of the exercise by the Commission of its functions pursuant to the 2015 Act, references to “HEFCW” or to “the Higher Education Funding Council for Wales” in a direction within paragraph (1) or (3) have effect as if they were references to “the Commission” and related expressions are to be interpreted accordingly.

Directions of the Welsh Ministers under section 28(4) of the 2015 Act

35.—(1) A direction given under section 28(4) of the 2015 Act by the Welsh Ministers to HEFCW and which is in effect immediately before 1 August 2024—

- (a) continues in effect on and after 1 August 2024, and
- (b) has effect as if it has been given by the Welsh Ministers to the Commission.

(2) For the purposes of paragraph (1) a direction is in effect if—

- (a) the period specified in the direction commences before 1 August 2024 and ends on or after that date, and
- (b) it has not been revoked by a subsequent direction given by the Welsh Ministers under section 56(b) of the 2015 Act.

(3) In so far as necessary for the purpose of the exercise by the Commission of its functions pursuant to the 2015 Act, references to “HEFCW” or to “the Higher Education Funding Council for Wales” in a direction within paragraph (1) have effect as if they were references to “the Commission” and related expressions are to be interpreted accordingly.

Financial management code

36.—(1) A financial management code to which paragraph (2) applies and which has effect immediately before 1 August 2024—

- (a) continues in effect on and after 1 August 2024, and
- (b) has effect as if—
 - (i) approved by the Welsh Ministers and Senedd Cymru under section 30 of the 2015 Act, and
 - (ii) published by the Commission under section 30(7) of the 2015 Act.

(2) This paragraph applies to a financial management code which has been—

- (a) approved by the Welsh Ministers and Senedd Cymru under section 30 of the 2015 Act, and
- (b) published by HEFCW under section 30(7) of the 2015 Act.

(3) In so far as necessary for the purpose of the exercise by the Commission of its functions pursuant to the 2015 Act, references to “HEFCW” or to “the Higher Education Funding Council for Wales” in a financial management code within paragraph (1) have effect as if they were references to “the Commission” and related expressions are to be interpreted accordingly.

HEFCW notices which are not in force

37.—(1) A notice within paragraph (2) which is given by HEFCW before 1 August 2024 and to which paragraph (3) applies—

- (a) continues in effect on and after 1 August 2024, and
- (b) has effect as if it has been given by the Commission.

(2) A notice within this paragraph is notice given to the governing body of an institution under any of the following sections of the 2015 Act—

- (a) section 37;
- (b) section 38;
- (c) section 39.

(3) This paragraph applies to a notice given to the governing body of an institution where, immediately before 1 August 2024, that governing body has—

- (a) not notified HEFCW in writing that it accepts the notice and the time period for making an application for a review under regulation 8 of the 2015 Regulations has not expired, or
- (b) made an application to the review panel under regulation 8 of the 2015 Regulations and the review has—
 - (i) not concluded, or
 - (ii) concluded but HEFCW has not notified the governing body in writing that the notice has effect.

(4) In paragraph (3)(a) notification to HEFCW in writing means notification under regulation 4(a) of the 2015 Regulations.

(5) Nothing in this article affects the treatment of a notice for the purposes of the 2015 Regulations as set out in regulation 4 of those Regulations.

(6) In so far as necessary for the purpose of the exercise by the Commission of its functions pursuant to the 2015 Act, references to “HEFCW” or to “the Higher Education Funding Council for Wales” in a notice within paragraph (1) have effect as if they were references to “the Commission” and related expressions are to be interpreted accordingly.

HEFCW notices which are in force

38.—(1) A notice given by HEFCW under a section of the 2015 Act referred to in article 37(2) which is in effect immediately before 1 August 2024—

- (a) continues in effect on and after 1 August 2024, and
- (b) has effect as if it has been given by the Commission.

(2) For the purposes of paragraph (1) a notice is in effect if the governing body of the institution to which it has been given—

- (a) has notified HEFCW in writing under regulation 4(a) of the 2015 Regulations that it accepts the notice,
- (b) is not able to apply for a review under regulation 8 of the 2015 Regulations due to the time period for making an application to the review panel having expired, or
- (c) has received notification in writing from HEFCW that the notice has effect following the conclusion of a review in respect of the notice.

(3) For the purposes of paragraph (1) a notice given by HEFCW under section 37 of the 2015 Act is not in effect if—

- (a) the period specified in the notice has expired;
- (b) HEFCW has withdrawn the notice under section 37(6) of the 2015 Act.

(4) In so far as necessary for the purpose of the exercise by the Commission of its functions pursuant to the 2015 Act, references to “HEFCW” or to “the Higher Education Funding Council for Wales” in a notice within paragraph (1) have effect as if they were references to “the Commission” and related expressions are to be interpreted accordingly.

HEFCW notices under section 45(3) of the 2015 Act

39. A notice given under section 45(3) of the 2015 Act by HEFCW which has effect immediately before 1 August 2024—

- (a) continues in effect on and after 1 August 2024, and
- (b) has effect as if it has been given by the Commission.

Guidance issued by the Welsh Ministers

40. In so far as necessary for the purpose of the exercise by the Commission of its functions pursuant to the 2015 Act, references to “HEFCW” or to “the Higher Education Funding Council for Wales” in any guidance issued by the Welsh Ministers in relation to the 2015 Act which has effect immediately before 1 August 2024 have effect on and after 1 August 2024 as if they were references to “the Commission” and related expressions are to be interpreted accordingly.

41. Guidance issued by the Welsh Ministers to HEFCW under section 49 of the 2015 Act and which has effect immediately before 1 August 2024 has effect on and after 1 August 2024 as if it has been given by the Welsh Ministers to the Commission under section 20 of the Act.

Statement in respect of intervention functions

42.—(1) A statement in respect of intervention functions which has effect immediately before 1 August 2024—

- (a) continues in effect on and after 1 August 2024, and
- (b) has effect as if it has been prepared and published by the Commission under section 52 of the 2015 Act.

(2) In so far as necessary for the purpose of the exercise by the Commission of its functions pursuant to the 2015 Act, references to “HEFCW” or to “the Higher Education Funding Council for Wales” in a statement in respect of intervention functions within paragraph (1) have effect as if they were references to “the Commission” and related expressions are to be interpreted accordingly.

(3) In this article “statement in respect of intervention functions” means a statement published under section 52 of the 2015 Act.

Transitional provisions relating to the Well-being of Future Generations (Wales) Act 2015

43. In its application to the Commission, paragraph (a) of section 9(2) of the Well-being of Future Generations (Wales) Act 2015 has effect as if for that paragraph there were substituted—

“(a) no later than 31 March 2025, and”.

Transitional provisions relating to the 2015 Regulations

44.—(1) Where in accordance with regulation 11(1)(b) of the 2015 Regulations a direction under section 11 of the 2015 Act is being published on HEFCW’s website immediately before 1 August 2024, the Commission must publish a copy of that direction on its website.

(2) Publication of the direction by the Commission under paragraph (1) has effect as publication in accordance with regulation 11(1)(b) of the 2015 Regulations for the purposes of regulation 11(2) of those Regulations.

Transitional provisions relating to the 2016 Regulations

45.—(1) Where in accordance with regulation 7(b) of the 2016 Regulations a notice given under section 37, 38 or 39 of the 2015 Act is being published on HEFCW’s website immediately before 1 August 2024, the Commission must publish a copy of that notice on its website.

(2) Publication of the notice by the Commission under paragraph (1) has effect as publication in accordance with regulation 7(b) of the 2016 Regulations for the purposes of regulations 9 and 10 of those Regulations.