



Tertiary Education and Research (Wales) Act 2022

2022 asc 1

VALID FROM 04/09/2023

PART 2

REGISTRATION AND REGULATION OF TERTIARY EDUCATION PROVIDERS

CHAPTER 1

REGISTRATION OF TERTIARY EDUCATION PROVIDERS

The register and registration procedure

25 The register

- (1) The Commission must establish and maintain a register of tertiary education providers in Wales (referred to in this Act as “the register”).
- (2) The Welsh Ministers must, by regulations, specify one or more categories of registration for which the Commission must make provision in the register.
- (3) A category of registration specified in the regulations must relate to the provision of one or more kinds of tertiary education.
- (4) The Commission must register a tertiary education provider in a category of the register if—
 - (a) its governing body applies for it to be registered in the category,
 - (b) it is a tertiary education provider in Wales,
 - (c) it provides, or has provided on its behalf, the kind of tertiary education that relates to the category,

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- (d) it satisfies the initial registration conditions applicable to it in respect of the registration sought (see section 27),
 - (e) registration is not prohibited by provision made in regulations under subsection (5), and
 - (f) the application complies with any requirements imposed under subsection (7).
- (5) The Welsh Ministers may, by regulations, prohibit the registration of a tertiary education provider in one category of the register at the same time that it is registered in one or more of the other categories.
- (6) The Commission must not register a tertiary education provider in the register otherwise than—
- (a) in a category of registration specified in regulations under subsection (2);
 - (b) in accordance with subsection (4), section 44 (change in registration category without application) and any regulations made under subsection (5).
- (7) The Commission may determine—
- (a) the form of an application for registration,
 - (b) the information to be contained in it or provided with it, and
 - (c) the way in which an application is to be submitted.
- (8) The Welsh Ministers may, by regulations, make provision about the information which must be contained in a tertiary education provider’s entry in the register.
- (9) Once registered, a tertiary education provider’s ongoing registration in a category of the register is subject to the provider satisfying—
- (a) the general ongoing registration conditions applicable to the provider’s registration in the category and as they may be later revised (see section 28), and
 - (b) the specific ongoing registration conditions (if any) imposed on it in that category of registration and as they may be later varied (see section 29).
- (10) References in this Part to the ongoing registration conditions of a tertiary education provider are to the conditions mentioned in subsection (9)(a) and (b).
- (11) The Commission must make the information contained in the register, and the information previously contained in it, publicly available by such means as it considers appropriate.

Commencement Information

11 S. 25 not in force at Royal Assent, see [s. 148\(2\)](#)

PROSPECTIVE

26 Registration procedure

- (1) Before refusing an application to register a tertiary education provider in a category of the register, the Commission must notify the governing body of the provider that it proposes to do so.

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- (2) The notice must specify—
 - (a) the Commission’s reasons for proposing to refuse to register the tertiary education provider in the category,
 - (b) the period during which the governing body of the provider may make representations about the proposal (“the specified period”), and
 - (c) the way in which those representations may be made.
- (3) The specified period must not be less than 28 days beginning with the date on which the notice is received.
- (4) The Commission must have regard to any representations made by the governing body of the tertiary education provider in accordance with the notice in deciding whether to register it in the category.
- (5) Having decided whether or not to register the tertiary education provider in the category, the Commission must notify the governing body of the provider of its decision.
- (6) Where the decision is to register the tertiary education provider in the category, the notice must specify—
 - (a) the date of entry in the register in the category, and
 - (b) the ongoing registration conditions applicable to the provider’s registration in the category at that time.
- (7) Where the decision is to refuse to register the provider in the category, the notice must specify—
 - (a) the grounds for the refusal,
 - (b) information as to the right of review, and
 - (c) the period specified in regulations under section 79(4)(c) within which an application for a review may be made.

Commencement Information

I2 S. 26 not in force at Royal Assent, see [s. 148\(2\)](#)

Registration conditions

27 Initial registration conditions

- (1) It is an initial condition of registration in each category of the register that the Commission is satisfied as to—
 - (a) the quality of the kind of tertiary education provided by, or on behalf of, the applicant tertiary education provider to which the category of the register relates;
 - (b) the effectiveness of the governance and management of the applicant tertiary education provider (including its financial management);
 - (c) the financial sustainability of the applicant tertiary education provider;
 - (d) the effectiveness of the applicant tertiary education provider’s arrangements for supporting and promoting the welfare of its students and staff;

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- (e) where there are validation arrangements in place, the effectiveness of those arrangements in enabling the applicant tertiary education provider to satisfy itself as to the quality of the education leading to the award of a qualification under the arrangements.
- (2) The Commission must publish a document specifying the requirements that must be met for it to be satisfied as to the matters mentioned in subsection (1).
- (3) The Commission may revise the requirements.
- (4) If the Commission revises the requirements, it must publish a revised document specifying the requirements as revised.
- (5) Before publishing the document or revised document, the Commission must, if it appears to it appropriate to do so, consult such persons as it considers appropriate.
- (6) The Welsh Ministers may, by regulations, provide for further initial conditions of registration for any category of registration.
- (7) Regulations under subsection (6) may (among other things)—
 - (a) confer functions on the Commission in connection with the operation of further initial conditions provided for in the regulations;
 - (b) provide for further initial conditions of registration relating to—
 - (i) the charitable or other status of tertiary education providers;
 - (ii) the information provided to prospective students about a provider, its courses, and its terms and conditions of contracts with students;
 - (iii) complaints procedures of providers.
- (8) In subsection (1)(e), “validation arrangements” means arrangements between an applicant tertiary education provider and another education provider under which the applicant tertiary education provider awards a qualification to a student at the other provider or authorises the other provider to award a qualification on its behalf.

Commencement Information

I3 S. 27 not in force at Royal Assent, see [s. 148\(2\)](#)

28 General ongoing registration conditions

- (1) The Commission must determine and publish general ongoing registration conditions.
- (2) Different conditions may be determined for different categories of registration.
- (3) In relation to a category of registration, different conditions may be determined for different descriptions of tertiary education provider.
- (4) The Commission must publish the general ongoing registration conditions in a way that identifies the category of registration to which the condition applies.
- (5) The Commission may revise the conditions.
- (6) If the Commission revises the conditions, it must publish them as revised.

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- (7) Before determining or revising the conditions, the Commission must, if it appears to it appropriate to do so, consult such persons as it considers appropriate.
- (8) The Commission may, at the time of a tertiary education provider’s registration in a category of the register or later, decide that any one or more general ongoing registration conditions applicable to registration in that category is not applicable to the provider, subject to the requirements under this Part relating to mandatory ongoing registration conditions.
- (9) Where the decision is made after the tertiary education provider’s registration in that category of the register, the Commission must notify the governing body of the provider of its decision.

Commencement Information

14 S. 28 not in force at Royal Assent, see [s. 148\(2\)](#)

PROSPECTIVE

29 Specific ongoing registration conditions

- (1) The Commission may, at the time of a tertiary education provider’s registration in a category of the register or later, impose such conditions on its registration in the category as the Commission may determine (“the specific ongoing registration conditions”).
- (2) The Commission may at any time vary or remove a specific ongoing registration condition.
- (3) Before—
 - (a) imposing a specific ongoing registration condition, or
 - (b) varying or removing a specific ongoing registration condition,
 the Commission must notify the governing body of the tertiary education provider that it proposes to do so.
- (4) The notice must—
 - (a) specify the Commission’s reasons for proposing to take the step in question,
 - (b) specify the period during which the governing body of the tertiary education provider may make representations about the proposal (“the specified period”), and
 - (c) specify the way in which those representations may be made.
- (5) The specified period must not be less than 28 days beginning with the date on which the notice is received.
- (6) The Commission must have regard to any representations made by the governing body of the tertiary education provider in accordance with the notice in deciding whether to take the step in question.
- (7) Having decided whether or not to take the step in question, the Commission must—
 - (a) notify the governing body of the tertiary education provider of its decision, and

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- (b) publish the notice.
- (8) If the Commission decides to impose a new specific ongoing registration condition or vary or remove a specific ongoing registration condition, the notice must—
- (a) specify the new condition, the condition as varied or the condition being removed (as the case may be), and
 - (b) specify the date when the imposition, variation or removal takes effect.
- (9) Where the notice relates to the imposition or variation of a specific ongoing registration condition, the notice must also specify—
- (a) the grounds for the imposition or variation of the condition,
 - (b) information as to the right of review, and
 - (c) the period specified in regulations under section 79(4)(c) within which an application for a review may be made.
- (10) A specific ongoing registration condition, or a variation to such a condition, may not take effect at any time when—
- (a) an application for review under section 45(b) could be brought in respect of the decision to impose or vary the condition, or
 - (b) a review or a decision by the Commission following such a review is pending.
- (11) But that does not prevent a specific ongoing registration condition, or a variation to such a condition, taking effect if the governing body of the tertiary education provider notifies the Commission that it does not intend to apply for a review.
- (12) Where subsection (10) ceases to prevent a specific ongoing registration condition, or a variation to such a condition, taking effect on the date specified under subsection (8), the Commission must determine a future date on which it takes effect.
- (13) But that is subject to what has been determined by the Commission following any review under section 45(b) in respect of the decision to impose or vary the condition.

