

## **Explanatory Memorandum to the Commission for Tertiary Education and Research (Decision Review) (Wales) Regulations 2025.**

This Explanatory Memorandum has been prepared by the Education, Culture and Welsh Language Department and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Commission for Tertiary Education and Research (Decision Review) (Wales) Regulations 2025. I am satisfied that the benefits justify the likely costs

**Vikki Howells MS**  
**Minister for Further and Higher Education**  
**19 December 2025**

## **PART 1**

### **1 Description**

- 1.1 This Explanatory Memorandum (“EM”) relates to the Commission for Tertiary Education and Research (Decision Review) (Wales) Regulations 2025 (“the Regulations”) which are being made under the Tertiary Education and Research (Wales) Act 2022 (“the 2022 Act”).
- 1.2 The 2022 Act provides for the establishment of the Commission for Tertiary Education and Research (“the Commission”), which was established on 15<sup>th</sup> December 2022<sup>1</sup> and became operational on 1 August 2024. The Commission (which is now known as Medr) is responsible for promoting, funding, and regulating tertiary education and research in Wales.
- 1.3 Part 2 of the 2022 Act makes provision for a register of tertiary education providers in Wales (“the register”) which the Commission is responsible for establishing and maintaining. The register will be the mechanism by which appropriate and proportionate regulatory oversight is applied to registered higher education providers who are in receipt of public funds, including grant funding from the Commission, or who benefit from the automatic designation of their courses for Welsh Government tuition fee support.
- 1.4 To register with the Commission providers must satisfy a range of initial conditions of registration and once registered, comply with a range of ongoing registration conditions. The Commission is required to monitor compliance with the ongoing registration conditions, and the 2022 Act provides the Commission with a range of regulatory and intervention functions to support this activity. The 2022 Act also sets out the processes and procedures the Commission must follow when exercising these functions, including in relation to the issuing of notices of directions.
- 1.5 The 2022 Act provides that where the Commission decides to issue a notice or direction in reliance on certain of its regulatory powers, a tertiary education provider may request a review (‘decision review’). Decision reviews will be undertaken by an independent reviewer or panel of reviewers (decision reviewer(s)) appointed by the Welsh Ministers, as required by virtue of section 79(1) of the 2022 Act.
- 1.6 The 2022 Act also requires the Welsh Ministers to make provision through regulations in connection with the carrying out of reviews by the decision reviewer(s) appointed by the Welsh Ministers. The Regulations make this provision, setting out:
  - the procedure to be followed by the applicant when applying for a decision review

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<sup>1</sup> By virtue of the coming into force of section 1 of the 2022 Act by article 2(a) of the Tertiary Education and Research (Wales) Act 2022 (Commencement No. 1) Order 2022 SI 2022/1318.

- the steps the independent decision reviewer must take once an application is received,
- the recommendations that may be made by the decision reviewer and the grounds for those recommendations
- how the Commission is to respond to a recommendation from the decision reviewer
- the powers and duties of the decision reviewer, the applicant and the Commission during the review process

1.7 The Regulations will come into force on 25 December 2025.

## **2 Matters of special interest to the Legislation, Justice and Constitution Committee**

2.1 None.

## **3 Legislative Background**

3.1 The Regulations are made pursuant to sections 79(3) and (4) of the 2022 Act.

3.2 Section 79(3) requires the Welsh Ministers to make regulation in relation to decision reviews, with section 79(4) providing that such regulations may include, but are not limited to:

- Grounds for review.
- Recommendations to be made by the decision reviewer.
- The period within which a request for a review may be made, and the form in which the request must be made.
- The procedures and steps to be taken and
- Steps to be taken by the Commission (Medr) or the Welsh Ministers following a review.

3.3 Section 143(5) of the 2022 Act provides that the Regulations are subject to annulment in pursuance of a resolution of Senedd Cymru.

## **4 Purpose and intended effect of the legislation**

4.1 The establishment of a decision review process is intended to ensure providers have recourse to an independent review where the Commission issue notices or directions in reliance on certain of its regulatory powers.

4.2 The Welsh Government's policy objectives for making the Regulations are to ensure clarity for tertiary education providers in relation to the decision review process, allow providers adequate opportunity to present evidence and to ensure reviews can be completed in a timely manner. The Regulations are also intended to satisfy the duty placed on Welsh Ministers in the 2022 Act to make

Regulations making provision in connection with reviews by the decision reviewer(s).

