

Regulatory Approach and Intervention Powers

1 August 2026 to 31 July 2027



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1. Introduction

- 1.1. Medr monitors registered and funded providers' compliance with regulatory requirements and, in the event of non-compliance, we have statutory powers to intervene to address these issues. Registered providers are regulated through our Conditions of Registration and funded providers' through our Conditions of Funding. Some of our powers also apply to providers delivering on behalf of registered providers, which are referred to as 'external providers'. We also have some powers in respect of other tertiary education provision in Wales that is not delivered by a registered or funded provider.

What are the intervention powers and which apply to me?

- 1.2. The table below summarises the basis for the intervention powers that apply to different types of tertiary education and training provider including Higher Education (HE), Further Education (FE) and Other Tertiary Education and Training providers in Wales in receipt of Medr funding and other providers delivering provision in Wales. The types of provider listed below are not always mutually exclusive, with some providers likely to fall under more than one 'provider type'. This table flows from the provisions in the Tertiary Education and Research (Wales) Act 2022 ('TERA 2022'), with 'specified powers' being those defined interventions that are explicitly set out in TERA 2022, and other 'non-specified' interventions being those potential interventions that are not explicitly defined but are generally underpinned by the legislation.

Provider type	Basis for Intervention
Registered HE providers	<ul style="list-style-type: none">• All TERA 2022 specified intervention powers linked to relevant Ongoing Conditions of Registration• Other non-specified interventions linked to Conditions of Registration and funding powers
'External Providers' Franchise partners delivering on behalf of Registered HE providers	<ul style="list-style-type: none">• TERA 2022 specified intervention powers regarding Monitoring & Promotion of Improvement, Advice & Assistance and Reviews linked to the Condition of Registration in respect of Quality• TERA 2022 specified intervention powers regarding Directions in Respect of Failure to Cooperate
Regulated HE Institutions - until 31 July 2027 (see Part 2)	<ul style="list-style-type: none">• Remaining Higher Education (Wales) Act 2015 specified intervention powers linked to approved Fee and Access Plans• Other non-specified interventions linked to approved Fee and Access Plans
Non-funded HE providers with Specific Course Designation	<ul style="list-style-type: none">• Other non-specified interventions linked to Medr's Specific Course Designation monitoring function

Provider type	Basis for Intervention
FE Institutions that are not registered	<ul style="list-style-type: none"> • TERA 2022 specified intervention powers regarding Monitoring & Promotion of Improvement, Advice & Assistance and Reviews linked to the Condition of Funding in respect of Quality • TERA 2022 specified intervention powers regarding Directions in Respect of Failure to Cooperate • Other non-specified interventions linked to Conditions of Funding • Welsh Ministers' intervention powers specified by TERA 2022
Other funded tertiary education and training providers that are not registered	<ul style="list-style-type: none"> • TERA 2022 specified intervention powers regarding Monitoring & Promotion of Improvement, Advice & Assistance and Reviews linked to the Condition of Funding in respect of Quality • TERA 2022 specified intervention powers regarding Directions in Respect of Failure to Cooperate • Other non-specified interventions linked to Conditions of Funding
Funded School 6 th forms	<ul style="list-style-type: none"> • TERA 2022 specified intervention powers regarding Monitoring & Promotion of Improvement, Advice & Assistance and Reviews in respect of Quality • Other non-specified interventions linked to Conditions of Funding
Other tertiary education and training provision in Wales that is not delivered by a registered or funded provider	<ul style="list-style-type: none"> • TERA 2022 powers regarding Assessment of Quality and associated specified intervention powers regarding Advice & Assistance and Reviews in respect of Quality

- 1.3. **School sixth forms** are not covered by Medr's conditions of registration or funding because they are part of the existing funding and regulatory framework that applies to schools and their maintaining local authorities. Should intervention be necessary, engagement will be solely with the relevant local authority, not the school.
- 1.4. The intention is that these powers enable a degree of coherence in the approach to regulatory intervention across the tertiary education sector. This is particularly the case in respect of our approach to regulation of quality, within which some of our specified intervention powers apply to most tertiary providers. In some other areas of regulation, specified interventions for registered providers, linked to Conditions of Registration, are replicated for non-registered tertiary education providers as non-specified interventions linked to Conditions of Funding. In the case of FE Institutions, Medr's ability to undertake specified and non-specified interventions is backed up by Welsh Ministers' own specified intervention powers for these providers.

Why have we prepared this document?

- 1.5. Section 81 of the TERA 2022 requires us to publish a Statement setting out how we propose to exercise our intervention powers and to keep that Statement under

review. This document satisfies that requirement, providing a guide to our specified TERA 2022 intervention powers and how these will be used. For completeness, we have also included information on other non-specified interventions that we may use as an alternative to, a precursor to, or in parallel with, our specified interventions. Our use of intervention powers is informed by our regulatory philosophy, which is outlined in this document.

When will our powers apply?

- 1.6. Many of our intervention powers for providers of higher education link to Conditions of Registration under TERA 2022. The conditions will be introduced in two tranches, with the first conditions in effect from 1 August 2026 and the second tranche from 1 August 2027. This means that, whilst our intervention powers under TERA will apply in most areas from 1 August 2026, the powers will not apply in some areas until 1 August 2027. Those areas are highlighted in this document where appropriate.
- 1.7. The new Conditions of Funding for all other tertiary education providers will come into effect from 1 August 2026. These will supersede any previous Conditions of Funding from that point. This document is therefore intended to satisfy the consultation duty in section 66 of the Further and Higher Education Act 1992.
- 1.8. For providers of higher education who register with Medr, most regulatory requirements under the Higher Education (Wales) Act 2015 ('The 2015 Act') will cease on 31 July 2026, to be replaced by the first tranche of new register-linked TERA 2022 powers. However, as not all of the new powers will be introduced at the same time, the 2026/27 Academic Year will be a transitional year in which TERA 2022 registration conditions will be in place alongside certain remaining Fee and Access Plan regulatory requirements under the 2015 Act. For completeness, we have included both sets of powers in this document:
 - **PART 1** of this document covers the TERA 2022 specified intervention powers and other non-specified forms of intervention. Whilst **PART 1** includes all the TERA 2022 specified powers, we have highlighted where some areas are to be introduced within the second tranche of Conditions of Registration that take effect from 1 August 2027.
 - **PART 2** of this document does not materially differ from the statement already [published under the Higher Education \(Wales\) Act 2015](#). It has been included to explain how elements of that statement apply to registered providers (who are also regulated institutions) until fully superseded by the provision of TERA 2022. Formal consultation was undertaken on this statement prior to the introduction of the 2015 Act arrangements in 2017.
- 1.9. The full range of registration conditions for registered providers of higher education under TERA 2022 will come into effect from 1 August 2027. At that point all remaining Fee and Access Plan linked specified intervention powers under the 2015 Act will cease for those providers. We expect to re-issue a version of this document without **PART 2** in advance of the start of the 2027/28 Academic Year.

2. Our Regulatory Approach

- 2.1. Medr's regulatory approach sets out the guiding principles by which we will undertake our regulatory duties, with the aim of achieving our vision "...to enable a tertiary education and research system which is centred around the needs of learners, society and economy with excellence, equality and engagement at its heart." As the body accountable to Welsh Ministers for overseeing tertiary education, we are committed to regulating in a manner that is transparent, proportionate, consistent and risk-based, while being deeply aligned with our values of Dysgu (Learning), Cydweithio (Collaboration), Cynnwys Pawb (Inclusion), and Rhagori (Excellence).
- 2.2. Our approach is not just about enforcing standards, but also about working collaboratively with educational providers and stakeholders to achieve shared outcomes. This will be informed by data and other forms of evidence that help us to exercise judgement, accounting for the diversity of contexts and missions that shape tertiary education across Wales. We understand that the landscape of tertiary education is complex and dynamic, requiring a regulatory framework that is both robust and adaptable to the needs of learners, society and the economy.
- 2.3. Medr's regulatory philosophy, deeply aligned with our core values, integrates the strengths of both rules-based (compliance) and outcome-based regulation (continuous improvement). We want providers not only to comply individually with our regulatory requirements, but also advance the tertiary sector, to the benefit of Wales. In this context, we expect providers to maintain a sense of ownership of their responsibilities, possessing confidence to report issues of compliance when things go wrong, and seeking to continuously drive forward improvements.
- 2.4. This approach aims to deliver a robust, inclusive, and forward-looking tertiary education and research sector that is capable of meeting both present and future challenges.

2.5. Strategic Context

- 2.5.1. Our regulatory duties are empowered by the Tertiary Education and Research (Wales) Act 2022 (TERA 2022) and contribute to the delivery of the strategic aims in our Strategic Plan. This plan sets out our priorities for the next five years, informed by the strategic priorities of the Welsh Government, the Well-being of Future Generations (Wales) Act 2015 and the duties set out in TERA 2022. Medr is required to prepare a strategic plan setting out how it will address these priorities and how it will discharge the strategic duties given to it under the Act.
- 2.5.2. By aligning our regulatory approach with national priorities and expectations, our aim is for tertiary education providers to take responsibility for contributing positively to the broader social and economic objectives of Wales.

2.6. Strategic Aims

- 2.6.1. Underpinning our approach to the regulation of the sector, and through extensive consultation, we will discharge our regulatory duties in line with our strategic aims:
 - **To focus the tertiary education sector around the needs of the learner.**

- **Regulatory objective:** The interests of all types of learners are safeguarded by preventing poor educational practices or approaches to well-being.
- **Regulatory approach:** Medr will engage closely with learners and position their voice centrally within decision making. We will regulate in a way that expects providers to focus on, and be attentive to, the needs, experiences and outcomes of learners of all kinds.
- **To create a flexible and joined-up tertiary system where everyone can acquire the skills and knowledge they need for a changing economy and society.**
 - **Regulatory objective:** There is joined up regulation and funding across tertiary education, which improves equality of opportunity by minimising barriers to learner progression.
 - **Regulatory approach:** Medr will work with providers and employers to regulate in a way that reflects understanding of the labour market and that supports learners from all backgrounds to progress between different types of tertiary education and work throughout life, acquiring knowledge and skills that will enhance their lives.
- **To ensure learners receive the highest-quality provision in a tertiary education sector that strives for continuous improvement.**
 - **Regulatory objective:** A culture of continuous improvement that focuses on positive learner outcomes, raises baseline standards and reduces the likelihood of a poor quality experience.
 - **Regulatory approach:** Medr will work with providers to identify and uphold rigorous quality requirements for tertiary education, which provide confidence and drive enhancement, whilst advancing equality of opportunity. Our Quality Framework will expect providers to demonstrate high quality standards, considering their different contexts and missions as we apply a whole system approach, so there are improvements within individual providers and across tertiary education as a whole.
- **To grow internationally-acclaimed research and inspire innovation throughout the tertiary education sector.**
 - **Regulatory objective:** Safeguard both the integrity and capacity of research and innovation by preventing practices or conditions that could erode quality, reduce inclusivity, or undermine sustainability.
 - **Regulatory approach:** Medr will work with providers and government to support research and innovation which is sustainable and carried out with integrity. We will regulate in a way which expects providers to nurture research and innovation environments and cultures which are inclusive. By promoting equality of opportunity, we will enable more diverse participation in research and innovation careers.
- **To encourage greater use of the Welsh language, increasing demand for and participation in learning and assessment through the medium of Welsh.**
 - **Regulatory objective:** Increased access to quality Welsh medium provision helps safeguard the Welsh language and supports the Welsh Government's aspiration for a million Welsh speakers.
 - **Regulatory approach:** Medr will work with key stakeholders including the Coleg Cymraeg Cenedlaethol to develop a national plan for Welsh

medium tertiary education. Informed by that plan, we will regulate in a way that challenges providers to expand and improve provision, both in terms of its quality and accessibility, whilst also encouraging greater use of the language across all tertiary environments.

2.7. Our Regulatory Philosophy

- 2.7.1. Our regulatory philosophy is guided by a proportionate, risk-based approach that blends the clarity of rules-based regulation with expectations for continuous improvement across tertiary education in Wales. We will work closely with learners and providers on the design of our regulatory framework, including testing how our regulatory approach and systems will work across a variety of scenarios. We will provide clarity on our regulatory requirements, taking intervention and enforcement actions where we identify non-compliance or poor performance. We will also work with learners, providers and government to evaluate the effects of our regulatory approach, so we improve it over time to the benefit of Wales.
- 2.7.2. Our regulatory approach blends several aspects of those regulatory styles. We will set clear, enforceable rules that establish minimum expectations for compliance, ensuring providers understand their obligations and that non-compliance is addressed with proportionate intervention. Our risk-based approach means our actions will be proportionate to the performance and capacity of providers. This will enable us to scale oversight to reflect varying levels of risk and performance, and reciprocate trust with responsible providers whilst concentrating regulatory effort where it is most needed. At the same time, by focusing on a goals-based approach through measurable outcomes, we encourage providers to focus on achieving the shared aims we all have for learners in Wales. Central to this philosophy is a commitment to self-regulation and institutional responsibility, empowering providers to proactively manage risks and ensure accountability to their learners and stakeholders. Our philosophy is intended to deliver our vision and will be guided by our core values:
- 2.7.3. **Dysgu: Learning** runs throughout our regulatory approach, balancing the strengths of both rules-based and goal-based regulatory frameworks. A rules-based approach provides clear, consistent baseline standards for providers to follow, ensuring that all comply with essential requirements. By aligning this with goal-based regulation for appropriate conditions, we will also encourage providers to innovate in the context of their specific missions, and deliver continuous improvement.
- **Compliance and improvement:** Medr will promote a regulatory environment where providers are encouraged to learn and grow, meeting not just the baseline requirements but also pursuing broader, aspirational outcomes that contribute to the overall excellence of the Welsh tertiary education system.
 - **Responding to feedback:** To minimise uncertainty and bureaucracy, we will change our baseline regulatory requirements only selectively and following consultation, but we will also be self-reflective, seeking feedback from learners and providers about the effects of our regulation, so we can improve our approach over time.
- 2.7.4. **Cydweithio: Collaboration** is a cornerstone of effective regulation. By working closely with and involving stakeholders, we will set regulatory expectations that are not only understood and enforceable, but also consonant with the diverse missions of tertiary education across Wales. We also want through our regulation to promote

collaboration between providers, so there are clear pathways for learners, sharing of insights, good practice and resources, and duplication only where this is necessary to meet demand.

- **Regulatory design:** Medr will develop and test regulatory conditions in partnership with learners and providers, so there is the desired level of compliance and contribution to Medr's strategic priorities at the provider level and across the sector. This will help providers to align their own strategic outcomes with our regulatory requirements, and to understand how they could be delivered through collaboration with other providers and partnerships.
- **Shared outcomes:** Through collaboration, Medr and its partners, including other regulators and inspectorates as well as providers, will work towards common objectives, ensuring that the regulatory framework supports the collective ambition of improving educational outcomes for all learners in Wales.

2.7.5. **Cynnwys Pawb: Inclusion** requires that all learners have equal opportunities to benefit from high-quality educational experiences and outcomes. This includes fostering safe and inclusive learning environments, and also conducting our regulation in a way that is sensitive to the diversity of learners and tertiary provision across Wales.

- **Common standards:** Medr's rules-based approach requires that providers adhere to baseline requirements, so that all learners can have confidence about the provider in which they are studying.
- **Promoting improvement:** Providers will be challenged to set and achieve measurable outcomes, in the context of their particular missions, so they improve quality and equality of opportunity beyond the baseline requirements.

2.7.6. **Rhagori: Excellence** will be pursued across all aspects of Medr's work. We will support providers to deliver a tertiary education sector in Wales that not only meets current expectations, but also strives for continuous improvement and international competitiveness.

- **Expectations and accountability:** Our new regulatory system will establish high expectations for providers, the tertiary education sector and Medr itself. We will gather, communicate and act on data and other forms of evidence that help to understand performance across these levels.
- **Encouraging innovation:** Medr's approach to continuous improvement in context encourages providers to innovate and pursue excellence in ways that align with their unique strengths and aspirations, and achieve higher levels of performance, benefiting learners, society, and the economy.

2.8. Our Regulatory Principles

2.8.1. These are the principles which will provide a framework for how we establish and deliver our regulatory requirements.

1. **Clear guidance and resources:** We publish guidance with clear explanations of the requirements, enabling providers to meet both regulatory requirements and desired outcomes. Over time, this will include sharing examples of good practice across the tertiary education sector to drive continuous improvement.

2. **Transparent communication:** We communicate clearly about the implications of non-compliance, ensuring providers understand the consequences of failing to meet their regulatory duties. This transparency fosters a culture of accountability and encourages proactive compliance. We may publish information that highlights continuous improvement or issues of non-compliance and poor performance, where we consider it appropriate for the benefit of learners and the wider public.
3. **Minimising burden:** We consider the workload implications of our regulatory processes, including through insights from the tertiary education workforce, to help minimise bureaucracy and empower providers to focus on the delivery of tertiary education and research.
4. **Collaborative development of regulations and processes:** Medr works closely with stakeholders, including other regulators, inspectorates or relevant public bodies, to develop regulatory processes that are coherent with their own requirements. Through engagement and consultations, we ensure that our regulations are informed by those they affect, balancing the needs of providers with the requirements of the TERA 2022 legislation. This approach helps providers better understand and integrate regulatory expectations into their operations.
5. **Engagement:** We offer regular opportunities for providers to engage with us directly, through workshops, training sessions, meetings and other routes. This means that providers are well-equipped to comply with their obligations and can seek guidance whenever necessary.
6. **Proactive Monitoring and Feedback:** Drawing upon early self-reporting, we will continue to proactively monitor compliance, identifying potential issues early and working with providers to address them before they escalate. This preventive approach helps maintain high standards across the sector while minimising the need for statutory interventions. Our monitoring is targeted based on the nature of the requirement, our statutory duties, and the risk to learners and the public purse.
7. **Legal and Directive Action:** When necessary, Medr takes evidence-based targeted action to address non-compliance and poor performance. This may be through use of specified or non-specified statutory interventions, or combinations of these, as appropriate. Any such interventions are proportionate and conducted in a manner consistent with our values.
8. **Promotion of Best Practice:** Medr encourages providers to look beyond mere compliance, fostering a culture of evaluation and continuous improvement.
9. **Innovative and Responsive Approaches:** We continually review and improve our regulatory processes to adapt to changing circumstances, ensuring that our regulations remain effective, proportionate and relevant. This includes responding to new legislation and analysing data to anticipate and address long-term challenges for current and future generations of staff and learners.
10. **Resilience and Focused Action:** We are resilient in the face of challenges, maintaining focus on our statutory duties and strategic objectives, and providing consistency of direction for providers. We are committed to taking proportionate and timely action to secure compliance and excellence in tertiary education and training in Wales.

