



Llywodraeth Cymru
Welsh Government

Higher Education (Wales) Bill

Policy intent for regulations
to be made under the Bill

May 2014

POLICY INTENT FOR PROPOSED REGULATIONS TO BE MADE UNDER THE HIGHER EDUCATION (WALES) BILL

1. This document provides an indication of the current policy direction for regulations that the Welsh Ministers intend to make using the powers in the Higher Education (Wales) Bill ('the Bill').
2. The Bill will make provision for a revised regulatory framework for higher education in Wales. It will achieve this by providing the Higher Education Funding Council for Wales ('HEFCW') with the necessary functions to assure the quality of higher education provision, enforce tuition fee controls and fee plan requirements and establish a framework for the organisation and management of the financial affairs of providers of higher education in Wales who have a fee and access plan approved by HEFCW.
3. The key components of the new regulatory framework are set out on the face of the Bill and will be commenced either on Royal Assent or in accordance with commencement orders made by the Welsh Ministers. However, the Bill does provide the Welsh Ministers with a number of regulation making powers that follow logically from what is clearly described on the face of the Bill. These will allow matters of procedural detail to be prescribed, and provide for future flexibility with regard to matters which may change from time to time.
4. With the exception of the power to commence provisions of the Bill by way of an order, the delegated powers provided by this Bill take the form of regulations. It is the Welsh Government's intention to consult on the detail of the proposed regulations prior to them being made.
5. This document provides information on the policy intentions for those regulations to be made under the Bill, if enacted.
6. In respect of the order making power for commencement, section 56 of the Bill provides that Part 1 and certain other provisions will come into force on the day on which the Act receives Royal Assent. The other provisions of the Bill will be commenced, by way of order, at such times as the Welsh Ministers consider appropriate or expedient. It is intended that certain provisions will be implemented for academic year 2015/16. This assumes that Royal Assent is achieved in early 2015 with subordinate legislation made during 2015 and transition to the new regulatory system during 2016 in time for full commencement in the 2016/17 academic year. A phased approach to implementation is considered to be necessary in order to ensure a smooth transition to the new regulatory framework.
7. This document should be read in conjunction with the:

Draft Bill

<http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&id=256106&ds=5/2014>

Explanatory Memorandum

<http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&id=256107&ds=5/2014>

Technical Consultation

<http://wales.gov.uk/consultations/education/higher-education-wales-bill-technical-consultation/?status=closed&lang=en>

Summary of Responses to Technical Consultation

<http://wales.gov.uk/consultations/education/higher-education-wales-bill-technical-consultation/?status=closed&lang=en>

PART 2 – FEE AND ACCESS PLANS

8. This Part of the Bill will allow certain institutions in Wales to apply to HEFCW for approval of a fee and access plan. This Part also deals with the content of fee and access plans including a fee limit for certain courses. HEFCW will be required to monitor institutions' compliance with their fee and access plans (including fee limits) and this Part confers a number of new functions upon HEFCW to enable them to undertake this role.
9. The following guidance and regulations are referred to in the information relating to regulations to be made under Part 2 of the Bill:
 - The Student Fees (Approved Plans)(Wales) Regulations 2011 (SI 2011/884 (W.128))
Available at: <http://www.legislation.gov.uk/wsi/2011/884/contents/made>
 - Guidance to HEFCW on Fee Plan Approval and Enforcement, April 2011.
Available at:
<http://wales.gov.uk/topics/educationandskills/publications/guidance/heplans/?lang=en>
 - Higher Education (Wales) Bill Technical Consultation – (paragraphs 3.4, 4.24 4.5)
Available at: <http://wales.gov.uk/consultations/education/higher-education-wales-bill-technical-consultation/?lang=en>
 - Qualifying Courses and Persons) (Wales) Regulations 2011.
Available at: <http://www.legislation.gov.uk/wsi/2011/691/contents/made>

- The Education (Student Support) (Wales) Regulations 2013
Available at: <http://www.legislation.gov.uk/wsi/2013/3177/contents/made>

10. The tables overleaf provide the policy intentions for each of the regulation making powers in this Part of the Bill.

REGULATIONS RELATING TO:	Applications for approval of a fee and access plan.
SECTION	2(4)
DESCRIPTION OF THE POWER/REGULATION	
<p>Section 2 permits the governing body of a certain type of institution to apply to HEFCW for approval of a fee and access plan. The institution must be an institution in Wales which provides higher education and is a charity.</p> <p>Section 2(4) enables the Welsh Ministers to make provision, via regulations, about the making of applications for approval of a fee and access plan.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>The information and requirements set out in these regulations are likely to be technical in nature and require updating on a regular basis. The regulations may require institutions to provide HEFCW with certain information or documentation alongside their applications for approval of a fee and access plan. These requirements regarding information and documentation are likely to change over time following changes in the delivery of higher education in Wales as well as technological advancements. The Welsh Ministers need the flexibility to respond to these changes which will ensure that the fee and access plan application process remains up to date.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>It is expected that HEFCW will require certain information or documentation from institutions applying to them for approval of a fee and access plan. The policy intention is these regulations will outline the information and documentation that institutions applying for approval of a fee and access plan will need to provide to HEFCW. This could include information which demonstrates that the education provided by the institution is of adequate quality and that the institution's financial management is robust. It may also include details of the type and range of higher education courses provided by the institution as well as information on the institution's record on, and future plans for, promoting access to its courses to students from a range of social and economic backgrounds.</p> <p>It is also proposed the technical details about the application process will be set out in the regulations. This could include information on timescales, requirements to provide contact information as well as any other further information reasonably required by HEFCW.</p>	