Commencement Information

I5 S. 29 not in force at Royal Assent, see [s. 148\(2\)](#)

30 Proportionate conditions etc.

- (1) The Commission must ensure that—
- (a) the requirements specified under section 27(2), and
 - (b) all ongoing registration conditions,
- are proportionate to the Commission’s assessment of the risks posed.
- (2) In light of its duty under subsection (1), the Commission must keep all ongoing registration conditions under review.

Commencement Information

I6 S. 30 not in force at Royal Assent, see [s. 148\(2\)](#)

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31 Mandatory ongoing registration conditions for each registered provider

(1) The Commission must ensure that the ongoing registration conditions of each tertiary education provider registered in a category include—

- (a) a condition relating to the quality of the kind of tertiary education provided by, or on behalf of, the provider to which the category of registration relates;
- (b) a condition relating to the effectiveness of the governance and management of the provider (including its financial management);
- (c) a condition relating to the financial sustainability of the provider;
- (d) a condition relating to the effectiveness of the provider’s arrangements for supporting and promoting the welfare of its students and staff;
- (e) a condition relating to the effectiveness of any validation arrangements in place;
- (f) a condition requiring the governing body of the provider to notify the Commission of any change of which it becomes aware which affects the accuracy of the information contained in the provider’s entry in the register;
- (g) a condition requiring the governing body of the provider, if it has been given notice under section 126(1), to have in place a learner protection plan approved by the Commission (under section 126(3) or (5)) on or before the date specified in the condition and to give effect to the plan;
- (h) a condition requiring the governing body of the provider to comply with the requirements contained in the Learner Engagement Code published under section 129(1) or any revised code published under section 129(3);
- (i) a condition requiring the governing body of the provider to have regard to advice or guidance given by the Commission to the body (either specifically or to persons generally) in exercise of the Commission’s functions under this Act;
- (j) a condition requiring the governing body of the provider to provide the Commission, or a person authorised by the Commission, with such information, assistance and access to the provider’s facilities, systems and equipment as the Commission may reasonably require for the purpose of exercising the Commission’s functions under this Part.

(2) In subsection (1)(e), “validation arrangements” means arrangements between the registered provider and another education provider under which the registered provider awards a qualification to a student at the other provider or authorises the other provider to award a qualification on its behalf.

Commencement Information

I7 S. 31 not in force at Royal Assent, see [s. 148\(2\)](#)

32 Mandatory ongoing registration condition on fee limits

(1) The Commission must ensure that the ongoing registration conditions of each registered provider—

- (a) falling within a fee limit category, and
- (b) providing qualifying courses, or having qualifying courses provided on its behalf,

include a fee limit condition.

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- (2) A fee limit category is a category of registration—
 - (a) for which the Commission must make provision in the register, and
 - (b) which is specified for the purpose of this section in regulations made by the Welsh Ministers.
- (3) A fee limit condition is a condition that requires the governing body of a registered provider to—
 - (a) have a fee limit statement approved under section 47, and
 - (b) secure that regulated course fees do not exceed the applicable fee limit.
- (4) A qualifying course is a course of a description specified in regulations made by the Welsh Ministers to which subsection (5) applies.
- (5) This subsection applies to a course provided—
 - (a) at one or more places in Wales or elsewhere,
 - (b) by means of correspondence, equipment or other facility that enables persons who are not in the same place (whether in Wales or elsewhere) to participate in teaching or studying the course, or
 - (c) by a combination of the ways described in paragraphs (a) and (b).
- (6) The power to specify a description of course under subsection (4) must not be exercised so as to discriminate—
 - (a) in relation to courses of initial teacher training, between different courses on the basis of the subjects in which such training is given;
 - (b) in relation to other courses, between different courses at the same or a comparable level on the basis of the areas of study or research to which they relate.
- (7) Regulated course fees are fees payable to the tertiary education provider by a qualifying person—
 - (a) in connection with the person undertaking a qualifying course, and
 - (b) in respect of an academic year applicable to that course, where the year begins on a day when the applicable provisions in the fee limit statement have effect.
- (8) The applicable fee limit is—
 - (a) in a case where the tertiary education provider’s fee limit statement specifies a fee limit for the course and year in question, that limit;
 - (b) in a case where the provider’s fee limit statement provides for the determination of a fee limit for the course and year in question, that limit as determined in accordance with the statement.
- (9) A qualifying person is a person who—
 - (a) is not an international student, and
 - (b) falls within any class of persons specified in regulations made by the Welsh Ministers for the purposes of this Part.
- (10) An international student is a person who may or must be charged higher fees by virtue of regulations made under section 1 of the [Education \(Fees and Awards\) Act 1983 \(c. 40\)](#) (charging of higher fees in case of students not having prescribed connection with the United Kingdom).

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- (11) The Welsh Ministers may, by regulations, make provision for circumstances in which fees payable to a person, in connection with a qualifying person’s undertaking a course, or part of a course, provided on behalf of a tertiary education provider, are to be treated for the purposes of subsection (7) and section 46 as being payable to that provider in connection with the qualifying person’s undertaking the course.

Commencement Information

I8 S. 32 not in force at Royal Assent, see [s. 148\(2\)](#)

33 Mandatory ongoing registration conditions on equal opportunity

- (1) The Commission must ensure that the ongoing registration conditions of each registered provider include conditions requiring the delivery of measurable outcomes to further each of the aims in subsection (2).

- (2) The aims are—

- (a) increasing participation in relevant tertiary education provided by, or on behalf of, the registered provider by persons who are members of under-represented groups;
- (b) retention of students who are members of under-represented groups to the end of courses of relevant tertiary education provided by, or on behalf of, the registered provider;
- (c) reduction of any gaps in attainment in relevant tertiary education provided by, or on behalf of, the registered provider between different groups of students specified in the conditions, where the differences arise from social, cultural, economic or organisational factors;
- (d) provision of support for students finishing courses of relevant tertiary education provided by, or on behalf of, the registered provider who are members of under-represented groups to continue their tertiary education, find employment or start a business.

- (3) In this section—

“relevant tertiary education” (“*addysg drydyddol berthnasol*”) means courses of tertiary education provided wholly or mainly in Wales and of a kind that relates to the category of the register in which the provider in question is registered;

“under-represented groups” (“*grwpiau sydd heb gynrychiolaeth ddigonol*”) are groups specified in the conditions that are under-represented in relevant tertiary education as a result of social, cultural, economic or organisational factors.

Commencement Information

I9 S. 33 not in force at Royal Assent, see [s. 148\(2\)](#)

34 Power to provide for further mandatory ongoing registration conditions

The Welsh Ministers may, by regulations, provide for further mandatory ongoing registration conditions applicable to one or more of the categories of registration.

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Commencement Information

I10 S. 34 not in force at Royal Assent, see [s. 148\(2\)](#)

35 Commission duty to give guidance about ongoing registration conditions

The Commission must publish guidance for registered providers about ongoing registration conditions.

Commencement Information

I11 S. 35 not in force at Royal Assent, see [s. 148\(2\)](#)

Monitoring and enforcement of registration conditions

36 Commission duty to monitor compliance with ongoing registration conditions

The Commission must monitor compliance with ongoing registration conditions by registered providers.

Commencement Information

I12 S. 36 not in force at Royal Assent, see [s. 148\(2\)](#)

PROSPECTIVE

37 Advice and assistance in respect of compliance with ongoing registration conditions

The Commission may provide, or make arrangements for the provision of, advice or other assistance to a registered provider for the purpose of securing compliance by the provider with its ongoing registration conditions.

Commencement Information

I13 S. 37 not in force at Royal Assent, see [s. 148\(2\)](#)

PROSPECTIVE

38 Reviews relevant to compliance with ongoing registration conditions

The Commission may carry out, or arrange for another person to carry out, a review of any matters that it considers relevant to compliance by a registered provider with its ongoing registration conditions.

