

2015 No. 1485 (W. 164)

EDUCATION, WALES

**The Higher Education (Fee and
Access Plans) (Notices and
Directions) (Wales) Regulations
2015**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in respect of directions under section 11 of the Higher Education (Wales) Act 2015 (“the 2015 Act”) and the issue and review of those notices and directions specified in section 41(1) of the 2015 Act.

Regulation 3 prescribes the time and manner in which representations may be made in respect of proposed notices and directions. Regulations 4 and 5 set out when notices and directions are to be treated as having been given.

Regulation 6 sets out the information that must be given with notices and directions.

Regulation 7 prescribes the grounds on which an application for a review of a notice or direction may be made. Regulation 8 sets out the procedure that a governing body must follow in order to apply for a review of a notice or direction.

Regulation 9 sets out the procedure to be followed by the person, or panel of persons, appointed by the Welsh Ministers to review notices and directions. Regulation 10 prescribes the post review procedure.

Regulation 11 provides that HEFCW must immediately give a copy of a direction given under section 11 of the 2015 Act to the Welsh Ministers. The regulation also provides for how HEFCW must publish that direction.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to

the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Higher Education Division, Cathays Park, Cardiff, CF10 3NQ.

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**The Higher Education (Fee and
Access Plans) (Notices and
Directions) (Wales) Regulations
2015**

<i>Made</i>	<i>7 July 2015</i>
<i>Laid before the National Assembly for Wales</i>	<i>9 July 2015</i>
<i>Coming into force</i>	<i>31 July 2015</i>

The Welsh Ministers, in exercise of the powers conferred upon them by sections 11(5), 42(2)(d), 43(c) and 44(3) of the Higher Education (Wales) Act 2015⁽¹⁾, make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Higher Education (Fee and Access Plans) (Notices and Directions) (Wales) Regulations 2015.

(2) These Regulations come into force on 31 July 2015 and apply in relation to Wales.

Interpretation

2. In these Regulations—

“the 2015 Act” (“*Deddf 2015*”) means the Higher Education (Wales) Act 2015; and

“review panel” (“*panel adolygu*”) means the person, or panel of persons, appointed by the Welsh Ministers under section 44(2) of the 2015 Act.

Representations about proposed notices and directions: warning notices

3. For the purposes of section 42(2)(d) of the 2015 Act, representations may be made to HEFCW in

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writing within the period of 40 days beginning with the date of the warning notice.

Treatment of notices and directions

4. Subject to regulation 5, a notice or direction specified in section 41(1) of the 2015 Act is to be treated as having been given by HEFCW to a governing body on the date on which the first of the following events occurs—

- (a) the governing body notifies HEFCW in writing that it accepts the notice or direction;
- (b) the expiry of the period within which the governing body may apply for a review of the notice or direction under section 44 of the 2015 Act and the governing body has not applied for a review;
- (c) a review of the notice or direction under section 44 of the 2015 Act has concluded and HEFCW have notified the governing body in writing that the relevant notice or direction has effect.

5. Regulation 4 does not apply for the purposes of calculating the period within which a governing body may apply for a review under regulation 8(a).

Information to be given with notices and directions

6. A statement given under section 43 of the 2015 Act must include the following information—

- (a) the date of the notice or direction;
- (b) an explanation of when the notice or direction may be treated as having been given;
- (c) the grounds as described in regulation 7 on which an application for a review of the notice or direction may be made;
- (d) an explanation of the procedure as described in regulation 9 that the governing body is to follow in order to apply for a review;
- (e) the name and address of the review panel to whom an application for a review is to be made.

Grounds for review of notices and directions

7.—(1) An application for a review of a notice or direction under section 44 of the 2015 Act may be made by a governing body on one or more of the following grounds—

- (a) the governing body presents a material factor for consideration to which, for good reason, it has not previously drawn HEFCW's attention;

- (b) the governing body considers that HEFCW have disregarded a material factor which they should have considered;
- (c) the governing body considers that the notice or direction is disproportionate in view of all the relevant facts which were considered by HEFCW.

(2) An application for a review of a notice or direction cannot be made where a governing body has notified HEFCW in writing under regulation 4(a) that it accepts the notice or direction.

Procedure to apply for a review of notices and directions

8. An application by the governing body for a review of a notice or direction under section 44 of the 2015 Act must—

- (a) be made to the review panel in writing within the period of 40 days beginning with the date of the notice or direction;
- (b) specify the grounds for review;
- (c) include the following—
 - (i) a copy of the notice or direction to be reviewed;
 - (ii) a copy of the statement given by HEFCW under section 43 of the 2015 Act; and
 - (iii) information in support of the application.

Review procedure

9.—(1) This regulation applies where an application for a review has been made by a governing body in accordance with regulation 8.

(2) The review panel must give HEFCW—

- (a) details of the notice or direction to be reviewed;
- (b) details of the grounds on which the application for review has been made; and
- (c) a copy of the information provided by the governing body in support of the application for review.

(3) The review panel must, as soon as practicable upon receiving an application for a review, provide the governing body and HEFCW with an anticipated timetable for completing the review.

(4) For the purposes of the review, the review panel may request further information from—

- (a) HEFCW; or
- (b) the governing body.

(5) A request from the review panel for further information must be made in writing.

(6) Where the review panel requests further information—

- (a) from HEFCW, the review panel must at the same time provide a copy of the request to the governing body; and
- (b) from the governing body, the review panel must at the same time provide a copy of the request to HEFCW.

(7) The review panel is not obliged to consider any further information provided to it by either HEFCW or the governing body where such information is provided after the end of 28 days beginning with the date of the request.

(8) The review panel must—

- (a) provide a copy of any further information submitted to it by HEFCW in response to its request, to the governing body;
- (b) provide a copy of any further information submitted to it by the governing body in response to its request, to HEFCW;
- (c) consider whether it is appropriate to allow representations from either HEFCW or the governing body in respect of any further information submitted to it in response to its request for such information;
- (d) if it considers it appropriate to allow representations under sub-paragraph (c), notify HEFCW and the governing body accordingly;
- (e) take account of any information submitted under paragraph (4) and representations submitted by HEFCW or the governing body by virtue of sub-paragraph (c);
- (f) prepare a written report of the review which is to include its findings;
- (g) send a dated copy of its written report of the review to HEFCW and the governing body at the same time.

Post review procedure

10.—(1) Following a review under section 44 of the 2015 Act, HEFCW must take account of the review panel's report and reconsider their decision to issue the notice or direction.

(2) Within the period of 40 days beginning with the date of the review panel's report, HEFCW must notify the governing body in writing whether the notice or direction has effect.

(3) The notification under paragraph (2) must set out HEFCW's reasons for their decision.

Compliance and reimbursement directions

11.—(1) If HEFCW give a direction to the governing body of an institution under section 11 of the 2015 Act they must—

- (a) immediately give a copy of the direction to the Welsh Ministers; and
- (b) except than in the case of a direction which revokes an earlier direction publish a copy of the direction on their website within the period of 7 days beginning with the date on which the direction is given to the governing body.

(2) A copy of a direction published on HEFCW's website under paragraph (1)(b) is to remain on that website until HEFCW—

- (a) revoke the direction; or
- (b) are satisfied that the governing body has complied with the direction.

(3) For the purposes of paragraph (1)(b) the date on which the direction is given is to be determined in accordance with regulation 4.

Huw Lewis

Minister for Education and Skills, one of the Welsh Ministers

7 July 2015