REGULATIONS RELATING TO:	The designation of other providers of higher education.
SECTION:	3(4)
DESCRIPTION OF THE POWER/REGULATION	
<p>Section 3 enables the Welsh Ministers to designate a charitable provider of higher education in Wales as an ‘institution’ for the purposes of the Bill and any subordinate legislation made under it. Such a provider would not normally be regarded as an ‘institution’ under the Bill. A designation may be made on an application by the provider concerned.</p> <p>Section 3(4) enables the Welsh Ministers to make regulations about applications for designation, the making and withdrawal of designations, including matters to be taking into account when considering whether to make or withdraw a designation, and the effect of a withdrawal of designation.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>The matters to be dealt with in these regulations are likely to be technical and administrative in nature and require updating on a regular basis. The regulations may require providers to provide the Welsh Ministers with certain information to accompany their applications for designation. These information requirements are likely to change over time following changes to the higher education sector as well as technological advancements.</p> <p>Similarly, the procedures and processes associated with making or withdrawing designations may change over time as different providers seek to enter the higher education sector in Wales. This regulation making power will allow the Welsh Ministers to respond to the changes.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>This power could 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. Such a provider might not regard itself as an “institution” for the purposes of section 2 but may nevertheless wish for those courses to be automatically designated by student support regulations (for the purposes of student support from the Welsh Ministers) and to be able to apply for approval of a fee and access plan under that section.</p> <p>The policy intention is that these regulations will require providers applying to the Welsh Ministers for designation as an ‘institution’ to provide certain information or documentation alongside their application. The information which the Welsh Ministers might reasonably expect an applicant provider to supply would concern proof of the provider’s operation in Wales and of its charitable status. The regulations may also specify how an application is to be made (for example in writing).</p> <p>Under section 3(4), the Welsh Ministers are able to make regulations about the making of applications by such providers, the withdrawal of a designation and the effect of such a withdrawal.</p> <p>To protect the interests of existing students it is proposed the regulations will specify that where a provider’s designation as an institution is withdrawn, the provider is to continue to be treated as an ‘institution’ for a limited period and in relation to certain elements of the new regulatory framework established under the Bill.</p>	

REGULATIONS RELATING TO:	Maximum period in respect of which a fee plan is to have effect.
SECTION:	4(2)
DESCRIPTION OF THE POWER/REGULATION	
<p>Section 4 requires a fee and access plan to specify the period in respect of which it is to have effect. Under sub-section (2), the Welsh Ministers may prescribe in regulations the maximum period to which a fee and access plan is to have effect. Any period specified in a fee and access plan must not exceed this maximum period.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>The maximum period in respect of which a fee and access plan is to have effect is likely to change over time in response to changes to the higher education sector in Wales. This regulation power is required to enable the Welsh Ministers to respond to these changes.</p> <p>The Welsh Ministers currently have a similar regulation making power in section 35(2) of the Higher Education Act 2004.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>Fee plans became a statutory requirement in Wales for institutions charging tuition fees over a specified amount (£4,000) in relation to certain qualifying courses commencing in the 2012/13 academic year. Currently the maximum duration of fee plans is prescribed in regulations as being 2 years. The intention is that in the long term this will be extended up to 5 years. The policy intention is to reduce the administrative burdens on both HEFCW and institutions in light of the new power sought for HEFCW to monitor institutions' compliance with the provisions of approved fee plans and to evaluate the effectiveness of those plans. However, due to the need for the new system to embed it is expected the maximum duration of fee plans will not be extended beyond 2 years in the first set of regulations.</p> <p>Currently Regulation 8 of the Student Fees (Approved Plans) (Wales) Regulations 2011 specifies the maximum period during which a plan is to be in force.</p>	

REGULATIONS RELATING TO:	Description of qualifying courses.
SECTION:	5(2)(b)
DESCRIPTION OF THE POWER/REGULATION	
<p>Section 5 requires a fee and access plan to specify, or provide for the determination of, a fee limit in relation to each 'qualifying course'.</p> <p>Section 5(2)(b) enables the Welsh Ministers to prescribe in regulations descriptions of 'qualifying courses'. Such courses must be wholly or principally provided in Wales.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>Qualifying courses are courses that will attract a fee limit. This regulation making power is required to provide the Welsh Ministers with the flexibility to respond to changes in the student support system or higher education sector in Wales. For example, if a new range of courses are designated for student support purposes (meaning certain students attending those courses are eligible to receive Welsh Government student support), those courses are likely to become 'qualifying courses' for the purposes of the new fee limit and the wider regulatory framework.</p> <p>The Welsh Ministers currently have a similar regulation making power in section 28(6) of the Higher Education Act 2004.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The definition of "qualifying courses" is likely to be closely connected to those courses automatically designated for student support funding by regulations made under section 22 of the Teaching and Higher Education Act 1998. In general terms, the description of a qualifying course is likely to be restricted to undergraduate higher education courses provided wholly or principally in Wales. This will include first degree courses, Higher National Diplomas (HNDs), Higher National Certificates (HNCs) and courses for the initial training of teachers. It is likely that courses which are delivered on behalf of a regulated institution under franchise arrangements with another institution or provider will be included in the definition of "qualifying courses" in the regulations.</p> <p>Qualifying courses are currently prescribed in Regulation 3 of the (Qualifying Courses and Persons) (Wales) Regulations 2011.</p>	