2.9. Our Expectations

2.9.1. At Medr, we are committed to working collaboratively with all providers to create an environment of continuous improvement, accountability, and excellence. In this spirit, we outline the following commitments and expectations that guide our collective efforts:

- **A Commitment to Compliance and Integrity:**
Providers are entrusted with the responsibility to deliver full compliance with regulatory requirements. This is not merely a matter of meeting obligations, but of encouraging trust and integrity across the sector. We expect institutions to take ownership of their compliance processes, embedding regulatory standards into their day-to-day operations and demonstrating a proactive approach to maintaining these standards.
- **Engagement with Regulatory Guidance**
Constructive engagement with Medr's guidance is key to maintaining a strong regulatory partnership. Providers should value the feedback and direction offered by the regulator and act promptly to address any areas of concern.
- **Transparency and Self-Reporting**
We encourage a culture of openness and transparency. When challenges arise, providers should feel confident in self-reporting any concerns or non-compliance in a timely manner. This "no surprises" approach demonstrates accountability and allows Medr to provide support where needed.
- **Proactive Risk Management and Mitigation**
A forward-thinking approach to risk management is essential for maintaining high standards. Providers are expected to establish internal governance structures that allow for the early identification and mitigation of risks.
- **Pursuing Continuous Improvement**
While meeting baseline regulatory standards is crucial, we encourage providers to aim higher. Continuous improvement should be at the heart of every institution's mission.
- **Collaboration with Stakeholders**
Education is a collaborative effort, and we expect providers to engage actively with their stakeholders, including learners, employers, and the wider community.
- **Respect for Regulatory Interventions**
When Medr provides feedback or suggests improvements, it is with the aim of helping institutions to meet our expectations. Providers are expected to embrace this guidance constructively, implementing any necessary changes to prevent issues from escalating.

PART 1: Our specified intervention powers under the Tertiary Education and Research Wales Act 2022 and other non-specified interventions

NOTE: For the 2026/27 Academic Year (1 August 2026 to 31 July 2027), the intervention powers in respect of Fee Limits and Equality of Opportunity for Registered Providers are covered by The 2015 Act powers in **PART 2**.

3. Monitoring and Ensuring Compliance

This section applies to: Registered Providers in both categories as applicable (all registration conditions), External Providers (Quality) and other Funded Further Education and Training Providers (all funding conditions, including Quality).

Registered providers

3.1. We monitor a provider's eligibility for registration and its compliance with initial Conditions of Registration as part of the process by which providers apply to become registered. These initial conditions, in effect from 1 August 2026, cover the following areas:

- Quality
- The effectiveness of governance and management (including financial management)
- Financial sustainability
- The effectiveness of arrangements for supporting and promoting the welfare of students and staff
- The effectiveness of validation arrangements
- Charitable status (core category only)
- Information provided to prospective students

The initial registration conditions, including the condition requirements and associated guidance for providers are published separately by Medr.

3.2. The application process for registration will include scrutiny of a range of information that is used to make a judgement on compliance. This includes, for example, information to evidence a provider's financial sustainability, the adequacy of its governance and management and the quality of its provision. Where necessary, Medr will seek additional information from a provider following the submission of its application, to help determine compliance. Further information on the application process for registration is published separately.

3.3. Once registered, providers must comply with ongoing registration conditions. These ongoing conditions cover the following areas. Unless otherwise stated, these ongoing conditions will come into effect from 1 August 2026:

- Quality
- The effectiveness of governance and management (including financial management)
- Financial sustainability
- The effectiveness of arrangements for supporting and promoting the welfare of students and staff
- The effectiveness of validation arrangements
- Notification of any change which affects the accuracy of the information contained in the provider's entry in the register

- Learner protection plans
- The Learner Engagement Code
- To have regard to advice or guidance given by the Commission (either specifically or to persons generally)
- Information, assistance and access to the provider's facilities, systems and equipment
- Fee limits (**In effect from 1 August 2027**). For 2026/27 this area is covered by The 2015 Act powers – see **PART 2** of this document for details
- Equality of opportunity (**In effect from 1 August 2027**). For 2026/27 this area is covered by The 2015 Act powers – see **PART 2** of this document for details
- Charitable status (core category only)
- Information provided to prospective students
- Welsh medium education
- Provider complaints processes

The ongoing registration conditions, including the condition requirements and associated guidance for providers are published separately. Registered providers may also be subject to additional conditions of funding, including in respect of Medr research and innovation funding. Further information on our funding conditions is published separately.

- 3.4. We undertake a range of monitoring, which is essential for us to be able to undertake our regulatory functions, with information from monitoring processes underpinning the potential to intervene in instances of non-compliance. The monitoring of compliance with ongoing registration conditions, and monitoring of the quality of tertiary education, will be undertaken through a number of means, but will include, for example: the consideration of annual monitoring and assurance returns submitted by the provider; the review of annual financial statements, forecasts and other financial information; the review of quality information, including any assessment or inspection reports; the analysis of a range of published performance data; the consideration of complaints received regarding the provider; and any serious incident reports that have been submitted. Whilst much of this monitoring information may be received on a cyclical basis, some monitoring information, such as complaints about providers and serious incident report submissions, may be received at any point in time.

External providers

- 3.5. We will monitor external providers' (providers delivering provision on behalf of regulated providers i.e. 'franchise' provision) compliance with quality registration condition requirements. This is regardless of where the external provider is located. Monitoring will be undertaken through the processes applied to registered providers.

Funded further education and training providers

- 3.6. Whilst it is likely that many FE colleges will be registered for their HE provision, for those funded further education and training providers that are not registered, we will

monitor their compliance with our funding conditions. These funding conditions include, amongst others, conditions in respect of:

- Quality
- The effectiveness of governance and management (including financial management)
- Financial sustainability
- The effectiveness of arrangements for supporting and promoting the welfare of students and staff
- Learner protection plans
- The Learner Engagement Code
- To have regard to advice or guidance given by the Commission (either specifically or to persons generally)

Further information on our funding conditions is published separately.

Funded School 6th forms

- 3.7. For 6th forms in maintained schools in Wales, we have a duty to monitor and promote quality. We will also monitor the statutory requirement for those 6th forms to comply with the Learner Engagement Code and any other funding conditions. Further information on our funding conditions is published separately.

Other tertiary provision in Wales

- 3.8. For other tertiary provision in Wales, that is not delivered by registered or funded providers, we may be alerted to quality issues. For higher education provision, this may be through quality assessments undertaken by Medr or on Medr's behalf.

When things go wrong

- 3.9. For all tertiary education and training providers in Wales, where monitoring has provided evidence of non-compliance with applicable conditions, this informs Medr's consideration of potential interventions as summarised at **Figure 1** below. We will take intervention action at any point we consider there to have been a breach, or likelihood of a breach, of any ongoing Condition of Registration by a Registered Provider or of any Condition of Funding for all other tertiary education and training providers. The type of intervention will be dependent on a range of factors, including:
- **Seriousness** – Who is impacted by the issue and the scale and severity of that impact. The impact may be viewed in terms of the scope and level of any harm to learners, staff, public funds, reputation etc.
 - **Persistence** – How long the issue has been ongoing and if the issue is a re-occurring one.
 - **Provider actions** – Actions the provider has taken to address the issue.

- **Context** - What our broader regulatory intelligence tells us.
- **Risk** – The risk posed by the provider and our risk appetite with regard to the issue.
- **Statutory duties** – The implications for Medr’s statutory duties.

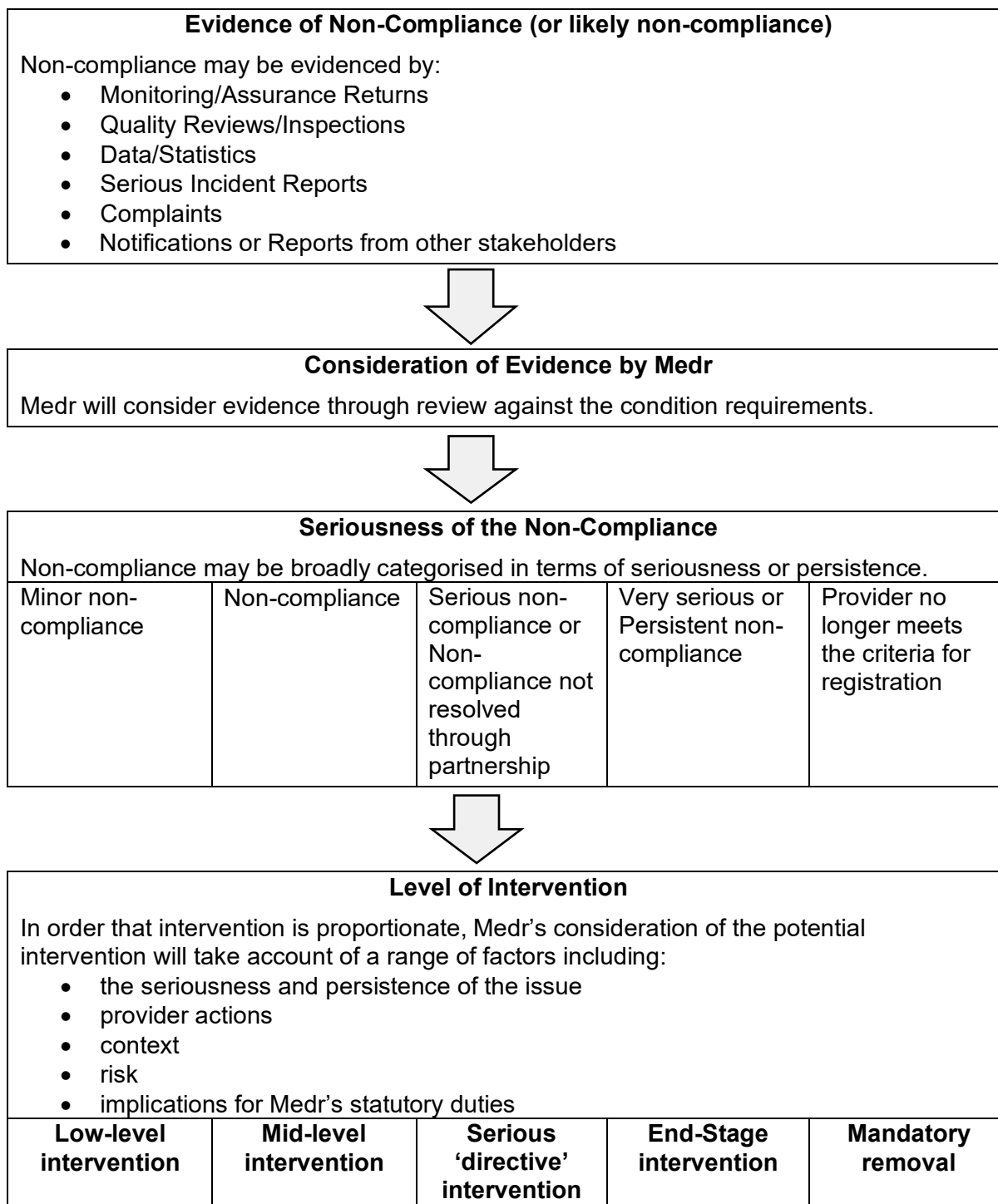
Medr will consider the above factors flexibly, along with any other relevant factors, and the weight attached to each of the factors may vary according to the facts of the case. Medr will respond to issues on a case-by-case basis.

- 3.10. In the case of external providers (providers delivering provision on behalf of registered providers) and other funded providers, we will take action as our intervention powers allow. We may intervene via a Registered Provider where an external provider, delivering provision on their behalf, has breached quality requirements. This is regardless of the location of that provision, meaning that external providers in Wales, elsewhere in the UK and overseas are covered by aspects of our monitoring and intervention powers.

NOTE: For Registered Providers, for the 2026/27 transitional year only (1 August 2026 until 31 July 2027), we will also take intervention action at any point we consider there to have been a breach, or likelihood of a breach, of our remaining regulatory requirements under The 2015 Act (Fee Limits and the General Requirements of Approved Fee and Access Plans). This only applies to Registered Providers that have an approved Fee and Access Plan. Those remaining statutory intervention powers under The 2015 Act are set out at **PART 2** of this document.

- 3.11. Intervention may take the form of a range of actions, including actions under the TERA 2022 powers. Section 81 of the TERA 2022 requires Medr to publish a Statement setting out how it proposes to exercise its intervention functions and to keep that Statement under review. This document (our regulatory approach and intervention powers) satisfies that requirement and, whilst the requirement relates to specified interventions in TERA 2022, for completeness, other non-specified interventions that may be used by Medr have also been included. These other interventions include the potential use of funding as a lever to drive compliance.

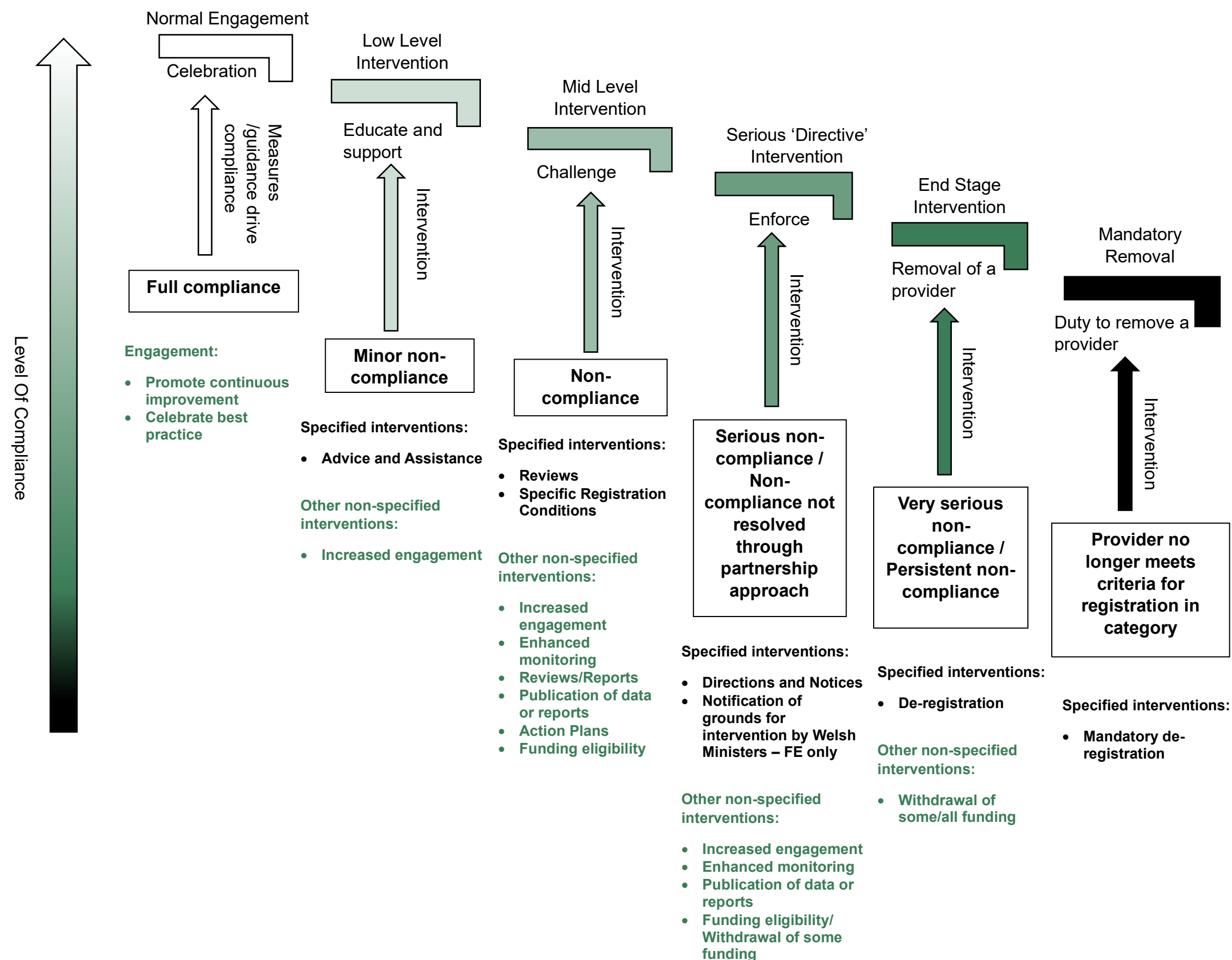
Figure 1. Consideration of Potential Interventions



3.12. **Figure 2** provides an overview of the spectrum of interventions that are available to Medr. For ease of reference, this spectrum has been presented as discrete Stages, although there may be some blurring and overlap between Stages in reality. Whilst this spectrum outlines Medr's intervention powers in a linear manner for clarity, they may be used in any order Medr chooses. It should be noted that the non-specified interventions in **Figure 2** do not represent an exhaustive list.

Figure 2. Spectrum of Regulatory Interventions

Interventions may be taken in any order and levels may be skipped as appropriate.



4. Interventions not specified in TERA 2022

This section applies to: Registered Providers (all registration conditions), External Providers (Quality) and other Funded Further Education and Training Providers (all funding conditions, including Quality).

4.1. Medr may utilise a range of levers that are not explicitly specified in TERA 2022 in order to drive compliance with ongoing registration conditions. These non-specified interventions include, amongst others:

- **Engagement - writing to and/or meeting a provider** – Engagement might include writing to and/or meeting the provider's Principal/Vice-Chancellor or other relevant senior manager (e.g. Director of Finance). Where appropriate, this may also include engagement with the Chair of the provider's governing body and/or relevant committee Chair (e.g. Audit Committee Chair), and potentially the wider governing body.
- **Requiring enhanced monitoring of a provider** – Where a specific non-compliance issue has been identified, increased engagement and monitoring may be undertaken to ensure that the provider is taking all reasonable steps to address the issues. Enhanced monitoring might take the form of a frequency of reporting and/or meetings that is greater than would be the case normally. It may also include the submission of additional information, that would not normally be required.
- **Commissioning a review or report** – Medr may commission a review or report where further information is required regarding the compliance issues at a provider. Such a review or report could inform the actions to be taken by the provider to address non-compliance and potentially inform further action by Medr, including a decision whether to initiate statutory intervention.
- **Requesting an action plan** – Medr may request that the provider develops an action plan to address specific areas of concern. Medr might expect that the provider's governing body plays a role in approval and oversight of the plan, with the delivery of the plan monitored by Medr or its agents. In the event that the provider is unsuccessful in the delivery of its action plan, that might inform a decision by Medr on whether to initiate statutory intervention.
- **Publishing data, plans or reports** – Medr may publish information that highlights a provider's non-compliance, where it is considered appropriate. Amongst other forms of information, that might take the form of data, such as performance data. It might also take the form of action plans to address non-compliance and reports, such as the report of any review commissioned by Medr. Publication may be undertaken by Medr or by bodies acting on Medr's behalf. Publication of such information may serve to highlight failings, thereby helping other providers to avoid similar situations, and act as an incentive for the provider to address its non-compliance. The publication of information may also be undertaken alongside interventions specified by TERA 2022.
- **Sharing with other regulators** – Where appropriate, Medr will share information on a provider's non-compliance with other regulators. Medr also has a duty to make certain government bodies aware of relevant non-compliance (e.g. UKVI, Prevent etc.).

- **Using funding** – Published Medr funding conditions or thresholds may render a non-compliant provider ineligible for certain relevant types of Medr funding. This may be done to protect public funds and/or to act as an incentive for the provider to address its non-compliance. Medr’s use of its funding powers may be scaled such that more serious non-compliance results in a proportionately greater ineligibility for Medr funding.

4.2. Non-specified interventions, such as the examples set out above, may form the main means by which Medr may enforce Conditions of Funding for non-registered tertiary education and training providers. They may form a potential alternative to those mid-level interventions specified in TERA 2022 (where those interventions are available) and may also act as a precursor to such interventions. For example, a provider might be given the opportunity to deliver against an action plan, with subsequent failure to deliver against that plan leading to the triggering of an intervention specified in TERA 2022. The use of non-specified levers, including enhanced monitoring and those linked to funding, may also be undertaken in parallel with use of specified intervention powers in order to complement those interventions and drive compliance. For funded providers that are not on the register, the use of funding powers may be the most severe intervention that can be applied by Medr (For further education providers, more severe interventions specified in TERA 2022 may also be undertaken by Welsh Ministers in consultation with Medr).