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Commencement Information

I14 S. 38 not in force at Royal Assent, see [s. 148\(2\)](#)

PROSPECTIVE

39 Directions in respect of failure to comply with ongoing registration conditions

- (1) The Commission may give the governing body of a tertiary education provider a direction under this section if it is satisfied that the governing body has failed, or is likely to fail, to comply with an ongoing registration condition.
- (2) In the case of a failure, or likely failure, to comply with an ongoing registration condition, the Commission may direct the governing body to comply with the condition.
- (3) In the case of a failure to comply with a fee limit condition, the Commission may also, as an alternative or in addition to a direction described in subsection (2), direct the governing body to reimburse excess fees paid to the tertiary education provider.
- (4) A direction under this section may specify steps that are (or are not) to be taken by the governing body for the purpose of compliance with the condition.
- (5) A direction of the kind described in subsection (3) may specify the manner in which reimbursement of excess fees is to be, or may be, effected.
- (6) If the Commission gives a direction under this section, it must—
 - (a) give a copy of the direction to the Welsh Ministers;
 - (b) publish the direction.
- (7) “Excess fees” are regulated course fees to the extent that those fees exceed the applicable fee limit (as quantified for the purposes of the duty under section 32 with which the governing body has failed to comply).
- (8) For procedural provision about directions under this section, see sections 75 to 78.

Commencement Information

I15 S. 39 not in force at Royal Assent, see [s. 148\(2\)](#)

PROSPECTIVE

40 Supplementary provision about directions under section 39

- (1) The Commission may issue guidance about steps to be taken for the purpose of complying with a direction under section 39.

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- (2) Before issuing guidance under this section the Commission must consult the governing body of each registered provider; and may consult the governing body of any other tertiary education provider in Wales as it considers appropriate.

Commencement Information

I16 S. 40 not in force at Royal Assent, see [s. 148\(2\)](#)

De-registration

41 De-registration

- (1) The Commission must remove a tertiary education provider from a category of the register if the Commission becomes aware that the provider—
- (a) is no longer a tertiary education provider in Wales, or
 - (b) no longer provides, or has provided on its behalf, the kind of tertiary education that relates to the category.
- (2) The Welsh Ministers may, by regulations, specify other circumstances in which a registered provider must be removed from one or more categories of the register or all categories of the register.
- (3) The Commission may remove a registered provider from a category of the register if condition A or B is satisfied.
- (4) Condition A is satisfied if—
- (a) the Commission has previously exercised its powers under section 39 (directions in respect of failure to comply with ongoing registration conditions) in relation to breach of one of the tertiary education provider’s ongoing registration conditions that apply to the category of registration, and
 - (b) it appears to the Commission that—
 - (i) there is again a breach, or a continuing breach, of that condition, or
 - (ii) there is or has been a breach of a different one of the provider’s ongoing registration conditions that apply to the category of registration.
- (5) Condition B is satisfied if it appears to the Commission that—
- (a) there is or has been a breach of one of the tertiary education provider’s ongoing registration conditions that apply to the category of registration, and
 - (b) its powers under section 39 are insufficient to deal with the breach (whether or not they have been, are being or are to be, exercised in relation to it).
- (6) The Welsh Ministers may, by regulations, make transitional or saving provision in connection with the removal of a tertiary education provider from a category of the register under this section.
- (7) Regulations under subsection (6) may include provision treating the tertiary education provider as a registered provider for such purposes as the regulations may specify.
- (8) The Commission must—

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- (a) maintain a list of tertiary education providers removed from a category of the register under this section,
- (b) include in that list reference to any regulations made under subsection (6), and
- (c) make the list publicly available by such means as it considers appropriate.

Commencement Information

I17 S. 41 not in force at Royal Assent, see [s. 148\(2\)](#)

PROSPECTIVE

42 De-registration: procedure

- (1) Before removing a registered provider from a category of the register under section 41, the Commission must notify the governing body of the provider that it proposes to do so.
- (2) The notice must specify—
 - (a) the Commission’s reasons for proposing to remove the provider from a category of the register,
 - (b) the period during which the governing body of the provider may make representations about the proposal (“the specified period”), and
 - (c) the way in which those representations may be made.
- (3) The specified period must not be less than 28 days beginning with the date on which the notice is received.
- (4) The Commission must have regard to any representations made by the governing body of the provider in accordance with the notice in deciding whether to remove it from a category of the register.
- (5) Having decided whether or not to remove the provider from a category of the register, the Commission must notify the governing body of the provider of its decision.
- (6) Where the decision is to remove the provider from a category of the register, the notice must specify the date on which the removal takes effect.
- (7) The notice must also specify—
 - (a) the grounds for the removal,
 - (b) information as to the right of review, and
 - (c) the period specified in regulations under section 79(4)(c) within which an application for review may be made.
- (8) A removal under section 41 may not take effect at any time when—
 - (a) an application for a review under section 45(c) or (d) could be brought in respect of the decision to remove, or
 - (b) a review or a decision by the Commission following such a review is pending.
- (9) But that does not prevent a removal taking effect if the governing body of the provider notifies the Commission that it does not intend to apply for a review.

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- (10) Where subsection (8) ceases to prevent a removal taking effect on the date specified under subsection (6), the Commission must determine a future date on which the removal takes effect.
- (11) But that is subject to what has been determined by the Commission following any review under section 45(c) or (d) in respect of the decision to remove.

Commencement Information

I18 S. 42 not in force at Royal Assent, see [s. 148\(2\)](#)

43 Voluntary de-registration and de-registration with consent

- (1) The Commission must remove a registered provider from a category of the register if—
- (a) the governing body of the provider applies to the Commission for the provider to be removed from that category of the register, and
 - (b) the application complies with any requirements imposed under subsection (6).
- (2) But if the application under subsection (1)(a) specifies that it is combined with an application under section 25(4)(a) for registration in another category, the duty in subsection (1) does not apply unless the condition in subsection (3) applies or both of the conditions in subsection (4) apply.
- (3) The condition in this subsection is that the Commission is required to register the provider in the other category in accordance with the application under section 25(4)(a).
- (4) The conditions in this subsection are—
- (a) that the Commission would be required to register the provider in the other category in accordance with the application under section 25(4)(a) were it not for the effect of section 25(4)(e) in relation to the categories of registration that are the subject of the application under subsection (1)(a) and section 25(4)(a), and
 - (b) that the Commission would be required to register the provider in the other category if the provider is removed from the category in respect of which the application under subsection (1)(a) is made.
- (5) The Commission may remove a registered provider from a category of the register if the governing body of the provider consents.
- (6) The Commission may determine—
- (a) the form of an application under subsection (1),
 - (b) the information to be contained in it or provided with it, and
 - (c) the way in which an application is to be submitted.
- (7) The Commission must notify the governing body of the provider of the date on which the provider is removed from the category of the register under this section (“the removal date”).

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- (8) The Commission may vary the removal date at any time before that date by notifying the governing body of the provider.
- (9) A removal under this section may not take effect at any time when—
 - (a) an application for a review under section 45(d) could be brought in respect of the decision to remove, or
 - (b) a review or a decision by the Commission following a such review is pending.
- (10) But that does not prevent a removal taking effect if the governing body of the provider notifies the Commission that it does not intend to apply for a review.
- (11) Where subsection (9) ceases to prevent a removal taking effect on the date specified under subsection (7), the Commission must determine a future date on which the removal takes effect.
- (12) But that is subject to what has been determined by the Commission following any review under section 45(d) in respect of the decision to remove.
- (13) The Welsh Ministers may, by regulations, make transitional or saving provision in connection with the removal of a provider from a category of the register under this section.
- (14) Regulations under subsection (13) may include provision treating the provider as a registered provider in that category for such purposes as the regulations may specify.
- (15) The Commission must—
 - (a) maintain a list of tertiary education providers removed from categories of the register under this section,
 - (b) include in that list reference to any regulations made under subsection (13), and
 - (c) make the list publicly available by such means as it considers appropriate.

Commencement Information

I19 S. 43 not in force at Royal Assent, see [s. 148\(2\)](#)

PROSPECTIVE

44 Change of registration category without application

Where a registered provider is removed from a category of the register under section 41(3) or 43(5), the Commission may register the provider in another category without an application under section 25(4)(a) if—

- (a) the governing body of the provider consents,
- (b) it continues to be a tertiary education provider in Wales,
- (c) it provides, or has provided on its behalf, the kind of tertiary education that relates to the other category,
- (d) it satisfies the initial registration conditions applicable to it in respect of the registration in the other category (see section 27), and

Status: Point in time view as at 15/12/2022. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2. (See end of Document for details)

- (e) registration in the other category is not prohibited by provision made in regulations under section 25(5).

Commencement Information

I20 S. 44 not in force at Royal Assent, see [s. 148\(2\)](#)

PROSPECTIVE

Registration decision reviews

45 Registration decision reviews

The governing body of a tertiary education provider may apply for a review by the decision reviewer of any of the following decisions —

- (a) a decision of the Commission to refuse to register the provider in a category of the register under section 25;
- (b) a decision of the Commission to impose or vary a specific ongoing registration condition on the provider under section 29;
- (c) a decision of the Commission to remove the provider from a category of the register under section 41;
- (d) a decision of the Commission as to the date specified under section 42(6) or section 43(7) or (8) as the date on which a removal of the provider from a category of the register takes effect.

