

ACCOMPANYING DOCUMENTS

Explanatory Notes and an Explanatory Memorandum are printed separately.

Draft Tertiary Education and Research (Wales) Bill

[CONSULTATION DRAFT]

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Draft Tertiary Education and Research (Wales) Bill

[CONSULTATION DRAFT]

An Act of Senedd Cymru to establish the Commission for Tertiary Education and Research and to make other provision about tertiary education (which includes higher education, further education and training) and research.

Having been passed by Senedd Cymru and having received the assent of Her Majesty, it is enacted as follows:

PART 1

STRATEGIC FRAMEWORK FOR TERTIARY EDUCATION AND RESEARCH

The Commission

1 Establishment of the Commission for Tertiary Education and Research

- (1) The Commission for Tertiary Education and Research (“the Commission”) is established as a body corporate.
- (2) Schedule 1 contains further provision about the Commission.

2 General duties of the Commission

- (1) The Commission must, so far as relevant to the exercise of its functions, have regard to—
 - (a) the need to ensure coherence in the provision of tertiary education and the alignment of such provision with research and innovation priorities;
 - (b) the reasonable requirements of industry, commerce, finance, the professions and other employers regarding tertiary education and research and innovation;
 - (c) the reasonable requirements of persons who may wish to undertake tertiary education or carry out research or innovation;
 - (d) the need to ensure continuous improvement in the quality of tertiary education;
 - (e) the importance of ensuring that members of the tertiary education workforce are capable of providing tertiary education of a high quality;
 - (f) the reasonable requirements of members of the tertiary education workforce for continuous professional development;
 - (g) the importance of protecting the academic freedom of institutions that provide higher education (so far as the freedom relates to higher education);
 - (h) the need to ensure continuous improvement in research and innovation;
 - (i) the need to ensure good value in relation to financial resources provided out of public funds.

- (2) In exercising its functions, the Commission must have regard to guidance given to it by the Welsh Ministers.
- (3) In giving guidance to the Commission, the Welsh Ministers must have regard to the importance of protecting the academic freedom of institutions that provide higher education (so far as the freedom relates to higher education).
- (4) In this section –

“academic freedom” (*“rhyddid academaidd”*) includes (among other things) the freedom of institutions –

- (a) to determine the contents of particular higher education courses and the manner in which they are taught, supervised or assessed,
- (b) to determine the criteria for admission of students to higher education courses and to apply those criteria in particular cases, and
- (c) to determine the criteria for the selection and appointment of academic staff and to apply those criteria in particular cases;

“members of the tertiary education workforce” (*“aelodau o’r gweithlu addysg drydyddol”*) are –

- (a) teachers of persons receiving tertiary education (“learners”),
- (b) persons who provide support to such teachers, and
- (c) persons who provide support to learners to participate in tertiary education.

Strategy for tertiary education and research

3 Statement of strategic priorities

- (1) The Welsh Ministers must publish a statement setting out their strategic priorities for and in connection with tertiary education and research and innovation.
- (2) The Welsh Ministers may at any time amend the statement published under subsection (1) (including by replacing it entirely).
- (3) The Welsh Ministers must publish any amendments they make to the statement.

4 Strategic plan for the Commission

- (1) The Commission must prepare a strategic plan setting out –
 - (a) objectives the Commission intends to achieve in the exercise of its functions;
 - (b) how the achievement of the objectives will address the priorities in the Welsh Ministers’ statement published under section 3;
 - (c) how the Commission intends to achieve the objectives.
- (2) In preparing the plan, the Commission must –
 - (a) have regard to the priorities in the Welsh Ministers’ statement of strategic priorities;

- (b) consult such persons as it considers appropriate.

5 Approval, publication and implementation of strategic plan

- (1) The Commission must send a strategic plan prepared under section 4 to the Welsh Ministers for their approval before the end of a period of 6 months beginning with the day on which the statement is published under section 3(1).
- (2) The Welsh Ministers may –
 - (a) approve the plan, or
 - (b) approve the plan with modifications.
- (3) The Welsh Ministers must consult the Commission before they modify its plan under subsection (2)(b).
- (4) The Commission must publish its approved strategic plan.
- (5) The Commission may publish its statement about well-being objectives under section 7 of the Well-being of Future Generations (Wales) Act 2015 (anaw 2) by including it in its approved strategic plan.
- (6) The Commission must take all reasonable steps to implement its approved strategic plan.

6 Review of strategic plan

- (1) If the Welsh Ministers amend their statement under section 3(2) after the Commission has published its approved strategic plan under section 5(4), the Commission must review its strategic plan.
- (2) The Commission may review its strategic plan at any other time.
- (3) The Commission may revise its strategic plan after a review under subsection (1) or (2) if it considers it appropriate to do so.
- (4) If the Commission revises its strategic plan, section 4 applies in relation to the revision of the plan as it applies in relation to the preparation of a plan.
- (5) The Commission must send its revised strategic plan to the Welsh Ministers for their approval –
 - (a) where the revision is in consequence of a review under subsection (1), before the end of a period of 6 months beginning with the day on which the Welsh Ministers publish the amendments to their statement, or
 - (b) where the revision is in consequence of a review under subsection (2), as soon as is reasonably practicable.
- (6) Subsections (2) to (6) of section 5 apply to a plan revised under this section as they apply to a plan prepared under section 4.

Specific strategic objectives

7 Civic mission

- (1) The Commission must promote the pursuit of a civic mission by institutions in Wales within the further education sector and the higher education sector.

- (2) The duty in subsection (1) may be discharged by the Commission in exercise of its other functions under this Act.
- (3) The Commission may exercise its functions under this Act to promote the pursuit of a civic mission by other persons (other than the institutions mentioned in subsection (1)) who are funded by the Commission under this Act.
- (4) In this section, a “civic mission” means action for the purpose of promoting or improving the economic, social, environmental or cultural well-being of Wales (including action that may achieve any of the well-being goals in section 4 of the Well-being of Future Generations (Wales) Act 2015 (anaw 2)).
- (5) In subsection (4), “well-being of Wales” includes the well-being of –
 - (a) the whole or any part of Wales;
 - (b) all or any persons resident or present in Wales.

8 Duties in relation to Welsh medium tertiary education

The Commission must –

- (a) encourage individuals who are ordinarily resident in Wales to participate in tertiary education through the medium of Welsh;
- (b) take all reasonable steps to ensure that there is sufficient tertiary education provided through the medium of Welsh to meet reasonable demand;
- (c) encourage the provision of tertiary education through the medium of Welsh by –
 - (i) registered institutions, and
 - (ii) persons other than registered institutions providing tertiary education funded or otherwise secured by the Commission.

Dissolution of Higher Education Funding Council for Wales

9 Dissolution of the Higher Education Funding Council for Wales

The Higher Education Funding Council for Wales ceases to exist.

10 Transfer schemes

Schedule 2 makes provision about schemes for the transfer of staff and property, rights and liabilities from the Higher Education Funding Council for Wales and the Welsh Ministers to the Commission.

PART 2

REGISTRATION AND REGULATION OF TERTIARY EDUCATION PROVIDERS

CHAPTER 1

REGISTRATION OF TERTIARY EDUCATION PROVIDERS

The register and registration procedure

11 The register

- (1) The Commission must establish and maintain a register of institutions in Wales providing tertiary education (which includes the provision of tertiary education by others on the institution's behalf) (referred to in this Act as "the register").
- (2) The register must be divided into different parts representing the different categories of registration for which provision is required by regulations under subsection (3).
- (3) The Welsh Ministers must, by regulations, specify categories of registration for which provision must be made in the register.
- (4) The categories of registration specified in the regulations must relate to the provision of one or more kinds of tertiary education.
- (5) The Commission must register an institution in a category of the register if—
 - (a) its governing body applies for it to be registered in the category,
 - (b) it is an institution in Wales,
 - (c) it provides, or has provided on its behalf, the kind of tertiary education that relates to the category,
 - (d) it satisfies the initial registration conditions applicable to it in respect of the registration sought (see section 13),
 - (e) the application complies with any requirements imposed under subsection (8), and
 - (f) registration is not prohibited by provision made in regulations under subsection (6).
- (6) The Welsh Ministers may, by regulations, prohibit the registration of an institution in one category of the register at the same time that it is registered in one or more of the other categories.
- (7) The Commission must not register an institution in the register otherwise than in accordance with subsection (5), section 30 (change in registration category without application) and any regulations made under subsection (6).
- (8) The Commission may determine—
 - (a) the form of an application for registration,
 - (b) the information to be contained in it or provided with it, and
 - (c) the way in which an application is to be submitted.

- (9) The Welsh Ministers may, by regulations, make provision about the information which must be contained in an institution's entry in the register.
- (10) Once registered, an institution's ongoing registration in a category of the register is subject to the institution satisfying –
 - (a) the general ongoing registration conditions applicable to the institution's registration in the category and as they may be later revised (see section 14), and
 - (b) the specific ongoing registration conditions (if any) imposed on it in that category of registration and as they may be later varied (see section 15).
- (11) References in this Part to the ongoing registration conditions of an institution are to the conditions mentioned in paragraphs (a) and (b) of subsection (10).
- (12) The Commission must make the information contained in the register, and the information previously contained in it, publicly available by such means as it considers appropriate.

12 Registration procedure

- (1) Before refusing an application to register an institution in a category of the register, the Commission must notify the governing body of the institution that it proposes to do so.
- (2) The notice must specify –
 - (a) the Commission's reasons for proposing to refuse to register the institution in the category,
 - (b) the period during which the governing body of the institution may make representations about the proposal ("the specified period"), and
 - (c) the way in which those representations may be made.
- (3) The specified period must not be less than 28 days beginning with the date on which the notice is received.
- (4) The Commission must have regard to any representations made by the governing body of the institution in accordance with the notice in deciding whether to register it in the category.
- (5) Having decided whether or not to register the institution in the category, the Commission must notify the governing body of the institution of its decision.
- (6) Where the decision is to register the institution in the category, the notice must specify –
 - (a) the date of entry in the register in the category, and
 - (b) the ongoing registration conditions applicable to the institution's registration in the category at that time.
- (7) Where the decision is to refuse to register the institution in the category, the notice must specify –
 - (a) the grounds for the refusal,
 - (b) information as to the right of review, and
 - (c) the period specified in regulations under section 71(4)(c) within which an application for a review may be made.

Registration conditions

13 Initial registration conditions

- (1) It is an initial condition of registration in each category of the register that the Commission is satisfied as to—
 - (a) the quality of the kind of tertiary education provided by, or on behalf of, the applicant institution to which the category of the register relates;
 - (b) the effectiveness of the governance and management of the applicant institution (including its financial management);
 - (c) the financial sustainability of the applicant institution.
- (2) The Commission must publish a document specifying the requirements that must be met for it to be satisfied as to the matters mentioned in subsection (1).
- (3) The Welsh Ministers may, by regulations, provide for further initial conditions of registration for any category of registration.
- (4) Regulations under subsection (3) may (among other things)—
 - (a) confer functions on the Commission in connection with the operation of further initial conditions provided for in the regulations;
 - (b) provide for further initial conditions of registration relating to—
 - (i) the charitable or other status of institutions;
 - (ii) the information provided to prospective students about an institution, its courses, and its terms and conditions of contracts with students;
 - (iii) complaints procedures of institutions.

14 General ongoing registration conditions

- (1) The Commission must determine and publish general ongoing registration conditions.
- (2) Different conditions may be determined for different categories of registration.
- (3) In relation to a category of registration, different conditions may be determined for different descriptions of institution.
- (4) The Commission must publish the general ongoing registration conditions in a way that identifies the category of registration to which the condition applies.
- (5) The Commission may revise the conditions.
- (6) If the Commission revises the conditions, it must publish them as revised.
- (7) Before determining or revising the conditions, the Commission must, if it appears to it appropriate to do so, consult persons that appear to the Commission to be concerned.

- (8) The Commission may, at the time of an institution's registration in a category of the register or later, decide that any one or more general ongoing registration conditions applicable to registration in that category is not applicable to the institution, subject to the requirements under this Part relating to mandatory ongoing registration conditions.
- (9) Where the decision is made after the institution's registration in that category of the register, the Commission must notify the governing body of the institution of its decision.

15 Specific ongoing registration conditions

- (1) The Commission may, at the time of an institution's registration in a category of the register or later, impose such conditions on its registration in the category as the Commission may determine ("the specific ongoing registration conditions").
- (2) The Commission may at any time vary or remove a specific ongoing registration condition.
- (3) Before –
 - (a) imposing a specific ongoing registration condition, or
 - (b) varying or removing a specific ongoing registration condition,the Commission must notify the governing body of the institution that it proposes to do so.
- (4) The notice must –
 - (a) specify the Commission's reasons for proposing to take the step in question,
 - (b) specify the period during which the governing body of the institution may make representations about the proposal ("the specified period"), and
 - (c) specify the way in which those representations may be made.
- (5) The specified period must not be less than 28 days beginning with the date on which the notice is received.
- (6) The Commission must have regard to any representations made by the governing body of the institution in accordance with the notice in deciding whether to take the step in question.
- (7) Having decided whether or not to take the step in question, the Commission must notify the governing body of the institution of its decision.
- (8) If the Commission decides to impose a new specific ongoing registration condition or vary or remove a specific ongoing registration condition, the notice must –
 - (a) specify the new condition, the condition as varied or the condition being removed (as the case may be), and
 - (b) specify the date when the imposition, variation or removal takes effect.
- (9) Where the notice 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 specified in regulations under section 71(4)(c) within which an application for a review may be made.
- (10) A specific ongoing registration condition, or a variation to such a condition, may not take effect at any time when—
 - (a) an application for review under section 31(b) could be brought in respect of the decision to impose or vary the condition, or
 - (b) a review or a decision by the Commission following such a review is pending.
- (11) But that does not prevent a specific ongoing registration condition, or a variation to such a condition, taking effect if the governing body of the institution notifies the Commission that it does not intend to apply for a review.
- (12) Where subsection (10) ceases to prevent a specific ongoing registration condition, or a variation to such a condition, taking effect on the date specified under subsection (8), the Commission must determine a future date on which it takes effect.
- (13) But that is subject to what has been determined by the Commission following any review under section 31(b) in respect of the decision to impose or vary the condition.

16 Proportionate conditions etc.

- (1) The Commission must ensure that—
 - (a) the requirements specified under section 13(2), and
 - (b) all ongoing registration conditions,are proportionate to the Commission’s assessment of the risks posed.
- (2) In light of its duty under subsection (1), the Commission must keep all ongoing registration conditions under review.

17 Mandatory ongoing registration conditions for each registered institution

The Commission must ensure that the ongoing registration conditions of each institution registered in a category include—

- (a) a condition relating to the quality of the kind of tertiary education provided by, or on behalf of, the institution to which the category of registration relates;
- (b) a condition relating to the financial sustainability of the institution;
- (c) a condition relating to the effectiveness of the governance and management of the institution (including its financial management);
- (d) a condition requiring the governing body of the institution to notify the Commission of any change of which it becomes aware which affects the accuracy of the information contained in the institution’s entry in the register;
- (e) a condition requiring the governing body of the institution, if it has been given notice under section 114(1), to have in place a learner protection plan approved by the Commission (under section 114(3) or (5)) on or before the date specified in the condition and to give effect to the plan;

- (f) a condition requiring the governing body of the institution to comply with the requirements contained in the Learner Engagement Code published under section 117(1) or any revised code published under section 117(3);
- (g) a condition requiring the governing body of the institution to have regard to advice or guidance given by the Commission to the body (either specifically or to persons generally) in exercise of the Commission's functions under this Act;
- (h) a condition requiring the governing body of the institution to provide the Commission, or a person authorised by the Commission, with such information, assistance and access to the institution's facilities, systems and equipment as the Commission may reasonably require for the purpose of exercising the Commission's functions under this Part.