REGULATIONS RELATING TO:	Maximum fee limits
SECTION:	5(3)
DESCRIPTION OF THE POWER/REGULATION	
<p>A fee limit specified in, or determined in accordance with, a fee and access plan must not exceed a specified maximum amount. Section 5(3) enables the Welsh Ministers to set this maximum amount.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>The maximum fee limit applicable to certain higher education courses ('qualifying courses') is likely to change over time, in response to changes in student support policy, the fees in other UK administrations and other economic and social factors. This regulation making power will provide the Welsh Ministers with the flexibility to respond to these changes.</p> <p>The Welsh Ministers currently have a similar regulation making power in section 28(6) of the Higher Education Act 2004.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>Under the current system the Welsh Ministers prescribe a basic and higher fee amount in regulations. Institutions can charge tuition fees up to the basic amount without having an approved fee plan in force. Institutions charging fees above the basic amount need to have an approved fee plan in force. Under the new system, it is proposed the Welsh Ministers will only prescribe a single fee amount which will be the maximum fee chargeable by an institution with an approved fee and access plan in force (a regulated institution).</p> <p>It is proposed this single fee amount will be prescribed at £9,000 in the first set of regulations. This corresponds with the existing higher amount, which is the maximum fee chargeable by those institutions with an approved fee plan in place.</p> <p>The Student Fees (Amounts) (Wales) Regulations 2011 prescribe the basic and higher amounts which relevant institutions may charge by way of tuition fees for full-time undergraduate courses.</p>	

REGULATIONS RELATING TO:	The meaning of 'qualifying persons'
SECTION:	5(5)
DESCRIPTION OF THE POWER/REGULATION	
<p>A fee limit specified in, or determined by, a fee and access plan will only apply to fees payable by 'qualifying persons'. Section 5(5) enables the Welsh Ministers to prescribe classes of persons in regulations who will be 'qualifying persons' for the purposes of the fee limit. International students will not be 'qualifying persons' for the purposes of section 5 or the associated regulations.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>Prescribing the classes of persons who will be 'qualifying persons' for the purposes of the fee limit is a technical issue which may need updating from time to time. This power will provide the Welsh Ministers with the flexibility to update the meaning of 'qualifying persons' as and when required.</p> <p>The Welsh Ministers currently have a similar regulation making power in section 28(6) of the Higher Education Act 2004.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>These regulations will prescribe the classes of person to which the 'fee limit' will apply (where those persons are undertaking qualifying courses).</p> <p>'Qualifying persons' as currently prescribed in regulation 4 of the Qualifying Courses and Persons (Wales) Regulations 2011 are similar, but do not mirror, 'eligible students' as prescribed in the Education (Student Support) (Wales) Regulations 2013. The current definition of 'qualifying persons' includes the following groups, all of which must be ordinarily resident in the UK on the first day of the first academic year of the course:</p> <ul style="list-style-type: none"> • Persons who are settled in the UK; • Refugees and their family members; • Persons with leave to enter or remain and their family members; • EEA migrant and their family members; • Persons who are settled in the United Kingdom and have exercised a right of residence elsewhere; • Children of Swiss nationals; and • Children of Turkish workers. <p>The current definition of 'qualifying persons' also includes EU nationals.</p> <p>There is no current intention to make any amendments to the definition of a 'qualifying persons' as prescribed in the current regulations.</p>	

REGULATIONS RELATING TO:	Fees payable to other persons
SECTION	5(9)
DESCRIPTION OF THE POWER/REGULATION	
<p>Section 5(2) confirms that a fee limit for the purposes of the Bill is a limit on the fees payable by a 'qualifying person' to an institution in connection with the undertaking of a 'qualifying course'. This corresponds with the standard position, where fees are payable by students to institutions delivering their courses.</p> <p>Section 5(9) enables the Welsh Ministers to make regulations which specify circumstances where fees payable to another person in connection with a qualifying person's course, are to be regarded as fees payable to the institution in connection with that course. This power will apply where a course is provided by an institution or provider, on behalf of an institution with an approved fee and access plan in force (a regulated institution).</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>This regulation making power is required to enable the Welsh Ministers to respond to changes in the way fees are charged by higher education institutions in Wales. This power will ensure that institutions which enter into franchise arrangements with other institutions or providers are unable to circumvent the statutory fee limit by arranging for their partner institutions to charge fees to students. This would protect students by ensuring that they are not charged additional fees, which brings the total amount of fees payable above the statutory fee limit.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>We recognise that a variety of franchise arrangements may exist and some or all of the fees charged for a qualifying course may be payable to a partner institution. The policy intention of these regulations is to ensure that the fees payable by students (qualifying persons) do not exceed the statutory fee limit, even where those fees are payable to a person other than a regulated institution responsible for the course.</p>	