Commencement Information

I21 S. 45 not in force at Royal Assent, see [s. 148\(2\)](#)

Fee limit statements

46 Requirements of a fee limit statement

- (1) A fee limit statement is a document that complies with this section.
- (2) A fee limit statement must—
 - (a) specify a fee limit, or
 - (b) provide for the determination of a fee limit,
 in relation to each qualifying course and in respect of each relevant academic year.
- (3) A fee limit statement may specify, or provide for the determination of, different fee limits in relation to different courses and in respect of different relevant academic years.
- (4) A fee limit statement must specify the date on which it begins to have effect and any variation of a fee limit statement must specify the date on which the variation begins to have effect.

Status: Point in time view as at 15/12/2022. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2. (See end of Document for details)

(5) In this Part—

- (a) a fee limit, in relation to a course, is a limit that the fees payable to the tertiary education provider by a qualifying person, in connection with the person’s undertaking the course, must not exceed;
 - (b) a relevant academic year, in relation to a course, is an academic year that is applicable to the course, and in respect of which fees are payable to the provider, and which begins on a day when the applicable provisions in the fee limit statement have effect.
- (6) Where a fee limit statement specifies a fee limit in relation to a year and course, the fee limit specified must not exceed whatever amount is specified in regulations made by the Welsh Ministers for the purposes of this section (“the maximum amount”).
- (7) Where a fee limit statement provides for the determination of a fee limit in relation to a year and course, the statement must specify that the fee limit determined in accordance with the statement is not to exceed the maximum amount.

Commencement Information

I22 S. 46 not in force at Royal Assent, see [s. 148\(2\)](#)

47 Approval of fee limit statement

- (1) The governing body of a tertiary education provider in Wales may apply to the Commission for the Commission’s approval of a proposed fee limit statement relating to the provider.
- (2) If an application for approval of a fee limit statement is made to the Commission, the Commission must by notice to the governing body concerned either—
- (a) approve the statement, or
 - (b) reject the statement.
- (3) The governing body of a provider with an approved fee limit statement may apply to the Commission for approval of a variation or replacement of the statement.
- (4) If an application for approval of a variation or replacement is made, the Commission must by notice to the governing body either—
- (a) approve the variation or replacement, or
 - (b) reject the variation or replacement.
- (5) An approved fee limit statement ceases to be approved if the provider to which it relates ceases to be registered in a category of registration specified under section 32(2)(b) to which the statement relates.
- (6) For procedural provision about notice under subsections (2)(b) and (4)(b), see sections 75 to 78.

Commencement Information

I23 S. 47 not in force at Royal Assent, see [s. 148\(2\)](#)

Status: Point in time view as at 15/12/2022. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2. (See end of Document for details)

PROSPECTIVE

48 Publication of approved fee limit statement

- (1) Where the Commission has approved a fee limit statement, the governing body of the provider to which the statement relates must publish the statement (and any approved variation or replacement of the statement).
- (2) In discharging its duty under subsection (1), the governing body must have regard to the need to make the statement easily accessible to students and prospective students.

Commencement Information

I24 S. 48 not in force at Royal Assent, see [s. 148\(2\)](#)

PROSPECTIVE

49 Validity of contracts

- (1) This section applies to a contract that provides for the payment of regulated course fees to a tertiary education provider, by a qualifying person and in connection with the person's undertaking a qualifying course, that exceed the applicable fee limit.
- (2) For the purposes of any rights and liabilities arising under the contract, and any proceedings in respect of those rights and liabilities, the contract is to be treated as providing for the payment of fees in an amount equivalent to the applicable fee limit.
- (3) Except as provided in subsection (2), the contract is not void or unenforceable in consequence of providing for the payment of fees exceeding the applicable fee limit.

Commencement Information

I25 S. 49 not in force at Royal Assent, see [s. 148\(2\)](#)

CHAPTER 2

QUALITY ASSURANCE AND IMPROVING QUALITY

PROSPECTIVE

General quality assurance functions

50 Quality assurance frameworks

- (1) The Commission may publish quality assurance frameworks.

Status: Point in time view as at 15/12/2022. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2. (See end of Document for details)

- (2) A quality assurance framework is a document setting out guidance and information on matters of policy and practice concerning—
- (a) criteria for assessing the quality of tertiary education;
 - (b) processes for assessing the quality of tertiary education;
 - (c) the roles and responsibilities of—
 - (i) persons assessing the quality of tertiary education,
 - (ii) providers of tertiary education as regards the quality of tertiary education, and
 - (iii) any other persons as regards the quality of tertiary education as the Commission considers appropriate;
 - (d) consideration of the views of learners about the quality of the tertiary education they receive;
 - (e) the professional development of members of the tertiary education workforce;
 - (f) any other matter the Commission considers relevant to assurance of the quality of tertiary education.
- (3) The Commission may revise, replace or withdraw any quality assurance framework published under this section.
- (4) Before publishing a framework (or any revised framework) or withdrawing a framework under this section, the Commission must consult—
- (a) each registered provider,
 - (b) Her Majesty’s Chief Inspector of Education and Training in Wales (“the Chief Inspector”), and
 - (c) any other persons the Commission considers appropriate.
- (5) The persons mentioned in subsection (6) must, so far as relevant to the exercise of their functions, have regard to a quality assurance framework published under this section.
- (6) The persons are—
- (a) the Commission;
 - (b) the Chief Inspector;
 - (c) a designated body (see section 56).
- (7) Nothing in this section affects the Commission’s other powers to issue guidance.
- (8) “Members of the tertiary education workforce” has the same meaning as in section 5.

Commencement Information

I26 S. 50 not in force at Royal Assent, see [s. 148\(2\)](#)

51 Duty to monitor, and promote improvement in, the quality of regulated tertiary education

The Commission must monitor, and promote improvement in, the quality of tertiary education—

Status: Point in time view as at 15/12/2022. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: *There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2. (See end of Document for details)*

- (a) provided by, or on behalf of, registered providers (so far as the tertiary education relates to the providers' categories of registration);
- (b) funded or otherwise secured by the Commission.

Commencement Information

I27 S. 51 not in force at Royal Assent, see [s. 148\(2\)](#)

52 Advice and assistance in respect of quality of tertiary education

- (1) This section applies to tertiary education, or a particular course of tertiary education—
- (a) provided by, or on behalf of, a registered provider,
 - (b) funded or otherwise secured by the Commission, or
 - (c) provided in Wales and not falling within paragraph (a) or (b).
- (2) The Commission may provide, or make arrangements for the provision of, advice or other assistance to any person for the purpose of—
- (a) improving the quality of the tertiary education or course, or
 - (b) preventing the quality of the tertiary education or course from becoming inadequate.
- (3) For the purposes of this section, the quality of tertiary education, or of a course of tertiary education, is inadequate if it is not adequate to meet the reasonable needs of those receiving the education or undertaking the course.

Commencement Information

I28 S. 52 not in force at Royal Assent, see [s. 148\(2\)](#)

53 Reviews relevant to quality of tertiary education

The Commission may carry out, or arrange for another person to carry out, a review of any matters that it considers relevant to the quality of tertiary education, or a particular course of tertiary education—

- (a) provided by, or on behalf of, a registered provider,
- (b) funded or otherwise secured by the Commission, or
- (c) provided in Wales and not falling within paragraph (a) or (b).

Commencement Information

I29 S. 53 not in force at Royal Assent, see [s. 148\(2\)](#)

Status: Point in time view as at 15/12/2022. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2. (See end of Document for details)

Assessment of quality in higher education

54 Assessment of quality of higher education

- (1) The Commission must assess, or make arrangements for the assessment of, the quality of higher education provided—
 - (a) by each registered provider;
 - (b) on behalf of each registered provider (whether by another registered provider or by an external provider).
- (2) The duty in subsection (1) applies to the assessment of higher education relating to the provider’s category of registration.
- (3) The Commission may assess, or make arrangements for the assessment of, the quality of higher education provided in Wales by any tertiary education provider.
- (4) The Commission must publish a report of each assessment carried out under this section.
- (5) The Welsh Ministers may, by regulations—
 - (a) require assessments under subsection (1) to be conducted at intervals specified in the regulations;
 - (b) require reports under subsection (4) to be published before the end of a period specified in the regulations.
- (6) Before making regulations under subsection (5), the Welsh Ministers must consult the Commission.
- (7) In this Part, references to an external provider are references to a person who—
 - (a) is not a registered provider, but
 - (b) is responsible for providing all or part of a course of higher education on behalf of a registered provider;and references to a governing body in relation to an external provider that is not an institution are references to the persons responsible for the provider’s management.
- (8) For the purposes of subsection (7)(b), the Welsh Ministers may make provision by regulations about the circumstances in which a person is (or is not) to be treated as responsible for providing a course (or part of it).