18 Mandatory ongoing registration condition on access and opportunity plans and fee limit

- (1) The Commission must ensure that the ongoing registration conditions of each institution registered in a category specified in regulations made by the Welsh Ministers for the purposes of this subsection include an access and opportunity plan condition.
- (2) The Commission must ensure that the ongoing registration conditions of each institution mentioned in subsection (1) that provides qualifying courses, or has qualifying courses provided on its behalf, include a fee limit condition.
- (3) Subsections (4) to (11) apply for the purposes of this Part.
- (4) An access and opportunity plan condition is a condition that requires the governing body of the institution –
 - (a) to have an access and opportunity plan approved under section 36, and
 - (b) to comply with the general requirements of its approved plan (and any approved variation of the plan) (see section 35(8)).
- (5) A fee limit condition is a condition that requires the governing body of the institution to secure that regulated course fees do not exceed the applicable fee limit.
- (6) A qualifying course is a course, of any description, specified in regulations made by the Welsh Ministers.
- (7) Regulated course fees are fees payable to the institution by a qualifying person –
 - (a) in connection with the person 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 33 in the institution's most recent access and opportunity plan.
- (8) The institution's most recent access and opportunity plan is the access and opportunity plan most recently approved under section 36 in relation to the institution.
- (9) The applicable fee limit is –
 - (a) in a case where the institution's most recent access and opportunity plan specifies a fee limit for the course and year in question, that limit;

- (b) in a case where the institution's most recent access and opportunity 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.
- (10) A qualifying person is a person who –
 - (a) is not an international student, and
 - (b) falls within any class of persons specified in regulations made by the Welsh Ministers for the purposes of this Part.
- (11) An international student is a person who does not fall within any class of persons prescribed under section 1 of the Education (Fees and Awards) Act 1983 (c. 40) (charging of higher fees in case of students not having prescribed connection with the United Kingdom) for the purposes of subsection (1) or (2) of that section.
- (12) The Welsh Ministers may, by regulations, make provision for circumstances in which fees payable to a person, in connection with a qualifying person's undertaking a course, or part of a course, provided on behalf of an institution, are to be treated for the purposes of subsection (7) and section 34 as being payable to that institution in connection with the qualifying person's undertaking the course.
- (13) The power to specify a description of course under subsection (6) must not be exercised so as to discriminate –
 - (a) in relation to courses of initial teacher training, between different courses on the basis of the subjects in which such training is given;
 - (b) in relation to other courses, between different courses at the same or a comparable level on the basis of the areas of study or research to which they relate.

19 Mandatory ongoing registration condition on equality of opportunity statement

- (1) This section applies to registered institutions that –
 - (a) are not subject to an access and opportunity plan condition, and
 - (b) provide higher education in Wales.
- (2) The Commission must ensure that the ongoing registration conditions of each registered institution to which this section applies include a condition requiring the governing body of the institution to publish a statement setting out what action the governing body proposes to take to –
 - (a) promote participation by people from under-represented groups in higher education provided in Wales, and
 - (b) reduce gaps in attainment in higher education provided in Wales between persons from different groups specified in the condition.
- (3) In this section, "under-represented groups" are groups that, at the time a statement of the kind mentioned in subsection (2) is published, are under-represented in higher education in Wales.

20 Power to provide for further mandatory ongoing registration conditions

The Welsh Ministers may, by regulations, provide for further mandatory ongoing registration conditions applicable to one or more of the categories of registration.

21 Commission duty to give guidance about ongoing registration conditions

The Commission must publish guidance for registered institutions about ongoing registration conditions.

*Monitoring and enforcement of registration conditions***22 Commission duty to monitor compliance with ongoing registration conditions**

The Commission must monitor compliance with ongoing registration conditions by registered institutions.

23 Advice and assistance in respect of compliance with ongoing registration conditions

The Commission may provide, or make arrangements for the provision of, advice or other assistance to a registered institution for the purpose of securing compliance by the institution with its ongoing registration conditions.

24 Reviews relevant to compliance with ongoing registration conditions

The Commission may carry out, or arrange for another person to carry out, a review of any matters that it considers relevant to compliance by a registered institution with its ongoing registration conditions.

25 Directions in respect of failure to comply with ongoing registration conditions

- (1) The Commission may give the governing body of an institution a direction under this section if it is satisfied that the governing body has failed, or is likely to fail, to comply with an ongoing registration condition.
- (2) But in the case of a failure, or likely failure, by the governing body of an institution to comply with an access and opportunity plan condition so far as it relates to a general requirement of an approved plan, the Commission may not give a direction if—
 - (a) it is satisfied that the governing body has taken all reasonable steps to comply with the requirement in question, and
 - (b) at the time of the failure, or at the time the Commission concludes that the governing body is likely to fail, an access and opportunity plan to which the condition relates was approved under section 36 and was in force.
- (3) In the case of a failure, or likely failure, to comply with an ongoing registration condition, the Commission may direct the governing body to comply with the condition.

- (4) In the case of a failure to comply with a fee limit condition, the Commission may also, as an alternative or in addition to a direction described in subsection (3), direct the governing body to reimburse excess fees paid to the institution.
- (5) A direction under this section may specify steps that are (or are not) to be taken by the governing body for the purpose of compliance with the condition.
- (6) A direction of the kind described in subsection (4) may specify the manner in which reimbursement of excess fees is to be, or may be, effected.
- (7) If the Commission gives a direction under this section, it must –
 - (a) give a copy of the direction to the Welsh Ministers;
 - (b) publish the direction.
- (8) “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 18 with which the governing body has failed to comply).
- (9) For procedural provision about notice under this section, see sections 67 to 70.

26 Supplementary provision about directions under section 25

- (1) The Commission may issue guidance about steps to be taken for the purpose of complying with a direction under section 25.
- (2) Before issuing guidance under this section the Commission must consult the governing body of each registered institution; and may consult the governing body of any other institution in Wales providing tertiary education as it considers appropriate.
- (3) For procedural provision about directions under section 25, see sections 67 to 70.

De-registration

27 De-registration

- (1) The Commission must remove an institution from a category of the register if the Commission becomes aware that the institution –
 - (a) is no longer an institution in Wales, or
 - (b) no longer provides, or has provided on its behalf, the kind of tertiary education that relates to the category.
- (2) The Welsh Ministers may, by regulations, specify other circumstances in which a registered institution must be removed from one or more categories of the register or all categories of the register.
- (3) The Commission may remove a registered institution from a category of the register if condition A or B is satisfied.

- (4) Condition A is satisfied if –
 - (a) the Commission has previously exercised its powers under section 25 (directions in respect of failure to comply with ongoing registration conditions) in relation to breach of one of the institution’s ongoing registration conditions that applies to the category of registration, and
 - (b) it appears to the Commission that –
 - (i) there is again a breach, or a continuing breach, of that condition, or
 - (ii) there is or has been a breach of a different one of the institution’s ongoing registration conditions that apply to the category of registration.
- (5) Condition B is satisfied if it appears to the Commission that –
 - (a) there is or has been a breach of one of the institution’s ongoing registration conditions that apply to the category of registration, and
 - (b) its powers under section 25 are insufficient to deal with the breach (whether or not they have been, are being or are to be, exercised in relation to it).
- (6) The Welsh Ministers may, by regulations, make transitional or saving provision in connection with the removal of an institution from a category of the register under this section.
- (7) Regulations under subsection (6) may include provision treating the institution as a registered institution for such purposes as the regulations may specify.
- (8) The Commission must –
 - (a) maintain a list of institutions removed from a category of the register under this section,
 - (b) include in that list reference to any regulations made under subsection (6), and
 - (c) make the list publicly available by such means as it considers appropriate.

28 De-registration: procedure

- (1) Before removing a registered institution from a category of the register under section 27, the Commission must notify the governing body of the institution that it proposes to do so.
- (2) The notice must –
 - (a) specify the Commission’s reasons for proposing to remove the institution from a category of the register,
 - (b) specify the period during which the governing body of the institution may make representations about the proposal (“the specified period”), and
 - (c) specify the way in which those representations may be made.
- (3) The specified period must not be less than 28 days beginning with the date on which the notice is received.

- (4) The Commission must have regard to any representations made by the governing body of the institution in accordance with the notice in deciding whether to remove it from a category of the register.
- (5) Having decided whether or not to remove the institution from a category of the register, the Commission must notify the governing body of the institution of its decision.
- (6) Where the decision is to remove the institution from a category of the register, the notice must specify the date on which the removal takes effect.
- (7) The notice must also specify –
 - (a) the grounds for the removal,
 - (b) information as to the right of review, and
 - (c) the period specified in regulations under section 71(4)(c) within which an application for review may be made.
- (8) A removal under section 27 may not take effect at any time when –
 - (a) an application for a review under section 31(c) or (d) could be brought in respect of the decision to remove, or
 - (b) a review or a decision by the Commission following such a review is pending.
- (9) But that does not prevent a removal taking effect if the governing body of the institution notifies the Commission that it does not intend to apply for a review.
- (10) Where subsection (8) ceases to prevent a removal taking effect on the date specified under subsection (6), the Commission must determine a future date on which the removal takes effect.
- (11) But that is subject to what has been determined by the Commission following any review under section 31(c) or (d) in respect of the decision to remove.

29 Voluntary de-registration and de-registration with consent

- (1) The Commission must remove a registered institution from a category of the register if –
 - (a) the governing body of the institution applies to the Commission for the institution to be removed from that category of the register, and
 - (b) the application complies with any requirements imposed under subsection (6).
- (2) But if the application under subsection (1)(a) specifies that it is combined with an application under section 11(5)(a) for registration in another category, the duty in subsection (1) does not apply unless the condition in subsection (3) applies or both of the conditions in subsection (4) apply.
- (3) The condition in this subsection is that the Commission is required to register the institution in the other category in accordance with the application under section 11(5)(a).
- (4) The conditions in this subsection are –
 - (a) that the Commission would be required to register the institution in the other category in accordance with the application under section 11(5)(a) were it not for the effect of section 11(5)(f) in relation to the categories of registration that are the subject of the application under subsection (1)(a) and section 11(5)(a), and

- (b) that the Commission would be required to register the institution in the other category if the institution is removed from the category in respect of which the application under subsection (1)(a) is made.
- (5) The Commission may remove a registered institution from a category of the register if the governing body of the institution consents.
- (6) The Commission may determine –
 - (a) the form of an application under subsection (1),
 - (b) the information to be contained in it or provided with it, and
 - (c) the way in which an application is to be submitted.
- (7) The Commission must notify the governing body of the institution of the date on which the institution is removed from the category of the register under this section (“the removal date”).
- (8) The Commission may vary the removal date at any time before that date by notifying the governing body of the institution.
- (9) A removal under this section may not take effect at any time when –
 - (a) an application for a review under section 31(d) could be brought in respect of the decision to remove, or
 - (b) a review or a decision by the Commission following a such review is pending.
- (10) But that does not prevent a removal taking effect if the governing body of the institution notifies the Commission that it does not intend to apply for a review.
- (11) Where subsection (9) ceases to prevent a removal taking effect on the date specified under subsection (7), the Commission must determine a future date on which the removal takes effect.
- (12) But that is subject to what has been determined by the Commission following any review under section 31(d) in respect of the decision to remove.
- (13) The Welsh Ministers may, by regulations, make transitional or saving provision in connection with the removal of an institution from a category of the register under this section.
- (14) Regulations under subsection (13) may include provision treating the institution as a registered institution in that category for such purposes as the regulations may specify.
- (15) The Commission must –
 - (a) maintain a list of institutions removed from categories of the register under this section,
 - (b) include in that list reference to any regulations made under subsection (13), and
 - (c) make the list publicly available by such means as it considers appropriate.

30 Change of registration category without application

Where a registered institution is removed from a category of the register under section 27(3) or 29(5), the Commission may register the institution in another category without an application under section 11(5)(a) if –

- (a) the governing body of the institution consents,
- (b) it continues to be an institution in Wales,
- (c) it provides, or has provided on its behalf, the kind of tertiary education that relates to the other category,
- (d) it satisfies the initial registration conditions applicable to it in respect of the registration in the other category (see section 13), and
- (e) registration in the other category is not prohibited by provision made in regulations under section 11(6).

*Registration decision reviews***31 Registration decision reviews**

The governing body of an institution may apply for a review by the decision reviewer of any of the following decisions –

- (a) a decision of the Commission to refuse to register the institution in a category of the register under section 11;
- (b) a decision of the Commission to impose or vary a specific ongoing registration condition on the institution under section 15;
- (c) a decision of the Commission to remove the institution from a category of the register under section 27;
- (d) a decision of the Commission as to the date specified under section 28(6) or section 29(7) or (8) as the date on which a removal of the institution from a category of the register takes effect.

CHAPTER 2**ACCESS AND OPPORTUNITY PLANS****32 Application by institution for Commission's approval of access and opportunity plan**

- (1) The governing body of an institution in Wales may apply to the Commission for the Commission's approval of a proposed access and opportunity plan relating to the institution.
- (2) An access and opportunity plan is a plan that complies with sections 33 to 35.

33 Period to which plan relates

- (1) An access and opportunity plan relating to an institution must specify a period in respect of which it is to have effect.

- (2) The period specified must not exceed a period specified in regulations made by the Welsh Ministers.
- (3) Before making regulations under subsection (2), the Welsh Ministers must consult—
 - (a) the Commission,
 - (b) the governing body of each registered institution, and
 - (c) any other persons they consider appropriate.
- (4) References in this Part to the period to which a plan relates are to the period specified in it under this section.

34 Fee limit

- (1) An access and opportunity plan relating to an institution subject to a fee limit condition must—
 - (a) specify a fee limit, or
 - (b) provide for the determination of a fee limit,in relation to each qualifying course and in respect of each relevant academic year.
- (2) An access and opportunity plan may specify, or provide for the determination of, different fee limits in relation to different courses and in respect of different relevant academic years.
- (3) In this Part—
 - (a) a fee limit, in relation to a course, is a limit that the fees payable to the institution by a qualifying person, in connection with the person's undertaking the course, may not exceed;
 - (b) a relevant academic year, in relation to a course, is an academic year that is applicable to the course, and in respect of which fees are payable to the institution, and which begins within the period to which the access and opportunity plan relates.
- (4) Where an access and opportunity plan specifies a fee limit in relation to a year and course, the fee limit specified must not exceed whatever amount is specified in regulations made by the Welsh Ministers for the purposes of this section ("the maximum amount").
- (5) Where an access and opportunity plan provides for the determination of a fee limit in relation to a year and course, the plan must specify that the fee limit determined in accordance with the plan is not to exceed the maximum amount.

35 Promotion of equality of opportunity and tertiary education

- (1) An access and opportunity plan relating to an institution must include such provisions relating to the promotion of equality of opportunity for people in Wales or the promotion of relevant tertiary education provided in Wales as may be specified in regulations made by the Welsh Ministers.

- (2) An access and opportunity plan may also include further provisions relating to the promotion of equality of opportunity or the promotion of the kinds of tertiary education provided by, or on behalf of, the institution.
- (3) The provisions that may be specified in regulations under subsection (1) for inclusion in a plan include (among other things) provisions requiring the governing body –
 - (a) to take measures to attract applications from prospective students who are members of under-represented groups (or to secure the taking of such measures);
 - (b) to take measures to retain students who are members of under-represented groups (or to secure the taking of such measures);
 - (c) to take measures to reduce gaps in attainment in relevant tertiary education between persons from different groups specified in the regulations (or to secure the taking of such measures);
 - (d) to provide financial assistance to students (or to secure the provision of such assistance);
 - (e) to make available to students or prospective students information about financial assistance available to students from any source (or to secure that such information is made available).
- (4) The provisions that may be specified for inclusion in a plan also include provisions –
 - (a) setting out objectives relating to the promotion of equality of opportunity and the promotion of the kinds of tertiary education provided by, or on behalf of, the institution;
 - (b) setting out information about expenditure in respect of those objectives;
 - (c) relating to the monitoring by the governing body of –
 - (i) compliance with the provisions of the plan;
 - (ii) progress in achieving any objectives set out in the plan by virtue of paragraph (a).
- (5) But the power to specify provisions for inclusion in an access and opportunity plan may not be exercised so as to require a plan relating to an institution to include provision –
 - (a) referring to the manner in which higher education courses are taught, supervised or assessed;
 - (b) relating to the criteria for the admission of students to higher education courses.
- (6) In this section and in section 39 –

“equality of opportunity” (*“cyfle cyfartal”*) means equality of opportunity in connection with access to relevant tertiary education;

“relevant tertiary education” (*“addysg drydyddol berthnasol”*) means the kind of tertiary education that relates to a category of the register –

 - (a) specified in regulations under section 18(1), and

(b) in connection with which the application for approval of the plan under section 32 is made.

- (7) For the purposes of this section, “under-represented groups”, in relation to an access and opportunity plan, are groups that, as at the date of the plan’s approval under section 36, are under-represented in relevant tertiary education in Wales.
- (8) References in this Part to the general requirements of an access and opportunity plan are to provisions included in the plan by virtue of this section which require the governing body of the institution to do (or not to do) specified things.