4.3 The instances in which providers may request a decision review are set out in sections 45 and 78 of the 2022 Act and relate to the following circumstances:

- In respect of the registration system and the associated regulatory arrangements:
  - Refusing to register a provider
  - Imposing or varying a specific ongoing registration condition
  - Directing a provider in respect of failure to comply with ongoing registration conditions
  - Removing a provider from a category of the register
  - Specifying the date on which a provider is to be removed from a category of the register
  - Giving a notice rejecting a fee limit statement or a variation to such statement
- In respect of the quality assurance aspects of the regulatory arrangements, directing a provider in respect of failing to co-operate with the Commission (Medr) or a designated quality body.

4.4 The Regulations set out, at regulations 3 and 4, the procedure to be followed when applying for a decision review.

4.5 An application must be made in writing to the decision reviewer appointed by the Welsh Ministers, within 40 calendar days of the provider being notified by the Commission about its intended decision. An application must specify the grounds on which a review is sought and contain:

- a copy of the decision to be reviewed, including any reasons for the decision given by Medr, and
- any supporting information the applicant wishes the decision reviewer to take into account.

4.6 Regulations 6, 7 and 8 deal with the powers and duties of the decision reviewer, the applicant and Medr during the review process.

4.7 Regulation 6 provides that on receipt of an application the decision reviewer must send a copy of the application, along with any supporting information, to the Commission, and tell the applicant and the Commission ('the parties') how long the decision reviewer believes the review will take.

4.8 The decision reviewer may (regulation 7) also:

- request additional information from the parties, with the parties required to respond to any such request within 28 days, and
- invite the parties to make further representations in response to any additional information.

4.9 Where the decision reviewer requests additional information or representations from either Medr or the applicant, it must send the other part a copy of the request and any additional information or representations provided.

4.10 Once the review is completed, the decision reviewer must produce a written recommendation and send it to the parties (regulation 8). The recommendations a decision reviewer may make are set out in regulation 5, with those recommendations being that:

- the Commission should take no action, this applies where the decision reviewer finds no, or insufficient reason, for the Commission to reconsider the decision, or
- the Commission should reconsider its decision.

4.11 Regulation 5 specifies the circumstances where a decision reviewer may recommend the Commission should reconsider its decision, which are where:

- the Commission has failed to comply with procedural requirements as set out on the face of the 2022 Act or in regulations made under that Act,
- The applicant has provided new information. This may be specifically relevant where such information may provide a basis for the Commission to have reached a different decision,
- The decision reviewer finds the Commission has not considered any relevant fact, or
- The decision reviewer considers the decision to be disproportionate.

4.12 Regulation 9 provides that following receipt of a recommendation from the decision reviewer, the Commission must, if the decision reviewer so recommends, reconsider its decision. The Commission is also required to notify the applicant of the outcome of its reconsideration, including its reasons, within 40 days of receiving the recommendation from the decision reviewer.

4.13 The approach in the Regulations is broadly similar to the arrangements that were provided for by the Higher Education (Fee and Access Plans) (Notices and Directions) (Wales) Regulations 2015 and so will be familiar to most tertiary education providers in Wales.

## **5 Consultation**

5.1 A 14-week public consultation was undertaken on the draft Regulations between 31 October 2023 and 5 February 2024. The consultation also sought views on other Regulations now made in respect of the establishment of the register.

5.2 The consultation was drawn to the attention of a wide audience of key stakeholders with an interest in post-compulsory education and training. Two online stakeholder briefing sessions were held in November 2023 to support the consultation.

- 5.3 The main objective of these sessions was to assist stakeholder understanding of the purpose of the consultation and to enable stakeholders to consider the information included in the consultation document and respond to the consultation.
- 5.4 Respondents were invited to review the consultation questions via e-mail, postal questionnaire or an online form. A total of 21 consultation responses were received.
- 5.5 The consultation sought stakeholders' views on the draft Regulations with the majority of respondents agreeing with the arrangements proposed for decision reviews. As such no change were made to the draft Regulations following the consultation.
- 5.6 The consultation documents and a summary of the responses received are available at [Register of tertiary education providers: initial regulations](#)