REGULATIONS RELATING TO:	The promotion of equality of opportunity and the promotion of higher education.
SECTION:	6(1)
DESCRIPTION OF THE POWER/REGULATION	
<p>Section 6(1) requires a fee and access plan relating to an institution to include such provision on the promotion of equality of opportunity and the promotion of higher education as may be prescribed by the Welsh Ministers in regulations. This power enables the Welsh Ministers to prescribe the information on equality of opportunity and higher education for this purpose.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>The information and priorities associated with the promotion of equality of opportunity and the promotion of higher education is likely to change over time alongside changes to the higher education sector in Wales. This power will enable the Welsh Ministers to respond to these changes by adapting the requirements imposed on institution's fee and access plans.</p> <p>The Welsh Ministers currently have a similar power in section 33 of the Higher Education Act 2004.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The policy intention is that these regulations will build on the requirements set out in existing regulations.</p> <p>Currently Regulations 3 and 4 of the Student Fees (Approved Plans)(Wales) Regulations 2011 set out the required contents of a fee the plan. The intention is to restate a number of the existing requirements, such as the requirement for a plan to require the governing body to take measures to attract applications from under-represented groups and the requirement to make information available about financial assistance available. It is also intended to incorporate new requirements concerning measures to be taken to retain students who are members of under-represented groups and also a requirement in relation to the setting out of expenditure in relation to the objectives of a plan if fees are to be charged above a specified threshold amount</p>	

REGULATIONS RELATING TO:	Approval or rejection of a fee and access plan
SECTION:	7(3)
DESCRIPTION OF THE POWER/REGULATION	
<p>Under section 7 HEFCW may either approve or reject an application for approval of an institution's fee and access plan.</p> <p>Section 7(3) enables the Welsh Ministers to make regulations about matters to be taken into account by HEFCW in determining whether to approve or reject a plan.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>The matters which will be relevant to a decision by HEFCW to approve or reject an institution's fee and access plan are likely to change over time. These matters may be influenced by the types of institution applying for approval, the range of courses offered in Wales and other changes to the higher education sector. This power will enable the Welsh Ministers to update the fee and access plan approval process in accordance with these changes.</p> <p>The Welsh Ministers currently have a similar power in section 34(5) of the Higher Education Act 2004.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>Conditions concerning the approval or rejection of a proposed plan are set out on the face of the Bill (section 7(2)). The policy intention is that when deciding whether to approve a proposed plan that HEFCW should be obliged to take into account additional matters which reflect the different types of institution which may apply for approval of a fee and access plan and the wider range of fee levels which are to be subject to fee and access plan requirements under the new regulatory system.</p> <p>The intention is that HEFCW should be required to take into account the following:</p> <ul style="list-style-type: none"> • the quality of education at the institution and the organisation of its financial affairs in order to ensure that the interests of prospective students are protected; • the adequacy of the measures committed to in the plan against the proposed tuition fee level in order to ensure a proportionate approach to approval of plans. <p>Currently Regulation 6 of the Student Fees (Approved Plans)(Wales) Regulations 2011 specifies the matters that the relevant authority (HEFCW) must have regard to when making any determination relating to the approval of a plan. Those matters include safeguarding of fair access to higher education and the desirability of protecting academic freedom. The intention is for those matters to be replicated in the regulations to be made under section 7(3) of the Bill.</p>	

REGULATIONS RELATING TO:	Publication of approved plans
SECTION:	8(1)
DESCRIPTION OF THE POWER/REGULATION	
<p>This power enables the Welsh Ministers to require institutions with an approved fee and access plan to publish their approved plan. The regulations requiring publication may make specific provision on how and when a plan is to be published.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>The requirements around the publication of approved plans are likely to change over time, in response to the number of people wishing to view plans, ease of access and changes in technology. This regulation power will enable the Welsh Ministers to respond to these changes and allow for a flexible and up to date approach to publication.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The policy intention is that there should be greater transparency in respect of the availability of information about the progress made by institutions against their fee plan commitments. One element of this is to ensure that fee and access plans are published so that those with an interest in the approved plans can access them easily.</p> <p>Currently Regulation 7 of the Student Fees (Approved Plans)(Wales) Regulations 2011 requires institutions to publish approved plans in a manner which makes them conveniently accessible to students and prospective students. We do not intend to make any changes to this requirement in the first set of regulations.</p>	

REGULATIONS RELATING TO:	Variation of approved plans
SECTION:	9(1)
DESCRIPTION OF THE POWER/REGULATION	
<p>This power will be relevant where, following approval of a fee and access plan by HEFCW, an institution wishes to vary its approved plan. The Welsh Ministers may, via regulations, enable approved plans to be varied in accordance with the procedure laid down in those regulations. The regulations must provide that a variation will only take effect if approved by HEFCW.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>The number and scope of requests for variations of approved plans is likely to change over time. In addition, the processes and procedures applying to variations is also likely to change depending on HEFCW's experience of past practice, technological changes and institutional preferences. This regulation power will enable the Welsh Ministers to respond to these changes.</p> <p>The Welsh Ministers currently have a similar power in section 36 of the Higher Education Act 2004.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The policy intention is to provide an effective procedure for approved plans to be varied during the lifetime of the plan. Currently, regulation 9 of the Student Fees (Approved Plans) (Wales) Regulations 2011 provides that an institution may seek to make changes to its fee plan during the lifetime of the plan and is required to seek approval from HEFCW to do so.</p> <p>It is intended that the procedure for a variation of a plan should mirror the procedure that HEFCW must adopt in considering a proposed fee and access plan for the first time. Namely, that if HEFCW propose to reject the variation, they should give a warning notice which sets out their reasons and which allows the institution to make representations to HEFCW which are to be taken into account by HEFCW in deciding whether to refuse the variation. Additionally the intention is to make provision for a review of a decision by HEFCW to refuse to vary a plan as currently set out in Regulation 11 of the Student Fees (Approved) Plans Regulations 2011.</p> <p>In assessing proposed changes, the Welsh Government would expect HEFCW to have regard to a key principle that students should know before committing to a course what fees they can expect to pay and that students should be protected against changing fee levels where the possibility of that change has not been notified to them at the time of application for the course.</p>	

