



Tertiary Education and Research (Wales) Act 2022

2022 asc 1

PART 2

REGISTRATION AND REGULATION OF TERTIARY EDUCATION PROVIDERS

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.

Status: Point in time view as at 15/12/2022. This version of this chapter contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, CHAPTER 3. (See end of Document for details)

Commencement Information

II 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—
 - (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.

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Commencement Information

I2 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

I3 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—
 - (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

I4 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,

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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

I5 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—

- (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

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

Commencement Information

I6 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

I7 S. 75 not in force at Royal Assent, see [s. 148\(2\)](#)

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Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, CHAPTER 3. (See end of Document for details)

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.

Commencement Information

I8 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.

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Commencement Information

I9 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

I10 S. 78 not in force at Royal Assent, see [s. 148\(2\)](#)

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

I11 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;

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- (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 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

I12 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.

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

Commencement Information

I13 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

I14 S. 82 not in force at Royal Assent, see [s. 148\(2\)](#)

Status:

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Changes to legislation:

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