



# Tertiary Education and Research (Wales) Act 2022

2022 asc 1

## PART 2

### REGISTRATION AND REGULATION OF TERTIARY EDUCATION PROVIDERS

#### CHAPTER 3

##### FURTHER ENFORCEMENT AND PROCEDURAL PROVISIONS

###### *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.

#### **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.

#### **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.

#### **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.

## **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).