## PART 2 – REGULATORY IMPACT ASSESSMENT

### 6 Summary

- 6.1 The Welsh Ministers Code of Practice on carrying out regulatory impact assessments was considered in relation to the Regulations. A Regulatory Impact Assessment is required and follows.
- 6.2 This Regulatory Impact Assessment (RIA) sets out the options considered in relation to the specifying of arrangements in relation to the undertaking of decision reviews and considers the scope, costs and benefits of providing for these arrangements through the making of regulations under the 2022 Act.
- 6.3 In preparing this RIA, two options have been considered, as follows:
- **Option 1:** Do nothing – the Welsh Ministers do not make the Regulations.
  - **Option 2:** The Welsh Ministers make regulations, setting out the arrangements for decision reviews.
- 6.4 **Option 2** was the stated policy intent when the 2022 Act was passed by the Senedd on the 28 June 2022 and was included in the Statement of Policy Intent which accompanied the Act on its introduction to the Senedd.
- 6.5 As detailed in section 5 of the EM, the Welsh Government consulted in February 2024 on the policy proposals and draft Regulations. The consultation focused upon **option 2**. This was the intent as providers of higher education need to understand what process will be followed should they request a review of a decision made by the Commission (Medr).
- 6.6 This RIA includes costings for both **option 1** and **2**, this is due to the ability of providers to request decision review being set out on the face of the 2022 Act, therefore decision review would remain even if the regulations were not made, albeit there would be no process or arrangements set out.
- 6.7 It must be noted that whilst categories of costs can be identified, costings are estimated on the basis of the average time it might take to go through the decision process and any follow up action that might be required as the result of a recommendation. Some decision reviews maybe more complicated and require additional time and resources. The RIA also includes the benefits for option 2.

#### Option 1

- 6.8 Under this option, the Welsh Ministers would be choosing not to make regulations as required under section 79(3) of the 2022 Act, in breach of their statutory obligation to do so, which would be unlawful.

6.9 The Welsh Ministers would still be required to appoint a decision reviewer or panel of decision reviewers, and providers would still be able to request a decision review in line with the provision of the 2022 Act.

#### Key advantages of option 1

6.10 Under this option no Welsh Government resource would be required to make regulations.

#### Key disadvantages of option 1

6.11 Whilst providers would still be able to request a review under the 2022 Act, there would be no established procedure in place to be followed, causing confusion for both providers and the Commission. This might also result in a resolution never being reached and increased costs compared to option 2.

6.12 A lack of defined arrangements for decision reviews also risks an inconsistent approach being adopted, increasing the risk that providers who request a decision review are treated differently with varying recommendations.

6.13 The decisions which may be subject to a decision review include matters such as the Commission choosing to refuse a provider's application to the register. A provider's registration status determines their eligibility to receive grant funding from the Commission and to have their higher education courses and as such any inconsistency in the decision review process risks providers being treated differently, which could ultimately impact on learners.

6.14 In addition, the Welsh Ministers would fail to satisfy their duty to make regulations setting out the process to be followed as required by section 79(3) of the 2022 Act).

### **Option 2**

6.15 This option has been the stated policy intent since the 2022 Act was introduced into the Senedd (as set out in the Statement of Policy Intent which accompanied the then Bill) and remained the stated policy intent when the 2022 Act was passed by the Senedd on the 28 June 2022.

6.16 This option would involve the Welsh Ministers making regulations under section 79(3) of the 2022 Act to specify the arrangements for decision reviews.

#### Key advantages of option 2

6.17 Option 2 will provide clarity as to the arrangements and processes that will support the decision review process and allow tertiary education providers to request a review of certain decisions made by the Commission.

#### Key disadvantages of option 2

6.18 Option 2 would require the development of policy and the making of regulations.

## 7 Costs

7.1 The costs of both options are explored as part of this RIA. Types of costs can be identified but estimates are provided based on an assumption of the number of days and resources that might be needed to undertake a routine review. The basis of these are the costs identified for the process as provided for in the 2015 Act. However, in some instances the costs might be more if the decision review is particularly difficult, whilst for simple reviews the costs might be less.

7.2 The estimated costs included within this RIA are associated with:

- the development of decision review process including guidance,
- the appointment of the decision reviewer / panel of decision reviewers,
- the remuneration of decision reviewer(s),
- the process of submitting a review,
- the provision of follow up information, and
- any follow up action as result of a recommendation to the Commission (Medr) to reconsider its initial decision.

7.3 Section 79(1) of the 2022 Act requires the Welsh Ministers to appoint a person or panel of persons to review decisions under sections 45 and 78 of that Act. The 2022 Act does not specify the number of decision reviewers required nor are there any requirement for the Welsh Ministers to use a specific appointment approach such as the public appointments process.