Commencement Information

I30 S. 54 not in force at Royal Assent, see [s. 148\(2\)](#)

PROSPECTIVE

55 Action plans following assessments under section 54

- (1) This section applies to assessments conducted under section 54(1)(a) and (b) and published in accordance with section 54(4).

Status: Point in time view as at 15/12/2022. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2. (See end of Document for details)

- (2) The governing body of a registered provider that provides the higher education assessed, or on behalf of which the higher education is provided (as the case may be), must—
- (a) prepare a written statement of the action it proposes to take in the light of the report and the period within which it proposes to take it;
 - (b) send the statement to the Commission and, if the assessment was conducted by a designated body, the designated body.
- (3) The governing body making the statement must publish it.
- (4) Compliance with the duties under subsections (2) and (3) is to be treated as an ongoing registration condition that applies to the registered provider for the purposes of section 39 (directions in respect of failure to comply with ongoing registration conditions) and section 41 (de-registration).

Commencement Information

I31 S. 55 not in force at Royal Assent, see [s. 148\(2\)](#)

PROSPECTIVE

56 Exercise of higher education assessment functions by a designated body

- (1) Schedule 3 makes provision—
- (a) about the designation of a body to exercise the assessment functions;
 - (b) about oversight of the designated body by the Commission;
 - (c) for the body to charge fees.
- (2) For the purposes of this Chapter, “the assessment functions” are the functions of the Commission under section 54 (assessing the quality of higher education).
- (3) Where a body has been designated under Schedule 3 to exercise the assessment functions, the functions under section 54 do not cease to be exercisable by the Commission.

Commencement Information

I32 S. 56 not in force at Royal Assent, see [s. 148\(2\)](#)

Inspection of further education or training etc.

57 Duty of the Chief Inspector to inspect and report

- (1) The Chief Inspector must inspect—
- (a) further education or training funded or otherwise secured by the Commission;
 - (b) further education or training funded or otherwise secured by the Welsh Ministers;

Status: Point in time view as at 15/12/2022. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2. (See end of Document for details)

- (c) further education or training funded by a local authority;
 - (d) further education or training where the Commission or a local authority is contemplating giving funding to the provider of the further education or training;
 - (e) education or training provided for persons of compulsory school age by a tertiary education provider in Wales that is an institution within the further education sector or the higher education sector;
 - (f) education or training provided in Wales and specified by the Welsh Ministers in regulations (if any).
- (2) Paragraphs (a), (b) and (c) of subsection (1) do not apply to—
- (a) education of a kind that may or must be inspected under Part 1 of the [Education Act 2005 \(c. 18\)](#) (school inspections), or
 - (b) if the funding mentioned in those paragraphs is given for a specific purpose, education or training at which that support is not directed.
- (3) The Chief Inspector must publish a report of each inspection carried out under this section including views on—
- (a) the quality of the education or training inspected,
 - (b) the standards achieved by those receiving that education or training, and
 - (c) whether the financial resources made available to the provider of the education or training are managed efficiently and used in a way which provides value for money.
- (4) The Welsh Ministers may, by regulations,—
- (a) require inspections under subsection (1) (except paragraph (d)) to be conducted at intervals specified in the regulations;
 - (b) require reports under subsection (3) to be made before the end of a period specified in the regulations.
- (5) Before making regulations under this section the Welsh Ministers must consult—
- (a) the Commission;
 - (b) the Chief Inspector.

Commencement Information

I33 S. 57 not in force at Royal Assent, see [s. 148\(2\)](#)

PROSPECTIVE

58 Power of the Chief Inspector to inspect and report

- (1) The Chief Inspector may inspect, and report on, any education or training described in section 57(1).
- (2) The Chief Inspector may inspect, and report on, any education or training—
- (a) which is not of a kind described in section 57(1), but
 - (b) which could be funded in one of the ways mentioned in that section, if the provider of the education or training asks the Chief Inspector to do so.

Status: Point in time view as at 15/12/2022. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2. (See end of Document for details)

- (3) The Chief Inspector may charge for the cost of an inspection conducted under subsection (2).
- (4) Subsections (3) to (5) of section 57 apply to a report under subsection (1) as they apply to a report under that section.
- (5) The Chief Inspector may arrange for a report of an inspection carried out as a result of a request under subsection (2) to be published.

Commencement Information

I34 S. 58 not in force at Royal Assent, see [s. 148\(2\)](#)

PROSPECTIVE

59 Duty to provide information and advice to the Commission

- (1) This section applies in relation to education or training described in section 57(1) that is funded or otherwise secured by the Commission.
- (2) The Chief Inspector must keep the Commission informed about—
 - (a) the quality of the education or training to which this section applies,
 - (b) the standards achieved by those receiving that education or training, and
 - (c) whether the financial resources made available to those providing it are managed efficiently and used so as to provide value for money.
- (3) When asked to do so by the Commission, the Chief Inspector must—
 - (a) give the Commission advice on such matters, relating to education or training to which this section applies, as the Commission may specify;
 - (b) inspect such education or training, or such class of education or training, to which this section applies as the Commission may specify;
 - (c) report on the result of an inspection conducted under this section.

Commencement Information

I35 S. 59 not in force at Royal Assent, see [s. 148\(2\)](#)

PROSPECTIVE

60 Duty to provide information and advice to the Welsh Ministers

- (1) This section applies in relation to education and training described in section 57(1) that is not funded or otherwise secured by the Commission.
- (2) The Chief Inspector must keep the Welsh Ministers informed about—
 - (a) the quality of the education or training to which this section applies,
 - (b) the standards achieved by those receiving that education or training, and

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Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2. (See end of Document for details)

- (c) whether the financial resources made available to those providing it are managed efficiently and used so as to provide value for money.
- (3) When asked to do so by the Welsh Ministers, the Chief Inspector must—
- (a) give the Welsh Ministers advice on such matters, relating to education or training to which this section applies, as the Welsh Ministers may specify;
 - (b) inspect such education or training, or such class of education or training, to which this section applies as the Welsh Ministers may specify;
 - (c) report on the result of an inspection conducted under this section.

Commencement Information

I36 S. 60 not in force at Royal Assent, see [s. 148\(2\)](#)

PROSPECTIVE

61 Additional functions of the Chief Inspector

- (1) The Welsh Ministers may, by regulations, confer other functions on the Chief Inspector in connection with the education or training described in section 57(1).
- (2) The functions conferred by the regulations may (among other things) include functions with respect to training of or for teachers, lecturers, trainers or other persons engaged in the provision of such education or training.

Commencement Information

I37 S. 61 not in force at Royal Assent, see [s. 148\(2\)](#)

PROSPECTIVE

62 Action plans following inspections by the Chief Inspector

- (1) This section applies if the Chief Inspector publishes a report of an inspection.
- (2) But it does not apply to a report of an inspection conducted—
 - (a) as a result of a request under section 58(2), or
 - (b) under section 63.
- (3) The person responsible for the management of the provider of the education or training which is the subject of the report must prepare a written statement of the action which the person proposes to take in the light of the report and the period within which the person proposes to take it.
- (4) The person making the statement must publish it.
- (5) Subsection (6) applies if—
 - (a) a person subject to the duties in subsections (3) and (4) is the governing body of a registered provider, and

Status: Point in time view as at 15/12/2022. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2. (See end of Document for details)

- (b) the education or training which is the subject of the report relates to the provider’s category of registration.
- (6) Compliance with the duties in subsections (3) and (4) is to be treated as an ongoing registration condition that applies to the registered provider for the purposes of section 39 (directions in respect of failure to comply with ongoing registration conditions) and section 41 (de-registration).
- (7) Subsection (8) applies if the education or training which is the subject of the report is funded by the Commission or the Welsh Ministers under Part 3 of this Act.
- (8) Compliance with the duties in subsections (3) and (4) is to be treated as a requirement of the terms and conditions of funding under this Act.

