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STATUTORY INSTRUMENTS

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**2011 No. 884 (W.128)**

**EDUCATION, WALES**

**The Student Fees (Approved Plans) (Wales) Regulations 2011**

Made - - - - 21 March 2011

Coming into force - - 31 March 2011

The Welsh Ministers, in exercise of the powers conferred on the National Assembly for Wales by sections 33, 34, 35, 36, 38, 39 and 47(5) of the Higher Education Act 2004(1) and now exercisable by them(2), make the following Regulations.

In accordance with section 47(4) of that Act(3), a draft of these Regulations was laid before and approved by a resolution of the National Assembly for Wales.

**Title, commencement and application**

1.—(1) The title of these Regulations is the Student Fees (Approved Plans) (Wales) Regulations 2011 and they come into force on 31 March 2011.

(2) These Regulations apply in relation to Wales.

**Interpretation**

2. In these Regulations “the 2004 Act” (“*Deddf 2004*”) means the Higher Education Act 2004.

**Content of plans**

3. A plan under section 33(1) of the 2004 Act must set out the objectives of the institution, determined by its governing body, relating to—

- (a) the promotion of equality of opportunity; and
- (b) the promotion of higher education.

4. A plan must include provisions requiring the governing body of the institution to—

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(1) 2004 c. 8. Sections 34(1) and 38(4) were amended by paragraphs 31 and 33 of Schedule 14 to the Education Act 2005 (c. 18).  
(2) The functions of the National Assembly for Wales as constituted by the Government of Wales Act 1998 (c. 38) contained in Part 3 of the Higher Education Act 2004 were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).  
(3) The function of making a statutory instrument containing regulations by virtue of section 33(3) and 34 of the Higher Education Act 2004 is substantially the same as the function conferred on the Secretary of State of making a statutory instrument containing regulations by virtue of section 33(2) and 34 of that Act. Section 47(4) provides that the Secretary of State may not make a statutory instrument containing (either alone or with other provisions) regulations by virtue of section 33(2) or 34 unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament. By virtue of paragraph 34(2) of Schedule 11 to the Government of Wales Act 2006 (c. 32), the provision applies to the exercise by the Welsh Ministers of the function of making a statutory instrument containing such regulations as if any reference to either House of Parliament were a reference to the National Assembly for Wales.

- (a) take, or secure the taking of, the measures set out in the plan in order to attract an increased number of applications from prospective students who are members of groups which, at the time when the plan is approved, are under-represented in higher education;
- (b) provide, or secure the provision of financial assistance set out in the plan to students undertaking a course at the institution;
- (c) make the arrangements set out in the plan to make available to students undertaking a course at the institution and prospective students wishing to undertake such a course information about financial assistance available to them from any source;
- (d) make the arrangements set out in the plan to inform any prospective student before the student commits to undertaking a course at the institution of the aggregate amount of fees that the institution will charge for the completion of the course;
- (e) monitor in the manner set out in the plan its compliance with the provisions of the plan and its progress in achieving its objectives set out in the plan in accordance with regulation 3; and
- (f) provide the relevant authority<sup>(4)</sup> with such information as the relevant authority may reasonably require from time to time.

### **Approval of plans**

5. The relevant authority must exercise its functions in accordance with the following procedure where the governing body of an institution applies to the relevant authority for approval of a proposed plan:—

- (a) the relevant authority must inform the governing body within a reasonable time whether the relevant authority approves the plan or whether it is minded not to approve the plan, giving reasons in the latter case;
- (b) where the relevant authority informs the governing body under paragraph (a) that it is minded not to approve the plan, it must inform the governing body that it may, within a reasonable time, do either or both of the following—
  - (i) make representations to the relevant authority as to why the relevant authority should approve the plan, or
  - (ii) modify the plan;
- (c) where the governing body acts in accordance with paragraph (b), the relevant authority must within a reasonable time consider the representations or modifications (or both) to the plan and, having considered them, inform the governing body whether or not it approves the plan;
- (d) where the governing body does not act in accordance with paragraph (b) within a reasonable time, the relevant authority must, within a further reasonable time, inform the governing body whether or not it approves the plan.

6. In making any determination relating to approval of a plan, the relevant authority must have regard to—

- (a) the safeguarding of fair access to higher education; and
- (b) the desirability of protecting academic freedom and in particular the freedom of institutions to determine —
  - (i) the contents of particular courses and the manner in which they are taught, supervised or assessed;

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(4) The Higher Education Funding Council for Wales has been designated the relevant authority in relation to Wales by virtue of the Higher Education Act 2004 (Relevant Authority) (Designation) (Wales) Regulations 2011 (SI 2011/658 (W.96))

(ii) the criteria for the admission of students and to apply those criteria in particular cases.

7. Where the relevant authority has approved a plan, the institution must publish it in a manner which makes it conveniently accessible to students and prospective students.

#### **Duration of plans**

8. The maximum period of time during which an approved plan may be in force is two years.

#### **Variation of plans**

9. The governing body may at any time within the period during which an approved plan is in force apply to the relevant authority for approval of a variation of the plan. Where the governing body does so, the procedure to be followed is as set out in regulations 5, 6 and 7, as if in those regulations all occurrences of the word “plan” were substituted by “variation”.

#### **Enforcement of plans**

10.—(1) In this regulation “requirement” means a requirement specified in section 28(1)(a) or (c) of the 2004 Act.