36 Approval of access and opportunity plan

- (1) If an application for approval of an access and opportunity plan is made to the Commission under section 32, the Commission must by notice to the governing body concerned either –
 - (a) approve the plan, or
 - (b) reject the plan.
- (2) The governing body of an institution with an approved plan may apply to the Commission for approval of a variation to the plan.
- (3) If an application for a variation is made under subsection (2), the Commission must by notice to the governing body either –
 - (a) approve the variation, or
 - (b) reject the variation.
- (4) The Welsh Ministers may, by regulations, make provision about matters to be taken into account by the Commission in making any determination in respect of approval or rejection of a plan or a variation to a plan under this section.
- (5) For the purposes of this Part, the period within which an access and opportunity plan relating to an institution and approved under this section is in force is the period beginning with the day of its approval under this section, and ending with the day on which the period to which it relates expires.
- (6) In this Part, references to an approved plan are to an access and opportunity plan relating to an institution that has been approved under this section and is currently in force.
- (7) This section is subject to section 40(5) (no approval of new access and opportunity plan).
- (8) For procedural provision about notice under subsections (1)(b) and (3)(b), see sections 67 to 70.

37 Publication of approved plan

- (1) Where the Commission has approved an access and opportunity plan, the governing body of the institution to which the plan relates must publish the plan (and any approved variation of the plan).

- (2) In discharging its duty under subsection (1), the governing body must have regard to the need to make the plan easily accessible to students and prospective students.

38 Validity of contracts

- (1) This section applies to a contract that provides for the payment of regulated course fees to an institution, by a qualifying person and in connection with the person's undertaking a qualifying course, that exceed the applicable fee limit.
- (2) For the purposes of any rights and liabilities arising under the contract, and any proceedings in respect of those rights and liabilities, the contract is to be treated as providing for the payment of fees in an amount equivalent to the applicable fee limit.
- (3) Except as provided in subsection (2), the contract is not void or unenforceable in consequence of providing for the payment of fees exceeding the applicable fee limit.

39 Commission's duty to monitor and evaluate compliance and effectiveness

- (1) The Commission must –
 - (a) monitor compliance with the general requirements of approved plans;
 - (b) evaluate the effectiveness of each approved plan;
 - (c) evaluate the effectiveness of approved plans generally.
- (2) For the purposes of this section, the effectiveness of an approved plan is its effectiveness in promoting –
 - (a) equality of opportunity, and
 - (b) relevant tertiary education.
- (3) In this section, "equality of opportunity" and "relevant tertiary education" have the meaning given by section 35(6).

40 Notice of refusal to approve new access and opportunity plan

- (1) If the Commission is satisfied that a condition in subsection (3) is met in respect of a registered institution, it may give notice under this section to the institution's governing body.
- (2) Notice under this section is notice that the Commission will not approve a new access and opportunity plan relating to the institution before the end of a period specified in the notice.
- (3) The conditions are that the governing body of the institution has failed to comply with –
 - (a) a fee limit condition imposed under section 18,
 - (b) an access and opportunity plan condition imposed under section 18, or
 - (c) a direction under section 25 to enforce a condition mentioned in paragraph (a) or (b).
- (4) A governing body is not to be treated for the purposes of subsection (3)(b) as having failed to comply with a requirement if the Commission is satisfied that the governing body has taken all reasonable steps to comply with it.

- (5) If the Commission gives notice under this section to the governing body of an institution, the Commission must not approve a proposed access and opportunity plan relating to the institution before the end of the period specified in the notice.
- (6) Where the Commission has given notice under this section –
 - (a) it may withdraw the notice, and
 - (b) if it does so, the restriction in subsection (5) ceases to apply.
- (7) The Welsh Ministers may, by regulations, make provision about –
 - (a) the period that may be specified in a notice under this section;
 - (b) matters to be taken into account by the Commission in deciding whether to give or withdraw notice under this section;
 - (c) the procedure to be followed in connection with the withdrawal of notice.
- (8) If the governing body of an institution that is not a registered institution fails to comply with a direction under section 25, this section applies in relation to that institution as it applies in relation to a registered institution.
- (9) If the Commission gives notice under this section, it must –
 - (a) give a copy of the notice to the Welsh Ministers;
 - (b) publish the notice.
- (10) For procedural provision about notice under this section, see sections 67 to 70.
- (11) The Commission’s powers in sections 25 (directions in respect of failure to comply with ongoing registration conditions) and 27 (de-registration) are also available in the event of a breach of a condition described in subsection (3)(a) or (b).

41 Duty to withdraw approval

If a registered institution with an approved plan ceases to be registered in the category of registration in connection with which it applied for approval of the plan under section 32, the Commission must withdraw its approval of the access and opportunity plan by giving notice under this section to the institution’s governing body.

CHAPTER 3

QUALITY ASSURANCE AND IMPROVING QUALITY

General quality assurance functions

42 Quality assurance frameworks

- (1) The Commission may publish quality assurance frameworks.
- (2) A quality assurance framework is a document setting out guidance and information on matters of policy and practice concerning –
 - (a) criteria for assessing the quality of tertiary education;

- (b) processes for assessing the quality of tertiary education;
 - (c) the roles and responsibilities of—
 - (i) persons assessing the quality of tertiary education,
 - (ii) providers of tertiary education as regards the quality of tertiary education, and
 - (iii) any other persons as regards the quality of tertiary education as the Commission considers appropriate;
 - (d) the professional development of members of the tertiary education workforce;
 - (e) any other matter the Commission considers relevant to assurance of the quality of tertiary education.
- (3) The Commission may revise, replace or withdraw any quality assurance framework published under this section.
- (4) Before publishing a framework (or any revised framework) or withdrawing a framework under this section, the Commission must consult—
- (a) each registered institution,
 - (b) Her Majesty’s Chief Inspector of Education and Training in Wales (“the Chief Inspector”), and
 - (c) any other persons the Commission considers appropriate.
- (5) The persons mentioned in subsection (6) must, so far as relevant to the exercise of their functions, have regard to a quality assurance framework published under this section.
- (6) The persons are—
- (a) the Commission;
 - (b) the Chief Inspector;
 - (c) a designated body (see section 48).
- (7) Nothing in this section affects the Commission’s other powers to issue guidance.
- (8) “Members of the tertiary education workforce” has the same meaning as in section 2(4).

43 Duty to monitor, and promote improvement in, the quality of regulated tertiary education

The Commission must monitor, and promote improvement in, the quality of tertiary education—

- (a) provided by, or on behalf of, registered institutions (so far as the tertiary education relates to the institutions’ categories of registration);
- (b) funded or otherwise secured by the Commission.

44 Advice and assistance in respect of quality of tertiary education

- (1) This section applies to tertiary education, or a particular course of tertiary education—
- (a) provided by, or on behalf of, a registered institution;
 - (b) funded or otherwise secured by the Commission;

- (c) provided in Wales and not falling within paragraph (a) or (b).
- (2) The Commission may 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.
- (3) For the purposes of this section, the quality of tertiary education, or of a course of tertiary education, is inadequate if it is not adequate to meet the reasonable needs of those receiving the education or undertaking the course.

45 Reviews relevant to quality of tertiary education

The Commission may carry out, or arrange for another person 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 institution;
- (b) funded or otherwise secured by the Commission;
- (c) provided in Wales and not falling within paragraph (a) or (b).

Assessment of quality in higher education

46 Assessment of quality of higher education

- (1) The Commission must assess, or make arrangements for the assessment of, the quality of higher education provided—
 - (a) by each registered institution;
 - (b) on behalf of each registered institution (whether by another registered institution or by an external provider).
- (2) The duty in subsection (1) applies to the assessment of higher education relating to the institution's category of registration.
- (3) The Commission may assess, or make arrangements for the assessment of, the quality of higher education provided in Wales by any institution.
- (4) The Commission must publish a report of each assessment carried out under this section.
- (5) The Welsh Ministers may, by regulations—
 - (a) require assessments under paragraphs (a) and (b) of subsection (1) to be conducted at intervals specified in the regulations;
 - (b) require reports under subsection (4) to be published before the end of a period specified in the regulations.
- (6) Before making regulations under subsection (5), the Welsh Ministers must consult the Commission.
- (7) In this Part, references to an external provider are references to a person who—
 - (a) is not a registered institution, but

(b) is responsible for providing all or part of a course of higher education on behalf of a registered institution;

and references to a governing body in relation to an external provider that is not an institution are references to the persons responsible for the provider's management.

- (8) For the purposes of subsection (7)(b) the Welsh Ministers may make provision by regulations about the circumstances in which a person is (or is not) to be treated as responsible for providing a course (or part of it).

47 Action plans following assessments under section 46

- (1) This section applies to assessments conducted under section 46(1)(a) and (b) and published in accordance with section 46(4).
- (2) The governing body of a registered institution that provides the higher education assessed, or on behalf of which the higher education is provided (as the case may be), must—
- (a) prepare a written statement of the action it proposes to take in the light of the report and the period within which it proposes to take it;
 - (b) send the statement to the Commission and, if the assessment was conducted by a designated body, the designated body.
- (3) The governing body making the statement must publish it.
- (4) Compliance with the duties under subsections (2) and (3) is to be treated as an on-going registration condition that applies to the institution for the purposes of section 25 (directions in respect of failure to comply with on-going registration conditions) and section 27 (de-registration).

48 Performance of higher education assessment functions by a designated body

- (1) Schedule 3 makes provision—
- (a) about the designation of a body to perform the assessment functions;
 - (b) about oversight of the designated body by the Commission;
 - (c) for the body to charge fees.
- (2) For the purposes of this Chapter “the assessment functions” are the functions of the Commission under section 46 (assessing the quality of higher education).
- (3) Where a body has been designated under Schedule 3 to perform the assessment functions, the functions under section 46 do not cease to be exercisable by the Commission.

Inspection of further education or training etc.

49 Duty of the Chief Inspector to inspect and report

- (1) The Chief Inspector must inspect—
- (a) further education or training funded or otherwise secured by the Commission;
 - (b) further education or training funded or otherwise secured by the Welsh Ministers;

- (c) further education or training funded by a local authority;
 - (d) further education or training where the Commission or a local authority is contemplating giving funding to the provider of the further education or training;
 - (e) education or training provided for persons of compulsory school age in an institution in Wales within the further education sector or the higher education sector;
 - (f) education or training provided in Wales and specified by the Welsh Ministers in regulations (if any).
- (2) Paragraphs (a), (b) and (c) of subsection (1) do not apply to—
- (a) education of a kind that may be inspected under Part 1 of the Education Act 2005 (c. 18) (school inspections), or
 - (b) if the funding mentioned in those paragraphs is given for a specific purpose, education or training at which that support is not directed.
- (3) The Chief Inspector must publish a report of each inspection carried out under this section including views on—
- (a) the quality of the education or training inspected,
 - (b) the standards achieved by those receiving that education or training, and
 - (c) whether the financial resources made available to the provider of the education or training are managed efficiently and used in a way which provides value for money.
- (4) The Welsh Ministers may, by regulations, —
- (a) require inspections under subsection (1) (except paragraph (d)) to be conducted at intervals specified in the regulations;
 - (b) require reports under subsection (3) to be made before the end of a period specified in the regulations.
- (5) Before making regulations under this section the Welsh Ministers must consult—
- (a) the Commission;
 - (b) the Chief Inspector.

50 Power of the Chief Inspector to inspect and report

- (1) The Chief Inspector may inspect, and report on, any education or training described in section 49(1).
- (2) The Chief Inspector may inspect, and report on, any education or training—
- (a) which is not of a kind described in section 49(1), but
 - (b) which could be funded in one of the ways mentioned in that section, if the provider of the education or training asks the Chief Inspector to do so.
- (3) The Chief Inspector may charge for the cost of an inspection conducted under subsection (2).

- (4) Subsections (3) to (5) of section 49 apply to a report under subsection (1) as they apply to a report under that section.
- (5) The Chief Inspector may arrange for a report of an inspection carried out as a result of a request under subsection (2) to be published.

51 Duty to provide information and advice to the Commission

- (1) This section applies in relation to education or training described in section 49(1) that is funded or otherwise secured by the Commission.
- (2) The Chief Inspector must keep the Commission informed about—
 - (a) the quality of the education or training to which this section applies,
 - (b) the standards achieved by those receiving that education or training, and
 - (c) whether the financial resources made available to those providing it are managed efficiently and used so as to provide value for money.
- (3) When asked to do so by the Commission, the Chief Inspector must—
 - (a) give the Commission advice on such matters, relating to education or training to which this section applies, as the Commission may specify;
 - (b) inspect such education or training, or such class of education or training, to which this section applies as the Commission may specify;
 - (c) report on the result of an inspection conducted under this section.

52 Duty to provide information and advice to the Welsh Ministers

- (1) This section applies in relation to education and training described in section 49(1) that is not funded or otherwise secured by the Commission.
- (2) The Chief Inspector must keep the Welsh Ministers informed about—
 - (a) the quality of the education or training to which this section applies,
 - (b) the standards achieved by those receiving that education or training, and
 - (c) whether the financial resources made available to those providing it are managed efficiently and used so as to provide value for money.
- (3) When asked to do so by the Welsh Ministers, the Chief Inspector must—
 - (a) give the Welsh Ministers advice on such matters, relating to education or training to which this section applies, as the Welsh Ministers may specify;

- (b) inspect such education or training, or such class of education or training, to which this section applies as the Welsh Ministers may specify;
- (c) report on the result of an inspection conducted under this section.

53 Additional functions of the Chief Inspector

- (1) The Chief Inspector is to have such other functions in connection with the education or training described in section 49(1) as the Welsh Ministers may specify in regulations.
- (2) The functions specified in the regulations may include functions with respect to training of or for teachers, lecturers, trainers or other persons engaged in the provision of such education or training.

54 Action plans following inspections by the Chief Inspector

- (1) This section applies if the Chief Inspector publishes a report of an inspection.
- (2) But it does not apply to a report of an inspection conducted –
 - (a) as a result of a request under section 50(2), or
 - (b) under section 55.
- (3) The person responsible for the management of the provider of the education or training which is the subject of the report must prepare a written statement of the action which the person proposes to take in the light of the report and the period within which the person proposes to take it.
- (4) The person making the statement must publish it.
- (5) Subsection (6) applies if –
 - (a) a person subject the duties in subsections (3) and (4) is the governing body of a registered institution, and
 - (b) the education or training which is the subject of the report relates to the institution's category of registration.
- (6) Compliance with the duties in subsections (3) and (4) is to be treated as an on-going registration condition that applies to the institution for the purposes of section 25 (directions in respect of failure to comply with on-going registration conditions) and section 27 (de-registration).
- (7) Subsection (8) applies if the education or training which is the subject of the report is funded by the Commission or the Welsh Ministers under Part 3 of this Act.
- (8) Compliance with the duties in subsections (3) and (4) is to be treated as a requirement of the terms and conditions of funding under this Act.

55 Area inspections

- (1) The Chief Inspector may inspect –
 - (a) the quality and availability of a description of education or training, in a specified area in Wales, for persons who are aged 15 or over,
 - (b) the standards achieved by those receiving that education or training, and
 - (c) whether the financial resources made available to those providing that education or training are managed efficiently and used in a way which provides value for money.
- (2) The Chief Inspector must carry out an inspection of the type described in subsection (1) (“an area inspection”) if requested to do so by –
 - (a) the Commission;
 - (b) the Welsh Ministers.
- (3) The education or training that may be made the subject of an area inspection is any education or training described in section 49 or within the remit of the Chief Inspector as a result of any other enactment.
- (4) But the power to require the Chief Inspector to carry out an area inspection may only be exercised –
 - (a) in the case of the Commission, in respect of a description of education or training funded or otherwise secured by the Commission;
 - (b) in the case of the Welsh Ministers, in respect of a description of education or training other than education or training funded or otherwise secured by the Commission.
- (5) An area inspection may extend to considering –
 - (a) the manner in which any financial resources have been applied by a person described in subsection (6) in respect of the education or training inspected, and
 - (b) whether any such financial resources have been applied in a way which provides value for money.
- (6) The persons mentioned in subsection (5) are –
 - (a) the Commission;
 - (b) the Welsh Ministers;
 - (c) a local authority.
- (7) The following persons must provide such information as the Chief Inspector may reasonably require in connection with the inspection –
 - (a) persons responsible for the management of any provider of education or training which is the subject of an area inspection;
 - (b) any local authority within the area which is the subject of an area inspection;
 - (c) the Commission;

- (d) the Welsh Ministers.
- (8) On completing an area inspection, the Chief Inspector must publish a report.
- (9) The Welsh Ministers may, by regulations, –
 - (a) make further provision with respect to the duty to provide information imposed by this section;
 - (b) require reports under subsection (8) to be published before the end of a period specified in the regulations.
- (10) For provision on reporting on sixth forms found to be causing concern in an area inspection, see sections 44C and 44E of the Education Act 2005 (c. 18).
- (11) In subsection (1) –
 - “persons who are aged 15” (*“personau sy’n 15 oed”*) includes persons for whom education is being provided at a school who will attain that age in the current school year;
 - “specified” (*“penodedig”*) means –
 - (a) in the case of an area inspection requested under subsection (2), specified in the request;
 - (b) in the case of an area inspection carried out by the Chief Inspector other than by request, specified by the Chief Inspector.