Commencement Information

I38 S. 62 not in force at Royal Assent, see [s. 148\(2\)](#)

VALID FROM 01/11/2023

63 Area inspections

- (1) The Chief Inspector may inspect—
 - (a) the quality and availability of a description of education or training, in a specified area in Wales, for persons who are aged 15 or over,
 - (b) the standards achieved by those receiving that education or training, and
 - (c) whether the financial resources made available to those providing that education or training are managed efficiently and used in a way which provides value for money.
- (2) The Chief Inspector must carry out an inspection of the type described in subsection (1) (“an area inspection”) if requested to do so by—
 - (a) the Commission;
 - (b) the Welsh Ministers.
- (3) The education or training that may be made the subject of an area inspection is any education or training described in section 57 or within the remit of the Chief Inspector as a result of any other enactment.
- (4) But the power to require the Chief Inspector to carry out an area inspection may only be exercised—
 - (a) in the case of the Commission, in respect of a description of education or training funded or otherwise secured by the Commission;
 - (b) in the case of the Welsh Ministers, in respect of a description of education or training other than education or training funded or otherwise secured by the Commission.
- (5) An area inspection may extend to considering—
 - (a) the manner in which any financial resources have been applied by a person described in subsection (6) in respect of the education or training inspected, and

Status: Point in time view as at 15/12/2022. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2. (See end of Document for details)

- (b) whether any such financial resources have been applied in a way which provides value for money.
- (6) The persons mentioned in subsection (5) are—
- (a) the Commission;
 - (b) the Welsh Ministers;
 - (c) a local authority.
- (7) The following persons must provide such information as the Chief Inspector may reasonably require in connection with the inspection—
- (a) persons responsible for the management of any provider of education or training which is the subject of an area inspection;
 - (b) any local authority within the area which is the subject of an area inspection;
 - (c) the Commission;
 - (d) the Welsh Ministers.
- (8) On completing an area inspection, the Chief Inspector must publish a report.
- (9) The Welsh Ministers may, by regulations—
- (a) make further provision with respect to the duty to provide information imposed by this section;
 - (b) require reports under subsection (8) to be published before the end of a period specified in the regulations.
- (10) For provision on reporting on sixth forms found to be causing concern in an area inspection, see sections 44C and 44E of the [Education Act 2005 \(c. 18\)](#).
- (11) In subsection (1)—
- “persons who are aged 15” (“*personau sy’n 15 oed*”) includes persons for whom education is being provided at a school who will attain that age in the current school year;
 - “specified” (“*penodedig*”) means—
 - (a) in the case of an area inspection requested under subsection (2), specified in the request;
 - (b) in the case of an area inspection carried out by the Chief Inspector other than by request, specified by the Chief Inspector.

Commencement Information

I39 S. 63 not in force at Royal Assent, see [s. 148\(2\)](#)

PROSPECTIVE

64 Right of entry and offences

- (1) When conducting an inspection under this Chapter, the Chief Inspector has, at all reasonable times—
- (a) a right of entry to premises on which the education or training being inspected is provided;

Status: Point in time view as at 15/12/2022. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2. (See end of Document for details)

- (b) a right of entry to premises of the provider of that education or training which are used in connection with that provision;
 - (c) a right to inspect, and take copies of, any records kept by that person, and any other documents containing information relating to the education or training, which the inspector requires for the purposes of the inspection.
- (2) In respect of education or training provided by an employer in the workplace, the right of entry conferred by subsection (1) may be exercised only if the employer has been given reasonable notice.
- (3) The right to inspect conferred by subsection (1)(c) includes the right to have access to, and to inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records or documents in question.
- (4) That right also includes the right to such assistance from—
- (a) the person by whom or on whose behalf the computer is or has been so used, or
 - (b) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material,
- as the Chief Inspector may reasonably require.
- (5) It is an offence wilfully to obstruct the Chief Inspector in the exercise of functions in relation to an inspection under this Chapter.
- (6) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (7) The powers conferred by this section do not include the power to enter a dwelling without the agreement of the occupier.
- (8) In this section, “premises” means premises in Wales or England.

Commencement Information

140 S. 64 not in force at Royal Assent, see [s. 148\(2\)](#)

PROSPECTIVE

65 Surveys and studies

- (1) The Commission may direct the Chief Inspector to carry out—
- (a) a survey of Wales, or of an area within Wales specified in the direction, in respect of matters specified in the direction relating to policy concerned with further education or training;
 - (b) a comparative study of the provision made outside Wales in respect of matters specified in the direction relating to further education or training.
- (2) The Chief Inspector may, without being directed to, carry out a survey or study of that kind.

Status: Point in time view as at 15/12/2022. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2. (See end of Document for details)

Commencement Information

I41 S. 65 not in force at Royal Assent, see [s. 148\(2\)](#)

PROSPECTIVE

66 Annual reports

- (1) The annual report of the Chief Inspector required by section 21(1)(a) of the [Education Act 2005 \(c. 18\)](#) must include an account of the exercise of functions of the Chief Inspector under this Chapter.
- (2) The power conferred by that section to make other reports includes a power to make reports with respect to matters relating to education or training described in section 57(1).

Commencement Information

I42 S. 66 not in force at Royal Assent, see [s. 148\(2\)](#)

PROSPECTIVE

67 Annual plan of the Chief Inspector

- (1) The Chief Inspector must, for each financial year, prepare a plan setting out estimates of—
 - (a) the expenditure necessary, in the financial year to which the plan relates, in order to secure that the functions of the Chief Inspector are exercised effectively, and
 - (b) the income which the Chief Inspector will receive in that financial year and which may be applied towards meeting the expenses of the Chief Inspector.
- (2) The plan must contain proposals for the management of any funds which may be provided to the Chief Inspector in that financial year under—
 - (a) section 68 of this Act (funding by the Commission), and
 - (b) section 104(4) of the [Government of Wales Act 1998 \(c. 38\)](#) (funding by the Welsh Ministers).
- (3) The plan must be submitted, for the purposes of consultation, to—
 - (a) the Commission, and
 - (b) the Welsh Ministers,by such time before the beginning of the financial year to which it relates as they may jointly direct.
- (4) The Chief Inspector may publish the plan after it has been approved by—
 - (a) the Commission, and
 - (b) the Welsh Ministers.

Status: Point in time view as at 15/12/2022. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2. (See end of Document for details)

Commencement Information

I43 S. 67 not in force at Royal Assent, see [s. 148\(2\)](#)

PROSPECTIVE

68 Funding of inspections and reports on further education and training etc.

- (1) The Commission must provide such funding to the Chief Inspector as it considers appropriate for the exercise of the Chief Inspector’s functions, so far as the functions relate to education or training that is funded or otherwise secured by the Commission.
- (2) In deciding what funding it considers appropriate, the Commission must have regard in particular to what the Commission considers the Chief Inspector needs to spend in order to exercise the functions.
- (3) Before the beginning of each financial year, the Commission must consult the Chief Inspector about the funding it is to provide to the Chief Inspector in that financial year.
- (4) The Commission must—
 - (a) approve such part (or parts) of the plan prepared by the Chief Inspector under section 67 as relate to functions in respect of which the Commission is required to provide funding under this section, and
 - (b) determine the amount of the funding it will provide under this section in accordance with the plan in so far as it is approved by the Commission.
- (5) But before it approves the plan under subsection (4) the Commission may require the Chief Inspector to modify the plan.
- (6) Section 104 of the [Government of Wales Act 1998 \(c. 38\)](#) is amended as follows—
 - (a) after subsection (1) insert—

“(1A) But the Welsh Ministers are not responsible for providing funding to the Chief Inspector for the discharge of the Chief Inspector’s functions under Chapter 2 of Part 2 of the Tertiary Education and Research (Wales) Act 2022 so far as they relate to education or training that is funded or otherwise secured by the Commission for Tertiary Education and Research.”;
 - (b) in subsection (4A), for paragraph (a) substitute—
 - (a) approve such part (or parts) of the plan prepared by the Chief Inspector under section 67 of the Tertiary Education and Research (Wales) Act 2022 as relate to functions in respect of which they are required to provide funding under this section, and”.

Commencement Information

I44 S. 68 not in force at Royal Assent, see [s. 148\(2\)](#)

Status: Point in time view as at 15/12/2022. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2. (See end of Document for details)

PROSPECTIVE

CHAPTER 3

FURTHER ENFORCEMENT AND PROCEDURAL PROVISIONS

Intervention in the conduct of further education institutions

69 Grounds for intervention

For the purposes of sections 70 and 71, the grounds for intervention in the conduct of a tertiary education provider in Wales that is an institution within the further education sector are as follows—

- (a) the provider's affairs have been or are being mismanaged by its governing body;
- (b) the provider's governing body has failed to comply with a duty under any enactment;
- (c) the provider's governing body has acted or is proposing to act unreasonably in the exercise of its functions under any enactment;
- (d) the provider is performing significantly less well than it might in all the circumstances reasonably be expected to perform, or is failing or likely to fail to give an acceptable standard of education or training.