REGULATIONS RELATING TO:	Copies and publication of compliance and reimbursement directions
SECTION:	11(5)
DESCRIPTION OF THE POWER/REGULATION	
<p>Section 10 requires regulated institutions (those institutions with an approved fee and access plan in place) to comply with the fee limit set out in, or determined in accordance with, their approved plan. If a regulated institution fails to comply with a fee limit, section 11 provides HEFCW with the power to direct the institution to comply with the limit and reimburse any excess fees already paid. Such a direction is known as a 'compliance and reimbursement direction'. If such a direction is issued, section 11(4) requires HEFCW to publish it and provide a copy to the Welsh Ministers.</p> <p>The power in section 11(5) enables the Welsh Ministers to make provision in regulations about how and when HEFCW are to publish any compliance and reimbursement directions and provide copies to the Welsh Ministers.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>The detail in these regulations relating to the publication and administration of compliance and reimbursement directions, will be technical and administrative in nature. It is also likely to change over time, following changes in HEFCW working practices, Welsh Minister requirements and advances in technology. This power will enable the Welsh Ministers to respond flexibly to these changes and include the relevant technical and administrative detail.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The policy intention is to set out the procedural requirements relating to the publication and administration of compliance and reimbursement directions issued by HEFCW. This is likely to include a requirement on HEFCW to publish a compliance and reimbursement direction on their website following issue. The regulations may also require HEFCW to provide the Welsh Ministers with a copy of any compliance and reimbursement direction (via e-mail) prior to issue.</p>	

REGULATIONS RELATING TO:	Failure to comply with general provisions of an approved plan
SECTION:	13(1)
DESCRIPTION OF THE POWER/REGULATION	
<p>This power enables the Welsh Ministers to make provision for the steps to be taken by HEFCW if they are satisfied that the governing body of an institution has failed to comply with the general provisions of its approved plan. Additionally the powers of this section allow for regulations to amend or apply (with or without modifications) any provision made by or under the Bill.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>The core requirements for inclusion in a fee and access plan are to be set out in regulations made under section 6 of the Bill (see above). However, each plan will be unique as it reflects the individual circumstances of a given institution and it may also include specific measures which an institution has committed to implement because institutions may, in addition to the core requirements, include their own provisions relating to the promotion of equality of opportunity and/or the promotion of higher education. The power to make regulations will provide flexibility to deal with the enforcement of this non-standard aspect of fee and access plans.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The policy intention is for HEFCW to be able to direct the governing body of an institution to deliver the measures it has committed to undertake in pursuance of achieving the objectives of its approved fee and access plan. It is intended that HEFCW will be required to follow certain procedural requirements when issuing such a direction and that institutions will be afforded a right to apply for a review of such directions.</p> <p>The regulations are likely to confer a new power on HEFCW to direct the governing body of an institution to take steps to ensure compliance with the general provisions of its approved plan. Such steps might include the undertaking of activities which may involve expenditure to which the institution has already committed in its plan.</p> <p>It is intended the regulations will define what constitutes failure to comply with the general provisions of an approved plan. For example, the regulations might provide that failure by the governing body of an institution to carry out measures committed to in its approved plan in connection with prospective students and students who are members of under-represented groups constitutes failure to comply with the general provisions of plan (section 6(3)(a) of the Bill). However it is intended that failure to achieve an objective set out in a plan (section 6(4)(a) of the Bill) will not constitute failure to comply with the general provisions of an approved plan. For example, if an institution's plan includes the objective of increasing the proportion of its student body drawn from under-represented groups and the institution does not achieve the objective then this will not constitute failure to comply with the general provisions of its plan and HEFCW will not be able to issue a direction. The policy intention is that such failures will be picked up through HEFCW's evaluation of the effectiveness of fee and access plans (section 15 of the Bill) and addressed through matters which HEFCW will take into account when considering approval of a new plan.</p> <p>Additionally it is envisaged that the regulations may make provision about the procedure which HEFCW will be required to follow when giving a direction. For example, the regulations might require HEFCW to issue a warning notice to the governing body of an institution prior to giving a direction, allow the institution an opportunity to make</p>	

representations to HEFCW and also enable the governing body to apply for a review of a resulting direction by an independent person or panel.

It is envisaged the regulations may make provision about the steps that HEFCW may take if a governing body fails to comply with a direction. For example, the regulations might provide that HEFCW is able to withdraw its approval of a plan where they are satisfied that the governing body of an institution has failed to comply with a direction.

PART 3 – QUALITY OF EDUCATION

11. This Part of the Bill confers a number of new functions upon HEFCW relating to the assessment of the quality of education provided in Wales by or on behalf of a regulated institution and in relation to the steps that HEFCW may take if they are satisfied that quality of education is inadequate or likely to become inadequate. A regulated institution is an institution with an approved fee and access plan in place.