56 Right of entry and offences

- (1) When conducting an inspection under this Chapter, the Chief Inspector has, at all reasonable times –
 - (a) a right of entry to premises on which the education or training being inspected is provided;
 - (b) a right of entry to premises of the provider of that education or training which are used in connection with that provision;
 - (c) a right to inspect, and take copies of, any records kept by that person, and any other documents containing information relating to the education or training, which the inspector requires for the purposes of the inspection.
- (2) In respect of education or training provided by an employer in the workplace, the right of entry conferred by subsection (1) may be exercised only if the employer has been given reasonable notice.
- (3) The right to inspect conferred by subsection 56(1)(c) includes the right to have access to, and to inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records or documents in question.

- (4) That right also includes the right to such assistance from –
 - (a) the person by whom or on whose behalf the computer is or has been so used, or
 - (b) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material,as the Chief Inspector may reasonably require.
- (5) It is an offence wilfully to obstruct the Chief Inspector in the exercise of functions in relation to an inspection under this Chapter.
- (6) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

57 Surveys and studies

- (1) The Commission may direct the Chief Inspector to carry out –
 - (a) a survey of Wales, or of an area within Wales specified in the direction, in respect of matters specified in the direction relating to policy concerned with further education or training;
 - (b) a comparative study of the provision made outside Wales in respect of matters specified in the direction relating to further education or training.
- (2) The Chief Inspector may, without being directed to, carry out a survey or study of that kind.

58 Annual reports

- (1) The annual report of the Chief Inspector required by section 21(1)(a) of the Education Act 2005 (c. 18) must include an account of the exercise of functions of the Chief Inspector under this Chapter.
- (2) The power conferred by that section to make other reports includes a power to make reports with respect to matters relating to education or training described in section 49(1).

59 Annual plan of the Chief Inspector

- (1) The Chief Inspector must, for each financial year, prepare a plan setting out estimates of –
 - (a) the expenditure necessary, in the financial year to which the plan relates, in order to secure that the functions of the Chief Inspector are discharged effectively, and
 - (b) the income which the Chief Inspector will receive in that financial year and which may be applied towards meeting the expenses of the Chief Inspector.
- (2) The plan must contain proposals for the management of any funds which may be provided to the Chief Inspector in that financial year under –

- (a) section 60 of this Act (funding by the Commission), and
 - (b) section 104(4) of the Government of Wales Act 1998 (c. 38) (funding by the Welsh Ministers).
- (3) The plan must be submitted, for the purposes of consultation, to –
- (a) the Commission, and
 - (b) the Welsh Ministers,
- by such time before the beginning of the financial year to which it relates as they may jointly direct.
- (4) The Chief Inspector may publish the plan after it has been approved by –
- (a) the Commission, and
 - (b) the Welsh Ministers.

60 Funding of inspections and reports on further education and training etc.

- (1) The Commission must provide such funding to the Chief Inspector as it considers appropriate for the discharge of the Chief Inspector's functions, so far as the functions relate to education or training that is funded or otherwise secured by the Commission.
- (2) In deciding what funding it considers appropriate, the Commission must have regard in particular to what the Commission considers the Chief Inspector needs to spend in order to discharge the functions.
- (3) Before the beginning of each financial year, the Commission must consult the Chief Inspector about the funding it is to provide to the Chief Inspector in that financial year.
- (4) The Commission must –
 - (a) approve such part (or parts) of the plan prepared by the Chief Inspector under section 59 as relate to functions in respect of which the Commission is required to provide funding under this section, and
 - (b) determine the amount of the funding it will provide under this section in accordance with the plan in so far as it is approved by the Commission.
- (5) But before it approves the plan under subsection (4) the Commission may require the Chief Inspector to modify the plan.
- (6) Section 104 of the Government of Wales Act 1998 (c. 38) is amended as follows –
 - (a) after subsection (1) insert –
 - “(1A) But the Welsh Ministers are not responsible for providing funding to the Chief Inspector for the discharge of the Chief Inspector's functions under Chapter 3 of Part 2 of the Tertiary Education and Research (Wales) Act 2021 so far as they relate to education or training that is funded or otherwise secured by the Commission for Tertiary Education and Research.”;

(b) in subsection (4A), for paragraph (a) substitute –

“(a) approve such part (or parts) of the plan prepared by the Chief Inspector under section 59 of the Tertiary Education and Research (Wales) Act 2021 as relate to functions in respect of which they are required to provide funding under this section, and”.

CHAPTER 4

FURTHER ENFORCEMENT AND PROCEDURAL PROVISIONS

Intervention in the conduct of further education institutions

61 Grounds for intervention

For the purposes of sections 62 and 63, the grounds for intervention in the conduct of an institution in Wales within the further education sector are as follows –

- (a) the institution’s affairs have been or are being mismanaged by its governing body;
- (b) the institution’s governing body has failed to comply with a duty under any enactment;
- (c) the institution’s governing body has acted or is proposing to act unreasonably in the exercise of its functions under any enactment;
- (d) the institution 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.

62 Powers to intervene

- (1) If the Welsh Ministers are satisfied that one or more of the grounds for intervention exist in relation to an institution in Wales within the further education sector, the Welsh Ministers may give a direction to the institution’s governing body.
- (2) Before giving a direction under this section, the Welsh Ministers must consult the Commission.
- (3) A direction under this section may –
 - (a) contain provision that has effect to remove all or any of the members of the institution’s governing body;
 - (b) contain provision that has effect to appoint new members of that body if there are vacancies (however arising);
 - (c) specify steps that are (or are not) to be taken by the governing body for the purpose of dealing with the grounds of intervention.
- (4) A direction under subsection (3)(c) may (among other things) require the governing body –

- (a) to exercise powers under paragraphs (b) to (f) and (h) of section 5(2) of the Education (Wales) Measure 2011 (nawm 7) to collaborate with such persons and on such terms as may be specified in the direction;
 - (b) to make a resolution under section 27A(1) of the Further and Higher Education Act 1992 (c. 13) (“the 1992 Act”) for the body to be dissolved on a date specified in the direction.
- (5) A governing body to which a direction such as is mentioned in subsection (4)(b) is given is to be taken for the purposes of section 27A(1) of the 1992 Act to have complied with section 27 of that Act before making the resolution required by the direction.
 - (6) Directions may be given under this section despite any enactment making the exercise of a power or performance of a duty contingent on a governing body’s opinion.
 - (7) The Welsh Ministers may not direct a governing body under this section to dismiss a member of staff.
 - (8) But subsection (7) does not prevent the Welsh Ministers, where they consider that it may be appropriate to dismiss a member of staff whom the governing body has power under the institution’s articles of government to dismiss, from giving the governing body such directions under this section as are necessary to secure that the procedures applicable to the consideration of the case for dismissal of that member of staff are given effect to in relation to that member of staff.
 - (9) An appointment of a member of a governing body under this section has effect as if made in accordance with the instrument of government and articles of government of the institution concerned.

63 Notification by the Commission of grounds for intervention

- (1) If the Commission is of the view that any one or more of the grounds for intervention exist in relation to an institution in Wales within the further education sector, the Commission must notify the Welsh Ministers of that view.
- (2) The Welsh Ministers must have regard to the Commission’s view in deciding whether to exercise the powers under section 62.

64 Welsh Ministers’ statement on intervention powers

- (1) The Welsh Ministers must publish a statement setting out how they propose to exercise their powers under section 62.
- (2) The Welsh Ministers –
 - (a) must keep the statement under review;
 - (b) may revise it.
- (3) Before publishing the statement or a revised statement, the Welsh Ministers must consult such persons as they consider appropriate.

*Access to information and facilities***65 Duty to co-operate**

- (1) The governing body of an external provider must ensure that a person exercising a function by virtue of section 43, 45 or 46(1) is provided with such information, assistance and access to the external provider's facilities, systems and equipment as the person reasonably requires for the purpose of exercising the function (including for the purpose of exercising any power under section 66).
- (2) The governing body of a provider of further education or training funded under section 88 must ensure that a person exercising a function by virtue of section 43 or 45 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 66).
- (3) In subsection (2) –
 - “the governing body” (*“y corff llywodraethu”*) means the person responsible for the provider's management;
 - “provider of further education or training” (*“darparwr addysg bellach neu hyfforddiant”*) does not include a registered institution.
- (4) If the Commission is satisfied that a governing body has failed to comply with subsection (1) or (2), it may direct it to take (or not to take) specified steps for the purpose of securing the provision of information, assistance or access as described in subsection (1) or (2) (as appropriate).
- (5) For procedural provision about a direction under subsection (4), see sections 67 to 70.

66 Powers of entry and inspection

- (1) For the purpose of the exercise of a function by virtue of section 22, 24, 39, 43, 45 or 46(1) an authorised person may –
 - (a) enter the premises of a registered institution;
 - (b) inspect, copy or take away documents found on the premises.
- (2) For the purpose of the exercise of a function by virtue of section 43, 45 or 46(1) an authorised person may –
 - (a) enter the premises of an external provider;
 - (b) inspect, copy or take away documents found on the premises.
- (3) In subsections (1)(b) and (2)(b), references to –
 - (a) documents include information recorded in any form;
 - (b) documents found on the premises include –
 - (i) documents stored on computers or electronic storage devices on the premises, and
 - (ii) documents stored elsewhere which can be accessed by computers on the premises.

- (4) The power conferred by subsections (1)(b) and (2)(b) includes power –
 - (a) to require a person to provide documents;
 - (b) to impose requirements as to how documents are provided (which may include requirements to provide legible copies of documents stored electronically);
 - (c) to inspect a computer or electronic storage device on which documents have been created or stored.
- (5) A power conferred by this section may be exercised only after giving reasonable notice to –
 - (a) the governing body of the registered institution or external provider in relation to whose premises the authorised person intends to exercise the power, and
 - (b) the governing body of any registered institution on whose behalf that institution or external provider provides the tertiary education to which the exercise of the relevant function mentioned in subsection (1) or (2) relates.
- (6) Subsection (5) does not apply to the exercise of a power if the authorised person is satisfied that –
 - (a) the case is one of urgency, or
 - (b) complying with that subsection would defeat the object of exercising the power.
- (7) In this section, “authorised person” means a person authorised in writing by the Commission (whether generally or specifically) to exercise the powers conferred by this section.
- (8) Before exercising a power under this section, an authorised person must, if required to do so, produce a copy of the person’s authorisation under subsection (7).
- (9) The powers conferred by this section –
 - (a) may be exercised at reasonable times only;
 - (b) may not be exercised to require a person to do anything otherwise than at a reasonable time.
- (10) The powers conferred by this section do not include power to enter a dwelling without the agreement of the occupier.

Warning and review procedure

67 Application of sections 68 to 70

- (1) Sections 68 to 70 apply to –
 - (a) a direction under section 25 (directions in respect of failure to comply with ongoing registration conditions);
 - (b) notice under section 36(1)(b) (rejection of proposed access and opportunity plan);
 - (c) notice under section 36(3)(b) (rejection of proposed variation of an access and opportunity plan);
 - (d) notice under section 40 (refusal to approve a new access and opportunity plan);

- (e) a direction under section 65(4) (directions in respect of failure to co-operate).
- (2) But those sections do not apply to a direction that provides only for the revocation of an earlier direction.

68 Proposed notices and directions: requirement to give warning notice

- (1) Before giving a governing body a notice or direction to which this section applies, the Commission must give the governing body a warning notice.
- (2) The warning notice must –
 - (a) set out the proposed notice or direction,
 - (b) state the reasons for proposing to give it,
 - (c) specify the period during which the governing body of the institution may make representations about the proposed notice or direction (“the specified period”), and
 - (d) specify the way in which those representations may be made.
- (3) The specified period must not be less than 28 days beginning with the date on which the notice is received.
- (4) The Commission must have regard to any representation made by the governing body of the institution in accordance with the warning notice in deciding whether to give the notice or direction.
- (5) Having decided whether to give the notice or direction, the Commission must notify the governing body of the institution of its decision.

69 Information to be given with notices and directions and effect pending review

- (1) If the Commission gives a governing body a notice or direction to which this section applies, the notice or direction must specify the date on which it takes effect.
- (2) The Commission must, at the same time it gives the notice or direction, give the governing body a statement specifying –
 - (a) the reasons for giving the notice or direction,
 - (b) information as to the right of review, and
 - (c) the period specified in regulations under section 71(4)(c) within which an application for review may be made.
- (3) A notice or direction to which this section applies may not take effect at any time when –
 - (a) an application for review under section 70 could be brought in respect of the notice or direction, or
 - (b) a review or a decision by the Commission following such a review is pending.

- (4) But that does not prevent a notice or direction taking effect if the governing body of the institution notifies the Commission that it does not intend to apply for a review.
- (5) Where subsection (3) ceases to prevent a notice or direction taking effect on the date specified under subsection (1), the Commission must determine a future date on which the notice or direction takes effect.
- (6) But that is subject to what has been determined by the Commission following any review under section 70 in respect of the notice or direction.

70 Review of notices and directions

If the Commission gives a governing body a notice or direction to which this section applies, the governing body may apply for a review of the notice or direction by the decision reviewer.

71 Decision reviewer

- (1) The Welsh Ministers must appoint a person, or a panel of persons, to review decisions under sections 31 and 70.
- (2) The Welsh Ministers may pay remuneration and allowances to persons appointed under subsection (1).
- (3) The Welsh Ministers must, by regulations, make provision in connection with reviews by the decision reviewer under sections 31 and 70.
- (4) The regulations may, among other things, make provision—
 - (a) about the grounds on which the decision reviewer may make recommendations to the Commission;
 - (b) about the kinds of recommendation that may be made by the decision reviewer to the Commission;
 - (c) about the period within which, and the way in which, an application must be made;
 - (d) about the procedure to be followed by the decision reviewer;
 - (e) about steps to be taken by the Commission or the Welsh Ministers following a review.
- (5) In this Part, “the decision reviewer” means the person or panel of persons appointed under subsection (1).

Miscellaneous duties

72 Duty to monitor and report on financial sustainability

- (1) The Commission must monitor the financial sustainability of—
 - (a) registered institutions;
 - (b) institutions in Wales within the further education sector funded by the Commission under section 88 that are not registered institutions;

- (c) other tertiary education providers of a kind specified in regulations made by the Welsh Ministers.
- (2) The Welsh Ministers may, by regulations, provide for exceptions to paragraphs (a) and (b) of subsection (1).
- (3) The Commission must include in its annual report information about the financial position of the persons monitored under subsection (1) for the financial year to which the annual report relates.
- (4) At the same time the Commission sends its annual report to the Welsh Ministers, the Commission must send a separate report to the Welsh Ministers containing a summary of the financial outlook for the persons monitored under subsection (1) for the financial years following the financial year to which the annual report relates.
- (5) “A summary of the financial outlook” is a summary of conclusions drawn by the Commission, from its monitoring under subsection (1), regarding relevant patterns, trends or other matters which it has identified.
- (6) Patterns, trends or other matters are “relevant” if—
 - (a) they relate to the financial sustainability of some or all of the persons monitored under subsection (1), and
 - (b) the Commission considers that they are appropriate to be brought to the attention of the Welsh Ministers.
- (7) In this section—
 - “annual report” (*“adroddiad blynyddol”*) means the annual report under paragraph 16 of Schedule 1;
 - “financial year” (*“blwyddyn ariannol”*) has the same meaning as in that Schedule (see paragraph 17).

