

HIGHER EDUCATION (WALES) ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS OF THE ACT

Part 6 – Notices and directions given by HEFCW

Section 44– Review of notices and directions

125. This section concerns the review of a notice or direction described in section 41(1) once HEFCW have decided to give such a notice or direction to the governing body of an institution. This section is based on section 39 of the Higher Education Act 2004 and the review procedure is likely to be similar to the review procedure in place under that Act.
126. The governing body of an institution to which the notice or direction is addressed may apply for a review of that notice or direction. A review is carried out by either a person or a panel or persons appointed by the Welsh Ministers.
127. The Welsh Ministers are required to make regulations under this section in connection with reviews.
128. Regulations may 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, or the governing body considering that HEFCW have disregarded a material factor which they should have considered in deciding to give the notice or direction.
129. 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.
130. Regulations may also make provision 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.
131. Regulations may also provide for a notice or direction to which section 44 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 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.