REGULATIONS RELATING TO:	External providers responsible for providing courses on behalf of regulated institutions
SECTION:	17(4)
DESCRIPTION OF THE POWER/REGULATION	
<p>Section 17 places a duty on HEFCW to assess, or make arrangements for the assessment of, the quality of education provided by, or on behalf of, each regulated institution (an institution with an approved fee plan in place). This duty encompasses education provided by an external provider on behalf of a regulated institution. Section 17(3) confirms that an external provider is not a regulated institution, but is responsible for providing all or part of a course on behalf of such an institution.</p> <p>Section 17(4) enables the Welsh Ministers to make provision in regulations about the circumstances in which an external provider is, or is not to be treated as providing all, or part of a course on behalf of a regulated institution.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>This power is required to enable the Welsh Ministers to respond flexibly to changes in the way courses are delivered to students. For example, the number of franchised courses (courses delivered on behalf of a regulated institution) may increase in the future along with the range of franchise partners. In addition methods of teaching and delivering courses may evolve over time, some of which may, or may not, be appropriate for assessment by HEFCW.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>Institutions and other providers of higher education courses may be involved in a variety of collaborative arrangements. The policy intention is that the regulations will provide, where necessary, for circumstances in which an external provider is, or is not, to be treated as providing all or part of a course on behalf of a regulated institution. An example of this could be individual tutors who help to deliver courses on behalf of regulated institutions. The regulations could confirm that these individuals should not be treated as external providers for the purposes of quality assessment.</p>	

PART 4 – FINANCIAL AFFAIRS OF REGULATED INSTITUTIONS

12. This Part makes provision on the organisation and management of the financial affairs of regulated institutions. There are no regulation powers in this Part of the Bill.

PART 5 – FEE AND ACCESS PLANS: WITHDRAWAL OF APPROVAL ETC.

13. This Part makes provision on the circumstances in which HEFCW may refuse to approve a new fee and access plan for an institution as well as the circumstances in which HEFCW must, or may, withdraw their approval of an existing fee and access plan.

REGULATIONS RELATING TO:	Notice of refusal to approve a new fee and access plan
SECTION:	36(7)
DESCRIPTION OF THE POWER/REGULATION	
<p>If HEFCW are satisfied that a regulated institution has failed to comply with certain requirements set out in the Bill, an approved fee and access plan or a direction issued under the Bill, they may give notice to the institution that they will not approve a new fee and access plan before the end of the period specified in the notice. These requirements relate to fee limits, the quality of education and the financial affairs of regulated institutions.</p> <p>Section 36(7) enables the Welsh Ministers to make provision in regulations relating to the notices and decisions by HEFCW not to approve a new fee and access plan. This includes provision about the period specified in a notice during which HEFCW will not approve a new fee and access plan, the matters to be taken into account by HEFCW in deciding whether to give, or withdraw, such a notice and the procedure to be followed if such a notice is withdrawn.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>The circumstances in which HEFCW may refuse to approve a new fee and access plan are set out in section 36(3) of the Bill. The power in section 36(7) enables the Welsh Ministers to provide further detail in regulations on specific procedural elements associated with a decision by HEFCW not to approve a new plan. The matters to be dealt with in the regulations will require updating over time, following changes to the higher education sector in Wales and in response to feedback received from HEFCW. For example, it may be appropriate to increase or reduce the maximum period a notice refusing to approve a new plan can apply for, following discussions and engagement with HEFCW on the effectiveness of such notices.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The intention is that these Regulations will set out specific procedural requirements relating to a decision by HEFCW not to approve a new plan. It is expected that the procedural requirements will include the period specified in a notice during which HEFCW will not approve a new fee and access plan, the matters to be taken into account by HEFCW in deciding whether to give, or withdraw, such a notice and the procedure to be followed if such a notice is withdrawn.</p> <p>It is currently proposed that the maximum period of time that a notice can be in place will be 1 year. This corresponds with the current maximum period prescribed in the Student Fees</p>	

(Approved Plans) (Wales) Regulations 2011 in relation to the existing fee capping regime. It is expected that if HEFCW decide to issue a notice they will be required to notify the institution concerned in writing and publish this notice on their website. Also if HEFCW decide to withdraw a notice this should also be communicated to the institution concerned in writing and published on their website.

It is expected the matters to be taken into account by HEFCW in deciding whether to give notice of their intention to refuse to approve a new plan might include consideration of the severity of the compliance failure and whether alternative courses of action may be appropriate. With regard to withdrawal of a notice it is expected that the matters to be taken into account by HEFCW might include any mitigating action taken by the institution (post issue of the notice) in order to effect its compliance with the conditions at section 36(3) of the Bill.

REGULATIONS RELATING TO:	Duty to withdraw approval
SECTION:	37(2) and (3)
DESCRIPTION OF THE POWER/REGULATION	
<p>Section 37 requires HEFCW to withdraw their approval of a fee and access plan by giving notice to an institution if they are satisfied that the institution has ceased to be an institution in Wales, provide higher education or be a charity.</p> <p>Under section 37(2), the Welsh Ministers may make provision in regulations about the matters to be taken into account by HEFCW in determining whether to withdraw approval of a fee plan and the procedure to be followed in connection with giving notice of a withdrawal. The regulations may also apply (with or without modification) the procedural requirements relating to warning notices and representations (as set out in sections 40 to 43) to any notice issued under section 37.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>The regulation power is required to enable the Welsh Ministers to update from time to time the processes and procedures associated with withdrawing approval of an institution's fee and access plan.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>It is expected that these Regulations will set out the matters to be taken into account by HEFCW in determining whether to withdraw approval of a fee plan and the procedure to be followed in connection with giving notice of a withdrawal in circumstances where if they are satisfied that the institution has ceased to be an institution in Wales, provide higher education or be a charity.</p> <p>These Regulations may require HEFCW to take into account decisions of the Charity Commission in relation to institutions which they believe no longer have charitable status and information concerning the extent of an institution's operations in Wales.</p> <p>It is also intended that these regulations will make provision for procedural requirements similar to those provided for in sections 41, 42 and 43 of the Bill which could require HEFCW to issue a warning notice indicating their intention to withdraw approval of a plan, setting out the reasons for the proposed withdrawal and providing the institution with an opportunity to make representations against the issue of such a notice prior to withdrawal of approval of a plan.</p>	