73 Commission’s statement on intervention functions

- (1) The Commission must publish a statement setting out how it proposes to exercise its intervention functions.
- (2) The Commission—
 - (a) must keep the statement under review;
 - (b) may revise it.
- (3) Before publishing the statement or a revised statement, the Commission must consult—
 - (a) the governing body of each registered institution, and
 - (b) any other persons it considers appropriate.
- (4) The Commission’s intervention functions are its functions under the following provisions—
 - (a) section 22 (duty to monitor compliance with ongoing registration conditions);
 - (b) section 23 (advice and assistance in respect of compliance with ongoing registration conditions);

- (c) section 24 (reviews relevant to compliance with conditions);
- (d) section 25 (directions in respect of failure to comply with ongoing registration conditions);
- (e) section 27 (de-registration);
- (f) section 40 (refusal to approve new access and opportunity plan);
- (g) section 43 (duty to monitor, and promote improvement in, the quality of regulated tertiary education);
- (h) section 44 (advice and assistance in respect of quality of tertiary education);
- (i) section 45 (reviews relevant to quality of tertiary education);
- (j) section 65(4) (directions in respect of failure to comply with a duty to co-operate).

Directions

74 Effect and enforcement of directions

- (1) If the Commission or the Welsh Ministers give a governing body a direction under this Part, the governing body must comply with the direction.
- (2) The direction is enforceable by injunction on the application of the person who gave the direction.
- (3) If requested to do so by the governing body, the person who gave the direction must give notice to the governing body stating whether the person is satisfied that it has complied with the direction (or with a particular requirement of the direction).
- (4) A direction given under this Part must be in writing.

CHAPTER 5

GENERAL

75 Compatibility with charity law and governing documents of institutions

- (1) Nothing in this Part confers power on the Commission to require the governing body of an institution to do anything that is incompatible with—
 - (a) any legal obligation or legal restriction that applies to the governing body by virtue of the institution being a charity, or
 - (b) the governing documents of the institution.
- (2) For the purposes of subsection (1), the governing documents of an institution are—
 - (a) in the case of an institution established by Royal Charter—
 - (i) the institution's Charter, and
 - (ii) any instrument relating to the conduct of the institution the making or amendment of which requires the approval of the Privy Council;

- (b) in the case of an institution conducted by a higher education corporation (within the meaning given by section 90(1) of the Further and Higher Education Act 1992 (c. 13)), the corporation's instrument of government and the institution's articles of government;
- (c) in the case of an institution conducted by a further education corporation (within the meaning given by section 17(1) of the Further and Higher Education Act 1992), the corporation's instrument of government and articles of government;
- (d) in the case of an institution designated under section 129 of the Education Reform Act 1988 (c. 40) or section 28 of the Further and Higher Education Act 1992, the institution's instrument of government and articles of government;
- (e) in the case of an institution not falling within paragraphs (a) to (d) that is conducted by a company, the company's memorandum and articles of association.

76 Designation of other providers of tertiary education

- (1) The Welsh Ministers may, on the application of a provider of tertiary education within subsection (2), designate the provider for the purposes of this section.
- (2) A provider of tertiary education within this subsection is one that –
 - (a) provides tertiary education in Wales, but
 - (b) would not (but for the designation) be regarded as an institution for the purposes of this Act.
- (3) A provider of tertiary education designated under this section is, unless the designation is withdrawn, to be treated for the purposes of any provision made by or under this Act as being an institution.
- (4) The Welsh Ministers may, by regulations, make provision about –
 - (a) the making of applications for designation;
 - (b) the making of designations under this section (including provision about matters to be taken into account in determining whether to make a designation);
 - (c) the withdrawal of a designation (including provision about matters to be taken into account in determining whether to withdraw a designation);
 - (d) the effect of a withdrawal of a designation (including provision for a provider whose designation is withdrawn to continue to be treated as an institution for prescribed purposes despite subsection (3)).

77 Interpretation of Part 2

In this Part –

“academic year” (*“blwyddyn academaidd”*) means a period of 12 months;

“access and opportunity plan” (*“cynllun mynediad a chyfle”*) has the meaning given by section 32;

“access and opportunity plan condition” (*“amod cynllun mynediad a chyfle”*) has the meaning given by section 18(4);

“applicable fee limit” (*“terfyn ffioedd cymwys”*) has the meaning given by section 18;

“approved plan” (*“cynllun cymeradwy”*) has the meaning given by section 36;

“Chief Inspector” (*“Prif Arolygydd”*) means Her Majesty’s Chief Inspector of Education and Training in Wales;

“decision reviewer” (*“adolygydd penderfyniadau”*) has the meaning given by section 71;

“excess fees” (*“ffioedd uwchlaw’r terfyn”*) has the meaning given by section 25;

“external provider” (*“darparwr allanol”*) has the meaning given by section 46(7);

“fee limit” (*“terfyn ffioedd”*) has the meaning given by section 34;

“fee limit condition” (*“amod terfyn ffioedd”*) has the meaning given by section 18(5);

“fees” (*“ffioedd”*) means fees in respect of, or otherwise in connection with, undertaking a course, including admission, registration, tuition and graduation fees, and fees payable to an institution for awarding or accrediting any part of the course, but excluding—

- (a) fees payable for board or lodging;
- (b) fees payable for field trips (including any tuition element of such fees);
- (c) fees payable for attending any graduation or other ceremony;
- (d) any other fees specified in regulations made by the Welsh Ministers for the purposes of this definition;

“general requirements” (*“gofynion cyffredinol”*), in relation to an approved plan, is to be read in accordance with section 35;

“governing body”, in relation to an external provider that is not an institution, has the meaning given by section 46(7) (see section 130 for the meaning of “governing body” generally);

“ongoing registration condition” (*“amod cofrestru parhaus”*) has the meaning given by section 11(11);

“qualifying course” (*“cwrs cymhwysol”*) means a course specified in regulations under section 18;

“qualifying person” (*“person cymhwysol”*) has the meaning given by section 18;

“regulated course fees” (*“ffioedd cwrs rheoleiddiedig”*) has the meaning given by section 18;

“relevant academic year” (*“blwyddyn academaidd berthnasol”*), in relation to an institution to which an access and opportunity plan relates, has the meaning given in section 34.

PART 3**SECURING AND FUNDING TERTIARY EDUCATION AND RESEARCH***Funding the Commission***78 Power of the Welsh Ministers to fund the Commission**

- (1) The Welsh Ministers may provide such funding to the Commission as they consider appropriate for the discharge of the Commission's functions.
- (2) The Welsh Ministers may make funding under subsection (1) subject to terms and conditions which may (among other things) –
 - (a) enable the Welsh Ministers to require the repayment, in whole or in part, of sums paid by them if any of the terms and conditions subject to which the sums were paid is not complied with;
 - (b) require the payment of interest in respect of any period during which a sum due to the Welsh Ministers in accordance with any of the terms and conditions remains unpaid;
 - (c) enable the Welsh Ministers to require the Commission to enter into an outcome agreement with a person to whom the Commission proposes to provide financial resources.
- (3) In subsection (2)(c), "an outcome agreement" means an agreement between –
 - (a) the Commission, and
 - (b) the person to whom the Commission proposes to provide financial resources,that sets out the activities to be carried out by that person for the purposes of contributing to the objectives specified in the Commission's strategic plan approved under section 5.
- (4) An outcome agreement may be required under subsection (2)(c) –
 - (a) in all cases where the Commission proposes to provide financial resources;
 - (b) in all cases where the Commission proposes to provide financial resources subject to specified exceptions;
 - (c) in those cases where the Commission proposes to provide financial resources to specified persons or to persons of a specified description;
 - (d) in those cases where the Commission proposes to provide financial resources for specified purposes or for purposes of a specified description;
 - (e) in those cases where the Commission proposes to provide financial resources above or below a specified amount.
- (5) In subsection (4), "specified" means specified in the terms and conditions.

79 Funding the Commission: limitations on terms and conditions

- (1) Terms and conditions under section 78 relating to the provision of financial resources by the Commission to a person under section 80 or 81 (higher education), section 88 (further education or training) or section 95 (research and innovation) must not relate to activities carried on by a particular person unless they impose requirements that must be complied with—
 - (a) in respect of every person, or every person of a specified class or description, and
 - (b) before financial resources of a specified amount or specified description are provided by the Commission in respect of activities carried on by a person.
- (2) In subsection (1), “specified” means specified in the terms and conditions.
- (3) Terms and conditions under section 78 relating to the provision of financial resources by the Commission must not be framed by reference to—
 - (a) the criteria for the selection, appointment or dismissal of academic staff, and how they are applied, or
 - (b) the criteria for the admission of students, or how they are applied.
- (4) Terms and conditions under section 78 relating to the provision of financial resources by the Commission under section 95 (research and innovation) may be framed by reference to an area of research or innovation but only if that area is specified in the Commission’s strategic plan approved under section 5.
- (5) Terms and conditions under section 78 relating to the provision of financial resources by the Commission under section 80 or 81 (higher education) may be framed by reference to a particular course of study, but must not require the Commission to perform a function in a way which prohibits or requires the provision of a particular course of study.
- (6) Terms and conditions under section 78 relating to the provision of financial resources by the Commission under section 80 or 81 (higher education) or section 95 (research and innovation) must not be framed by reference to—
 - (a) particular parts of courses of study;
 - (b) particular programmes of research or innovation projects;
 - (c) the content of courses of study, programmes of research or innovation projects;
 - (d) the manner in which such courses, programmes or projects are taught, supervised or assessed.
- (7) Subsections (5) and (6) do not prevent terms and conditions being framed by reference to courses of study or parts of courses of study being provided and assessed through the medium of Welsh.

*Funding of higher education***80 Financial support to specified institutions for higher education**

- (1) The Commission may provide financial resources to the governing body of a specified institution in respect of expenditure incurred, or to be incurred, by the governing body or by a collaborating body for the purposes of—
 - (a) the provision of higher education by, or on behalf of, the specified institution;
 - (b) the provision of facilities, and the carrying on of other activities, by or on behalf of the specified institution which its governing body considers it necessary or desirable to provide or carry on for the purposes of or in connection with higher education.
- (2) The Commission may also provide financial resources to any person in respect of expenditure incurred, or to be incurred, by the person for the purpose of the provision by any person of services for the purposes of, or in connection with, the provision of higher education by, or on behalf of, a specified institution.
- (3) In this section—

“collaborating body” (*“corff sy’n cydlafurio”*), in relation to a specified institution, means a person—

 - (a) to whom the governing body of the specified institution proposes to pay, with the consent of the Commission, all or some of the financial resources provided to it under subsection (1), and
 - (b) who is providing, or has provided, higher education on behalf of the specified institution, or who is working, or has worked, in collaboration with the institution for the purpose for which the financial resources are provided;

“specified institution” (*“sefydliad penodedig”*) means an institution registered in a category specified for the purposes of this section in regulations made by the Welsh Ministers.
- (4) The Welsh Ministers may by regulations provide that financial resources may not be provided under this section in respect of expenditure incurred or to be incurred by a person for the purposes of the provision of a course of initial teacher training unless the course satisfies requirements set out in the regulations.

81 Financial support for higher education courses specified in regulations

- (1) The Welsh Ministers may by regulations specify a particular course of higher education or description of course of higher education for the purposes of this section (“an eligible course”).
- (2) Regulations under subsection (1) may describe a course by reference to (among other things)—
 - (a) requirements to be met by the course;
 - (b) the description of person providing the course;
 - (c) the qualification to which the course leads.

- (3) The Commission may provide financial resources to a person (“a provider”) in respect of expenditure incurred, or to be incurred, by the provider or by a collaborating body for the purpose of—
 - (a) the provision of an eligible course wholly or mainly in Wales;
 - (b) the provision of an eligible course to persons who are ordinarily resident in Wales.
- (4) In subsection (3), “collaborating body”, in relation to a provider, means a person—
 - (a) to whom the provider proposes to pay, with the consent of the Commission, all or some of the financial resources provided to it under subsection (3), and
 - (b) who is providing, or has provided, an eligible course (or part of such a course) on behalf of the provider, or who is working, or has worked, in collaboration with the provider for the purpose for which the financial resources are provided.

82 Financial support under sections 80 and 81: terms and conditions

- (1) Financial resources may be provided by the Commission under section 80 or 81 on the terms and conditions that the Commission considers appropriate.
- (2) The terms and conditions may (among other things)—
 - (a) enable the Commission to require the repayment, in whole or in part, of sums paid by it if any of the terms and conditions subject to which the sums were paid is not complied with;
 - (b) require the payment of interest in respect of any period during which a sum due to the Commission in accordance with any of the terms and conditions remains unpaid.
- (3) The terms and conditions must not relate to the application of any sums derived otherwise than from the Commission.
- (4) The terms and conditions in relation to financial resources provided under section 81(3)
 - (a) to a person who is not a registered institution, must include a requirement that the person—
 - (a) if given notice under section 114(1), has in place a learner protection plan approved by the Commission (under section 114(3) or (5)) on or before the date specified in the terms and conditions, and gives effect to the plan,
 - (b) if the person is an institution in Wales, complies with the requirements contained in the Learner Engagement Code published under section 117(1) or any revised code published under section 117(3), and
 - (c) has regard to advice or guidance given by the Commission to the person (either specifically or to persons generally) in exercise of the Commission’s functions in this Act.
- (5) Before determining the terms and conditions to be imposed on financial resources provided under section 80 or 81, the Commission must consult such persons as it considers appropriate.

83 Financial support under sections 80 and 81: supplementary

- (1) In exercising its functions under section 80 or 81 to provide financial resources to a person the Commission must have regard to the desirability of not discouraging that person from maintaining or developing funding from other sources.
- (2) In exercising its functions under section 80 or 81, to provide financial resources to a person the Commission must have regard (so far as it considers it appropriate to do so in the light of any other relevant considerations) to the desirability of maintaining any distinctive characteristics of any institution for whose activities financial resources are provided.

84 Financial support by Welsh Ministers for certain higher education courses

- (1) The Welsh Ministers may provide financial resources to a person (“a provider”) in respect of expenditure incurred, or to be incurred, by the provider or by a collaborating body for the purpose of—
 - (a) the provision of a relevant higher education course wholly or mainly in Wales;
 - (b) the provision of a relevant higher education course to persons who are ordinarily resident in Wales.
- (2) Financial resources may be provided by the Welsh Ministers under this section on the terms and conditions that the Welsh Ministers consider appropriate.
- (3) The terms and conditions may (among other things)—
 - (a) enable the Welsh Ministers to require the repayment, in whole or in part, of sums paid by them if any of the terms and conditions subject to which the sums were paid is not complied with;
 - (b) require the payment of interest in respect of any period during which a sum due to the Welsh Ministers in accordance with any of the terms and conditions remains unpaid.
- (4) In this section—

“collaborating body” (*“corff sy’n cydlafurio”*), in relation to a provider, means a person—

 - (a) to whom the provider proposes to pay, with the consent of the Welsh Ministers, all or some of the financial resources provided to it under subsection (1), and
 - (b) who is providing, or has provided, a relevant higher education course (or part of such a course) on behalf of the provider, or who is working, or has worked, in collaboration with the provider for the purpose for which the financial resources are provided;

“relevant higher education course” (*“cours addysg uwch perthnasol”*) means a course within paragraph 1(g) or (h) of Schedule 6 to the Education Reform Act 1988 (c. 40) (courses in preparation for professional examinations at a higher level or providing education at a higher level).

Further education and training

85 Education and training for persons aged 16 to 19

- (1) The Commission must secure the provision of proper facilities in Wales for –
 - (a) further education suitable to the requirements of persons who are above compulsory school age but have not attained the age of 19, and
 - (b) training suitable to the requirements of such persons.
- (2) Facilities are proper if they are –
 - (a) of a quantity sufficient to meet the reasonable needs of individuals,
 - (b) of a quality adequate to meet those needs, and
 - (c) sufficient to satisfy the entitlements conferred under section 33F of the Learning and Skills Act 2000 (c. 21).
- (3) In performing the duty imposed on it by subsection (1) the Commission must –
 - (a) have regard to the places where facilities are provided, the character of facilities and the way they are equipped;
 - (b) have regard to the different abilities and aptitudes of different persons;
 - (c) have regard to the requirements of employers in relation to the education and training required in different sectors of employment;
 - (d) have regard to the education and training that is required in order to ensure that employees and potential employees are available who are able to deliver additional learning provision in Welsh;
 - (e) have regard to the education and training that is required in order to ensure that facilities are available for assessing through the medium of Welsh whether persons have additional learning needs;
 - (f) have regard to facilities whose provision the Commission thinks might reasonably be secured by other persons (including provision secured by local authorities under Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2));
 - (g) make the best use of the Commission’s resources and in particular avoid provision which might give rise to disproportionate expenditure.
- (4) Provision is not to be considered as giving rise to disproportionate expenditure only because that provision is more expensive than comparable provision.