5. Interventions specified in TERA 2022

- 5.1. There are a range of interventions explicitly specified in TERA 2022 that Medr may utilise to deal with non-compliance, or likelihood of non-compliance, by a provider. These intervention functions are set out at Section 81 of the TERA 2022 as the powers in the following sections of the Act:
- (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 co-operate).

These powers are detailed in [Figure 2](#) in ascending order of severity and, where appropriate, powers have been grouped together for ease of reference.

- 5.2. Whilst the above interventions all relate to registered providers, advice and assistance in respect of quality and reviews in respect of quality also apply to:
- External providers (providers delivering provision on behalf of registered providers);
 - Funded further education and training providers that are not on the register; and
 - Other tertiary provision in Wales that is not being delivered by registered or funded providers.

Directions in respect of failure to comply with a duty to cooperate may be used at any point where an external provider or funded further education and training provider (not including registered providers) has failed to provide information, assistance and access to its facilities, systems and equipment as we, or our agents, reasonably require for the purpose of exercising our functions. **In each section below we have referenced the types of provider to which the intervention powers apply.**

- 5.3. Where we intend to use our specified intervention powers this will be communicated clearly and transparently to the provider. Medr is required by the TERA 2022 to publish notice of certain interventions, but Medr may also decide to publish information on other interventions, and the related compliance issues, where it considers that to be appropriate and reasonable. Publication may also be undertaken by other bodies acting on Medr's behalf. Whilst Medr will give consideration to the potential risks to a provider associated with the publication of information on any intervention, this must be balanced against wider considerations including, for example, the need to encourage compliance and drive continuous improvement.

5.4. Monitoring and Promotion of Improvement

This section applies to: Registered Providers (all Ongoing Registration Conditions), External Providers (Quality only) and Other Funded Providers - including Funded FE and Training Providers and School 6th Forms (Quality only).

- 5.4.1. As set out above, Medr undertakes monitoring in respect of compliance with ongoing registration conditions and the quality of regulated tertiary education.
- 5.4.2. **Ongoing registration conditions** - Section 36 of the TERA 2022 imposes a legal duty on Medr to monitor compliance with ongoing registration conditions by registered providers. This means that providers will be monitored against the requirements of their particular category of registration. As noted in section 3.4, much of Medr's monitoring activity in respect of compliance with ongoing Conditions of Registration will be cyclical and routine in nature. Whilst such routine monitoring is not, strictly speaking, an intervention, enhanced monitoring may be undertaken where concerns have been identified. This enhanced monitoring may underpin further intervention action. Where monitoring identifies areas for improvement, or examples of good practice, Medr may also issue advice or guidance to help drive compliance.
- 5.4.3. **Quality** - Section 51¹ of the TERA 2022 imposes a legal duty on Medr to monitor, and promote improvement in, the quality of regulated tertiary education. This includes tertiary education:
- (a) provided by, or on behalf of, registered providers (so far as the tertiary education relates to the providers' categories of registration); or
 - (b) funded or otherwise secured by Medr

Consequently, this monitoring and promotion of improvement duty in respect of quality applies to all tertiary education providers in Wales that are registered or subject to Medr's Terms and Conditions of Funding. Further details on Medr's arrangements for monitoring, and promoting improvement in, the quality of tertiary education are set out in Medr's Quality Framework.

¹ Section 51 of TERA 2022 does not extend to providers funded under section 65 of FHEA 1992 - Whilst the duty doesn't extend to providers funded under section 65, Medr is still able to exercise section 53 of TERA 2022 in relation to those providers.

5.5. Advice and Assistance

This section applies to: Registered Providers (all Ongoing Registration Conditions), External Providers (Quality only), Other Funded Providers - including Funded FE and Training Providers and School 6th Forms (Quality only) and Other Tertiary Provision in Wales that is not delivered by a registered or funded provider (Quality only).

- 5.5.1. A key lower-level intervention power is the ability for Medr, or its agents, to provide advice or assistance to providers, in order to address non-compliance or the likelihood of non-compliance. These powers set out in Sections 37 and 52 of the TERA 2022 are detailed below.
- 5.5.2. **Ongoing registration conditions** - Registration Section 37 of the TERA 2022 enables Medr to 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. Medr may provide this advice or assistance itself or commission another body to provide this advice or assistance on its behalf. The governing body of the provider must have regard to the advice or guidance that is given by Medr (or on Medr's behalf), with this forming a mandatory ongoing condition of registration. The advice may take the form of advice given specifically to that provider or more generally (e.g. to all registered providers or certain types of provider).
- 5.5.3. **Quality** - Section 52 of the TERA enables Medr to 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. Consequently, providers should expect that Medr may intervene by providing advice and guidance in instances where the quality of education is at risk of becoming inadequate. The quality of tertiary education, or of a course of tertiary education, is defined as inadequate if it is not adequate to meet the reasonable needs of those receiving the education or undertaking the course. This power to provide advice and assistance in respect of quality applies to tertiary provision:
- (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 under either (a) or (b) – This is provision that is not being delivered by a registered or funded provider.

Consequently, this intervention power in respect of quality may be used for: registered providers, and their partners delivering provision on their behalf; all funded tertiary education providers including HE providers, FE providers, apprenticeship providers, adult learning providers, school sixth forms etc.; and all other providers delivering tertiary education in Wales. The governing body of the provider must have regard to the advice or guidance that is given by Medr (or by Medr's agent on Medr's behalf). For those providers that are registered, this forms a mandatory ongoing condition of registration. The advice may take the form of advice given specifically to that provider or more generally (e.g. to all registered providers or certain types of provider). Further details on Medr's arrangements for providing advice and assistance in respect of the quality of tertiary education are set out in Medr's Quality Framework.

5.6. Reviews

This section applies to: Registered Providers in both categories (all Ongoing Registration Conditions), External Providers (Quality only), Other Funded Providers - including Funded FE and Training Providers and School 6th Forms (Quality only) and Other Tertiary Provision in Wales that is not delivered by a registered or funded provider (Quality only).

- 5.6.1. **Ongoing registration conditions** - Section 38 of the TERA 2022 enables Medr to carry out, or commission someone else to carry out, a review of any matters that it considers relevant to compliance by a registered provider with its ongoing registration conditions. Reviews may be general in nature, or for a particular purpose. Medr may use the outcome of an investigation to inform general activities it undertakes. It may also form part of a regulatory action Medr decides to take, potentially being needed to provide the detailed evidence base that informs more serious regulatory action.
- 5.6.2. **Quality** - Section 53 of the TERA 2022 enables Medr to carry out, or commission someone else 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 Medr; or
 - (c) provided in Wales and not falling within paragraph (a) or (b).

Consequently, this intervention power in respect of quality may be used for: registered providers, and their partners delivering provision on their behalf; all funded tertiary education providers including HE providers, FE providers, apprenticeship providers, adult learning providers, school sixth forms etc.; and all other providers delivering tertiary education in Wales. Further details on Medr's arrangements for reviews in respect of the quality of tertiary education are set out in Medr's Quality Framework.

5.7. Specific Ongoing Conditions of Registration

This section applies to: Registered Providers only (all Initial and Ongoing Registration Conditions)

5.7.1. **Specific ongoing conditions** - Section 29 of the TERA 2022 enables Medr to impose specific ongoing Conditions of Registration on a provider. As illustrated by **Figure 1**, this will normally be done if Medr identifies non-compliance with Conditions of Registration. The judgement on the circumstances that warrant imposition of specific ongoing registration conditions, and the form of any conditions, will be made by Medr. Medr does not need to have undertaken other forms of informal or formal intervention prior to imposing specific ongoing Conditions of Registration, although these may also represent an escalation from previous intervention. Medr may impose these conditions:

- At the point of initial registration, where there is identified non-compliance with initial registration conditions, but where it would be disproportionate to refuse registration.
- On an already registered provider, at any point where non-compliance with ongoing Conditions of Registration has been identified and formal action is warranted to address the issues.

Once imposed, Medr may vary or remove a specific ongoing registration condition at any time.

5.7.2. The process for imposing specific ongoing Conditions of Registration is set out below and in the subsequent flow chart.

Stage 1: Initial notice and provider representations

5.7.3. Medr must formally notify the governing body of the provider before imposing, varying or removing specific ongoing registration conditions. The notice to the governing body must:

- (a) specify Medr's reasons for proposing to impose the special ongoing condition(s) of registration,
- (b) specify the period during which the governing body of the tertiary education provider may make representations about the proposed conditions (not less than 28 days beginning with the date on which the notice is received), and
- (c) specify the way in which those representations may be made.

Medr must have regard to any representations made by the governing body of the provider in deciding whether to impose the specific ongoing Conditions of Registration.

Stage 2: Notification, publication and decision reviews

5.7.4. Once Medr has decided whether or not to impose a new specific ongoing registration condition, or to vary or remove an existing specific ongoing registration condition, it must formally notify the provider's governing body of its decision, and publish the notice. Publication of notices of this type will normally be on Medr's

website, with the precise location of publication to be determined by Medr. The notice to the governing body must:

- specify the new condition, the condition as varied or the condition being removed, as appropriate, and
- specify the date when the imposition, variation or removal takes effect.

Where the notice to the provider's governing body 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 within which an application for a decision review may be made (see below).

5.7.5. The governing body of a provider may apply for a review by the Decision Reviewer of Medr's decision to impose, or vary, a specific ongoing registration condition on the provider. The Decision Reviewer is a person or panel of persons appointed by Welsh Ministers. The arrangements for decision reviews are set out in The Commission for Tertiary Education and Research (Decision Review) (Wales) Regulations 2024 and are as follows:

The application process and the period within which an application must be made

5.7.6. An application for a decision review must be made in writing by the provider's governing body within 40 days of the Medr decision to impose or vary a specific ongoing registration condition on the provider. The 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 provider's governing body wishes the Decision Reviewer to take into account.

Procedure to be followed by the Decision Reviewer

5.7.7. On receipt of an application for a decision review, the Decision Reviewer must send Medr a copy of the application and any supporting information, and tell Medr and the provider's governing body (i.e. both parties) how long it believes the review will take.

5.7.8. The Decision Reviewer may request additional information from the parties and invite each to make further representations in response to any additional information submitted by the other party. Medr and the provider's governing body must respond to any request for additional information within 28 days of receiving the request. If the Decision Reviewer requests additional information or representations from either party, it must send the other party a copy of:

- 1) any request it has made for additional information or representations, and
- 2) any additional information or representations that have been provided.

The Decision Reviewer must produce a written recommendation and send it to both Medr and the provider's governing body.

Recommendations that may be made by the Decision Reviewer

5.7.9. The Decision Reviewer may recommend that Medr:

- 1) take no action, where the Decision Reviewer finds no or insufficient reason for Medr to reconsider its decision, or
- 2) reconsiders its decision, where:
 - i. Medr has failed to comply with a procedural requirement,
 - ii. The provider has provided new information,
 - iii. the Decision Reviewer finds the Medr has not considered any relevant fact, or
 - iv. the Decision Reviewer considers the decision to be disproportionate.

Steps to be taken by Medr or the Welsh Ministers following a review

5.7.10. On receipt of a recommendation from the Decision Reviewer, Medr must:

- 1) reconsider its decision, if recommended to do so, and
- 2) notify the provider's governing body of the outcome of its reconsideration, including its reasons, within 40 days of receiving the recommendation.

Stage 3: Conditions taking effect

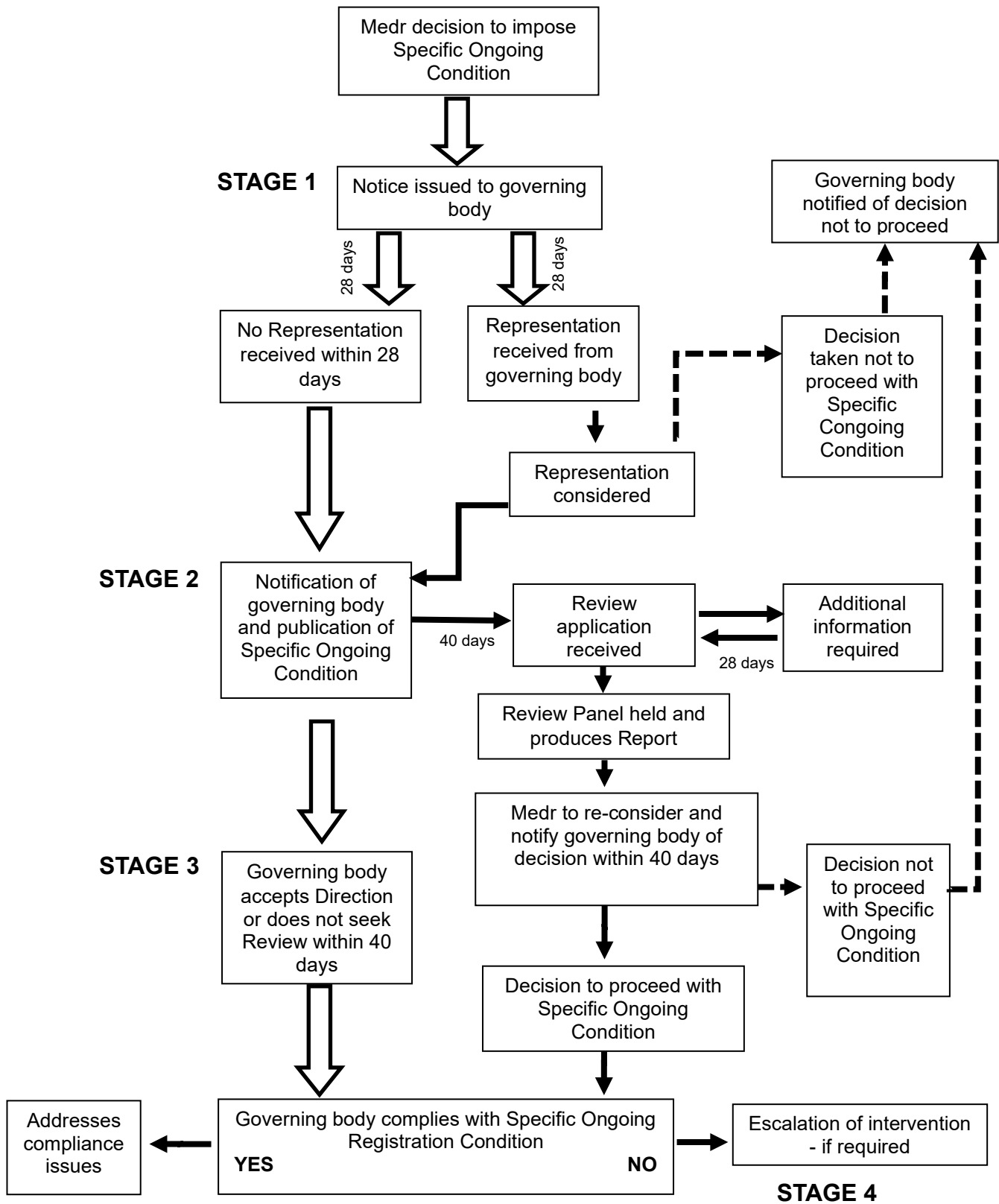
5.7.11. Should the governing body of the provider notify Medr that it does not intend to apply for a decision review, the condition, or variation to such a condition, will take effect on the date specified in the notice issued to the provider's governing body. However, a specific ongoing registration condition, or a variation to such a condition, may not take effect at any time when (a) an application for decision review could be brought or (b) a decision review or a decision by Medr following such a review is pending. Where either of these circumstances cease to prevent a specific ongoing registration condition, or a variation to such a condition, taking effect on the date specified in the notice to the governing body, Medr must determine a future date on which it takes effect. That future date is subject to what has been determined by Medr following any decision review.

Stage 4: Escalation of intervention

5.7.12. In the event of non-compliance with a specific ongoing registration condition, intervention may be escalated to the issue of a Direction in Respect of Non-Compliance with Ongoing Registration Conditions. This Direction power is set out in section 5.8. Where the Direction power is considered insufficient, intervention may be escalated to the removal of the provider from a category of the register. This de-registration power under Section 41(3) of TERA 2022 is set out in section 5.10.

Flow Chart: Specific Ongoing Registration Conditions

Intervention may be halted at any point if the provider complies.



5.8. Directions in respect of non-compliance with ongoing registration conditions (including fee limit condition)

This section applies to: Registered Providers only (all Ongoing Registration Conditions)

- 5.8.1. **Directions** - Section 39 of the TERA 2022 enables Medr to give the governing body of a provider a direction if it is satisfied that the governing body has failed, or is likely to fail, to comply with any ongoing registration condition. In the case of a failure, or likely failure, to comply with an ongoing registration condition, the direction issued by Medr may direct the governing body to comply with the condition. In the case of a failure to comply with a fee limit condition, Medr may also, as an alternative or in addition to a direction to comply, direct the governing body to reimburse all excess fees paid to the tertiary education provider (excess fees are regulated course fees to the extent that those fees exceed the applicable fee limit). A direction may specify steps that are (or are not) to be taken by the governing body for the purpose of compliance with the ongoing registration condition. For a direction in respect of reimbursement of excess fees, the direction may specify the manner in which excess fees are to be, or may be, reimbursed.
- 5.8.2. **Guidance** - Medr may issue guidance about steps to be taken for the purpose of complying with directions. Before issuing such guidance, Medr will consult the governing body of each registered provider; and may consult the governing body of other tertiary education providers in Wales as appropriate.
- 5.8.3. The process for issuing Directions in Respect of Non-compliance with Ongoing Registration Conditions, including the fee limit condition, is set out below and in the subsequent flow chart.

Stage 1: Warning notice and provider representations

- 5.8.4. Before giving a governing body a direction, Medr must first give the governing body a warning notice. The warning notice will:
- set out the proposed direction,
 - state the reasons for proposing to give it,
 - specify the period during which the governing body may make representations about the proposed notice or direction (not less than 28 days beginning with the date on which the warning notice is received), and
 - specify the way in which those representations may be made.

Medr must have regard to any representations made by the governing body of the provider in deciding whether to give the direction.

Stage 2: Giving the direction, publication and decision reviews

- 5.8.5. Having decided whether to give the direction, Medr must notify the provider's governing body of its decision. If Medr gives the governing body a direction, the direction must specify the date on which it takes effect. At the same time as it

gives the direction, Medr must also give the provider's governing body a statement specifying:

- the reasons for giving the direction,
- information as to the right of review, and
- the period within which an application for review may be made.

5.8.6. If Medr gives a direction to a provider, it must:

- give a copy of the direction to the Welsh Ministers; and
- publish the direction.

Publication of directions of this type will normally be on Medr's website, with the precise location of publication to be determined by Medr.

5.8.7. The governing body of a provider may apply for a review by the Decision Reviewer of Medr's decision to give a direction. The Decision Reviewer is a person or panel of persons appointed by Welsh Ministers. The arrangements for decision reviews are set out in The Commission for Tertiary Education and Research (Decision Review) (Wales) Regulations 2024 and covered from paragraph 5.7.5.

Stage 3: Directions taking effect

5.8.8. Should the governing body of the provider notify Medr that it does not intend to apply for a decision review, the direction will take effect on the date specified. However, a direction may not take effect at any time when (a) an application for decision review could be brought or (b) a decision review or a decision by the Medr following such a review is pending. Where either of these circumstances cease to prevent a direction taking effect on the date specified, Medr must determine a future date on which it takes effect. That future date is subject to what has been determined by Medr following any decision review.