REGULATIONS RELATING TO:	Power to withdrawal approval of a fee and access plan
SECTION:	38(3)
DESCRIPTION OF THE POWER/REGULATION	
<p>Section 38 provides HEFCW with the power to withdraw approval of a fee and access plan in certain circumstances. These are where an institution has persistently failed to comply with a fee limit or the general provisions of their approved plan, the quality of education delivered at the institution has been found to be seriously inadequate, or there has been a serious failure to comply with the financial management code.</p> <p>Section 38(3) enables the Welsh Ministers to specify in regulations matters to be taken into account by HEFCW in deciding whether to withdraw approval of a fee and access plan under this section.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>This power is required to enable the Welsh Ministers to respond to changes in the way higher education is delivered in Wales. If these changes lead to concerns around the quality of education or the financial stability of institutions in Wales, the Welsh Ministers may wish to specify these as matters to be considered by HEFCW in determining whether to withdraw approval of a fee and access plan. The Welsh Ministers may also want to make further provision around persistent failures to comply with fee limits and/or the general provisions of fee and access plans.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>Subject to the conditions specified at section 38(2) of the Bill being satisfied HEFCW is to have discretion as to withdraw its approval of a fee and access plan. In the operation of this discretion the policy intention is that regulations will 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. These matters may include for example, defining what constitutes persistent failure to comply with fee limits or the general provisions of an approved plan, the impact of failure to deliver education of adequate quality in reaching a determination of serious inadequacy and whether breaches of the financial management Code have impacted on the financial stability of the institution in reaching a determination of serious failure to comply with the Code.</p>	

REGULATIONS RELATING TO:	Publication of notices issued under Part 5
SECTION:	39(2)
DESCRIPTION OF THE POWER/REGULATION	
<p>Section 39 requires HEFCW to give a copy of any notice issued under Part 5 of the Bill to the Welsh Ministers. It also requires HEFCW to publish such a notice.</p> <p>Section 39(2) enables the Welsh Ministers to make provision in regulations about the way in which HEFCW must give copy of a notice to the Welsh Ministers and publish the notice, and about when they must do so.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>The requirement for HEFCW to publish notices is set out on the face of the Bill. This power will enable the Welsh Ministers to prescribe technical and administrative detail relating to how and when such notices are to be published. This detail may need amending from time to time as a result of technological advances and experience from past practice as to the effectiveness of the publication requirements in reaching a wide audience.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The intention is that regulations will specify the manner in which HEFCW is to publish notices and also the timing of their publication. This is likely to include a requirement to publish notices on a specified website or in a newspaper and that a specified period of time may be required to elapse between issuing of a notice and its publication.</p>	

PART 6 – NOTICES AND DIRECTIONS GIVEN BY HEFCW

14. This Part makes provision on the procedures to be followed by HEFCW in relation to certain actions that they may take in respect of regulated institutions. These procedures include the giving of warning notices and the ability of institutions to apply for reviews.

REGULATIONS RELATING TO:	Requirement to give a warning notice
SECTION:	41(2)(d)
DESCRIPTION OF THE POWER/REGULATION	
<p>Where HEFCW proposes to give various notices or directions to a regulated institution (as described in section 40(1)), section 41 requires HEFCW to first give a regulated institution a warning notice. A warning notice must set out the proposed notice or direction, the reasons for its proposed issue and must also inform the regulated institution of its right to make representations.</p> <p>Section 41(2)(d) enables the Welsh Ministers to make provision in regulations about the period within which representations about a proposed notice or direction may be made by a regulated institution. It also enables provision to be made about the way in which representations may be made.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>The detail relating to the requirements and content of warning notices is set out on the face of the Bill. This power will enable the Welsh Ministers to prescribe technical and administrative detail relating to representations on proposed notices or directions made by regulated institutions. This detail may need updating from time to time as a result of technological advances and lessons from past practice.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>It is currently intended that representations must be made to HEFCW in writing and the period in which such representations must be received is within 40 calendar days of the date of the warning notice. This will align with the period provided for in Regulation 13 of the Student Fees (Approved Plans) (Wales) Regulations 2011 which stipulates that a provisional decision becomes final if the governing body does not apply for a review within 40 calendar days.</p>	