86 Education and training for persons over 19

- (1) The Commission must secure the provision of reasonable facilities in Wales for –
 - (a) further education suitable to the requirements of persons who have attained the age of 19, and
 - (b) training suitable to the requirements of such persons.

- (2) Facilities are reasonable if (taking account of the Commission's resources) the facilities are of such a quantity and quality that the Commission can reasonably be expected to secure their provision.
- (3) In performing the duty imposed on it by subsection (1) the Commission must –
 - (a) have regard to the places where facilities are provided, the character of facilities and the way they are equipped;
 - (b) have regard to the different abilities and aptitudes of different persons;
 - (c) have regard to the requirements of employers in relation to the education and training required in different sectors of employment;
 - (d) have regard to the education and training that is required in order to ensure that employees and potential employees are available who are able to deliver additional learning provision in Welsh;
 - (e) have regard to the education and training that is required in order to ensure that facilities are available for assessing through the medium of Welsh whether persons have additional learning needs;
 - (f) have regard to facilities whose provision the Commission thinks might reasonably be secured by other persons (including provision secured by local authorities under Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2));
 - (g) make the best use of the Commission's resources and in particular avoid provision which might give rise to disproportionate expenditure.
- (4) Provision is not to be considered as giving rise to disproportionate expenditure only because that provision is more expensive than comparable provision.

87 Encouragement of education and training

The Commission must –

- (a) encourage individuals who are ordinarily resident in Wales to participate in further education or training, and
- (b) encourage employers in Wales to participate in the provision of further education or training.

88 Financial support for further education or training

- (1) The Commission or the Welsh Ministers may secure the provision of financial resources to –
 - (a) persons for the purpose of the provision or proposed provision by them or by a collaborating body (within the meaning given by subsection (3)) of further education or training wholly or mainly in Wales;
 - (b) persons for the purpose of the provision or proposed provision by them or by a collaborating body (within the meaning given by subsection (3)) of further education or training to persons who are ordinarily resident in Wales;

- (c) persons for the purpose of the provision or proposed provision by them of goods or services in connection with the provision by others of further education or training wholly or mainly in Wales;
 - (d) persons who are ordinarily resident in Wales and who are receiving or proposing to receive further education or training;
 - (e) persons who are not ordinarily resident in Wales and who are receiving or proposing to receive further education or training in Wales;
 - (f) institutions in Wales within the further or higher education sector for the purpose of the provision or proposed provision by them of secondary education to persons of compulsory school age;
 - (g) persons carrying out means tests under arrangements made under section 90.
- (2) The Commission or the Welsh Ministers may secure the provision of financial resources under subsection (1) –
- (a) by providing resources itself or themselves;
 - (b) by making arrangements for the provision of resources by another person;
 - (c) by making arrangements for the provision of resources by persons jointly (whether or not including the Commission or the Welsh Ministers).
- (3) A person (“a provider”) may pay all or some of the financial resources provided to the provider under paragraph (a) or (b) of subsection (1) to another person (“a collaborating body”) if –
- (a) the Commission (in the case of financial resources secured by it) or the Welsh Ministers (in the case of financial resources secured by them) give their consent, and
 - (b) the collaborating body is providing, or has provided, further education or training on behalf of the provider, or is working, or has worked, in collaboration with the provider for the purpose for which the financial resources are secured.
- (4) In exercising the power under paragraph (d) or (e) of subsection (1), the Commission or the Welsh Ministers may secure the provision of financial resources by reference to any fees or charges payable by the person receiving or proposing to receive the education or training or to any other matter (such as transport or childcare).
- (5) The Welsh Ministers may, by regulations, provide that the provision of financial resources for specified purposes must only be secured under paragraph (a) or (b) of subsection (1) to institutions registered in specified categories.
- (6) Regulations under subsection (5) may provide for exceptions for specified courses of further education or training or specified descriptions of such courses; and a course may be described by reference to (among other things) –
- (a) requirements to be met by the course;
 - (b) the description of person providing the course;
 - (c) the qualification to which the course leads.
- (7) In subsections (5) and (6), “specified” means specified in the regulations.

89 Financial resources for further education or training: terms and conditions

- (1) If the Commission itself, or the Welsh Ministers themselves, provide financial resources under section 88, they may impose such terms and conditions as they consider appropriate.
- (2) The terms and conditions may (among other things) –
 - (a) enable the Commission or the Welsh Ministers to require the repayment, in whole or in part, of sums paid by them if any of the terms and conditions subject to which the sums were paid is not complied with;
 - (b) require the payment of interest in respect of any period in which a sum due to the Commission or the Welsh Ministers in accordance with any of the terms and condition remains unpaid;
 - (c) require a person providing or proposing to provide education or training (“the provider”) to make arrangements providing for all or any of the following –
 - (i) for the provider to charge fees by reference to specified criteria;
 - (ii) for the provider to make awards by reference to specified criteria;
 - (iii) for the provider to recover amounts from persons receiving education or training or from employers (or from both);
 - (iv) for amounts to be determined by reference to specified criteria where provision is made under sub-paragraph (iii);
 - (v) for specified exemptions to operate where provision is made under sub-paragraph (iii).
- (3) In subsection (2), “specified” means specified in the terms and conditions.
- (4) The terms and conditions must prohibit a person providing, or proposing to provide, further education or training suitable to the requirements of persons who are above compulsory school age but have not attained the age of 19 from charging persons of that age who are receiving the further education or training.
- (5) The Welsh Ministers may, by regulations, provide for exceptions to the requirement in subsection (4).
- (6) Terms and conditions imposed by the Commission in relation to financial resources provided under section 88(1)(a) to a person who is not a registered institution, must –
 - (a) require the person, if given notice under section 114(1), to have in place a learner protection plan approved by the Commission (under section 114(3) or (5)) on or before the date specified in the terms and conditions, and to give effect to the plan;
 - (b) require the person, if the person is an institution in Wales, to comply with the requirements contained in the Learner Engagement Code published under section 117(1) or any revised code published under section 117(3);

- (c) require the person to have regard to advice or guidance given by the Commission, (either specifically or to persons generally) in exercise of the Commission's functions in this Act.

90 Means tests

- (1) The Commission or the Welsh Ministers may –
 - (a) carry out means tests;
 - (b) arrange for other persons to carry out means tests.
- (2) The Commission and the Welsh Ministers may take the results of means tests carried out under subsection (1) into account in exercising the power under paragraph (d) or (e) of section 88(1).

91 Funding of school sixth-forms

- (1) The Commission may make a grant to a local authority –
 - (a) on the condition that the grant be applied as part of the authority's schools budget for a funding period, and
 - (b) with a view to the grant being used for the purposes of, or for purposes connected with, the provision by schools of education suitable to the requirements of persons above compulsory school age.
- (2) A grant made under this section may be made on terms and conditions in addition to the condition mentioned in subsection (1)(a) (including terms and conditions of a kind which could be imposed under section 89).
- (3) In this section –
 - “funding period” (*“cyfnod cyllido”*) means a financial year or, if some other period is prescribed in relation to Wales under subsection (1B) of section 45 of the School Standards and Framework Act 1998 (c. 31) (maintained schools to have budget shares), that other period;
 - “schools budget” (*“cyllideb ysgolion”*) has the same meaning as in section 45A(2) of the School Standards and Framework Act 1998 (determination of specified budgets of local authority).

92 Persons with additional learning needs

- (1) In discharging its functions under the provisions set out in subsection (2) the Commission must have regard to –
 - (a) the needs of persons with additional learning needs;
 - (b) the desirability of facilities being available which would assist the discharge of duties under the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2).
- (2) The provisions are –
 - (a) section 85 (education and training for persons aged 16 to 19);
 - (b) section 86 (education and training for persons over 19);

- (c) paragraphs (a) to (e) of section 88(1) (financial support for further education or training);
- (d) section 93(1) (financial support for provision of information, advice, guidance and to form links with employers);
- (e) section 93(2) (financial support for Welsh medium education and teaching Welsh) except in so far as the provision of tertiary education and the teaching referred to in that subsection consists of higher education.

Financial support for other activities connected to tertiary education

93 Financial support for other activities connected to tertiary education

- (1) The Commission or the Welsh Ministers may secure the provision of financial resources for the purpose of, or in connection with—
 - (a) the provision or proposed provision of information, advice or guidance about education or training in Wales or connected matters;
 - (b) the provision or proposed provision of information, advice or guidance to persons ordinarily resident in Wales about education or training outside Wales or connected matters;
 - (c) the provision or proposed provision of facilities designed to form links between (on the one hand) employers and (on the other) persons who provide or receive education or training in Wales.
- (2) The Commission may secure the provision of financial resources for—
 - (a) the purpose of the provision of tertiary education in Wales through the medium of Welsh;
 - (b) the purpose of teaching Welsh to persons above compulsory school age in Wales;
 - (a) other purposes connected to those in paragraphs (a) and (b).
- (3) The Commission or the Welsh Ministers may secure the provision of financial resources under subsection (1), and the Commission may secure the provision of financial resources under subsection (2)—
 - (a) by providing resources itself or themselves;
 - (b) by making arrangements for the provision of resources by another person;
 - (c) by making arrangements for the provision of resources by persons jointly (whether or not including the Commission or the Welsh Ministers).
- (4) If the Commission itself, or the Welsh Ministers themselves, provide financial resources under subsection (1) or (2), they may impose such terms and conditions as they consider appropriate.
- (5) The terms and conditions may (among other things)—
 - (a) enable the Commission or the Welsh Ministers to require the repayment, in whole or in part, of sums paid by them if any of the terms and conditions subject to which the sums were paid is not complied with;

- (b) require the payment of interest in respect of any period in which a sum due to the Commission or the Welsh Ministers in accordance with any of the terms and condition remains unpaid.

Financial support for apprenticeships

94 Financial support for apprenticeships

- (1) The Commission may provide financial resources to a person in respect of expenditure incurred, or to be incurred –
 - (a) by the person or by a collaborating body (within the meaning given by subsection (2)) for or in connection with the provision of an approved Welsh apprenticeship;
 - (b) by the person for or in connection with the preparation of an apprenticeship framework.
- (2) A person (“a provider”) may pay all or some of the financial resources provided to the provider under subsection (1)(a) to another person (“a collaborating body”) if –
 - (a) the Commission gives its consent, and
 - (b) the collaborating body is providing, or has provided, an approved Welsh apprenticeship on behalf of the provider, or is working, or has worked, in collaboration with the provider for the purpose for which the financial resources are provided.
- (3) The Welsh Ministers may, by regulations, provide that the Commission must only provide financial resources under subsection (1)(a) to institutions registered in categories specified in the regulations.
- (4) Regulations under subsection (3) may provide for exceptions to the requirement to be registered; and an exception may be framed by reference to (among other things) –
 - (a) requirements to be met by an approved Welsh apprenticeship;
 - (b) the description of person providing an approved Welsh apprenticeship;
 - (c) qualifications which form part of an approved Welsh apprenticeship.
- (5) Financial resources may be provided by the Commission under this section on the terms and conditions that it considers appropriate.
- (6) The terms and conditions may (among other things) –
 - (a) enable the Commission to require the repayment, in whole or in part, of sums paid by it if any of the terms and conditions subject to which the sums were paid is not complied with;
 - (b) require the payment of interest in respect of any period during which a sum due to the Commission in accordance with any of the terms and conditions remains unpaid.
- (7) Terms and conditions imposed by the Commission in relation to financial resources provided under subsection (1)(a) to a person who is not a registered institution, must –

- (a) require the person, if given notice under section 114(1), to have in place a learner protection plan approved by the Commission (under section 114(3) or (5)) on or before the date specified in the terms and conditions, and to give effect to the plan;
 - (b) require the person, if the person is an institution in Wales, to comply with the requirements contained in the Learner Engagement Code published under section 117(1) or any revised code published under section 117(3);
 - (c) require the person to have regard to advice or guidance given by the Commission (either specifically or to persons generally) in exercise of the Commission's functions in this Act.
- (8) When providing financial resources to a person under subsection (1)(a) the Commission must have regard –
- (a) to the desirability of not discouraging that person from maintaining or developing funding from other sources, and
 - (b) (so far as it considers it appropriate to do so in light of any other relevant considerations) to the desirability of maintaining any distinctive characteristics of any institution for whose activities financial resources are provided.
- (9) In this section –
- “apprenticeship framework” (*“fframwaith prentisiaeth”*) has the meaning given by section 104;
 - “approved Welsh apprenticeship” (*“prentisiaeth Gymreig gymeradwy”*) has the meaning given by section 98.

Research and innovation

95 Financial support for research and innovation

- (1) The Commission may provide financial resources to the governing body of a specified institution in respect of expenditure incurred, or to be incurred, by the governing body or by a collaborating body for the purposes of, or in connection with, research or innovation.
- (2) The Commission may also provide financial resources to any person in respect of expenditure incurred, or to be incurred, by the person for the purpose of the provision by any person of services for the purposes of, or in connection with, the carrying out of research or innovation by a specified institution.
- (3) In exercising its functions under this section to provide financial resources to a specified institution the Commission must have regard to the desirability of not discouraging that institution from maintaining or developing funding from other sources.

(4) In this section –

“collaborating body” (*“corff sy’n cydlafurio”*), in relation to a specified institution, means a person –

- (a) to whom the governing body of the specified institution proposes to pay, with the consent of the Commission, all or some of the financial resources provided to it under subsection (1), and
- (b) who is working, or has worked, in collaboration with the institution for the purpose for which the financial resources are provided;

“specified institution” (*“sefydliad penodedig”*) means an institution registered in a category specified for the purposes of this section in regulations made by the Welsh Ministers.

96 Financial support for research and innovation: terms and conditions

- (1) Financial resources may be provided by the Commission under section 95 on the terms and conditions that the Commission considers appropriate.
- (2) The terms and conditions may (among other things) –
 - (a) enable the Commission to require the repayment, in whole or in part, of sums paid by it if any of the terms and conditions subject to which the sums were paid is not complied with;
 - (b) require the payment of interest in respect of any period during which a sum due to the Commission in accordance with any of the terms and conditions remains unpaid.
- (3) The terms and conditions must not relate to the application of any sums derived otherwise than from the Commission.
- (4) When –
 - (a) deciding to provide financial resources under section 95, and
 - (b) determining any terms and conditions of financial resources provided under that section,

the Commission must have regard to the principle that decisions on individual research or innovation proposals are best taken following an evaluation of the quality and likely impact of the proposals (such as a peer review process).

97 The Commission’s other functions in relation to research and innovation

- (1) The Commission must –
 - (a) promote awareness and understanding in Wales of the research and innovation activities it funds;
 - (b) disseminate in Wales the results of the research and innovation activities it funds;
 - (c) facilitate the practical application in Wales of the results of research and innovation activities it funds;
 - (d) encourage the carrying out of research and innovation in Wales.

- (2) The Commission must monitor how financial resources provided under section 95 are used.
- (3) The Commission must include in its annual report (prepared under paragraph 16 of Schedule 1) the conclusions it reaches from that monitoring as to the extent to which the activities it funds, for the financial year to which the report relates –
 - (a) are achieving successful results,
 - (b) are being delivered effectively, and
 - (c) represent value for money.

PART 4

APPRENTICESHIPS

Introductory

98 Meaning of “approved Welsh apprenticeship”

- (1) An approved Welsh apprenticeship is an arrangement that falls within subsections (2), (3) and (4).
- (2) The arrangement –
 - (a) takes place under an approved Welsh apprenticeship agreement, or
 - (b) is an alternative Welsh apprenticeship.
- (3) The work undertaken by virtue of the arrangement takes place wholly or mainly in Wales.
- (4) The arrangement satisfies any conditions specified in regulations made by the Welsh Ministers.
- (5) This section applies for the purposes of this Part.

99 Meaning of “approved Welsh apprenticeship agreement”

- (1) An approved Welsh apprenticeship agreement is an agreement which –
 - (a) provides for a person (“the apprentice”) to work for another person for reward in an occupation for which an apprenticeship framework published under section 105 is in force at the time the agreement is made,
 - (b) provides for the apprentice to receive training in order to assist the apprentice to meet the requirements specified in the apprenticeship framework, and
 - (c) satisfies any other conditions specified in regulations made by the Welsh Ministers.
- (2) This section applies for the purposes of this Part.