Stage 4: Enforcement

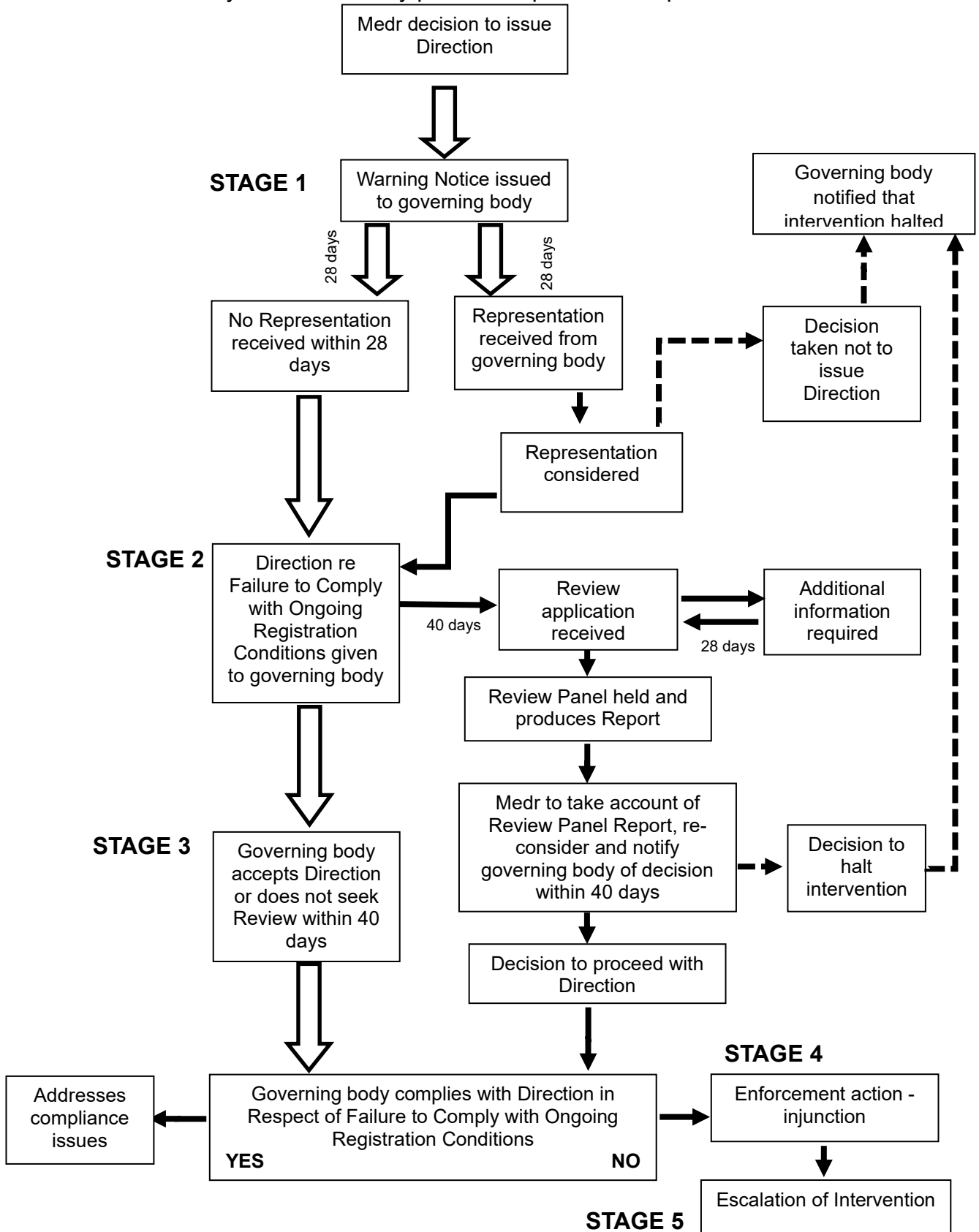
5.8.9. Where Medr issues a Direction in Respect of Failure to Comply with Ongoing Registration Conditions to the governing body of an institution, the governing body must comply with the Direction (subject to the outcome of any review of the Direction). In the event that a governing body fails to comply satisfactorily (in Medr's opinion) with the Direction, the Direction will be enforceable by injunction in accordance with Section 82 of TERA 2022. Our decisions on whether to proceed to injunction will take account of the particular circumstances of the case.

Stage 5: Escalation of intervention

5.8.10. In the event of persistent non-compliance, intervention may be escalated to the removal of the provider from a category of the register. This de-registration power under Section 41(3) of TERA 2022 is set out in section 5.10.

Flow Chart: Directions in Respect of Failure to Comply with Ongoing Registration Conditions (including fee limit condition)

Intervention may be halted at any point if the provider complies.



5.9. Directions in respect of failure to cooperate

This section applies to: External Providers and Funded FE and Training Providers (not including Registered Providers).

- 5.9.1. **Duty to co-operate – external providers** - The governing body of an external provider (a provider delivering provision on behalf of a registered provider) must ensure that a person exercising a function by virtue of Sections 51, 53 or 54(1) of the TERA 2022 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 of the TERA 2022). The functions covered by this duty to cooperate are:
- Section 51 - Duty to monitor, and promote improvement in, the quality of regulated tertiary education;
 - Section 53 - Reviews relevant to quality of tertiary education
 - Section 54(1) – Assessment of the quality of higher education
 - Section 74 – Entry to premises and the inspection, copying and removal of documents.
- 5.9.2. **Duty to cooperate – further education and training providers (not including registered providers)** - The governing body of a provider of further education or training funded under Section 97 of the TERA 2022 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 of the TERA 2022).
- 5.9.3. **Directions** – If Medr is satisfied that a governing body has failed to comply with the relevant duty to cooperate in the paragraphs above, Section 73(4) of the TERA 2022 enables Medr to direct the governing body to take (or not to take) specified steps for the purpose of securing the provision of information, assistance or access as described in paragraphs 5.9.1 and 5.9.2 above (as appropriate).
- 5.9.4. **Guidance** - Medr may issue guidance about steps to be taken for the purpose of complying with directions. Before issuing such guidance, Medr will consult the governing body of each registered provider; and may consult the governing body of other tertiary education providers in Wales as appropriate.
- 5.9.5. The process for issuing Directions in Respect of Failure to Cooperate is set out below and in the subsequent flow chart.

Stage 1: Warning notice and provider representations

5.9.6. Before giving a governing body a direction, Medr must first give the governing body a warning notice. The warning notice will:

- set out the proposed direction,
- state the reasons for proposing to give it,
- specify the period during which the governing body may make representations about the proposed notice or direction (not less than 28 days beginning with the date on which the warning notice is received), and
- specify the way in which those representations may be made.

Medr must have regard to any representations made by the governing body of the provider in deciding whether to give the direction.

Stage 2: Giving the direction, publication and decision reviews

5.9.7. Having decided whether to give the direction, Medr must notify the provider's governing body of its decision. If Medr gives the governing body a direction, the direction must specify the date on which it takes effect. At the same time as it gives the direction, Medr must also give the provider's governing body a statement specifying:

- the reasons for giving the direction,
- information as to the right of review, and
- the period within which an application for review may be made.

5.9.8. If Medr gives a direction to a provider, it must:

- give a copy of the direction to the Welsh Ministers; and
- publish the direction.

Publication of directions of this type will normally be on Medr's website, with the precise location of publication to be determined by Medr.

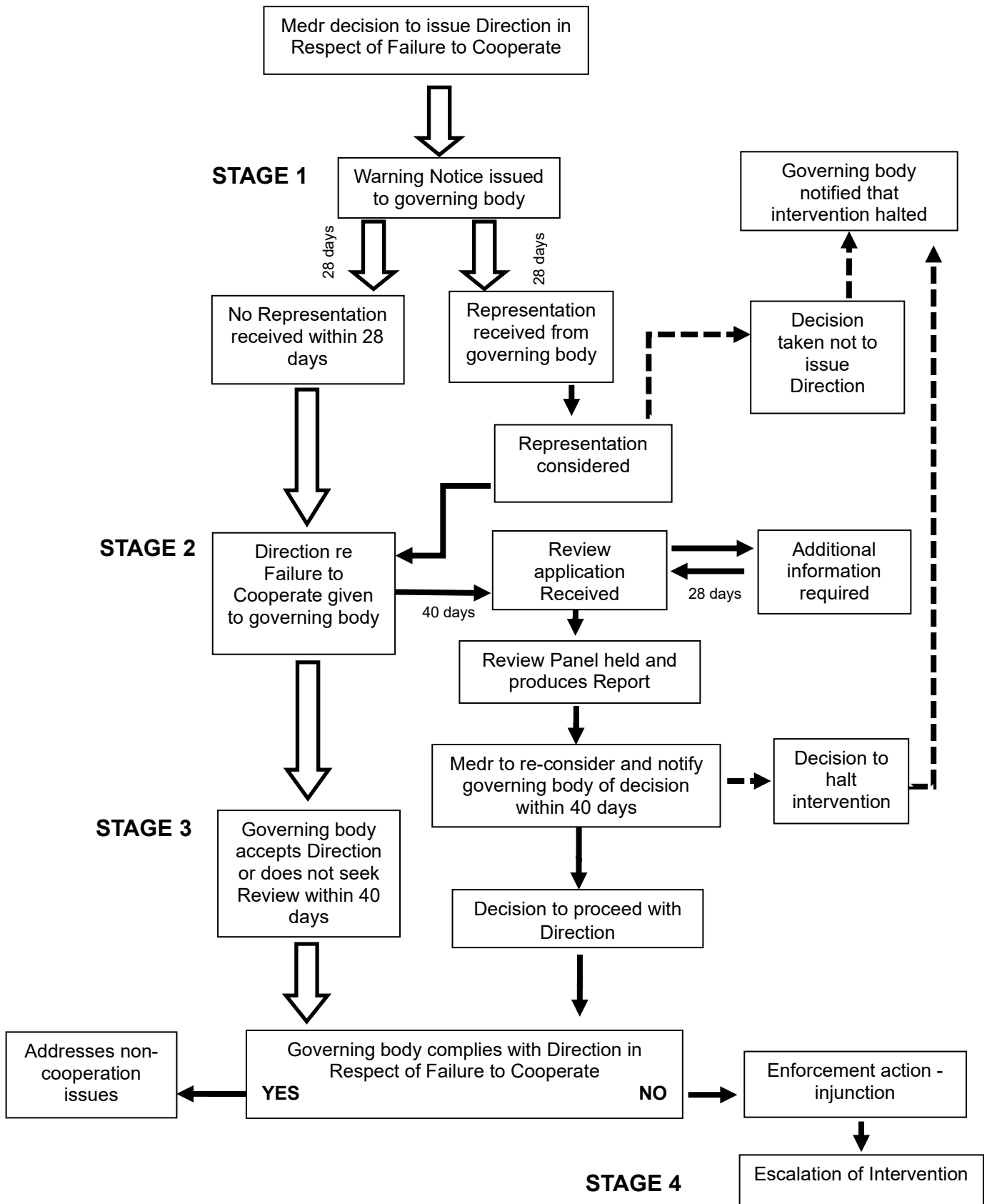
5.9.9. The governing body of a provider may apply for a review by the Decision Reviewer of a decision of the Medr to give a direction. The Decision Reviewer is a person or panel of persons appointed by Welsh Ministers. The arrangements for decision reviews are set out in The Commission for Tertiary Education and Research (Decision Review) (Wales) Regulations 2024 and are covered in paragraph 5.7.5.

Stage 3: Directions taking effect

5.9.10. Should the governing body of the provider notify Medr that it does not intend to apply for a decision review, the direction will take effect on the date specified. However, a direction may not take effect at any time when (a) an application for decision review could be brought or (b) a decision review or a decision by the Medr following such a review is pending. Where either of these circumstances cease to prevent a direction taking effect on the date specified, Medr must determine a future date on which it takes effect. That future date is subject to what has been determined by Medr following any decision review.

Flow Chart: Directions in Respect of Failure to Cooperate

Intervention may be halted at any point if the provider complies.



5.10. De-registration under Section 41(3) of TERA 2022

This section applies to: Registered Providers and, by extension, External Providers delivering provision on behalf of those Registered Providers.

- 5.10.1. **Circumstances where Medr may de-register a provider** - Section 41(3) of the TERA 2022 enables Medr to remove a tertiary education provider from a category of the register in the event of persistent or very serious non-compliance with ongoing registration conditions. For that to happen, either condition A or B (see below) must be satisfied:

Condition A, relating to persistent non-compliance, is satisfied if:

- (a) Medr has previously exercised its direction powers under Section 39 of the TERA 2022 (Directions in respect of failure to comply with ongoing registration conditions) in relation to non-compliance with one of the ongoing registration conditions that applies to the provider's category of registration, **and**
- (b) it appears to Medr that -
 - (i) there is a new breach, or a continued breach, of that ongoing registration condition, or
 - (ii) there is, or has been, a breach of a different ongoing registration condition that applies to the provider's category of registration.

Condition B, relating to very serious non-compliance, is satisfied if it appears to Medr that:

- (a) there is, or has been, a breach of one of the ongoing registration conditions that applies to the provider's category of registration, **and**
- (b) its direction powers under Section 39 of the TERA 2022 (Directions in respect of failure to comply with ongoing registration conditions) are insufficient to deal with that breach (whether or not they have been, are being or are to be, exercised in relation to it).

Stage 1: Initial notice and provider representations

- 5.10.2. Before removing a registered provider from a category of the register under Section 41 of the TERA 2022, Medr must first notify the governing body. The notice will:
- Set out Medr's reasons for proposing to remove the provider from a category of the register,
 - specify the period during which the governing body of the provider may make representations about the proposal (not less than 28 days beginning with the date on which the warning notice is received), and
 - Medr 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.

Medr will share a copy of the notice with Welsh Ministers and will keep Welsh Government officials apprised of the removal process.

Stage 2: Notification and decision reviews

- 5.10.3. Having decided whether or not to remove the provider from a category of the register, Medr must notify the governing body of the provider of its decision. 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. The notice must also specify:
- the grounds for the removal,
 - information as to the right of review, and
 - the period within which an application for review may be made.
- 5.10.4. The governing body of a provider may apply for a review by the Decision Reviewer of Medr's decision to remove it from a category of the register. The Decision Reviewer is a person or panel of persons appointed by Welsh Ministers. The arrangements for decision reviews are set out in The Commission for Tertiary Education and Research (Decision Review) (Wales) Regulations 2024 and are covered in paragraph [5.7.5](#).

Stage 3: Removal taking effect

- 5.10.5. Should the governing body of the provider notify Medr that it does not intend to apply for a decision review, the removal from the category of the register under Section 41 of the TERA 2022 will take effect on the date specified. However, removal may not take effect at any time when
- an application for decision review could be brought or
 - a decision review or a decision by the Medr following such a review is pending.

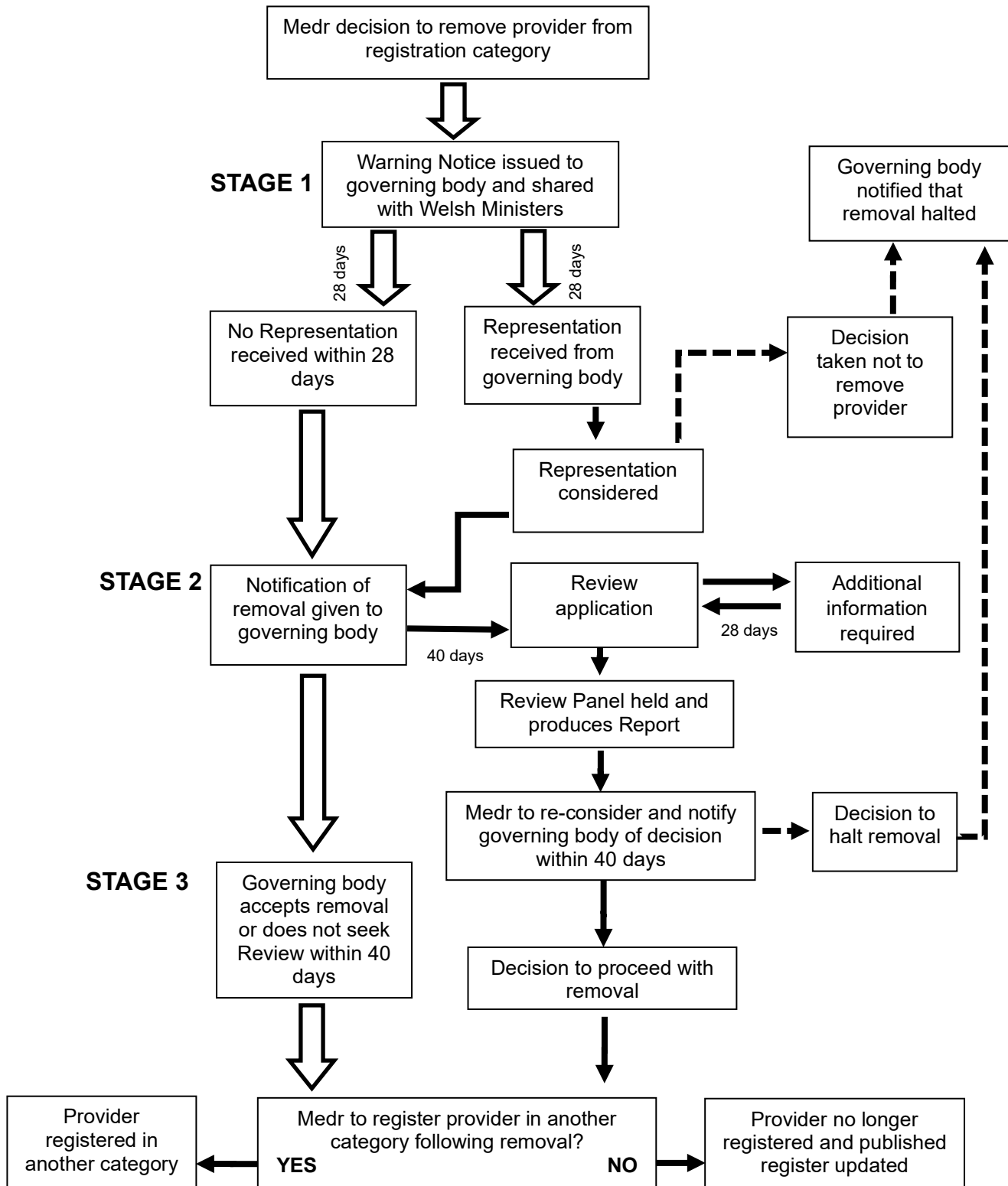
Where either of these circumstances cease to prevent removal taking place on the date specified, Medr must determine a future date on which removal takes effect. That future date is subject to what has been determined by Medr following any decision review. Once the provider has been removed from the category of the register, the published register will be updated to reflect that removal.

- 5.10.6. *Registration in another category following removal* - Where Medr removes a registered provider from a category of the register under the Section 41(3) TERA 2022 powers, Medr may register the provider in another category without an application if:
- the governing body of the provider consents,
 - it continues to be a tertiary education provider in Wales,
 - it provides, or has provided on its behalf, the kind of tertiary education that relates to the other category,
 - it satisfies the initial registration conditions applicable to it in respect of the registration in the other category (see section 27), and registration in the other category is not prohibited by provision made in regulations.

- 5.10.7. *Minimising impact on learners* - In order to protect learners, 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. This is intended to ensure that public funds and students' interests are protected and may include ensuring that Medr retains certain regulatory powers in respect of a de-registered provider, or that certain funding streams remain temporarily available to students in order to ensure course continuation and completion.