7.4 There will be a cost to the Welsh Government in relation to the recruitment of the decision reviewer(s), estimates of which are set out in table 1 below.

7.5 These costs will represent opportunity costs in respect of the Welsh Government staff responsible for preparing advertisement, reviewing applications and making appointment recommendations to the Welsh Ministers. Where possible existing channels for advertisements will be used to minimise any additional costs. The estimated cost for this process is approximately £10,400. Costs are set out in table 1 and are based on current top bands for civil service grades

*Table 1*

<b>Grade</b>	<b>Days</b>	<b>Cost</b>
SCS Band 1	4 days	£2,416
Grade 7	8 days	£3,568
SEO	9 days	£3,069
HEO	5 days	£1,360

7.6 The categories of costs outlined above will be repeated where either a reviewer/panel ends their tenure; or where it is determined a reviewer should be replaced.

7.7 There will also be ongoing Welsh Government costs related to the setting up of and administrative duties related to the panel. Costs will be predominantly staff time. Again, it is difficult to provide exact costs as they will depend on the number of reviews requested. However, this is likely to be approximately £1,360 per application. Costs are set out in table 2

*Table 2*

<b>Grade</b>	<b>Days</b>	<b>Cost</b>
HEO	5 days	£1,360

7.8 Section 79(2) of the 2022 Act provides for the Welsh Ministers to pay remuneration and or expenses of people appointed to review decisions. Whilst the level of remuneration has not yet been agreed it is likely to follow the current arrangement of daily rates set for public appointments, although the appointment of the reviewer/ panel of reviewers will not be considered a public appointment. This approach provides flexibility, with those appointed only receiving remuneration for the days which they spend assessing applications for review.

7.9 It is difficult to estimate the total costs for decision reviews as this will be dependent upon the number of reviewers appointed, the length and complexity of reviews and the number of reviews requested. Table 3 below sets out the minimum, median and upper costs per day based on the assumption of a panel of two reviewers being appointed<sup>2</sup> and in line with public appointment principles.

*Table 3*

<b>Minimum</b>	<b>Median</b>	<b>Upper</b>
£184	£564	£732

7.10 There will also be costs for Medr in terms of the review process, these may include providing additional information as required by the decision reviewer(s). Where a review concludes the Medr decision should be reversed, there may be additional administration costs for Medr related to reviewing the decision and registering the provider. It is difficult to provide an exact cost as this will depend on the number and complexity of reviews, as well as the staff that would need to be involved. Table 4 below provides a table of daily rates for Medr staff that may be engaged throughout the process.

*Table 4*

<b>Junior</b>	<b>Middle</b>	<b>Senior</b>	<b>Special<sup>3</sup></b>
£193	£300	£651	£337

7.11 There will also be costs for any registered provider requesting a decision review. The costs will be related to preparing and submitting an application for a

<sup>2</sup> Under the Higher Education Funding Wales Act (2015) two panel members were appointed to undertake decision reviews.

<sup>3</sup> Commission (Medr) Board Member

decision review; and responding to directions made through the process, including provision of additional information. It is likely that the costs will be predominantly opportunity costs related to staff time and administration costs. It is difficult to provide an exact cost as this will depend on the number and complexity of reviews, as well as the staff that would need to be involved.

## **8 Integrated Impact Assessment**

- 8.1 An Integrated Impact Assessment (IIA) produced following the public consultation, can be found [here](#). Whilst the IIA does not explicitly reference decision reviews, it does cover the public consultation that asked questions about the process. As the provision in respect of the arrangement for decision reviews form only part of the wider suite of provision in respect of the registration regime, we consider the IIA already published to be sufficient.

## **9 Competition Assessment**

- 9.1 The competition filter test has been completed. These regulations are not expected to have a significant impact on competition in Wales or the competitiveness of Welsh businesses.

## **10 Post Implementation Review**

- 10.1 A post-implementation evaluation of the 2022 Act will be undertaken by Welsh Government and similarly to the approach taken in respect of the 2015 Act, the Welsh Government will continue to work with the Commission, providers, and representative bodies.
- 10.2 A long-term plan to gather evidence of costs and benefits will be needed to provide a value for money assessment when the register, and associated regulatory arrangements, have been embedded. It is intended that these are reviewed at a three year and a five-year interval.