100 Meaning of “alternative Welsh apprenticeship”

- (1) An alternative Welsh apprenticeship is an arrangement, under which a person works, which is of a kind described in regulations made by the Welsh Ministers.

- (2) Regulations under subsection (1) may, for example, describe arrangements which relate to cases where a person –
 - (a) works otherwise than for another person;
 - (b) works otherwise than for reward.
- (3) This section applies for the purposes of this Part.

Welsh apprenticeship specifications

101 Specification of occupational sectors

- (1) The Welsh Ministers must specify occupational sectors for the purposes of apprenticeship frameworks.
- (2) The Welsh Ministers may revise or replace their specification of occupational sectors.
- (3) The Welsh Ministers must publish their specification of occupational sectors (including revisions and replacements).
- (4) A specification under this section (including a replacement) must state the date on which it comes into force.

102 Specification of requirements in relation to approved Welsh apprenticeships

- (1) The Welsh Ministers may specify requirements in relation to approved Welsh apprenticeships as follows.
- (2) A requirement may relate to the content of apprenticeship frameworks, including (but not limited to) –
 - (a) standards of attainment needed for completion of an approved Welsh apprenticeship;
 - (b) qualifications needed for completion of an approved Welsh apprenticeship;
 - (c) the type or amount of training needed for completion of an approved Welsh apprenticeship.
- (3) A requirement may relate to the preparation, revision, withdrawal or publication of an apprenticeship framework, including (but not limited to) –
 - (a) the way in which an apprenticeship framework is prepared, revised, withdrawn or published;
 - (b) the matters that must be taken into account in preparing, revising or withdrawing an apprenticeship framework.
- (4) A requirement may relate to the certification of an approved Welsh apprenticeship, including (but not limited to) –
 - (a) the way in which applications for certificates or copies of certificates must be made;
 - (b) the contents of certificates;
 - (c) the supply of certificates or copies of certificates to –

- (i) persons in respect of whom they were issued;
 - (ii) persons for whom those persons work or have worked under approved Welsh apprenticeship agreements to which the certificates relate.
- (5) A requirement may relate to approved Welsh apprenticeships generally or approved Welsh apprenticeships in one or more occupations.
- (6) The Welsh Ministers may –
- (a) revise or withdraw a requirement by further specification of a requirement;
 - (b) withdraw a requirement by publishing a notice of its withdrawal.
- (7) A requirement specified under this section (including a revision and a specification that includes a withdrawal) must be published.
- (8) A requirement specified under this section (including a revision) and the withdrawal of a requirement (whether by notice or further specification of a requirement) must state the date on which it comes into force.

103 Consultation by Welsh Ministers about specifications

- (1) Before taking any action mentioned in subsection (2), the Welsh Ministers must consult –
- (a) the Commission, and
 - (b) such other persons as they consider appropriate.
- (2) The actions are –
- (a) specifying occupational sectors under section 101 (including revising and replacing specifications);
 - (b) specifying a requirement under section 102 (including revised requirements);
 - (c) withdrawing a requirement under section 102.

Apprenticeship frameworks and certificates

104 Meaning of “apprenticeship framework”

In this Part, an “apprenticeship framework” is a document that specifies requirements for the completion of an approved Welsh apprenticeship in an occupation, which may include (but are not limited to) requirements relating to –

- (a) standards of attainment;
- (b) qualifications;
- (c) the type or amount of training undertaken.

105 Preparation and publication of apprenticeship frameworks

- (1) The Commission may prepare or secure the preparation of apprenticeship frameworks.

- (2) The Commission may publish apprenticeship frameworks prepared by itself or by other persons (whether or not the Commission secured their preparation).
- (3) An apprenticeship framework published under this section must relate to an occupation or group of occupations falling within an occupational sector specified under section 101.
- (4) An apprenticeship framework published under this section must comply with any requirements specified under section 102.
- (5) An apprenticeship framework may specify requirements at different levels of attainment for the same occupation or group of occupations, either within the same apprenticeship framework or in separate frameworks.
- (6) An apprenticeship framework may include any material relevant to an approved Welsh apprenticeship in the occupation or group of occupations to which the framework relates or to approved Welsh apprenticeships generally.
- (7) The Commission must make arrangements to keep under review each published apprenticeship framework with a view to determining whether the framework ought to be revised or withdrawn.
- (8) The Commission may –
 - (a) publish a revised version of an apprenticeship framework, or
 - (b) withdraw an apprenticeship framework (with or without publishing another in its place).
- (9) An apprenticeship framework published under this section must state the date on which it comes into force.
- (10) References to an apprenticeship framework in this section include a revised framework.

106 Register of apprenticeship frameworks

- (1) The Commission must maintain a register of the apprenticeship frameworks published under section 105.
- (2) In respect of each apprenticeship framework (including any revised framework), the register must include details of when it comes into force.
- (3) Where a revised framework is included in the register, the register must include a general description of the cases to which the revised framework applies.
- (4) Where an apprenticeship framework has been withdrawn, the register must include details of when the withdrawal comes into force and a general description of the cases to which the withdrawal applies.
- (5) The Commission must publish the register.
- (6) The Welsh Ministers may by regulations require the Commission to include other information in the register relating to approved Welsh apprenticeships.

107 Power to issue apprenticeship certificates

- (1) The Commission may issue a certificate (“an apprenticeship certificate”) in respect of a person who applies for it if it appears to the Commission that the person has completed an approved Welsh apprenticeship.
- (2) The power to issue an apprenticeship certificate is subject to, and must be exercised in accordance with, any requirements specified under section 102(4).
- (3) The Commission may charge a fee for issuing an apprenticeship certificate only if, and to the extent that, the charging of the fee is authorised by regulations made by the Welsh Ministers.
- (4) This section applies to the supply of copies of an apprenticeship certificate as it applies to the issue of an apprenticeship certificate.

*Exercise of functions***108 Delegation of Commission functions**

- (1) The functions of the Commission under section 105(2) or 107 may be exercised by a person designated by the Commission.
- (2) A designation under this section may be for some or all purposes of the function.
- (3) A person designated under this section must –
 - (a) comply with directions given by the Commission, and
 - (b) have regard to guidance given by the Commission.
- (4) A designation under this section may be revoked.
- (5) The delegation of a function does not affect –
 - (a) the Commission’s ability to exercise the function, or
 - (b) the Commission’s responsibility for the exercise of the function.
- (6) The Commission may pay to any person by whom any function is exercisable by virtue of subsection (1) –
 - (a) amounts it considers appropriate for the purpose of meeting expenditure incurred or to be incurred by that person in, or in connection with, the exercise of that function;
 - (b) such remuneration as it may determine.

*Supplementary provisions about apprenticeship agreements***109 Ineffective provisions of approved Welsh apprenticeship agreements**

- (1) If an agreement –
 - (a) contains provision that satisfies the conditions mentioned in paragraphs (a) to (c) of section 99(1), but

(b) also contains provision that is inconsistent with those conditions, the other provision is to be treated as having no effect.

- (2) Before an agreement that satisfies the conditions mentioned in paragraphs (a) to (c) of section 99(1) is varied in such a way that it no longer satisfies one or more of those conditions, the person for whom the apprentice is working must give the apprentice a notice.
- (3) The notice must explain that if the variation takes effect the agreement will cease to be an approved Welsh apprenticeship agreement.
- (4) If an agreement is varied in breach of the requirement in subsection (2), the variation has no effect.

110 Status of approved Welsh apprenticeship agreements

- (1) To the extent that it would otherwise be treated as being a contract of apprenticeship, an approved Welsh apprenticeship agreement is to be treated as not being a contract of apprenticeship.
- (2) To the extent that it would not otherwise be treated as being a contract of service, an approved Welsh apprenticeship agreement is to be treated as being a contract of service.
- (3) This section applies for the purposes of any enactment or rule of law.

111 Transfer of copyright in apprenticeship frameworks

- (1) This section applies where an apprenticeship framework is –
 - (a) prepared by a person other than the Commission, and
 - (b) published by the Commission under section 105(2) with the agreement of the person who, immediately before publication, is entitled to any right or interest in any copyright in the framework.
- (2) The right or interest is, by virtue of this section, transferred from that person to the Commission on publication.

112 Crown servants

- (1) This Part applies in relation to an agreement under which a person undertakes Crown employment as it applies in relation to any other agreement under which a person undertakes to work for another.
- (2) Subsection (1) is subject to subsection (3) and to any modifications which may be provided for under subsection (5).
- (3) Section 110(2) does not apply in relation to an approved Welsh apprenticeship agreement that is an agreement within subsection (1).
- (4) Without prejudice to section 129(2), the power conferred by section 99(1)(c) may be exercised, in particular, to make provision in relation to an apprenticeship agreement which is an agreement within subsection (1) that differs from provision made in relation to other agreements under which a person is to work for another.
- (5) The Welsh Ministers may by regulations provide for any provision of this Part to apply with modifications in relation to –

- (a) an agreement within subsection (1), or
 - (b) a person working, or proposing to work, under such an agreement.
- (6) In subsection (1), “Crown employment” means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by a statutory provision (but does not include service as a member of the naval, military or air forces of the Crown).

General

113 Interpretation of Part 4

In this Part—

“apprenticeship certificate” (*“tystysgrif brentisiaeth”*) means a certificate issued section 107;

“apprenticeship framework” (*“fframwaith prentisiaeth”*) has the meaning given by section 104;

“approved Welsh apprenticeship” (*“prentisiaeth Gymreig gymeradwy”*) has the meaning given by section 98;

“approved Welsh apprenticeship agreement” (*“cytundeb prentisiaeth Gymreig gymeradwy”*) has the meaning given by section 99.

PART 5

LEARNER PROTECTION, COMPLAINTS PROCEDURES AND LEARNER ENGAGEMENT

114 Learner protection plans

- (1) The Commission may give notice to a tertiary education provider asking it to submit a learner protection plan to the Commission on or before the date specified in the notice.
- (2) A learner protection plan is a document setting out the tertiary education provider’s arrangements for—
 - (a) protecting the interests of persons undertaking a relevant course in the event of the course ceasing to be provided for any reason, and
 - (b) supporting a person who is undertaking a relevant course and who wishes to transfer to another course of tertiary education (whether that course is provided by, or on behalf of, the tertiary education provider or another person).
- (3) The Commission may approve the learner protection plan with or without modifications.
- (4) If a tertiary education provider wishes to amend its approved learner protection plan, it must send a revised plan to the Commission.
- (5) The Commission may approve the revised learner protection plan with or without modifications.
- (6) The Commission must issue guidance on the preparation and revision of learner protection plans.

- (7) Before issuing guidance under subsection (6), the Commission must consult such persons as it considers appropriate.
- (8) The Commission must monitor the effectiveness of learner protection plans.
- (9) The Commission must include in its annual report (prepared under paragraph 16 of Schedule 1) the conclusions it reaches from that monitoring as to the effectiveness of learner protection plans during the financial year to which the report relates.
- (10) In this section and in section 115—
 - “relevant course” (*“cwrw perthnasol”*), in relation to a tertiary education provider, is—
 - (a) where the provider is a registered institution, any course of tertiary education provided by it or on its behalf;
 - (b) where the provider is not a registered institution, a course of tertiary education provided by it or on its behalf which is funded by the Commission under—
 - (i) section 81(3)(a) (higher education courses in other institutions),
 - (ii) section 88(1)(a) (further education or training), or
 - (iii) section 94(1)(a) (apprenticeships);
 - “tertiary education provider” (*“darparwr addysg drydyddol”*) is—
 - (a) a registered institution;
 - (b) a person other than a registered institution in receipt of financial resources provided or secured by the Commission under—
 - (i) section 81(3)(a) (higher education courses in other institutions),
 - (ii) section 88(1)(a) (further education or training), or
 - (iii) section 94(1)(a) (apprenticeships).

115 Complaints procedures

- (1) The Commission must take such steps as appear to it appropriate to ensure that a tertiary education provider—
 - (a) has in place a procedure for investigating complaints about an act or omission of the provider which are made by persons who are undertaking or have undertaken relevant courses, and
 - (b) takes reasonable steps to make the procedure known to persons undertaking relevant courses.
- (2) For the meaning of “relevant course” and “tertiary education provider”, see section 114(10).

116 Qualifying institutions for student complaints scheme

- (1) The Higher Education Act 2004 (c. 8) is amended as follows.
- (2) In section 11 (qualifying institutions) –
 - (a) the existing text becomes subsection (1);
 - (b) after that subsection insert –
 - “(2) The Welsh Ministers may by regulations specify as a qualifying institution for the purposes of this Part a person other than one within subsection (1) who is –
 - (a) a registered institution, or
 - (b) an institution in Wales other than a registered institution in receipt of financial resources –
 - (i) provided by the Commission for Tertiary Education and Research under section 81(3)(a) of the Tertiary Education and Research (Wales) Act 2021 (higher education courses),
 - (ii) secured by the Commission for Tertiary Education and Research or the Welsh Ministers under section 88(1)(a) of that Act (further education or training), or
 - (iii) provided by the Commission for Tertiary Education and Research under section 94(1)(a) of that Act (apprenticeships).
- (3) In subsection (2) –

“institution in Wales” means an institution whose activities are wholly or mainly carried on in Wales;

“registered institution” means an institution registered in the register established and maintained by the Commission for Tertiary Education and Research under section 11 of the Tertiary Education and Research (Wales) Act 2021.
- (4) The power to make regulations in subsection (2) is to be exercised by statutory instrument.
- (5) A statutory instrument containing regulations made under subsection (2) is subject to annulment in pursuance of a resolution of Senedd Cymru.”

- (3) In section 12 (qualifying complaints) –
- (a) after subsection (2) insert –
- “(2A) A complaint within subsection (1) about an act or omission of a qualifying institution specified in regulations made under paragraph (b) of subsection (2) of section 11 is a qualifying complaint only if it is made by a person who is undertaking or has undertaken a course funded by the Commission for Tertiary Education and Research or the Welsh Ministers under –
- (a) section 81(3)(a) of the Tertiary Education and Research (Wales) Act 2021 (higher education courses),
- (b) section 88(1)(a) of that Act (further education or training), or
- (c) section 94(1)(a) of that Act (apprenticeships).
- (b) in subsection (3) for “section 11” substitute “subsection (1) of section 11, or of a qualifying institution specified in regulations made under subsection (2) of that section,”.

117 **Learner Engagement Code**

- (1) The Commission must prepare and publish a code (“the Learner Engagement Code”) about the involvement of persons receiving tertiary education provided by, or on behalf of, a relevant institution (“learners”) in the making of relevant decisions by the institution.
- (2) The Learner Engagement Code may include provision about the following (among other things) –
- (a) how to ensure that the interests of learners are effectively represented in the making of relevant decisions by the relevant institution,
- (b) how to ensure that learners have the opportunity to participate in the making of relevant decisions by the relevant institution, and
- (c) how to ensure that learners have the opportunity to give their views to the relevant institution about the tertiary education they are receiving and on other matters that may be of concern or interest to them.
- (3) The Commission must keep the Learner Engagement Code under review and if it considers it appropriate, it must prepare and publish a revised code (and references in this section to the Learner Engagement Code include any revised code).
- (4) A provision of the Learner Engagement Code may take the form of a requirement or guidance.
- (5) In preparing the Learner Engagement Code or revised code, the Commission must consult with such persons as the Commission considers appropriate.
- (6) The Learner Engagement Code may make different provision for different purposes (including for different relevant institutions or different descriptions of relevant institution).
- (7) The Commission must monitor compliance by relevant institutions with the Learner Engagement Code.

(8) The Commission must include in its annual report (prepared under paragraph 16 of Schedule 1) the conclusions it reaches from that monitoring as to the effectiveness of the Learner Engagement Code during the financial year to which the report relates.

(9) In this section –

“relevant decision” (*“penderfyniad perthnasol”*) means a decision about matters that may be of concern or interest to learners on courses which are –

- (a) provided by or on behalf of a registered institution, or
- (b) where provided by or on behalf of an institution other than a registered institution, funded by the Commission under –
 - (i) section 81(3)(a) (higher education courses in other institutions),
 - (ii) section 88(1)(a) (further education or training), or
 - (iii) section 94(1)(a) (apprenticeships);

“relevant institution” (*“sefyddiad perthnasol”*) means –

- (a) a registered institution;
- (b) an institution in Wales other than a registered institution in receipt of financial resources provided or secured by the Commission under –
 - (i) section 81(3)(a) (higher education courses in other institutions),
 - (ii) section 88(1)(a) (further education or training), or
 - (iii) section 94(1)(a) (apprenticeships).