Flow Chart: De-registration under Section 41(3) of TERA 2022

Intervention may be halted at any point if the provider complies.



5.11. Mandatory De-registration under Section 41(1) of TERA 2022

This section applies to: Registered Providers and, by extension, External Providers delivering provision on behalf of those Registered Providers.

5.11.1. There are circumstances where there is a legal duty on Medr to remove a provider from a category of the register. Section 41(1) of the TERA 2022 requires Medr to remove a tertiary education provider from a category of the register if the provider:

- is no longer a tertiary education provider in Wales, or
- no longer provides, or has provided on its behalf, the kind of tertiary education that relates to the category.

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. This document will be updated in the event that such regulations are made.

Stage 1: Warning notice and provider representations

5.11.2. Before removing a registered provider from a category of the register under Section 41 of the TERA 2022, Medr must first give the governing body a warning notice. The warning notice will:

- Set out Medr's reasons for proposing to remove the provider from a category of the register,
- specify the period during which the governing body of the provider may make representations about the proposal (not less than 28 days beginning with the date on which the warning notice is received), and
- Medr 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.

Medr will share a copy of the warning notice with Welsh Ministers and will keep Welsh Government officials apprised of the removal process.

Stage 2: Notification and decision reviews

5.11.3. Having decided whether or not to remove the provider from a category of the register, Medr must notify the governing body of the provider of its decision. 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. The notice must also specify:

- the grounds for the removal,
- information as to the right of review, and
- the period within which an application for review may be made.

5.11.4. The governing body of a provider may apply for a review by the Decision Reviewer of Medr's decision to remove it from a category of the register. The Decision

Reviewer is a person or panel of persons appointed by Welsh Ministers. The arrangements for decision reviews are set out in The Commission for Tertiary Education and Research (Decision Review) (Wales) Regulations 2024 and are covered in paragraph 5.7.5.

Stage 3: Removal taking effect

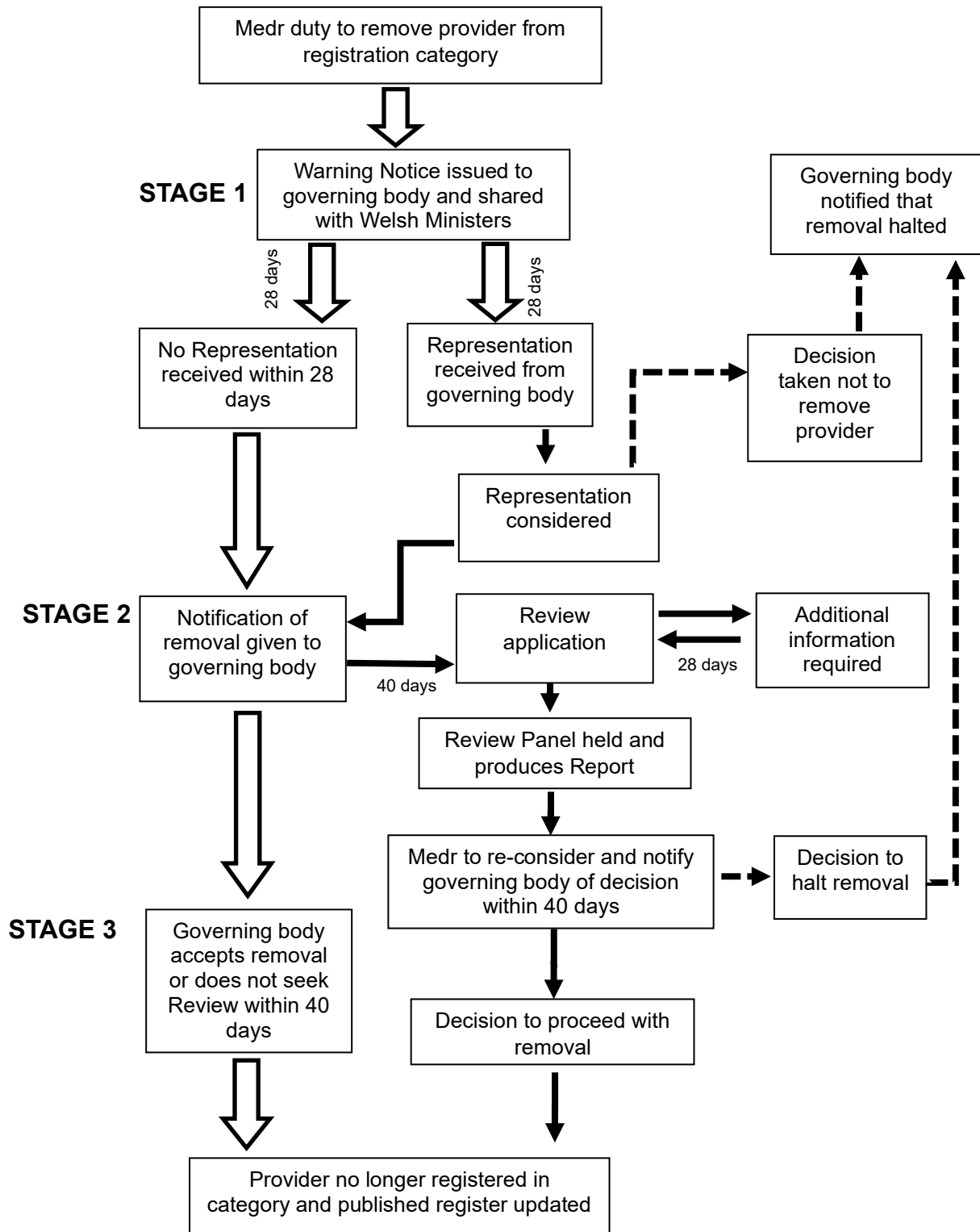
5.11.5. Should the governing body of the provider notify Medr that it does not intend to apply for a decision review, the removal from the category of the register under Section 41(1) of the TERA 2022 will take effect on the date specified. However, removal may not take effect at any time when

- an application for decision review could be brought or
- a decision review or a decision by the Medr following such a review is pending.

Where either of these circumstances cease to prevent removal taking place on the date specified, Medr must determine a future date on which removal takes effect. That future date is subject to what has been determined by Medr following any decision review. Once the provider has been removed from the category of the register, the published register will be updated to reflect that removal.

5.11.6. *Minimising impact on learners* - In order to protect learners, 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. This is intended to ensure that public funds and students' interests are protected and may include ensuring that Medr retains certain regulatory powers in respect of a de-registered provider, or that certain funding streams remain temporarily available to students in order to ensure course continuation and completion.

Flow Chart: Mandatory de-registration under Section 41(1) of TERA 2022



5.12. Notification to Welsh Ministers of grounds for their intervention

This section applies to: All Institutions within the FE sector in Wales.

5.12.1. In addition to relevant interventions by Medr, Sections 69 and 70 of TERA 2022 provide for intervention by Welsh Ministers to address compliance issues in providers in the further education sector. The grounds for intervention by Welsh Ministers are as follows:

- the provider's affairs have been or are being mismanaged by its governing body;
- the provider's governing body has failed to comply with a duty under any enactment;
- the provider's governing body has acted or is proposing to act unreasonably in the exercise of its functions under any enactment;
- 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.

Welsh Ministers will separately publish a Statement of Intervention setting out their intervention powers in respect of providers in the further education sector.

5.12.2. Section 71(1) of TERA 2022 places a legal duty on Medr to notify Welsh Ministers if we are of the view that any one, or more, of the grounds for intervention exist in relation to a provider in the further education sector in Wales. This advice to Welsh Ministers may be required in parallel with, or as an escalation from, the use of Medr's own intervention powers.

PART 2: Our remaining specified intervention powers under the Higher Education (Wales) Act 2015 as applicable to registered providers (in effect until 31 July 2027)

NOTE: For regulated institutions that have become registered providers, the 2015 Act powers in **PART 2** only remain in effect until the end of the 2026/27 Academic Year (31 July 2027). From 1 August 2027 they are superseded by intervention powers linked to the Fee Limit and Equality of Opportunity ongoing registration conditions, as set out in **PART 1**.

For regulated institutions that have not become registered providers, they will continue to be subject to the full range of 2015 Act powers as set out in the statement already [published under the Higher Education \(Wales\) Act 2015](#).

6. Intervention in relation to limits on student fees

This section applies to: Regulated Institutions (institutions with an approved Fee and Access Plan)

6.1. Basis for intervention

- 6.1.1. This section relates to intervention in respect of limits on student fees through Compliance and Reimbursement Directions. These interventions apply where we are satisfied that the governing body of an institution has failed to comply with Section 10(1) of the Higher Education (Wales) Act in relation to limits on student fees. Section 10(1) states that the governing body of an institution within subsection (2) must ensure that regulated course fees do not exceed the applicable fee limit. Institutions falling within subsection (2) are all those with an approved fee and access plan (whether or not that plan is still in force).

Note

Regulated course fees are the fees paid to an institution by a qualifying person:

- a. in connection with the person's undertaking a qualifying course; and
- b. in respect of an academic year applicable to that course, where that year begins at a time within the period specified under section 4 of the institution's most recent fee and access plan (whether or not the plan is still in force).

The most recent fee and access plan is the institution's fee and access plan most recently approved in accordance with Section 7 of The Higher Education (Wales) Act 2015.

Fee and access plans are 'in force' from the day of approval until the end of the plan period (or until approval is withdrawn by Medr under Section 38 or 39 of The 2015 Act).

The applicable fee limit is:

- a. In a case where the institution's most recent fee and access plan specifies a fee limit for the course and year in question, that limit;
- b. In a case where the institution's most recent fee and access plan provides for the determination of a fee limit for the course and year in question, that limit as determined in accordance with the plan.

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 10(1) with which the governing body has failed to comply).

- 6.1.2. The governing body of an institution is responsible for ensuring that excess fees are not charged. We will monitor and assess potential issues in relation to fee levels, through the monitoring of fee data and complaints against regulated

institutions², and through our institutional assurance processes, including audit where appropriate. The governing bodies of regulated institutions will also be subject to a compliance duty under Section 16(1) of The 2015 Act, which requires them to provide us with such information, assistance and access to the institution's facilities as we reasonably require for the purposes of monitoring compliance with fee limits. We will write to the Accountable Officer of the institution (normally the Head of the institution) to request any such information, assistance or access to facilities as is reasonably required for the purposes of monitoring compliance with fee limits, with a reasonable timescale to be agreed with the institution. Where the institution does not agree a timescale for submission of the information, or provision of assistance or access to facilities, we will set a timescale that we consider to be reasonable.

- 6.1.3. Where we are satisfied that a governing body has failed to provide such information within the timescale, under Section 16(2), we may direct the governing body to take (or not to take) specified steps for the purpose of securing the provision of the required information, assistance or access to facilities.

Securing Information, Assistance or Access

In the event of failure to provide information, assistance or access to facilities, we will attempt to resolve the situation through discussion with the institution's Accountable Officer (any correspondence will be copied to the Chair of the governing body and Clerk to the governing body). Should that fail to resolve the issue, we may direct the governing body to take (or not to take) specified steps in order to secure the information, assistance or access to facilities that is needed, through the issuing of a **Direction to Enforce Compliance with the Duty to Cooperate** for the Purpose of Monitoring and Evaluating Compliance and Effectiveness under Section 16(2) of The 2015 Act (sent to the Chair of the governing body and Clerk to the governing body and copied to the Accountable Officer).

A Direction to Enforce Compliance with the Duty to Cooperate for the Purpose of Monitoring and Evaluating Compliance and Effectiveness is not subject to the warning and review procedure set out at Sections 42 to 44 of The 2015 Act. Once such a Direction is issued, the institution will be required to comply with the request for information, assistance or access to facilities within a reasonable timescale set by Medr (which will be set out in the Direction).

In the event of non-compliance with this Direction, we may seek enforcement by means of injunction, with the judicial oversight provided by the court ensuring scrutiny of the exercise of these powers.

² www.medr.cymru/en/monitoring-and-compliance/

- 6.1.4. Where an institution receives an allegation which includes an element in respect of the charging of excess fees, the governing body of the institution will be required to inform us of the details of the complaint at the earliest reasonable opportunity, even if the allegation has been referred to the Office of the Independent Adjudicator for Higher Education (OIA) or the Competition and Markets Authority (CMA). This is because we have a statutory duty under Section 15(1)(a) of The 2015 Act to monitor institutions' compliance with fee limits. In addition, we may liaise with the OIA or the CMA, as relevant, to ensure that information is shared as required. Where we receive an allegation in respect of the charging of excess fees from an individual (or group of individuals), the individual will be expected to have pursued the issue via the institution's procedures in the first instance.
- 6.1.5. Where we are satisfied that the governing body of an institution has failed to comply with Section 10(1) of The 2015 Act in relation to limits on student fees (i.e. it has charged fees in excess of those set out in the relevant fee and access plan), Section 11 of The 2015 Act states that we may take action to rectify the situation by issuing a Compliance and Reimbursement Direction to direct the governing body of the institution to do either or both of the following:
- a. To comply with section 10(1) of the Higher Education (Wales) Act in order to ensure that the regulated course fees do not exceed the applicable fees limit.
 - b. To reimburse excess fees paid to the institution.
- 6.1.6. The Stages of this intervention process that are provided for under Sections 42 to 44 of The 2015 Act and the Fee and Access Plans (Notices and Directions) (Wales) Regulations 2015³ are outlined below, together with the associated checks and balances.

6.2. Prior to Intervention

- 6.2.1. Where an issue in respect of the charging of excess fees has been brought to our attention, we will contact the Accountable Officer of the institution (normally the Head of the institution) to discuss and verify the issue and to clarify what actions have already been taken to comply and to reimburse any excess fees (all correspondence at this informal Stage will be copied to the Clerk to the governing body and Chair of the governing body). Where actions have not yet been taken by the institution, a reasonable timescale will be agreed for the institution to comply and to reimburse the excess fees that have been charged. In agreeing this timescale, it should be noted that we must balance the institution's view regarding the reasonableness of any timescale with the need to reimburse students and their sponsors at the earliest reasonable opportunity.
- 6.2.2. Where an allegation in relation to the charging of excess fees has been raised with the OIA or CMA prior to being relayed to Medr, we may await the outcome of the OIA or CMA processes, prior to initiating formal intervention, in order to avoid unnecessary duplication of action. Whilst we will seek to avoid unnecessary duplication, it should be noted that the circumstances that trigger Medr intervention (Fees in excess of the level set out in an approved Fee and Access Plan) may be

³ [The Higher Education \(Fee and Access Plans\) \(Notices and Directions\) \(Wales\) Regulations 2015](#)

slightly different to those that trigger OIA or CMA involvement. We will liaise closely with the OIA or CMA in such circumstances and may choose to initiate formal intervention prior to the completion of these bodies' processes if this is considered to be necessary to address serious non-compliance issues. Where we are to liaise with the OIA or CMA, we would advise the Accountable Officer of the institution at an early Stage whether we are to await the outcome of OIA or CMA processes. We reserve the right to initiate action in parallel to the OIA or CMA, where necessary to address serious non-compliance.

- 6.2.3. We will normally only initiate formal intervention where an institution has failed to take appropriate action to comply and reimburse excess fees within an agreed timescale. Where serious failures are identified, such as repeated, widespread or systemic instances of the charging of excess fees, or where there is evidence of a flagrant disregard for the fee levels set out in an agreed Fee and Access Plan, we may decide that it is necessary to initiate formal intervention at an early Stage. We will be mindful of the circumstances of the case when considering formal intervention, including the institution's explanation of why excess fees were charged (e.g. administrative error); the likelihood of the institution addressing the issue voluntarily if given further time; the number of students affected; the extent to which fees have been overcharged; and any other relevant factors.

6.3. The Intervention Process

- 6.3.1. When intervening, for the purpose of clarity, all communication from Medr in respect of intervention will clearly state the Stage and any sub-element of the intervention process to which it relates.

Stage 1: Warning Notice

- 6.3.2. Before we can proceed to issue a Compliance and Reimbursement Direction to an institution, we must provide the governing body of that institution with a warning notice (sent via the Chair of the governing body and Clerk to the governing body and copied to the Accountable Officer). The warning notice will:
- a. Set out the proposed Compliance and Reimbursement Direction;
 - b. State Medr's reasons for proposing to give it;
 - c. Inform the governing body that it may make representations about the proposed Compliance and Reimbursement Direction;
 - d. Specify the period from the date of issue within which, and the way in which, representations may be made.

Checks and balances

- 6.3.3. From issue of the warning notice, governing bodies will have up to 40 days to make representations in writing to Medr, with all representations to be sent to the Medr Chief Executive. Where representations are not received, no Compliance and Reimbursement Direction will be issued until after this 40 day period.
- 6.3.4. Where representations are received, Medr will undertake to review these and decide on whether to issue a Compliance and Reimbursement Direction within 40 days of receipt of the representations, except where the submission of additional information is required in order for us to be able to adequately consider representations. In such instances, the additional information will be requested within 28 days of receipt of the representations and should be submitted by the institution within 28 days of this Medr request, in order for a decision to be made within 60 days of receipt of the original representations. Where representations are received, no Compliance and Reimbursement Direction will be issued until after the completion of this process.
- 6.3.5. Decisions regarding the issuing of a Compliance and Reimbursement Direction will be made by Medr. Where a decision is taken to not issue a Compliance and Reimbursement Direction, we will send a notice to the governing body within 14 days of that decision to inform them of the decision and the reasons for this.

Stage 2: Compliance and Reimbursement Direction

- 6.3.6. When issuing the Compliance and Reimbursement Direction to an institution (sent via the Chair of the governing body and Clerk to the governing body and copied to the Accountable Officer), Section 43 of The 2015 Act requires that we provide a statement to the governing body of that institution. The statement will:
- a. Set out our reasons for issuing the Compliance and Reimbursement Direction;
 - b. Inform the governing body that it may apply for a review of the Compliance and Reimbursement Direction, providing information on the grounds for review, the review process and details of to whom an application for review should be made; and

- c. Include any other prescribed information set out under the Fee and Access Plans (Notices and Directions) (Wales) Regulations 2015 at Regulation 6, i.e. the date of issue of the notice or direction; when the notice or direction is to be treated as having been given; the grounds in Regulation 7 on which an application for a review may be made; the procedure in Regulation 8 that a governing body must follow in order to apply for a review; and the name and address of the Review Panel to whom an application for a review must be made.

6.3.7. The Compliance and Reimbursement Direction that is issued may specify:

- a. The steps that are (or are not) to be taken by the governing body for the purpose of compliance with section 10(1);
- b. The manner in which reimbursement of excess fees is to be, or may be, effected.

6.3.8. The Compliance and Reimbursement Direction may be varied or revoked by the issue of a later Direction.

6.3.9. Regulation 4 under the Fee and Access Plans (Notices and Directions) (Wales) Regulations 2015⁴ states that a notice or Direction specified in Section 41(1) of The 2015 Act is to be treated as having been given on the day that the first of the following events occurs:

- a. The governing body notifies Medr in writing that it accepts the Compliance and Reimbursement Direction;
- b. The time limit to apply for a Review of the Compliance and Reimbursement Direction under Section 44 of The 2015 Act has expired and the governing body has not applied for a review;
- c. A review of the Compliance and Reimbursement Direction under Section 44 of The 2015 Act has concluded and Medr has notified the governing body in writing that the Direction stands.