Commencement Information

145 S. 69 not in force at Royal Assent, see [s. 148\(2\)](#)

70 Powers to intervene

- (1) If the Welsh Ministers are satisfied that one or more of the grounds for intervention exist in relation to a tertiary education provider in Wales that is an institution within the further education sector, the Welsh Ministers may give a direction to the provider's governing body.
- (2) Before giving a direction under this section, the Welsh Ministers must consult the Commission.
- (3) A direction under this section may—
 - (a) contain provision that has effect to remove all or any of the members of the provider's governing body;
 - (b) contain provision that has effect to appoint new members of that body if there are vacancies (however arising);
 - (c) specify steps that are (or are not) to be taken by the governing body for the purpose of dealing with the grounds of intervention.
- (4) A direction under subsection (3)(c) may (among other things) require the governing body—

Status: Point in time view as at 15/12/2022. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2. (See end of Document for details)

- (a) to exercise powers under section 5(2)(b) to (f) and (h) of the [Education \(Wales\) Measure 2011 \(nawm 7\)](#) to collaborate with such persons and on such terms as may be specified in the direction;
 - (b) to make a resolution under section 27A(1) of the [Further and Higher Education Act 1992 \(c. 13\)](#) (“the 1992 Act”) for the body to be dissolved on a date specified in the direction.
- (5) A governing body to which a direction such as is mentioned in subsection (4)(b) is given is to be taken for the purposes of section 27A(1) of the 1992 Act to have complied with section 27 of that Act before making the resolution required by the direction.
- (6) Directions may be given under this section despite any enactment making the exercise of a power or discharge of a duty contingent on a governing body’s opinion.
- (7) The Welsh Ministers may not direct a governing body under this section to dismiss a member of staff.
- (8) But subsection (7) does not prevent the Welsh Ministers, where they consider that it may be appropriate to dismiss a member of staff whom the governing body has power under the provider’s articles of government to dismiss, from giving the governing body such directions under this section as are necessary to secure that the procedures applicable to the consideration of the case for dismissal of that member of staff are given effect to in relation to that member of staff.
- (9) An appointment of a member of a governing body under this section has effect as if made in accordance with the instrument of government and articles of government of the provider concerned.

Commencement Information

I46 S. 70 not in force at Royal Assent, see [s. 148\(2\)](#)

71 Notification by the Commission of grounds for intervention

- (1) If the Commission is of the view that any one or more of the grounds for intervention exist in relation to a tertiary education provider in Wales that is an institution within the further education sector, the Commission must notify the Welsh Ministers of that view.
- (2) The Welsh Ministers must have regard to the Commission’s view in deciding whether to exercise the powers under section 70.

Commencement Information

I47 S. 71 not in force at Royal Assent, see [s. 148\(2\)](#)

72 Welsh Ministers’ statement on intervention powers

- (1) The Welsh Ministers must publish a statement setting out how they propose to exercise their powers under section 70.
- (2) The Welsh Ministers—

Status: Point in time view as at 15/12/2022. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2. (See end of Document for details)

- (a) must keep the statement under review;
 - (b) may revise it.
- (3) Before publishing the statement or a revised statement, the Welsh Ministers must consult such persons as they consider appropriate.
 - (4) As soon as possible after publishing the statement or revised statement, the Welsh Ministers must lay a copy of it before Senedd Cymru.

Commencement Information

148 S. 72 not in force at Royal Assent, see [s. 148\(2\)](#)

Access to information and facilities

73 Duty to co-operate

- (1) The governing body of an external provider must ensure that a person exercising a function by virtue of section 51, 53 or 54(1) is provided with such information, assistance and access to the external provider’s facilities, systems and equipment as the person reasonably requires for the purpose of exercising the function (including for the purpose of exercising any power under section 74).
- (2) The governing body of a provider of further education or training funded under section 97 must ensure that a person exercising a function by virtue of section 51 or 53 is provided with such information, assistance and access to the provider’s facilities, systems and equipment as the person reasonably requires for the purpose of exercising the function (including for the purpose of exercising any power under section 74).
- (3) In subsection (2)—
 - “the governing body” (“*y corff llywodraethu*”) means the person responsible for the provider’s management;
 - “provider of further education or training” (“*darparwr addysg bellach neu hyfforddiant*”) does not include a registered provider.
- (4) If the Commission is satisfied that a governing body has failed to comply with subsection (1) or (2), it may direct it to take (or not to take) specified steps for the purpose of securing the provision of information, assistance or access as described in subsection (1) or (2) (as appropriate).
- (5) For procedural provision about a direction under subsection (4), see sections 75 to 78.

Commencement Information

149 S. 73 not in force at Royal Assent, see [s. 148\(2\)](#)

74 Powers of entry and inspection

- (1) For the purpose of the exercise of a function by virtue of section 36, 38, 51, 53 or 54(1), an authorised person may—

Status: Point in time view as at 15/12/2022. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2. (See end of Document for details)

- (a) enter the premises of a registered provider;
 - (b) inspect, copy or take away documents found on the premises.
- (2) For the purpose of the exercise of a function by virtue of section 51, 53 or 54(1), an authorised person may—
- (a) enter the premises of an external provider;
 - (b) inspect, copy or take away documents found on the premises.
- (3) In subsections (1)(b) and (2)(b), references to—
- (a) documents include information recorded in any form;
 - (b) documents found on the premises include—
 - (i) documents stored on computers or electronic storage devices on the premises, and
 - (ii) documents stored elsewhere which can be accessed by computers on the premises.
- (4) The power conferred by subsections (1)(b) and (2)(b) includes power—
- (a) to require a person to provide documents;
 - (b) to impose requirements as to how documents are provided (which may include requirements to provide legible copies of documents stored electronically);
 - (c) to inspect a computer or electronic storage device on which documents have been created or stored.
- (5) A power conferred by this section may be exercised only after giving reasonable notice to—
- (a) the governing body of the registered provider or external provider in relation to whose premises the authorised person intends to exercise the power, and
 - (b) the governing body of any registered provider on whose behalf that provider or external provider provides the tertiary education to which the exercise of the relevant function mentioned in subsection (1) or (2) relates.
- (6) Subsection (5) does not apply to the exercise of a power if the authorised person is satisfied that—
- (a) the case is one of urgency, or
 - (b) complying with that subsection would defeat the object of exercising the power.
- (7) In this section, “authorised person” means a person authorised in writing by the Commission (whether generally or specifically) to exercise the powers conferred by this section.
- (8) Before exercising a power under this section, an authorised person must, if required to do so, produce a copy of the person’s authorisation under subsection (7).
- (9) The powers conferred by this section—
- (a) may be exercised at reasonable times only;
 - (b) may not be exercised to require a person to do anything otherwise than at a reasonable time.
- (10) The powers conferred by this section do not include power to enter a dwelling without the agreement of the occupier.

Status: Point in time view as at 15/12/2022. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2. (See end of Document for details)

(11) In this section, “premises” means premises in Wales or England.

Commencement Information

I50 S. 74 not in force at Royal Assent, see [s. 148\(2\)](#)

Warning and review procedure

75 Application of sections 76 to 78

(1) Sections 76 to 78 apply to—

- (a) a direction under section 39 (directions in respect of failure to comply with ongoing registration conditions);
- (b) notice under section 47(2)(b) (rejection of proposed fee limit statement);
- (c) notice under section 47(4)(b) (rejection of proposed variation or replacement of a fee limit statement);
- (d) a direction under section 73(4) (directions in respect of failure to co-operate).

(2) But those sections do not apply to a direction that provides only for the revocation of an earlier direction.

Commencement Information

I51 S. 75 not in force at Royal Assent, see [s. 148\(2\)](#)

76 Proposed notices and directions: requirement to give warning notice

(1) Before giving a governing body a notice or direction to which this section applies, the Commission must give the governing body a warning notice.

(2) The warning notice must—

- (a) set out the proposed notice or direction,
- (b) state the reasons for proposing to give it,
- (c) specify the period during which the governing body may make representations about the proposed notice or direction (“the specified period”), and
- (d) specify the way in which those representations may be made.

(3) The specified period must not be less than 28 days beginning with the date on which the notice is received.

(4) The Commission must have regard to any representation made by the governing body in accordance with the warning notice in deciding whether to give the notice or direction.

(5) Having decided whether to give the notice or direction, the Commission must notify the governing body of its decision.

Status: Point in time view as at 15/12/2022. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2. (See end of Document for details)

Commencement Information

I52 S. 76 not in force at Royal Assent, see [s. 148\(2\)](#)

77 Information to be given with notices and directions and effect pending review

- (1) If the Commission gives a governing body a notice or direction to which this section applies, the notice or direction must specify the date on which it takes effect.
- (2) The Commission must, at the same time it gives the notice or direction, give the governing body a statement specifying—
 - (a) the reasons for giving the notice or direction,
 - (b) information as to the right of review, and
 - (c) the period specified in regulations under section 79(4)(c) within which an application for review may be made.
- (3) A notice or direction to which this section applies may not take effect at any time when—
 - (a) an application for review under section 78 could be brought in respect of the notice or direction, or
 - (b) a review or a decision by the Commission following such a review is pending.
- (4) But that does not prevent a notice or direction taking effect if the governing body notifies the Commission that it does not intend to apply for a review.
- (5) Where subsection (3) ceases to prevent a notice or direction taking effect on the date specified under subsection (1), the Commission must determine a future date on which the notice or direction takes effect.
- (6) But that is subject to what has been determined by the Commission following any review under section 78 in respect of the notice or direction.

