



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

PROSPECTIVE

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: This version of this cross heading contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, Cross Heading: Intervention in the conduct of further education institutions. (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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Changes to legislation: There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, Cross Heading: Intervention in the conduct of further education institutions. (See end of Document for details)

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\(2\)](#)

Status:

This version of this cross heading contains provisions that are prospective.

Changes to legislation:

There are currently no known outstanding effects for the Tertiary Education and Research (Wales) Act 2022, Cross Heading: Intervention in the conduct of further education institutions.