6.3.10. Once a Compliance and Reimbursement Direction is given (see paragraph 6.3.6 above), we must immediately provide a copy of the Direction to Welsh Ministers. Whilst a Compliance and Reimbursement Direction will not be shared with Welsh Ministers until the point at which it is given, we will need to provide briefing to Welsh Government officials (and hence to Welsh Ministers) at the point of first issuing the Direction. The Compliance and Reimbursement Direction will also be published on the Medr website www.medr.cymru within seven days of being given and will remain on the website until either the Direction is revoked by Medr, or Medr is satisfied that the Direction has been complied with.

Checks and balances

6.3.11. Where we issue an institution with a Compliance and Reimbursement Direction, Section 44 of The 2015 Act provides the ability for the governing body of that institution to apply for a review of the Direction.

⁴ [The Higher Education \(Fee and Access Plans\) \(Notices and Directions\) \(Wales\) Regulations 2015](#)

- 6.3.12. The Higher Education Fee and Access Plans (Notices and Directions) (Wales) Regulations 2015 specify that an application for a review may be made on one or more of the following grounds:
- a. The governing body presents a material factor for consideration to which, for good reason, it had not previously drawn Medr's attention;
 - b. The governing body considers that Medr has disregarded a material factor it should have considered;
 - c. The governing body considers that the Direction is disproportionate in view of all the relevant facts which were considered by Medr.
- 6.3.13. Regulation 8 states that applications for review must be made within 40 days of issue of the Compliance and Reimbursement Direction, with applications made in writing as outlined in the Direction. The application for review must specify the grounds for review and include: a copy of the direction to be reviewed; a copy of the statement issued in accordance with Section 43 of The 2015 Act (see Paragraph 6.3.6); and information in support of the application. It should be noted that, under Regulation 7(2), an application for a review of the Compliance and Reimbursement Direction cannot be made where a governing body has notified Medr in writing that it accepts the Direction.
- 6.3.14. The review is to be carried out by a Person, or Panel of persons, appointed by the Welsh Ministers. Upon receiving an application for a review, the Person or Panel appointed by the Welsh Ministers will provide the governing body and Medr with an anticipated timetable for completing the review. The review Panel will give Medr details of the Direction to be reviewed, details of the grounds on which the review application has been made and a copy of the information supplied by the governing body in support of the application for review. The review Panel may make a written request for further information from either Medr or the governing body for the purposes of the review. Any request for further information made by the Panel will be sent to Medr and the governing body at the same time. Medr or the governing body will be required to provide any information requested by the Panel within 28 days of the issue of the request if it is to be considered. Under Regulation 9(8), the Panel will consider whether it is appropriate to allow representations from either Medr or the governing body in respect of any further information submitted to it in response to its request for such information; and if it considers it appropriate to allow representations, it will notify Medr and the governing body accordingly. The review Panel will ensure that both Medr and the governing body are in receipt of all information submitted by the other party.
- 6.3.15. The review Panel will take account of the requested information submitted by Medr and the governing body in making its decision. The Panel will prepare a written report that is sent to both Medr and the governing body at the same time. We will take account of the review Panel's report and reconsider its decision to issue the Direction. We will then notify the governing body in writing within 40 days as to whether the Direction stands or not, and provide reason for that decision. If our decision is that the Direction should stand, that decision will be binding on the governing body of the institution.
- 6.3.16. Under Section 12 of The 2015 Act, we may issue guidance about the steps to be taken for the purpose of complying with a Compliance and Reimbursement Direction. Before issuing such guidance, we will consult the governing bodies of all regulated institutions, as well as any other institutions in Wales that provide higher

education and that are charities, which we consider to be appropriate. A governing body to which a Compliance and Reimbursement Direction has been issued must take account of such guidance.

Stage 3: Compliance and Reimbursement

- 6.3.17. The governing body of the institution will be expected to consider the Compliance and Reimbursement Direction at the earliest possible opportunity, in order that it can agree measures to reduce the fee level to ensure that it complies with Section 10(1) of The 2015 Act (i.e. that the fee level does not exceed the applicable fee limit). The governing body will be expected to write to all affected persons within 60 days of the Direction being given (see paragraph 6.3.6).
- 6.3.18. In instances where the Compliance and Reimbursement Direction is not given until after students have commenced their courses, and excess fees have already been charged, it is likely that excess fees will need to be refunded. The mechanism for refunding excess fees will be dependent on whether the fees are self-financed or paid on students' behalf via the statutory student support system.
- 6.3.19. For self-financing students, excess fees will need to be refunded to the students directly or an arrangement made with the students whereby future fees are reduced in order to take account of the overpayment.
- 6.3.20. For students in receipt of statutory student support, an overpayment of support may be recovered via the Student Loans Company (SLC). The institution would be expected to notify the SLC of the required reduction in fees, thereby allowing the automatic recovery of overpaid fee support by the SLC on behalf of each UK administration.
- 6.3.21. Unless otherwise agreed by Medr, excess fees are to be repaid, or recovery arrangements put in place via the SLC, within 60 days of the Compliance and Reimbursement Direction being given (see paragraph 6.3.6).
- 6.3.22. The governing body will be expected to notify us in writing once compliance and reimbursement actions have been completed. Following completion of the compliance and reimbursement actions by the institution, we will seek to consider the information from the governing body regarding compliance within 14 days. If requested by the institution's governing body, we will give written notice to the governing body stating whether they are satisfied that it has complied with the Direction (or with a particular requirement of the Direction). Once satisfied, we will remove the Compliance and Reimbursement Direction from our website at the earliest opportunity and at most within 7 days.

Stage 4: Enforcement

- 6.3.23. Where we issue a Compliance and Reimbursement Direction to the governing body of an institution, the governing body must comply with the Direction (subject to the outcome of any review of the Direction - see Stage 2 above). In the event that a governing body fails to comply satisfactorily (in Medr's opinion) with the Direction within the above timescale, the Direction will be enforceable by injunction in accordance with section 45 of The 2015 Act. Our decisions on whether to proceed to injunction will take account of the particular circumstances of the case.

6.3.24. In the event of failure to comply with fee limits, we may consider refusal to approve a new Fee and Access Plan under Section 37 of The 2015 Act, with this normally considered where there is a longer-term or significant failure to comply. In the event of the most extreme circumstances, where there is a persistent failure to comply with fee limits or a failure to comply with a Compliance and Reimbursement Direction, we may consider the withdrawal of approval of an existing Fee and Access Plan under Section 39 of The 2015 Act. The circumstances under which we will consider escalating our intervention in respect of Limits on Student Fees to the use of these powers under Sections 37 or 39 of The 2015 Act are outlined below.

Stage 5: Escalation of Intervention in respect of Limits on Student Fees

6.3.25. We may consider escalation of intervention in respect of Limits on Student Fees to a Refusal to Approve a New Fee and Access Plan under Section 37 of The 2015 Act where an institution has failed to comply with fee limits. In view of the significance of this escalation, it would normally only be considered under the following circumstances:

- **Longer-term instances of a failure to comply with Student Fee Limits.** Whilst escalation of intervention would be determined on a case-by-case basis, such longer-term failure to comply with Student Fee Limits would generally take the form of the continuation of the same issue over a period of time. The level of overcharging need not necessarily be substantial. It should be noted that the escalation of intervention would normally only be undertaken where an institution has failed to show voluntary progress to address the identified failure within a reasonable period of time set by Medr.
- **Significant non-compliance with Student Fee Limits** that warrants more severe intervention than the issue of a Compliance and Reimbursement Direction, but where the withdrawal of a Fee and Access Plan would be excessive. Whilst escalation of intervention would be determined on a case-by-case basis, the judgement of what constitutes significant non-compliance would be based on the potential impact of the failure to comply on a range of stakeholders and issues (e.g. students, staff, institutional sustainability, public finances and wider impact on the higher education sector etc.). Such significant non-compliance might include, for example, circumstances in which multiple students have been charged excess fees or where substantial excess fees have been charged.

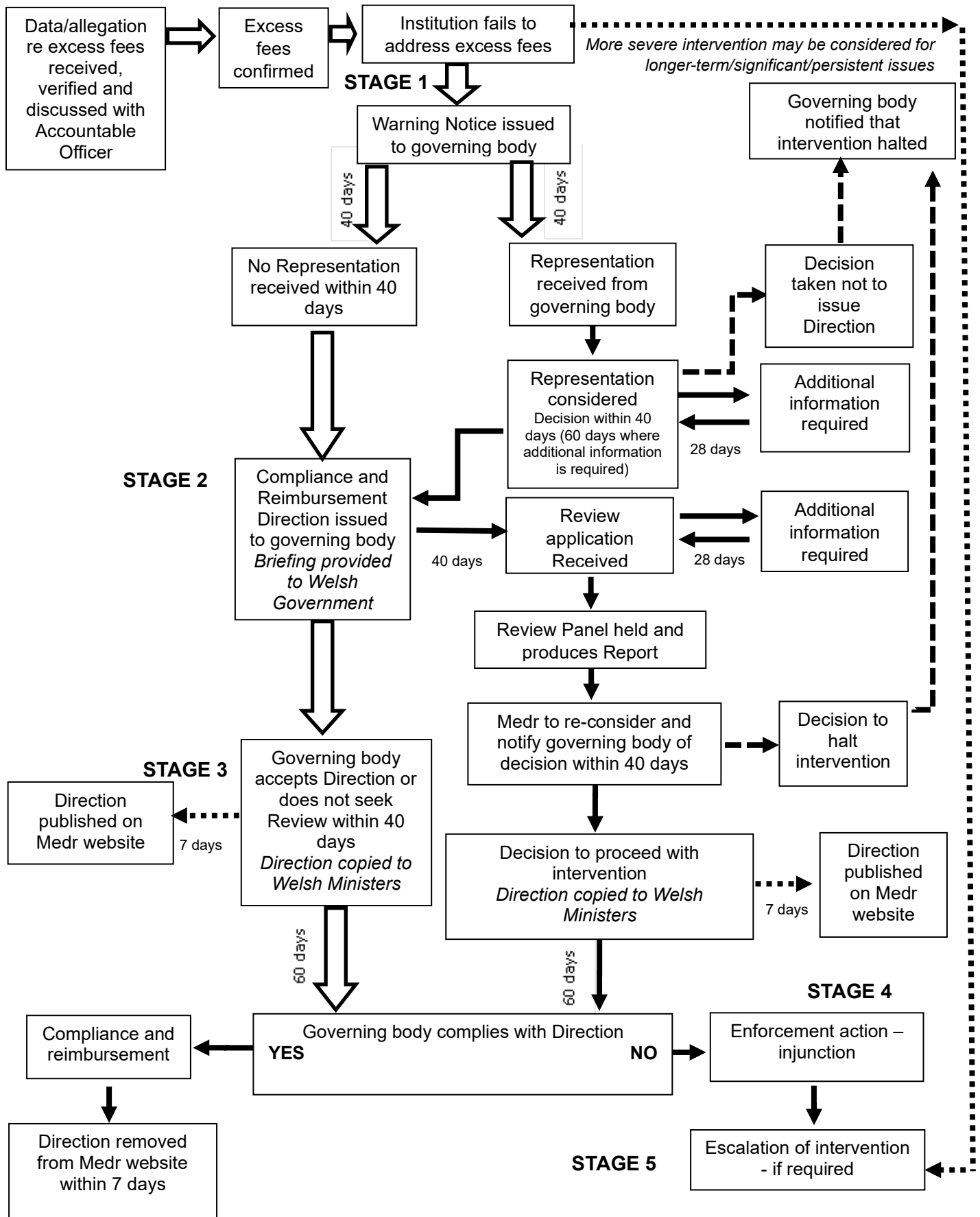
6.3.26. In the most extreme circumstances, we may instead (or additionally) consider escalation of intervention in respect of Limits on Student Fees to the Withdrawal of an Approved Fee and Access Plan under Section 39 of The 2015 Act. This action would only be taken in the following circumstances, where it is clearly evident that other interventions will not be effective:

- **Where an institution has persistently failed to comply with Student Fee Limits** and where the withdrawal of a Fee and Access Plan would be needed to protect students, their sponsors and/or other stakeholders from ongoing institutional failure to comply. Whilst escalation of intervention would be determined on a case-by-case basis, the circumstances when this approach might be used include, for example:

- Where the institution has failed to comply with Student Fee Limits on multiple occasions (including the repetition or continuation of the same issue) over a period of time and we have clear reason to believe that ongoing management or governance failures will prevent compliance for the foreseeable future.
- Where the institution has failed to comply with Student Fee Limits on multiple occasions (including the repetition or continuation of the same issue) over a period of time and we have clear reason to believe that the institution will continue to show blatant disregard for Student Fee Limits.
- Where the institution has failed to comply with Student Fee Limits on multiple occasions (including the repetition or continuation of the same issue) over a period of time and we have clear reason to believe that the institution has undertaken related actions that are fraudulent or illegal.
- **Where an institution has failed to comply with a Compliance and Reimbursement Direction** and where the withdrawal of a Fee and Access Plan would be needed to protect students, their sponsors and/or other stakeholders. Whilst escalation of intervention would be determined on a case-by-case basis, the circumstances when this approach might be used include, for example:
 - Where the institution has failed to comply with a Compliance and Reimbursement Direction and we have clear reason to believe that the institution will continue to show blatant disregard for Student Fee Limits.
 - Where the institution has failed to comply with a Compliance and Reimbursement Direction and any associated enforcement action through injunction.
 - Where the institution has failed to comply with a Compliance and Reimbursement Direction and we have clear reason to believe that the institution will persist in its refusal to engage with us due to management or governance failures.
 - Where the institution has failed to comply with a Compliance and Reimbursement Direction and we have clear reason to believe that the institution has undertaken related actions that are fraudulent or illegal.

6.3.27. Interventions under Sections 37 and 39 of the 2015 Act would only be undertaken *in extremis*, where we have clear reason to believe that intervention through the issue of a Compliance and Reimbursement Direction is unlikely to be sufficient or successful, or where an institution has already failed to comply with a Compliance and Reimbursement Direction (Section 39 only). Interventions under Sections 37 and 39 of the 2015 Act are outlined in this Statement of Intervention in sections 7.3 and 8.

Flow Chart: Compliance and Reimbursement Intervention Process



7. Intervention in respect of failure to comply with general requirements of an approved Fee and Access Plan

This section applies to: Regulated Institutions (institutions with an approved Fee and Access Plan)

7.1. Basis for Intervention

7.1.1. This section relates to Medr intervention in respect of failure to comply with general requirements of an approved Fee and Access Plan through Directions in Respect of a Failure to comply with General Requirements of Approved Plan. This intervention applies where we are satisfied that:

- There has been a failure by the governing body to comply with a general requirement of a Fee and Access Plan relating to the institution; and at the time of the failure, the Fee and Access Plan was approved under Section 7 of The 2015 Act; or
- The governing body is likely to fail to comply with a general requirement of the institution's approved Fee and Access Plan.

Note

The general requirements of an approved Fee and Access Plan are outlined under Section 6 of The Act and Regulations 5 and 6 of the Higher Education (Fee and Access Plans)(Wales) Regulations 2015. These requirements relate to the promotion of equality of opportunity and higher education. These include provisions requiring the governing body to:

- a. Take measures to attract applications from prospective students who are members of under-represented groups (or to secure the taking of such measures).
- b. Take measures to retain students who are members of under-represented groups (or to secure the taking of such measures).
- c. Provide financial assistance to students (or to secure the provision of such assistance).
- d. Make available to students or prospective students information about financial assistance available to students from any source (or to secure that such assistance is available).

The Fee and Access Plan must also:

- a. Set out objectives, with Specific, Measurable, Achievable, Realistic and Time-bound (SMART) measures, relating to the promotion of equality of opportunity and the promotion of higher education.
- b. Set out expenditure in respect of those objectives (i.e. specify the proportion of Fees to be spent on the objectives).

Note (continued)

- c. Set out how the governing body is going to monitor: compliance with the provisions of the Plan; and progress in meeting the objectives in the Plan relating to the promotion of equality of opportunity and the promotion of higher education.

- 7.1.2. The governing body of an institution is responsible for ensuring that the institution complies with the general requirements of its approved Fee and Access Plan. We will monitor this compliance (as required at Section 15(1)(b) of The 2015 Act) through our usual approval, monitoring and reporting processes. Further information on these monitoring and reporting processes is provided in Fee and Access Plan Guidance.
- 7.1.3. It should be noted that the governing bodies of regulated institutions will also be subject to a compliance duty under Section 16(1) of The 2015 Act, which requires them to provide Medr with such information, assistance and access to the institution's facilities as we reasonably require for the purposes of monitoring compliance with the general requirements of its approved Fee and Access Plan; evaluating the effectiveness of each approved plan; and evaluating the effectiveness of approved plans generally. We will write to the Accountable Officer of the institution (normally the Head of the institution) to request any such information, assistance or access to facilities, as is reasonably required for the purposes of monitoring compliance with the general requirements of approved plan and/or evaluating plan effectiveness, with a reasonable timescale to be agreed with the institution. Where the institution does not agree a timescale for submission of the information, or provision of assistance or access to facilities, we will set a timescale that we consider to be reasonable.
- 7.1.4. Where we are satisfied that a governing body has failed to provide such information, under Section 16(2), we may direct the governing body to take (or not to take) specified steps for the purpose of securing the provision of the required information, assistance or access.

Securing Information, Assistance or Access

In the event of failure to provide information, assistance or access to facilities, Medr will attempt to resolve the situation through discussion with the institution's Accountable Officer (any correspondence will be copied to the Chair of the governing body and Clerk to the governing body). Should that fail to resolve the issue, Medr may direct the governing body to take (or not to take) specified steps in order to secure the information, assistance or access to facilities that is needed, through the issuing of a **Direction to Enforce Compliance with the Duty to Cooperate** for the Purpose of Monitoring and Evaluating Compliance and Effectiveness under Section 16(2) of The 2015 Act (sent to the Chair of the governing body and Clerk to the governing body and copied to the Accountable Officer).

Securing Information, Assistance or Access (continued)

Effectiveness under Section 16(2) of The 2015 Act (sent to the Chair of the governing body and Clerk to the governing body and copied to the Accountable Officer).

A Direction to Enforce Compliance with the Duty to Cooperate for the purpose of monitoring and evaluating compliance and effectiveness is not subject to the warning and review procedure set out at Sections 42 to 44 of The 2015 Act. Once such a Direction is issued the institution will be required to comply with the request for information, assistance or access to facilities within a reasonable timescale set by Medr (which will be set out in the Direction). In the event of non-compliance with this Direction, we may seek enforcement by means of injunction, with the judicial oversight by the court ensuring scrutiny of the exercise of these Medr powers.

- 7.1.5. Where we are satisfied that the governing body of an institution has failed to comply with a general requirement of its Fee and Access Plan, or is likely to fail to comply with a general requirement of its approved Plan, Section 13(1) of The 2015 Act states that Medr may give a Direction in Respect of Failure to Comply with General Requirements of Approved Plan. This Direction would require the governing body to take (or not to take) specified steps to deal with or prevent its failure to comply. It should be noted that we may not give such a Direction if we are satisfied that the governing body has taken all reasonable steps to comply with the requirement in question.

Note

Medr will normally deem a governing body to have taken all reasonable steps to comply where it is evident that sufficient effort has been made by the institution to deliver the requirement but where factors outside the institution's control (e.g. external political or economic factors and issues arising from collaboration with another institution) have resulted in non-compliance.

For example, the governing body of an institution may commit in its approved Fee and Access Plan to provide bursary assistance to a certain number of students. The actual number of students which subsequently receive a bursary is lower than the number set out in the Plan because the number of eligible students applying for the bursary is lower than expected, despite the bursary being widely publicised. In that scenario, we might, after considering the details of the actions the institution had taken to make prospective

Note (continued)

students aware of the availability of the bursary, be satisfied that the governing body had taken all reasonable steps to comply with the general requirement.