Commencement Information

I53 S. 77 not in force at Royal Assent, see [s. 148\(2\)](#)

78 Review of notices and directions

If the Commission gives a governing body a notice or direction to which this section applies, the governing body may apply for a review of the notice or direction by the decision reviewer.

Commencement Information

I54 S. 78 not in force at Royal Assent, see [s. 148\(2\)](#)

Status: Point in time view as at 15/12/2022. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2. (See end of Document for details)

79 Decision reviewer

- (1) The Welsh Ministers must appoint a person, or a panel of persons, to review decisions under sections 45 and 78.
- (2) The Welsh Ministers may pay remuneration and allowances to persons appointed under subsection (1).
- (3) The Welsh Ministers must, by regulations, make provision in connection with reviews by the decision reviewer under sections 45 and 78.
- (4) The regulations may, among other things, make provision—
 - (a) about the grounds on which the decision reviewer may make recommendations to the Commission;
 - (b) about the kinds of recommendation that may be made by the decision reviewer to the Commission;
 - (c) about the period within which, and the way in which, an application must be made;
 - (d) about the procedure to be followed by the decision reviewer;
 - (e) about steps to be taken by the Commission or the Welsh Ministers following a review.
- (5) In this Part, “the decision reviewer” means the person or panel of persons appointed under subsection (1).

Commencement Information

I55 S. 79 not in force at Royal Assent, see s. 148(2)

Miscellaneous duties

80 Duty to monitor and report on financial sustainability

- (1) The Commission must monitor the financial sustainability of—
 - (a) registered providers;
 - (b) tertiary education providers in Wales that—
 - (i) are institutions within the further education sector,
 - (ii) are funded by the Commission under section 97, and
 - (iii) are not registered providers;
 - (c) other tertiary education providers of a kind specified in regulations made by the Welsh Ministers.
- (2) The Welsh Ministers may, by regulations, provide for exceptions to subsection (1) (a) and (b).
- (3) The Commission must include in its annual report information about the financial position of the persons monitored under subsection (1) for the financial year to which the annual report relates.
- (4) At the same time the Commission sends its annual report to the Welsh Ministers, the Commission must send a separate report to the Welsh Ministers containing a

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Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2. (See end of Document for details)

summary of the financial outlook for the persons monitored under subsection (1) for the financial years following the financial year to which the annual report relates.

- (5) “A summary of the financial outlook” is a summary of conclusions drawn by the Commission, from its monitoring under subsection (1), regarding relevant patterns, trends or other matters which it has identified.
- (6) Patterns, trends or other matters are “relevant” if—
- (a) they relate to the financial sustainability of some or all of the persons monitored under subsection (1), and
 - (b) the Commission considers that they are appropriate to be brought to the attention of the Welsh Ministers.
- (7) In this section—
- “annual report” (“*adroddiad blynyddol*”) means the annual report under paragraph 16 of Schedule 1;
- “financial year” (“*blwyddyn ariannol*”) has the same meaning as in that Schedule (see paragraph 17).

Commencement Information

I56 S. 80 not in force at Royal Assent, see [s. 148\(2\)](#)

81 Commission’s statement on intervention functions

- (1) The Commission must publish a statement setting out how it proposes to exercise its intervention functions.
- (2) The Commission—
 - (a) must keep the statement under review;
 - (b) may revise it.
- (3) Before publishing the statement or a revised statement, the Commission must consult—
 - (a) the governing body of each registered provider, and
 - (b) any other persons it considers appropriate.
- (4) The Commission’s intervention functions are its functions under the following provisions—
 - (a) section 36 (duty to monitor compliance with ongoing registration conditions);
 - (b) section 37 (advice and assistance in respect of compliance with ongoing registration conditions);
 - (c) section 38 (reviews relevant to compliance with conditions);
 - (d) section 39 (directions in respect of failure to comply with ongoing registration conditions);
 - (e) section 41 (de-registration);
 - (f) section 51 (duty to monitor, and promote improvement in, the quality of regulated tertiary education);
 - (g) section 52 (advice and assistance in respect of quality of tertiary education);
 - (h) section 53 (reviews relevant to quality of tertiary education);

Status: Point in time view as at 15/12/2022. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2. (See end of Document for details)

- (i) section 73(4) (directions in respect of failure to comply with a duty to cooperate).

Commencement Information

I57 S. 81 not in force at Royal Assent, see [s. 148\(2\)](#)

Directions

82 Effect and enforcement of directions

- (1) If the Commission or the Welsh Ministers give a governing body a direction under this Part, the governing body must comply with the direction.
- (2) The direction is enforceable by injunction on the application of the person who gave the direction.
- (3) If requested to do so by the governing body, the person who gave the direction must give notice to the governing body stating whether the person is satisfied that it has complied with the direction (or with a particular requirement of the direction).
- (4) A direction given under this Part must be in writing.

Commencement Information

I58 S. 82 not in force at Royal Assent, see [s. 148\(2\)](#)

CHAPTER 4

GENERAL

83 Designation of other providers of tertiary education

- (1) The Welsh Ministers may, on the application of a provider of tertiary education within subsection (2), designate the provider for the purposes of this section.
- (2) A provider of tertiary education within this subsection is one that—
 - (a) provides tertiary education in Wales, but
 - (b) would not (but for the designation) be regarded as an institution for the purposes of this Act.
- (3) A provider of tertiary education designated under this section is, unless the designation is withdrawn, to be treated for the purposes of any provision made by or under this Act as being an institution.
- (4) The Welsh Ministers may, by regulations, make provision about—
 - (a) the making of applications for designation;
 - (b) the making of designations under this section (including provision about matters to be taken into account in determining whether to make a designation);

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Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2. (See end of Document for details)

- (c) the withdrawal of a designation (including provision about matters to be taken into account in determining whether to withdraw a designation);
- (d) the effect of a withdrawal of a designation (including provision for a provider whose designation is withdrawn to continue to be treated as an institution for prescribed purposes despite subsection (3)).

Commencement Information

I59 S. 83 not in force at Royal Assent, see s. 148(2)

84 Interpretation of Part 2

In this Part—

“academic year” (“*blwyddyn academaidd*”) means a period of 12 months;

“applicable fee limit” (“*terfyn ffioedd cymwys*”) has the meaning given by section 32(8);

“Chief Inspector” (“*Prif Arolygydd*”) means Her Majesty’s Chief Inspector of Education and Training in Wales;

“decision reviewer” (“*adolygydd penderfyniadau*”) has the meaning given by section 79(5);

“excess fees” (“*ffioedd uwchlaw’r terfyn*”) has the meaning given by section 39(7);

“external provider” (“*darparwr allanol*”) has the meaning given by section 54(7);

“fee limit” (“*terfyn ffioedd*”) has the meaning given by section 46(5);

“fee limit condition” (“*amod terfyn ffioedd*”) has the meaning given by section 32(3);

“fee limit statement” (“*datganiad terfyn ffioedd*”) has the meaning given by section 46(1);

“fees” (“*ffioedd*”) means fees in respect of, or otherwise in connection with, undertaking a course, including admission, registration, tuition and graduation fees, and fees payable to a tertiary education provider for awarding or accrediting any part of the course, but excluding—

- (a) fees payable for board or lodging;
- (b) fees payable for field trips (including any tuition element of such fees);
- (c) fees payable for attending any graduation or other ceremony;
- (d) any other fees specified in regulations made by the Welsh Ministers for the purposes of this definition;

“governing body” (“*corff llywodraethu*”), in relation to an external provider that is not an institution, has the meaning given by section 54(7) (see section 144 for the meaning of “governing body” generally);

“ongoing registration condition” (“*amod cofrestru parhaus*”) has the meaning given by section 25(10);

“qualifying course” (“*cwrs cymhwysol*”) means a course specified in regulations under section 32(4);

“qualifying person” (“*person cymhwysol*”) has the meaning given by section 32(9);

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“regulated course fees” (“*ffioedd cwrs rheoleiddiedig*”) has the meaning given by section 32(7);

“relevant academic year” (“*blwyddyn academaidd berthnasol*”), in relation to a tertiary education provider to which a fee limit statement relates, has the meaning given in section 46(5).

Commencement Information

I60 S. 84 not in force at Royal Assent, see [s. 148\(2\)](#)

Status:

Point in time view as at 15/12/2022. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:

There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, PART 2.