

TERTIARY EDUCATION AND RESEARCH (WALES) ACT 2022

EXPLANATORY NOTES

GENERAL OVERVIEW OF THE ACT

Part 2 – Registration and Regulation of Tertiary Education Providers

11. **Part 2** is about the registration and regulation of tertiary education providers and is divided into 4 chapters:
 - Chapter 1 provides for a new system of registration of tertiary education providers (registration under Part 2 is not a legal requirement for the provision of tertiary education in itself; registration is linked to the Commission’s powers under Part 3 to fund tertiary education (see the explanation of Part 3 below));
 - Chapter 2 makes provision for quality assurance of publicly funded tertiary education (registered and unregistered) through monitoring, assessment and inspection;
 - Chapter 3 makes provision for intervention in further education institutions (unrelated to the registration system established by Chapter 1) and procedures for the exercise of all enforcement functions under Part 2;
 - Chapter 4 makes general provision relevant to the Part.

Chapter 1 – Registration of tertiary education providers

12. The Commission must establish and maintain a register of tertiary education providers in Wales and providers may apply to become registered in one or more categories of the register. Categories of registration are to be set in regulations made by the Welsh Ministers. The conditions of registration are a combination of conditions imposed directly by the Act and conditions set and published by the Commission, which must be proportionate to their aims. The Commission is placed under a duty to impose some conditions on all registered providers, and it has duties to set particular kinds of conditions for particular kinds of registered provider. It also is given power to set conditions of its own choosing.
13. The mandatory conditions in the Act for specified categories of provider relate to fee limits for courses and promoting equal opportunity. The categories of registered provider to which these provisions apply are to be specified by the Welsh Ministers by regulations. The Welsh Ministers also have the power by regulations to require the Commission to impose other conditions on registered providers.
14. The Commission is placed under a duty to monitor compliance with the registration conditions, may provide advice and assistance to tertiary education providers and may carry out or arrange reviews of matters relevant to compliance. Enforcement of any failure of a registered provider to comply with conditions of registration is to be by directions given by the Commission.

15. The Chapter also makes procedural provision for de-registration of registered providers and provision for reviews of Commission decisions by an independent panel.

Chapter 2 – Quality assurance and improving quality

16. **Chapter 2** gives the Commission the function of publishing quality assurance frameworks for the purpose of guiding policy and practice in the assessment of tertiary education by the Commission, Her Majesty’s Chief Inspector of Education and Training for Wales (“Estyn”) or a body designated by the Commission under Chapter 2 to carry out the Commission’s assessment functions in respect of higher education.
17. In respect of tertiary education provided by registered providers or tertiary education funded or secured by the Commission, the Commission—
- must monitor, and promote improvement in, the quality,
 - may provide advice or assistance to improve quality, and
 - may carry out or arrange reviews of matters relevant to quality.
18. The Commission has a specific duty to assess, or arrange assessment, of higher education provided by or on behalf of registered providers; and a duty is placed on the governing bodies of registered providers to publish action plans following these assessments. The Commission is given a power to designate a body to perform its higher education assessment functions. Schedule 3, which is introduced by the Chapter, provides for the process for designation of a body, oversight of the body by the Commission and the charging of fees by the designated body.
19. **Chapter 2** restates the functions of Estyn in respect of the inspection of post-16 education and training and the duties of persons responsible for providing education inspected, with modifications to take account of the new statutory context established by the Act. The existing provisions in sections 75 to 80 and 83 to 88 of the Learning and Skills Act 2000 are repealed.

Chapter 3 – Further enforcement and procedural provisions

20. **Chapter 3** restates, with modifications, the existing power of the Welsh Ministers to intervene in the conduct of further education institutions in Wales where their governing bodies fail to comply with duties, act unreasonably or perform inadequately. It provides the Commission with a power to refer cases to the Welsh Ministers where it considers there are grounds for intervention. The existing power of the Welsh Ministers in section 57 of the Further and Higher Education Act 1992 is repealed.
21. Provision is made for the Commission to give directions requiring the co-operation of certain tertiary education providers that are not registered providers, in so far as their activities are caught by Part 2. A power of entry and inspection is given to persons authorised by the Commission for the purpose of exercising Commission functions under Part 2.
22. The Chapter specifies requirements for warning notices to be given before the Commission gives directions in respect of failure to comply with conditions, notices of rejection of proposed fee limit statements (or of variations or replacements) or directions requiring the co-operation of certain providers that are not registered providers. The governing body of a provider given a warning notice is to have the right to apply for a review of the Commission’s proposed decision; and the review is to be conducted by a person, or panel of persons, appointed by the Welsh Ministers.
23. The Commission is placed under a duty to monitor and report on the financial sustainability of registered providers, and institutions in the further education sector that are funded by the Commission. And the Commission is placed under a duty to publish a statement on how it proposes to exercise its intervention functions under Part 2.