Where we consider that an institution may not have taken all reasonable steps to comply with the General Requirements of Approved Plan, this will be discussed with the institution's Accountable Officer.

The institution will be provided with the opportunity (within a reasonable timescale set by Medr) to provide information that supports the institution's case that all reasonable steps have been taken (e.g. evidence of factors outside the institution's control that have contributed to failure to comply with General Requirements of Approved Plan). Following review of this information, we may seek additional information where this is required.

All relevant information will be considered by Medr and a judgement made, as the regulator, on whether all reasonable steps have been taken by the institution.

- 7.1.6. We may intervene in respect of failure to comply with general requirements of an approved Fee and Access Plan whilst the approved Fee and Access Plan is in force or at a time when the Plan is no longer in force, provided the Plan was in force at the time of failure (or likelihood of failure).
- 7.1.7. The Stages of this intervention process, that are provided for under Sections 42 to 44 of The 2015 Act and the Fee and Access Plans (Notices and Directions)(Wales) Regulations 2015⁵, are outlined below together with the associated checks and balances.

7.2. Prior to Intervention

- 7.2.1. Where an issue in respect of a failure to comply with a general requirement of an approved Fee and Access Plan has been identified, we will contact the Accountable Officer of the institution (normally the Head of the institution) to discuss the issue and to clarify what actions have already been taken to comply and to understand any factors that may have impacted on compliance (all correspondence at this informal Stage will be copied to the Clerk to the governing body and Chair of the governing body). Where action to address identified compliance issues is possible, either within the lifetime of the approved Fee and Access Plan or subsequently, we may request an institution take such action as is needed to enable compliance within a reasonable timescale set by Medr. In agreeing this timescale, it should be noted that we must balance the institution's view regarding the reasonableness of any timescale with the interests of students and their sponsors and the need to address compliance at the earliest reasonable opportunity.

⁵ [The Higher Education \(Fee and Access Plans\) \(Notices and Directions\) \(Wales\) Regulations 2015](#)

- 7.2.2. We will normally only initiate formal intervention where an institution has failed to take appropriate action to comply with the general requirements of its approved Fee and Access Plan within an agreed timescale. However, where serious failures are identified, such as an inadequate effort by the institution to deliver against Plan requirements or repeated failure to comply, we may decide that it is necessary to initiate formal intervention at an early Stage. We will be mindful of the circumstances of the case when considering formal intervention, including the institution's explanation of why it has failed to comply; the likelihood of the institution addressing the issue voluntarily if given further time; and any other relevant factors.

7.3. The Intervention Process: Directions in Respect of a Failure to Comply with General Requirements of Approved Plan

- 7.3.1. When intervening, for the purpose of clarity, all communication from Medr in respect of intervention will clearly state the Stage and any sub-element of the intervention process to which it relates.

Stage 1: Warning Notice

- 7.3.2. Where an institution has failed to comply with general requirements of its approved Fee and Access Plan and has not taken all reasonable steps to comply, we may initiate the intervention process in respect of failure to comply with general requirements of an approved plan. Before we proceed to issue a Direction in Respect of Failure to Comply with General Requirements of Approved Plan to an institution we will provide the governing body of that institution with a Warning Notice. The Warning Notice will:
- a. Set out the proposed Direction in Respect of Failure to Comply with General Requirements of Approved Plan;
 - b. State Medr's reasons for proposing to give it;
 - c. Inform the governing body that it may make representations about the proposed Direction;
 - d. Specify the period from the date of issue within which, and the way in which, representations may be made.

Checks and balances

- 7.3.3. From issue of the Warning Notice, institutions will have up to 40 days to make representations to us, with all representations to be sent to the Medr Chief Executive. Where representations are not received, no Direction in Respect of Failure to Comply with General Requirements of Approved Plan will be issued until after the completion of this 40 day period.
- 7.3.4. Where representations are received, we will undertake to review these and decide on whether to issue a Direction in Respect of a Failure to Comply with General Requirements of Approved Plan within 40 days of receipt of the representations, except where the submission of additional information is required in order for us to be able to adequately consider representations. In such instances, the additional

information will be requested within 28 days of receipt of the representations and should be submitted by the institution within 28 days of this Medr request, in order for a decision to be made within 60 days of receipt of the original representations. Where representations are received no Direction in Respect of a Failure to Comply with General Requirements of Approved Plan will be issued until after the completion of this process.

- 7.3.5. Decisions regarding the issuing of a Direction in Respect of Failure to Comply with General Requirements of Approved Plan will be made by Medr. Where a decision is taken to not issue a Direction in Respect of Failure to Comply with General Requirements of Approved Plan, we will send a notice to the governing body within 14 days of that decision to inform them of the decision and the reasons for this.

Stage 2: The Direction in respect of Failure to Comply with General Requirements of Approved Plan

- 7.3.6. When issuing the Direction in Respect of Failure to Comply with General Requirements of Approved Plan to an institution (sent via the Chair of the governing body and Clerk to the governing body and copied to the Accountable Officer), Section 43 of The 2015 Act requires that Medr provide a statement to the governing body of that institution. The statement will:
- a. Set out our reasons for issuing the Direction in Respect of Failure to Comply with General Requirements of Approved Plan;
 - b. Inform the governing body that it may apply for a review of the Direction in Respect of Failure to Comply with General Requirements of Approved Plan, providing information on the grounds for review, the review process and details of to whom an application for review should be made; and
 - c. Include any other prescribed information set out under the Fee and Access Plans (Notices and Directions) (Wales) Regulations 2015 at Regulation 6, i.e. the date of issue of the notice or direction; when the notice or direction is to be treated as having been given; the grounds in Regulation 7 on which an application for a review may be made; the procedure in Regulation 8 that a governing body must follow in order to apply for a review; and the name and address of the Review Panel to whom an application for a review must be made.
- 7.3.7. The Direction in Respect of Failure to Comply with General Requirements of Approved Plan that is issued may specify the steps that are (or are not) to be taken by the governing body for the purpose of dealing with or preventing the failure to comply. The Direction in Respect of Failure to Comply with General Requirements of Approved Plan may be varied or revoked by the issue of a later Direction.
- 7.3.8. Regulation 4 under the Fee and Access Plans (Notices and Directions) (Wales) Regulations 2015⁶ states that a notice or Direction specified in Section 41(1) of The 2015 Act is to be treated as having been given on the day that the first of the following events occurs:

⁶ [The Higher Education \(Fee and Access Plans\) \(Notices and Directions\) \(Wales\) Regulations 2015](#)

- a. The governing body notifies Medr in writing that it accepts the Direction in Respect of Failure to Comply with General Requirements of Approved Plan;
- b. The time limit to apply for a Review of the Direction in Respect of Failure to Comply with General Requirements of Approved Plan under Section 44 of The 2015 Act has expired and the governing body has not applied for a review;
- c. A review of the Direction in Respect of Failure to Comply with General Requirements of Approved Plan under Section 44 of The 2015 Act has concluded and Medr has notified the governing body in writing that the Direction stands.

Checks and balances

7.3.9. Where we issue an institution with a Direction in Respect of Failure to Comply with General Requirements of Approved Plan, Section 44 of The 2015 Act provides the ability for the governing body of that institution to apply for a review of the Direction.

7.3.10. The Higher Education Fee and Access Plans (Notices and Directions)(Wales) Regulations 2015⁷ specify that an application for a review may be made only on the following grounds:

- a. The governing body presents a material factor for consideration to which, for good reason, it had not previously drawn Medr's attention;
- b. The governing body considers that Medr has disregarded a material factor it should have considered;
- c. The governing body considers that the Direction is disproportionate in view of all the relevant facts which were considered by Medr.

Regulation 8 of the Fee and Access Plans (Notices and Directions) (Wales) Regulations 2015 states that applications for review must be made within 40 days of issue of the Direction in Respect of Failure to Comply with General Requirements of Approved Plan, with applications made in writing as outlined in the Direction. The application for review must specify the grounds for review and include: a copy of the direction to be reviewed; a copy of the statement issued in accordance with Section 43 of The 2015 Act; and information in support of the application. It should be noted that, under Regulation 7(2), an application for a review of the Direction in Respect of Failure to Comply with General Requirements of Approved Plan cannot be made where a governing body has notified Medr in writing that it accepts the Direction.

7.3.11. The review is to be carried out by a Person, or Panel of persons, appointed by the Welsh Ministers. Upon receiving an application for a review, the Person or Panel appointed by the Welsh Ministers will provide the governing body and Medr with an anticipated timetable for completing the review. The review Panel will give Medr details of the Direction to be reviewed, details of the grounds on which the review

⁷ [The Higher Education \(Fee and Access Plans\) \(Notices and Directions\) \(Wales\) Regulations 2015](#)

application has been made and a copy of the information supplied by the governing body in support of the application for review.

- 7.3.12. The review Panel may make a written request for further information from either Medr or the governing body for the purposes of the review. Any request for further information made by the Panel will be sent to Medr and the governing body at the same time. Medr or the governing body will be required to provide any information requested by the Panel within 28 days of the issue of the request if it is to be considered. Under Regulation 9(8), the Panel will consider whether it is appropriate to allow representations from either Medr or the governing body in respect of any further information submitted to it in response to its request for such information; and if it considers it appropriate to allow representations, it will notify Medr and the governing body accordingly. The review Panel will ensure that both Medr and the governing body are in receipt of all information submitted by the other party.
- 7.3.13. The review Panel will take account of the requested information submitted by Medr and the governing body in making its decision. The Panel will prepare a written report that is sent to both Medr and the governing body at the same time. We will take account of the review Panel's report and reconsider our decision to issue the Direction. We will then notify the governing body in writing within 40 days as to whether the Direction stands or not, and provide reason for that decision. If our decision is that the Direction should stand, that decision will be binding on the governing body of the institution.

Stage 3: Compliance

- 7.3.14. The governing body of the institution will be expected to consider the Direction in Respect of Failure to Comply with General Requirements of Approved Plan at the earliest possible opportunity, in order that it can agree measures to comply with the requirements of its approved Fee and Access Plan. The governing body will be expected to initiate the necessary actions within 60 days of the Direction being given (see paragraph 7.3.8).
- 7.3.15. The governing body will be expected to notify us in writing that the Direction in Respect of Failure to Comply with General Requirements of Approved Plan actions have been completed. Following completion of the Direction actions by the institution, we will seek to consider the information from the governing body regarding compliance within 14 days. If requested by the institution's governing body, we will give written notice to the governing body stating whether they are satisfied that it has complied with the Direction (or with a particular requirement of the Direction).

Stage 4: Enforcement

- 7.3.16. Where we issue a Direction in Respect of Failure to Comply with General Requirements of Approved Plan to the governing body of an institution, the governing body must comply with the Direction (subject to the outcome of any review of the Direction - see Stage 2 above). In the event that a governing body fails to comply satisfactorily (in Medr's opinion) with the Direction within the above timescale, the Direction will be enforceable by injunction in accordance with

Section 45 of The 2015 Act. Our decisions on whether to proceed to injunction will take account of the particular circumstances of the case.

- 7.3.17. As a means to enforce compliance with a Direction in Respect of Failure to Comply with General Requirements of Approved Plan, we may consider the refusal to approve a new Fee and Access Plan under Section 37 of The 2015 Act as an alternative to injunction. The circumstances, under which we will consider use of the powers under Section 37 of The 2015 Act, rather than injunction, are outlined below.
- 7.3.18. In the event of failure to comply with the General Requirements of Approved Plan, we may consider the refusal to approve a new Fee and Access Plan under Section 37 of The 2015 Act, with this normally considered where there is a longer-term or significant failure to comply. We may also consider the refusal to approve a new Fee and Access Plan under Section 37 of The 2015 Act in the event of failure to comply with a Direction in respect of Failure to Comply with General Requirements of Approved Plan. In the event of the most extreme circumstances, where there is a persistent failure to comply with the General Requirements of Approved Plan or where there is non-compliance with a Direction in respect of Failure to Comply with General Requirements of Approved Plan, we may consider the withdrawal of approval of an existing Fee and Access plan under Section 39 of The 2015 Act. The circumstances under which we will consider escalating our intervention in respect of Failure to Comply with General Requirements of Approved Plan to the use of these powers under Section 37 or 39 of The 2015 Act are outlined below.

Stage 5: Escalation of Intervention in respect of Failure to Comply with General Requirements of Approved Plan

- 7.3.19. We may consider an escalation of intervention in respect of a Failure to Comply with General Requirements of Approved plan, to a Refusal to Approve a New Fee and Access Plan under Section 37 of The 2015 Act, where appropriate. In view of the significance of this escalation, it would normally only be considered under the following circumstances:
- **Longer-term instances of a Failure to Comply with General Requirements of Approved Plan.** Whilst escalation of intervention would be determined on a case-by-case basis, such longer-term failure to comply with General Requirements of Approved Plan would generally take the form of the continuation of the same issue over a period of time. It should be noted that the escalation of intervention would normally only be undertaken where an institution has failed to show voluntary progress to address the identified failure within a reasonable period of time set by Medr.
 - **Significant instances of a Failure to Comply with General Requirements of Approved Plan** that warrant more severe intervention than the issue of a Direction in respect of Failure to Comply with General Requirements of Approved Plan, but where the withdrawal of a Fee and Access Plan would be excessive. Whilst escalation of intervention would be determined on a case-by-case basis, the judgement of what constitutes significant failure would be based on the potential impact of the failure to comply on a range of stakeholders and issues (e.g. students, staff, institutional sustainability, public finances and wider impact on the higher education sector etc.). Such

significant non-compliance might include, for example, circumstances in which there is failure to comply with more than one General Requirement of an Approved plan or where the extent of any failure to comply is substantial.

7.3.20. We can enforce compliance with a Direction in respect of Failure to Comply with General Requirements of Approved Plan through the issue of a Notice of Refusal to Approve a New Fee and Access Plan (under Section 37 of The 2015 Act) as an alternative to enforcement through injunction. This alternative means of enforcement would normally only be used under the types of circumstances outlined below:

- **Where an institution has not complied with a Direction in respect of Failure to Comply with General Requirements of Approved Plan and there is clear reason to believe that it will not comply with an injunction** such that additional pressure must be brought to bear in order to enforce compliance. Whilst escalation of intervention would be determined on a case-by-case basis, the belief that an institution will not comply with an injunction might be based on, for example:
 - Blatant disregard by the institution's governing body for compliance with the Direction in respect of Failure to Comply with General Requirements of Approved Plan (e.g. a refusal to discuss; ongoing failure to come to a decision on compliance; or a decision not to comply);
 - Evidence of previous non-compliance with an injunction; or
 - An ongoing unwillingness, or inability, of the governing body to engage with Medr.

7.3.21. In the most extreme circumstances, we may instead (or additionally) consider escalation of intervention in respect of Failure to Comply with General Requirements of Approved Plan to a Withdrawal of an Approved Fee and Access Plan under Section 39 of The 2015 Act. This action would only be taken in the following extreme circumstances, where it is clearly evident that other interventions will not be effective:

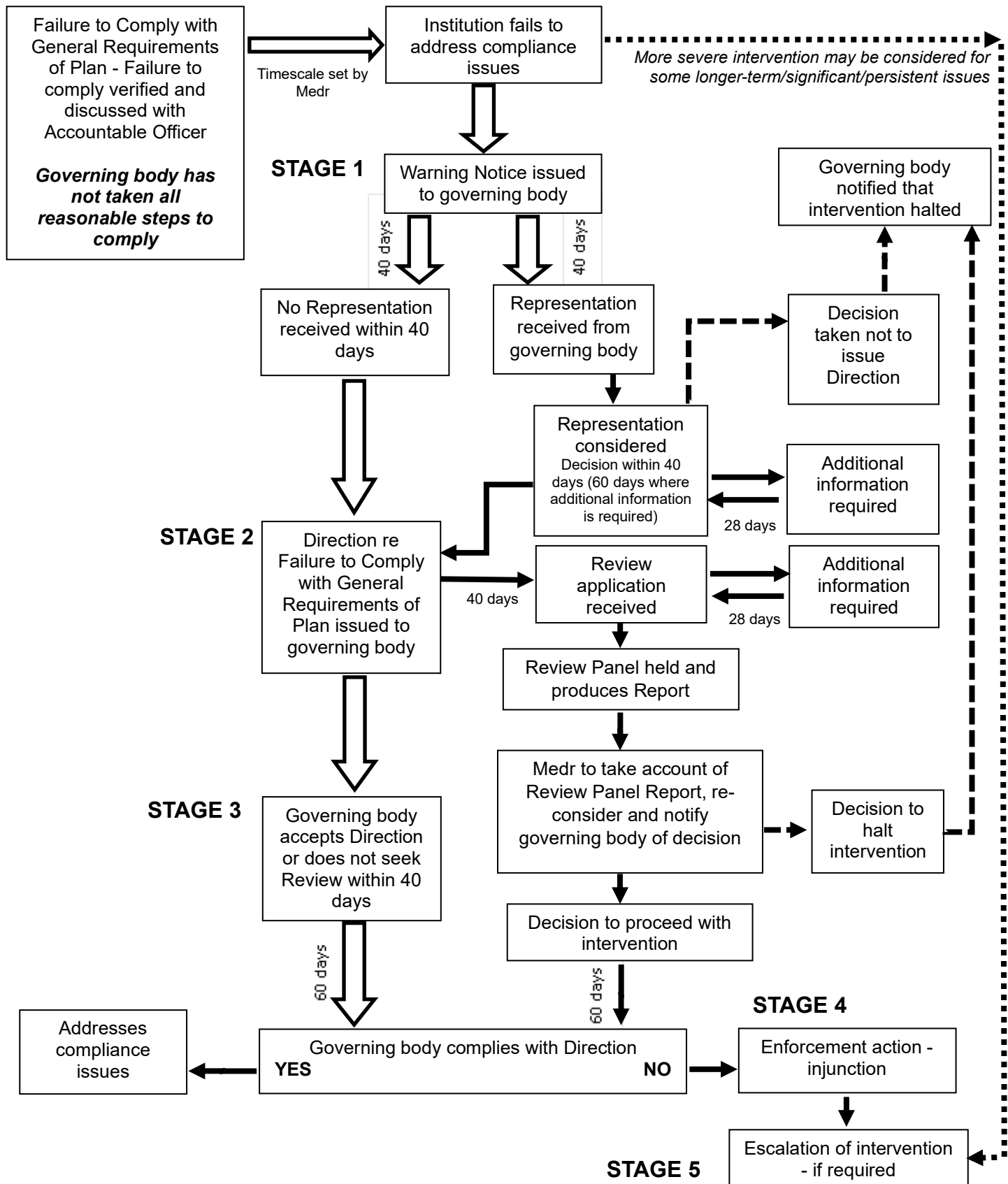
- **Where an institution has persistently failed to comply with the General Requirements of Approved Plan** and where the withdrawal of a Fee and Access Plan would be needed to protect students, their sponsors and/or other stakeholders from an ongoing institutional failure to comply. Whilst escalation of intervention would be determined on a case-by-case basis, the circumstances when this approach might be used include, for example:
 - Where the institution has failed to comply with the General Requirements of Approved Plan on multiple occasions (including the repetition or continuation of the same issue) over a period of time and we have clear reason to believe that ongoing management or governance failures will prevent compliance with the General Requirements of Approved Plan for the foreseeable future.
 - Where the institution has failed to comply with the General Requirements of Approved Plan on multiple occasions (including the repetition or continuation of the same issue) over a period of time and we have clear reason to believe that the institution will continue to show blatant disregard for the General Requirements of Approved Plan.