REGULATIONS RELATING TO:	Information to be given with notices and directions
SECTION:	42(c)
DESCRIPTION OF THE POWER/REGULATION	
<p>If HEFCW give a notice or direction as described in section 40(1), they must at the same time give the regulated institution a statement which sets out their reasons for giving the notice or direction and which informs the institution that it may apply for a review of the notice or direction under section 43.</p> <p>Section 42(c) enables the Welsh Ministers to prescribe other information in regulations which must be included in a statement accompanying a relevant notice or direction.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>The information which must be included in a statement accompanying a notice or direction under section 40(1) is set out on the face of the Bill. This power enables the Welsh Ministers to require additional information to be included in a statement and is required to keep the statement up to date with current practice.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>As stated above, the majority of information which must be included in a statement is set out on the face of the Bill. These regulations may additionally require a statement to include provision which informs a regulated institution that a copy of a notice or direction will be given to the Welsh Ministers and published.</p>	

REGULATIONS RELATING TO:	Reviews of notices and directions
SECTION:	43(3)
DESCRIPTION OF THE POWER/REGULATION	
<p>Section 43 concerns the review of a notice or direction as described in section 40(1). This section will apply once HEFCW has decided to give such a notice or direction to a regulated institution. At this point a regulated institution may apply for a review of the notice or direction, which will be undertaken by either a person, or panel of persons, appointed by the Welsh Ministers.</p> <p>Section 43(3) requires the Welsh Ministers to make regulations in connection with these reviews. These regulations may make provision on:</p> <ul style="list-style-type: none"> • the grounds on which an application for a review may be made; • the period within which an application for a review may be made; • the way in which an application for a review may be made; • the procedure to be followed by a person or panel carrying out a review; • the steps to be taken by HEFCW following a review; and • treating a notice or direction as not being given until specified steps have been taken or until a specified period has expired. 	
WHY THE REGULATION POWER IS REQUIRED	
<p>This power is required to enable the Welsh Ministers to update the review process from time to time, in line with changes to the higher education sector in Wales and in response to feedback on reviews from HEFCW and other interested stakeholders.</p> <p>The Welsh Ministers currently have a similar power in section 39 of the Higher Education Act 2004.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>It is envisaged these Regulations will make provision about the grounds on which an application for review may be made by a governing body. Such grounds of review might, for instance, include the governing body being able to present a material factor for consideration which was not, for good reason, previously drawn to HEFCW's attention, the governing body considering that HEFCW has disregarded a material factor which they should have considered in deciding to give the notice or direction, or that they consider the notice or direction to be disproportionate.</p> <p>Regulations may also provide for the period within which, and the way in which, an application may be made. For instance, regulations might provide that a governing body is to apply for a review in writing and within 40 calendar days of the date of the notice or direction.</p> <p>Provisions could be included in these Regulations about the procedure to be followed by a person or panel carrying out a review and the steps to be taken by HEFCW following a review. Such regulations might, for instance, require the panel to make a recommendation as a result of the review and require HEFCW to reconsider its decision to give the notice or direction in light of that recommendation.</p> <p>Regulations may also provide for a notice or direction to which section 43 applies not to be treated as having been given by HEFCW until specified steps have been taken or until a specified period has expired. Regulations might, for instance, provide that the notice or direction is not to be treated as having been given until a review has been completed or until the time for applying for a review has expired (without an application being made by the</p>	

governing body concerned). This would mean that a notice did not take effect, or that a governing body was not required to comply with a direction, while a review was taking place or an application for a review could still be made.

Currently the review process which applies in respect of the approval and enforcement of fee plans under the Higher Education Act 2004 is set out at Regulations 10 to 18 of the Student Fees (Approved Plans) (Wales) Regulations 2011.

PART 7 – SUPPLEMENTARY FUNCTIONS OF HEFCW

15. This Part confers functions on HEFCW in relation to the provision of reports to the Welsh Ministers and the provision of information and advice to interested parties.

REGULATIONS RELATING TO:	Statement of intervention functions
SECTION:	49(4)
DESCRIPTION OF THE POWER/REGULATION	
<p>Section 49 requires HEFCW to prepare and publish a statement setting out how they propose to exercise certain of their intervention functions. Before publishing this statement HEFCW must consult the governing body of each regulated institution and any other persons they think appropriate.</p> <p>Section 49(4) enables the Welsh Ministers to make provision in regulations about the statement, including its preparation, form and content, publication and consultation requirements.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>This power is required to enable the Welsh Ministers to make further technical and administrative provision in respect of HEFCW's statement on intervention functions. The requirements as to the form and content of the statement, as well as publication, may change over time. This power will provide the Welsh Ministers with the flexibility to respond to these changes.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The regulations are likely to require HEFCW to publish a copy of the finalised statement on their website. They may also require HEFCW to send a copy of the published statement to each regulated institution.</p> <p>The regulations may also require the statement to include a section on each of HEFCW's intervention functions as set out in section 49(5).</p>	

REGULATIONS RELATING TO:	Definition of fees
SECTION:	54(1)
DESCRIPTION OF THE POWER/REGULATION	
<p>The definition of “fees” is set out in section 54(1). This includes a number of types of fees which are excluded for the purposes of the definition. In addition to the fees excluded on the face of the Bill, the Welsh Ministers also have a power to make regulations which exclude other types of fee for this purpose.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>The types of fee, and the ways in which they are charged, are likely to change over time alongside changes to the higher education sector in Wales. This power will provide the Welsh Ministers with the flexibility to respond to these changes to ensure that the regulatory framework established under the Bill still operates effectively.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>There are no plans to exclude further types of fee from the definition of “fees” at this time. However this situation will be kept under review in line with changes to the way fees are charged to students by institutions.</p>	