(2) The relevant authority must act in accordance with the following procedure in connection with the giving of any notification under section 38(1) of the 2004 Act—

- (a) where the relevant authority considers that the governing body of an institution may have failed to comply with a requirement, it must inform the governing body of that fact, specifying the requirement, and give the governing body a reasonable time within which to make representations;
- (b) where the governing body makes representations within the given time, the relevant authority must consider the representations and, having considered them, inform the governing body whether it is satisfied that the governing body has failed to comply with a requirement, and if so, specify the requirement;
- (c) where the governing body does not make representations within the given time, the relevant authority must inform the governing body whether it is satisfied that the governing body has failed to comply with a requirement, and if so, specify the requirement;
- (d) where the relevant authority has informed the governing body that it is satisfied that the governing body has failed to comply with a specified requirement, it may inform the governing body that it is minded to notify the governing body under section 38(1) of the 2004 Act that on the expiry of the existing plan it will refuse to approve a new plan under section 34 of the 2004 Act during the period specified in the notification;
- (e) where the relevant authority has informed the governing body under paragraph (d), it must give the governing body a reasonable time within which to make representations as to the financial consequences of the refusal to approve a new plan;
- (f) where the governing body makes representations within the given time, the relevant authority must consider the representations and, having considered them, where the relevant authority had informed the governing body that it was minded to notify the governing body under section 38(1) of the 2004 Act, it must either so notify the governing body or inform the governing body that it will not issue such a notification;
- (g) where the governing body does not make representations within a reasonable time, where the relevant authority had informed the governing body that it was minded to notify the governing body under section 38(1) of the 2004 Act, it must either so notify the governing body or inform the governing body that it will not issue such a notification.

(3) The maximum period prescribed for the purposes of a notification given in accordance with section 38(1) of the 2004 Act is one year.

### **Review of decisions**

**11.** Any of the following decisions of the relevant authority has effect in the first instance as a provisional decision—

- (a) any decision to approve a plan under regulation 5(a) and any decision to approve or not to approve a plan under regulation 5(c) or (d);
- (b) any decision to approve or not to approve a variation under regulation 9;
- (c) any enforcement decision under regulation 10(2)(b), (c), (f) or (g).

**12.** The governing body of the institution may apply for a review of a provisional decision of the relevant authority to a person or panel of persons appointed by the Welsh Ministers.

**13.** A provisional decision becomes final if the governing body informs the relevant authority that it accepts the provisional decision or if the governing body does not apply for a review in accordance with regulation 12 within 40 calendar days of its date.

**14.** If the governing body applies for a review of a provisional decision in accordance with regulation 12, the relevant authority must reconsider its provisional decision having regard to any recommendation made as a result of the review and must issue a final decision within a reasonable time.

**15.** The grounds on which an application for the review of a provisional decision may be made are—

- (a) the governing body presents a material factor for consideration to which for good reason it had not previously drawn the relevant authority's attention;
- (b) the governing body considers that the relevant authority disregarded a material factor which it should have considered; or
- (c) the governing body considers that the provisional decision is disproportionate in view of all the relevant facts which were considered by the relevant authority.

**16.** The review of the provisional decision is to be undertaken by the person or panel of persons appointed by the Welsh Ministers.

**17.** In making the appointment of the person or panel of persons the Welsh Ministers must act in accordance with the principles set out in the Code of Practice for Ministerial Appointments to Public Bodies issued by the Commissioner for Public Appointments in August 2009.

**18.** The Welsh Ministers may pay remuneration and allowances to any person appointed in accordance with regulation 12.

21 March 2011

*Leighton Andrews*  
Minister for Children, Education and Lifelong  
Learning, one of the Welsh Ministers

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations prescribe in relation to Wales various matters related to plans as defined in section 22 of the Higher Education Act 2004 (“the 2004 Act”). These are plans which are submitted by a relevant institution and approved by the relevant authority in relation to Wales before the institution is allowed to charge tuition fees over the basic amount. The basic and higher amounts are prescribed in regulations made by the Welsh Ministers under section 28(6) of the 2004 Act. The relevant authority in relation to Wales is a person designated by the Welsh Ministers under section 30 of the 2004 Act.

Regulations 3 and 4 set out the required contents of the plans. Regulation 5 sets out how the relevant authority’s functions in relation to the approval of plans are to be exercised. Regulation 6 requires the relevant authority, when deciding whether or not to approve a plan, to have regard to the safeguarding of fair access to higher education and the desirability of protecting academic freedom. Regulation 7 requires institutions to publish approved plans. Regulation 8 specifies the maximum period during which a plan is to be in force. Regulation 9 provides for the variation of plans. Regulation 10 sets out the procedure for the enforcement of plans.

Regulations 11 to 18 provide for review of the relevant authority’s decisions. Regulation 11 requires a decision of the relevant authority to be provisional in the first instance. Regulation 12 gives institutions the right to apply for a review of the provisional decision. Under regulation 13, if a review is not applied for within 40 days or if the institution accepts the provisional decision, it becomes final. Regulation 14 requires the relevant authority to reconsider its provisional decision if a review is applied for. Regulation 15 prescribes the grounds upon which an application for the review of a provisional decision may be made. Regulation 16 provides for a review to be undertaken by a person or panel appointed by the Welsh Ministers. Regulation 17 requires the Welsh Ministers when appointing the person or panel to act in accordance with the applicable code of practice for public appointments. Regulation 18 enables the Welsh Ministers to pay expenses to any person or panel appointed by them to undertake a review.

The regulatory impact assessment applicable to these Regulations is obtainable from the Welsh Assembly Government at Cathays Park Cardiff CF10 3NQ.