- Where the institution has failed to comply with the General Requirements of Approved Plan on multiple occasions (including the repetition or continuation of the same issue) over a period of time and we have clear reason to believe that the institution has undertaken related actions that are fraudulent or illegal.
- **Where an institution has failed to comply with a Direction in Respect of Failure to Comply with General Requirements of Approved Plan**, and where the withdrawal of a Fee and Access Plan would be needed to protect students, their sponsors and/or other stakeholders. Whilst escalation of intervention would be determined on a case-by-case basis, the circumstances when this approach might be used include, for example:
 - Where the institution has failed to comply with a Direction in Respect of Failure to Comply with General Requirements of an Approved Plan and we have clear reason to believe that the institution will continue to show blatant disregard for General Requirements of Approved Plan.
 - Where the institution has failed to comply with a Direction in Respect of Failure to Comply with General Requirements of an Approved Plan and any associated enforcement action through injunction.
 - Where the institution has failed to comply with a Direction in Respect of Failure to Comply with General Requirements of an Approved Plan and we have clear reason to believe that the institution will persist in its refusal to engage with us due to serious management or governance failures.
 - Where the institution has failed to comply with a Direction in Respect of Failure to Comply with General Requirements of an Approved Plan and we have clear reason to believe that the institution has undertaken related actions that are fraudulent or illegal.

7.3.22. Interventions under Sections 37 and 39 of The 2015 Act would only be undertaken *in extremis*, where we have clear reason to believe that intervention through the issue of a Direction in respect of Failure to Comply with General Requirements of Approved Plan is unlikely to be sufficient or successful, where an injunction is unlikely to be complied with (intervention under Section 37 of The 2015 Act only), or where an institution has already failed to comply with a Direction in respect of Failure to Comply with General Requirements of Approved Plan. These interventions are outlined in this Statement of Intervention in sections 7.3 and 8.

Flow Chart: The Intervention Process in Respect of Failure to Comply with General Requirements of Approved Plan

Intervention may be halted at any point if the institution complies.



8. Withdrawal of Approval of a Fee and Access Plan under Section 39 of The 2015 Act

This section applies to: Regulated Institutions (institutions with an approved Fee and Access Plan)

8.1. Basis for Intervention

- 8.1.1. This section relates to our power to intervene in extremis through withdrawal of its approval of an existing Fee and Access Plan under Section 39 of The 2015 Act. This intervention power will only be used when we are satisfied that the regulatory breach is so significant or serious that it cannot be dealt with by other means. The basis for intervention is outlined below, with the intervention involving the issue of a Notice of Withdrawal of Approval of Fee and Access Plan.

Note

When initiating the withdrawal of an institution's Fee and Access Plan, Medr will strive to protect the interests of the students at the institution. We may work with the Welsh Government to implement measures through student support regulations (under Section 22 of the Teaching and Higher Education Act 1998) to make provision for student support to continue for those students remaining at the institution. We may also seek to protect students by, for example, working in partnership with a third party institution to ensure that students are able to complete their courses under new arrangements.

- 8.1.2. We may withdraw approval of a Fee and Access Plan if we are satisfied that one of the conditions for intervention set out at Section 39(2) of The 2015 Act has been met. These conditions, which relate to individual requirements under The 2015 Act and strands of intervention, are as follows:

- The governing body of the institution has:
 - **Persistently failed to comply with the duty at Section 10(1) of The 2015 Act** to ensure that regulated course fees do not exceed the applicable fee limit (i.e. that institutions do not charge excess fees); and/or
 - **Failed to comply with a Compliance and Reimbursement Direction.**
- The governing body of the institution has:
 - **Persistently failed to comply with the general requirements of the institution's approved Fee and Access Plan** (see Section 6 of The 2015 Act).
 - **Failed to comply with a Direction in Respect of Failure to Comply with General Requirements of Approved Plan** (see Section 13 of The 2015 Act).

Note

For the purposes of this intervention we will make a judgement on whether a governing body has **persistently failed to comply with the duty at Section 10(1) of The 2015 Act or with the General Requirements of Approved plan** based on the duration, recurrence and frequency of a compliance issue or issues (persistent failure may consist of a number of separate issues or the repetition or continuation of the same issue). This judgement may also be informed by the stance taken by the institution's governing body with regard to compliance (e.g. steadfast refusal to engage with Medr or to comply with regulatory requirements).

- 8.1.3. Where an institution's governing body has failed to comply with a Compliance and Reimbursement Direction or with a Direction in Respect of Failure to Comply with General Requirements of Approved Plan, this may result in enforcement action via injunction (see earlier sections of Statement of Intervention). However, as set out above, in certain circumstances we may escalate the intervention process by issuing a Notice of Withdrawal of Approval of Fee and Access Plan.
- 8.1.4. Similarly, we may issue a Notice of Withdrawal of Approval of Fee and Access Plan where an institution's governing body persistently fails to comply with either the duty at Section 10(1) of The 2015 Act to ensure that regulated course fees do not exceed the applicable fee limit or with the general requirements of the institution's approved Fee and Access Plan (see Section 6 of The 2015 Act).
- 8.1.5. In view of the likely major impact on an institution of the withdrawal of approval of its Fee and Access Plan, the issue of a Notice of Withdrawal of Approval of Fee and Access Plan will not be taken lightly and will normally only be utilised as a measure of last resort where other interventions have failed, or in circumstances where a compliance issue is so serious that decisive action must be taken (e.g. to protect students, public funds or the reputation of the wider Higher Education sector).
- 8.1.6. The Stages of this intervention process that are provided for under sections 42 to 44 of The 2015 Act and the Fee and Access Plans (Notices and Directions) (Wales) Regulations 2015 are outlined below, together with the associated checks and balances.

Note

Whilst an institution's governing body will normally be informed prior to the issue of a Warning Notice in respect of Withdrawal of Approval of Fee and Access Plan under Section 39 of The Act, **it may not always be appropriate to engage with the institution via a partnership approach.** For example, the circumstances in which a Notice of Withdrawal of Approval of Fee and Access Plan is issued may be serious enough (e.g. serious issues of non-compliance with The Code impacting on financial viability) that any informal engagement is no longer appropriate prior to initiation of the intervention.

8.2. Prior to Intervention

- 8.2.1. Where an institution's governing body has persistently failed to comply with any of: the duty at Section 10(1) of The 2015 Act to ensure that regulated course fees do not exceed the applicable fee limit; a Compliance and Reimbursement Direction; general requirements of the institution's approved Fee and Access Plan; a Direction in Respect of Failure to Comply with General Requirements of Approved Plan, we may, depending on the urgency of the situation in Medr's opinion, contact the governing body to discuss the issue. Where the governing body is unable or unwilling to comply, within a reasonable timescale set by Medr, the process leading to the issue of a Notice of Withdrawal of Approval of Fee and Access Plan will be initiated. We will be mindful of the circumstances of the case when considering this serious intervention, including the institution's explanation of why it has failed to comply; the likelihood of the institution addressing the issue(s) voluntarily if given further time; the interests of students and how these can be protected; and any other relevant factors. Where there is an urgent need for action (in Medr's opinion), we may not have time to engage with the governing body prior to initiating the intervention process.
- 8.2.2. Where the governing body is unable or unwilling to comply, within a reasonable timescale set by Medr, the process leading to issue of a Notice of Withdrawal of Approval of Fee and Access Plan will be initiated. We will be mindful of the circumstances of the case when considering this serious intervention, including the institution's explanation of why it has such serious failings; the likelihood of the institution addressing the issue(s) voluntarily if given further time; the interests of students and how these can be protected; and any other relevant factors. Where there is an urgent need for action (in Medr's opinion), we may not have time to engage with the governing body prior to initiating the intervention process.

8.3. The Intervention Process

Stage 1: Warning Notice

- 8.3.1. Where an institution's governing body has persistently failed to address the above non-compliance issues in respect of excess fees or the general requirements of the Fee and Access Plan or has seriously inadequate quality or serious issues in respect of compliance with The Code, we may initiate the intervention process in respect of withdrawal of approval of Fee and Access Plan.
- 8.3.2. Where we consider the issues to be not so urgent that immediate action is required, and has sought to engage further with the institution's governing body prior to initiating this intervention, we will initiate the intervention after a reasonable period (timescale to be set by Medr).
- 8.3.3. Before Medr proceeds to issue a Notice of Withdrawal of Approval of Fee and Access Plan to an institution, we will provide the governing body of that institution with a Warning Notice (sent via the Chair of the governing body and Clerk to the governing body and copied to the Accountable Officer). The Warning Notice will:
- Set out the proposed Notice of Withdrawal of Approval of Fee and Access Plan;
 - State our reasons for proposing to give it;

- c. Inform the governing body that it may make representations about the proposed Notice;
- d. Specify the period from the date of issue within which, and the way in which, representations may be made.

Checks and balances

- 8.3.4. From issue of the Warning Notice, institutions will have up to 40 days to make representations to Medr, with all representations to be sent to the Medr Chief Executive. No Notice of Withdrawal of Approval of Fee and Access Plan will be issued until after the completion of this 40 day period.
- 8.3.5. Where representations are received, we will undertake to review these and decide on whether to issue a Notice within 40 days of receipt of the representations, except where the submission of additional information is required in order for us to be able to adequately consider representations. In such instances, the additional information will be requested within 28 days of receipt of the representations and should be submitted by the institution within 28 days of the Medr request, in order for a decision to be made within 60 days of receipt of the original representations. Where representations are received, no Notice of Withdrawal of Approval of Fee and Access Plan will be issued until after the completion of this process.
- 8.3.6. Decisions regarding the issuing of a Notice of Withdrawal of Approval of Fee and Access Plan will be made by the Medr Chief Executive. Where a decision is taken to not issue a Notice of Withdrawal of Approval of Fee and Access Plan, Medr will send a notice to the governing body within 14 days to inform them of the decision and the reasons for this.

Stage 2: Notice of Withdrawal of Approval of Fee and Access Plan

- 8.3.7. When issuing a Notice of Withdrawal of Approval of Fee and Access Plan to an institution (sent via the Chair of the governing body and Clerk to the governing body and copied to the Accountable Officer), Section 43 of The 2015 Act requires that Medr provide a statement to the governing body of that institution. The statement will:
 - a. Set out Medr's reasons for issuing the Notice;
 - b. Inform the governing body that it may apply for a review of the Notice; and
 - c. Include any other prescribed information set out under the Fee and Access Plans (Notices and Directions) (Wales) Regulations 2015 at Regulation 6, i.e. the date of issue of the notice or direction; when the notice or direction is to be treated as having been given; the grounds in Regulation 7 on which an application for a review may be made; the procedure in Regulation 8 that a governing body must follow in order to apply for a review; and the name and address of the Review Panel to whom an application for a review must be made.
- 8.3.8. Regulation 4 under the Fee and Access Plans (Notices and Directions) (Wales) Regulations 2015⁸ states that a notice or direction specified in Section 41(1) of the

⁸ [The Higher Education \(Fee and Access Plans\) \(Notices and Directions\) \(Wales\) Regulations 2015](#)

2015 Act is to be treated as having been given on the day that the first of the following events occurs:

- a. The governing body notifies Medr in writing that it accepts the Notice;
- b. The time limit to apply for a Review of the Notice under Section 44 of The 2015 Act has expired and the governing body has not applied for a review;
- c. A review of the Notice under section 44 of The 2015 Act has concluded and Medr has notified the governing body in writing that the Notice stands.

Once given, the Notice will be published on the Medr website within seven days. The Notice will remain on Medr's website until the date on which the relevant Fee and Access Plan would have, but for the Notice, expired.

- 8.3.9. Whilst the Notice of Withdrawal of Approval of Fee and Access Plan will not be shared with Welsh Ministers until the point at which it is given, we will need to provide briefing to Welsh Government officials (and hence to Welsh Ministers) at the point of first issuing the Notice. The Notice that is issued will confirm that Medr will withdraw the approval for the institution's existing Fee and Access Plan.

Checks and balances

- 8.3.10. If Medr issues an institution with a Notice of Withdrawal of Approval of Fee and Access Plan, Section 44 of The 2015 Act provides the ability for the governing body of that institution to apply for a review of the Notice. An application for a review may be made only on the following grounds:
- a. The governing body presents a material factor for consideration to which, for good reason, it had not previously drawn Medr's attention;
 - b. The governing body considers that Medr has disregarded a material factor it should have considered;
 - c. The governing body considers that the notice is disproportionate in view of all the relevant facts which were considered by Medr.

Regulation 8 of the Fee and Access Plans (Notices and Directions) (Wales) Regulations 2015 states that applications for review must be made within 40 days of issue of the Notice of Withdrawal of Approval of Fee and Access Plan, with applications made in writing as outlined in the Notice. The application for review must specify the grounds for review and include a copy of the notice or direction to be reviewed; a copy of the statement issued in accordance with Section 43 of The 2015 Act; and information in support of the application. It should be noted that, under Regulation 7(2), an application for a review of the Notice of Withdrawal of Approval of Fee and Access Plan cannot be made where a governing body has notified Medr in writing that it accepts the Notice.

- 8.3.11. The review is to be carried out by a person, or Panel of persons, appointed by the Welsh Ministers. Upon receiving an application for a review, the Person or Panel appointed by the Welsh Ministers will provide the governing body and Medr with an anticipated timetable for completing the review. The review Panel will give Medr details of the Notice of Withdrawal of Approval of Fee and Access Plan to be reviewed, details of the grounds on which the review application has been made

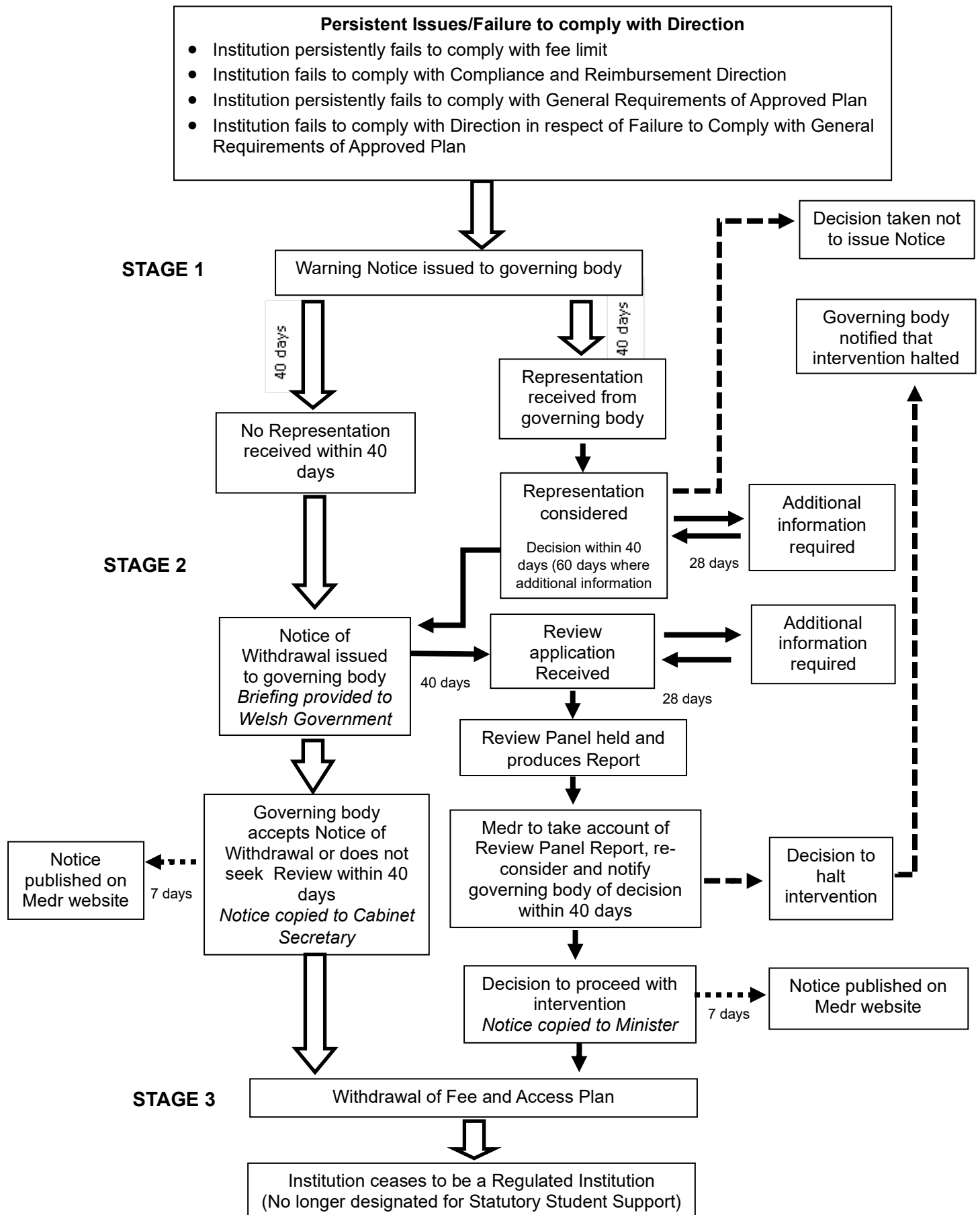
and a copy of the information supplied by the governing body in support of the application for review.

- 8.3.12. The review Panel may make a written request for further information from either Medr or the governing body for the purposes of the review. Any request for further information made by the Panel will be sent to Medr and the governing body at the same time. Medr or the governing body will be required to provide any information requested by the Panel within 28 days of the issue of the request if it is to be considered. Under Regulation 9(8), the Panel will consider whether it is appropriate to allow representations from either Medr or the governing body in respect of any further information submitted to it in response to its request for such information; and if it considers it appropriate to allow representations, it will notify Medr and the governing body accordingly. The review Panel will ensure that both Medr and the governing body are in receipt of all information submitted by the other party.
- 8.3.13. The review Panel will take account of all the requested information submitted by Medr and the governing body in making its decision. The Panel will prepare a written report that is sent to both Medr and the governing body at the same time. Medr will take account of the review Panel's report and reconsider its decision to issue the Direction. Medr will then notify the governing body in writing within 40 days as to whether the Notice stands or not, and provide reason for that decision. If Medr's decision is that the Notice should stand, that decision will enable Medr to proceed to withdraw approval.

Stage 3: Withdrawal of Approval

- 8.3.14. Once the Notice of Withdrawal of Approval of Fee and Access Plan has been given (see Paragraph 8.3.8), withdrawal would normally be expected to take place with immediate effect in order to avoid any worsening of the impact on students, public funds, publicly funded assets, reputation of the higher education sector etc.
- 8.3.15. The withdrawal of approval of the institution's Fee and Access Plan by Medr will mean that the institution ceases to be a Regulated Institution. The institution's courses will therefore no longer be automatically designated for the purposes of statutory student support.
- 8.3.16. In order to mitigate the impact of withdrawal of approval of the institution's Fee and Access Plan on existing students at the institution, measures will be implemented through student support regulations under Section 22 of the Teaching and Higher Education Act 1998. These will make provision for student support to continue for those students remaining at the institution. Medr's quality assessment duty and associated intervention functions will continue to apply in respect of those courses which continue to be undertaken by remaining students.

Flow Chart: Withdrawal of Approval of Fee and Access Plan under Section 39 of The 2015 Act



Medr

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