PART 6

INFORMATION, ADVICE AND GUIDANCE

118 Information and advice from the Commission and information from the Welsh Ministers

- (1) The Commission must give the Welsh Ministers –
 - (a) such information relating to any of its functions or obtained in the performance of any of its functions as the Welsh Ministers request, and
 - (b) such advice relating to any of its functions as the Welsh Ministers request.
- (2) Information and advice given under subsection (1) must be given in such form and manner as the Welsh Ministers may determine.
- (3) The Commission may give the Welsh Ministers –
 - (a) information relating to any of its functions or obtained in the performance of any of its functions, or
 - (b) advice relating to any of its functions.

- (4) The Welsh Ministers may give the Commission information for the purposes of the exercise of any of its functions.

119 Persons required to provide information to the Commission

- (1) The Commission may, by notice, require a person within subsection (2) to give the Commission such information as it requests for the purposes of the exercise of any of the Commission's functions.
- (2) The persons within this subsection are –
- (a) a registered institution;
 - (b) a person other than a registered institution in receipt of financial resources provided under –
 - (i) section 80(2) (services provided in connection with higher education),
 - (ii) section 81 (higher education courses in other institutions),
 - (iii) section 93 (other activities connected to tertiary education),
 - (iv) section 94 (apprenticeships),
 - (v) section 95(2) (services provided in connection with research and innovation),
 - (vi) section 124 (research by the Commission or the Welsh Ministers), or
 - (vii) section 88 (further education or training);
 - (c) a local authority;
 - (d) the governing body of a maintained school in Wales that is providing, or has arranged for the provision of, higher education to pupils at the school under section 28A of the Education Act 2002 (c. 32);
 - (e) a body designated under Schedule 3 to perform the Commission's functions under section 46 (assessment of quality of higher education);
 - (f) a person designated by the Commission under section 108 to exercise the Commission's functions under section 105(2) (publication of apprenticeship frameworks) or section 107 (issue of apprenticeship certificates);
 - (g) any person providing further education or training and who is in receipt of financial support from the Welsh Ministers.
- (3) A notice under subsection (1) to a person mentioned in paragraph (c), (d), (e), (f) or (g) of subsection (2) may not require the person to give information other than –
- (a) in the case of a person mentioned in paragraph (c), (d) or (g) of subsection (2), information held by the person for the purpose of the provision of tertiary education;
 - (b) in the case of a body mentioned in paragraph (e) of subsection (2), information held by the body for the purpose of the performance of any of the Commission's functions under section 46;
 - (c) in the case of a person mentioned in paragraph (f) of subsection (2), information held by the person for the purpose of the performance of any of the Commission's functions under section 105(2) or 107.

- (4) A notice under subsection (1) may require the information to be given –
 - (a) by a time specified in the notice, and
 - (b) in a form and manner specified in the notice.
- (5) If a person fails to comply with a notice under subsection (1) and does not satisfy the Commission that the information requested cannot be given, the duty to comply with the notice is enforceable by injunction on the application of the Commission.
- (6) The Commission may give a person listed in subsection (2) information about any matter in relation to which the Commission has a function.

120 Powers to share information

- (1) Each of the following may give the Commission information for the purposes of the exercise of any of the Commission's functions –
 - (a) Her Majesty's Chief Inspector of Education and Training in Wales;
 - (b) the Education Workforce Council;
 - (c) Qualifications Wales;
 - (d) the Secretary of State;
 - (e) the Office for Students;
 - (f) the United Kingdom Research and Innovation;
 - (g) a body designated under Schedule 3 to perform the Commission's functions under section 46 (assessment of quality of higher education);
 - (h) the person designated by the Welsh Ministers under section 13 of the Higher Education Act 2004 (c. 8) as the designated operator of a scheme for the review of student complaints;
 - (i) a person specified in arrangements made by the Welsh Ministers under section 23(4) of the Teaching and Higher Education Act 1998 (c. 30) to exercise on their behalf functions exercisable by virtue of regulations under section 22 of that Act (arrangements for giving financial support to students);
 - (j) a person specified in arrangements made by the Welsh Ministers under section 14 of the Education Act 2002 (c. 32) (financial assistance for education and children etc.), which, in accordance with section 17 of that Act, provide for the person to give assistance or exercise other functions relating to assistance;
 - (k) a person providing services to one or more institutions in Wales within the higher education sector relating to applications for admission on to higher education courses provided by them;
 - (l) a person specified in regulations made by the Welsh Ministers.
- (2) The Commission may give a person listed in subsection (1) and any other person it considers appropriate information about any matter in relation to which it has a function.

121 Power to require application-to-acceptance information

- (1) The Welsh Ministers may, by notice, require a person within subsection (2) to give them or the Commission such application-to-acceptance information as may be described in the notice for use for qualifying research.
- (2) A person within this subsection is one providing services to one or more institutions in Wales within the higher education sector relating to applications for admission on to higher education courses provided by them.
- (3) “Application-to-acceptance information” means information relating to –
 - (a) applications for admission to higher education courses provided by institutions in Wales within the higher education sector (including predicted grades),
 - (b) offers and rejections given to individuals in respect of applications for admission to those courses, or
 - (c) the acceptance of such offers.
- (4) “Qualifying research” means –
 - (a) research into the choices available to individuals who are –
 - (i) applying for admission on to higher education courses provided by institutions in Wales within the higher education sector, or
 - (ii) considering whether to accept an offer for admission on such a course from such an institution;
 - (b) research into equality of opportunity in connection with access to and participation in higher education provided by institutions in Wales within the higher education sector;
 - (c) research into any other topic approved by the Welsh Ministers.
- (5) A notice under subsection (1) may require the information to be given –
 - (a) by a time specified in the notice, and
 - (b) in a form and manner specified in the notice.
- (6) If a person fails to comply with a notice under subsection (1) and does not satisfy the Welsh Ministers that the information described in the notice cannot be given, the duty to comply with the notice is enforceable by injunction on the application of the Welsh Ministers.

122 Use of application-to-acceptance information for research purposes

- (1) The Welsh Ministers may –
 - (a) use information obtained under section 121 for qualifying research, and
 - (b) give information obtained under section 121 to the Commission or to an approved person for use for qualifying research.
- (2) The Welsh Ministers, the Commission or an approved person may publish the product of research carried out using information obtained under section 121 so long as –
 - (a) a purpose in publishing it is to provide statistical information,

- (b) no individual to whom the information obtained under section 121 relates may be identified from the publication, and
 - (c) the publication does not include information obtained under section 121 that may be regarded as commercially sensitive.
- (3) “Approved person” means –
- (a) a body approved by the Welsh Ministers for the purposes of this section that uses or disseminates information for the purpose of research (“an approved body”), or
 - (b) an individual approved by the Welsh Ministers or an approved body for the purposes of this section (“an approved researcher”).
- (4) An approved body may give information obtained under section 121 to an approved researcher, but an approved researcher may not give that information to –
- (a) another approved researcher, or
 - (b) another approved body.
- (5) The Welsh Ministers must publish guidance regarding factors to be taken into account in deciding whether to approve a body or individual for the purposes of this section.
- (6) “Qualifying research” has the same meaning as in section 121.

123 Other information, advice and guidance

- (1) The Commission may give advice and issue guidance (whether general or specific) to any person about the provision of tertiary education or any matter connected with the Commission’s functions.
- (2) The Commission must –
- (a) identify good practice in relation to the sharing of information by the persons specified in subsection (3), and
 - (b) give advice and issue guidance about such practice to those persons.
- (3) The persons specified in this subsection are –
- (a) a registered institution,
 - (b) a person other than a registered institution providing tertiary education funded or otherwise secured by the Commission.
- (4) The Commission must publish any guidance it issues under subsections (1) and (2) .
- (5) The Commission must establish systems for collecting information which is designed to secure that its decisions with regard to tertiary education are made on a sound basis.

124 Research by the Commission or the Welsh Ministers

- (1) The Commission or the Welsh Ministers may carry out, or secure the provision of financial resources to persons carrying out or proposing to carry out, research in relation to –
- (a) education or training in Wales;

- (b) any matter connected to education or training in Wales;
 - (c) any other matter relevant to the Commission's functions.
- (2) The Commission or the Welsh Ministers may publish, or arrange for the publication of, the results of such research so long as no individual to whom the research relates may be identified from the publication.
- (3) The Commission or the Welsh Ministers may secure the provision of financial resources under subsection (1) –
- (a) by providing resources itself or themselves;
 - (b) by making arrangements for the provision of resources by another person;
 - (c) by making arrangements for the provision of resources by persons jointly (whether or not including the Commission or the Welsh Ministers).
- (4) If the Commission itself, or the Welsh Ministers themselves, provide financial resources under subsection (1), they may impose such terms and conditions as they consider appropriate.
- (5) The terms and conditions may (among other things) –
- (a) enable the Commission or the Welsh Ministers to require the repayment, in whole or in part, of sums paid by them if any of the terms and conditions subject to which the sums were paid is not complied with;
 - (b) require the payment of interest in respect of any period in which a sum due to the Commission or the Welsh Ministers in accordance with any of the terms and condition remains unpaid.

PART 7

MISCELLANEOUS AND GENERAL

Higher education corporations

125 Instruments of government of higher education corporations in Wales

- (1) Section 124A of the Education Reform Act 1988 (c. 40) is amended as follows.
- (2) In subsection (9), for the words “3 to 5 and” substitute “2 to”.
- (3) After subsection (9) insert –
- “(9A) Before making an order under subsection (9) the Welsh Ministers must consult –
 - (a) the Commission for Tertiary Education and Research, and
 - (b) any other persons they think appropriate.
 - (9B) An order made under subsection (9) may, where it is necessary in consequence of amendments made to Schedule 7A to this Act, repeal or amend the following provisions of this Act –
 - (a) subsection 122A(3);

- (b) in subsection (4) of this section, the words “any provision authorised to be made by that Schedule and”;
- (c) in section 124C—
 - (i) in subsection (1), the words beginning with “and, in determining” to the end;
 - (ii) subsection (2).”

126 Articles of government of higher education corporations in Wales

- (1) The Education Reform Act 1988 (c. 40) is amended as follows.
- (2) In section 125, after subsection (7) insert—
 - “(8) The Welsh Ministers may by order amend or repeal any of subsections (2) to (4) of this section.
 - (9) Before making an order under subsection (8) the Welsh Ministers must consult—
 - (a) the Commission for Tertiary Education and Research, and
 - (b) any other persons they think appropriate.”
- (3) In section 232—
 - (a) in subsection (1), after the words “Secretary of State” insert “or the Welsh Ministers”;
 - (b) after subsection (4) insert—
 - “(4ZA) A statutory instrument containing any order or regulations made by the Welsh Ministers under this Act, other than an order under section 125, 214 or 216, shall be subject to annulment in pursuance of a resolution of Senedd Cymru.
 - (4ZB) A statutory instrument containing an order made by the Welsh Ministers under section 125 of this Act may not be made unless a draft of the instrument has been laid before, and approved by resolution of, Senedd Cymru.
 - (4ZC) For the purposes of subsection (4ZA) above, any order or regulations made by the Welsh Ministers under this Act includes any order or regulations made under a power that is expressed as a power of the Secretary of State and has been transferred to the Welsh Ministers.”;
 - (c) in subsection (5), for the word “thinks” substitute “or the Welsh Ministers think”.

127 Dissolution of higher education corporations in Wales

- (1) Section 128 of the Education Reform Act 1988 (c. 40) is amended as follows.
- (2) In subsection (1), in sub-paragraph (b)(iii), for the words “the Higher Education Funding Council for Wales” substitute “the Commission for Tertiary Education and Research (“the Commission”)”.
- (3) After subsection (1) insert—
 - “(1A) An order under subsection (1)(b)—

- (a) may, in relation to any property or rights of the corporation transferred under the order, make provision about the effect of such transfer on any right of pre-emption, right of return or other similar right that may apply in respect of such property or rights (including provision about the calculation and payment of any just compensation);
 - (b) has effect in relation to property, rights or liabilities to which it applies in spite of any provision (of whatever nature) of any enactment or any rule of law, which would otherwise prevent, penalise or restrict the transfer of the property rights or liabilities.”
- (4) In subsection (4), in paragraph (b), for the words “the Higher Education Funding Council for Wales” substitute “the Commission”.
- (5) For subsection (5), substitute –
 - “(5) In this section –
 - “charitable purposes” has the meaning given by section 11 of the Charities Act 2011 (c. 25);
 - “right of return” means any right under a provision for the return or reversion of property in specified circumstances.”

General

128 Publication

- (1) Where this Act imposes a duty to publish anything, it must be published –
 - (a) electronically, and
 - (b) in such other manner as the person subject to the duty considers appropriate.
- (2) The duty to publish electronically is –
 - (a) a duty to provide access free of charge, and
 - (b) a duty to publish on the person’s own website, if the person has one.
- (3) Copies of anything published under subsection (1)(b) may be supplied free of charge or on payment of such fee, not exceeding the cost of supplying the copy, as the person subject to the duty to publish may determine.

129 Regulations

- (1) A power to make regulations under this Act is to be exercised by statutory instrument.
- (2) A power to make regulations under this Act includes power to make –
 - (a) different provision for different purposes or different areas;
 - (b) incidental, supplementary, consequential, transitory, transitional or saving provision.

- (3) A statutory instrument to which this subsection applies may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru.
- (4) Subsection (3) applies to a statutory instrument containing regulations under any of the following provisions—
- (a) from Part 2, sections 11(3), 13(3), 18(1), 20, 27(2), 34(4), 35(1), 36(4) and 76(4);
 - (b) from Part 3, sections 80(3), 88(5), 89(5), 94(3) and 95(4);
 - (c) from Part 4, sections 98(4), 99(1)(c) and 100(1);
 - (d) from this Part—
 - (i) section 131;
 - (ii) section 132, but only where the regulations amend, repeal or otherwise modify a provision of an Act of Parliament, a Measure of the National Assembly for Wales or an Act of Senedd Cymru.
- (5) A statutory instrument containing regulations made by the Welsh Ministers under this Act to which subsection (4) does not apply, except regulations made under section 27(6) or 29(13), is subject to annulment in pursuance of a resolution of Senedd Cymru.

130 General interpretation

- (1) In this Act—

“additional learning needs” (*“anghenion dysgu ychwanegol”*) has the meaning given by section 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2);

“additional learning provision” (*“darpariaeth ddysgu ychwanegol”*) has the meaning given by section 3 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2);

“the Commission” (*“y Comisiwn”*) means the Commission for Tertiary Education and Research (see section 1);

“financial resources” (*“adnoddau ariannol”*) means financial resources of any kind including grants, loans and other payments;

“functions” (*“swyddogaethau”*) means powers and duties;

“governing body” (*“corff llywodraethu”*)—

- (a) in relation to a training provider who but for this section would not be regarded as an institution, means any persons responsible for the provider’s management;
- (b) in relation to a provider designated under section 76, means any persons responsible for the provider’s management;
- (c) in relation to any other institution, has the meaning given by section 90(1) of the Further and Higher Education Act 1992 (c. 13), but subject to any provision made by virtue of section 90(2) of that Act;

“higher education” (*“addysg uwch”*) means education provided by means of a course of any description mentioned in Schedule 6 to the Education Reform Act 1988 (c. 40);

“institution” (*“sefydliad”*) includes any training provider (whether or not the training provider would otherwise be regarded as an institution);

“local authority” (*“awdurdod lleol”*) means the council of a county or county borough in Wales;

“notice” (*“hysbysiad”*) means notice in writing;

“the register” (*“y gofrestr”*) means the register established and maintained under section 11;

“registered institution” (*“sefydliad cofrestredig”*) means an institution which is registered in the register; and references to “registration” (*“cofrestru”*) are to be read accordingly;

“secondary education” (*“addysg uwchradd”*) has the meaning given by section 2 of the Education Act 1996 (c. 56);

“tertiary education” (*“addysg drydyddol”*) means higher education, further education or training.

- (2) References in this Act to further education are to education (other than higher education) suitable to the requirements of persons who are above compulsory school age and organised leisure-time occupation connected with such education.
- (3) Accordingly for the purposes of this Act, further education includes education suitable to the requirements of pupils over compulsory school age but under 19 which is provided at a school at which secondary education is also provided.
- (4) References in this Act to training are to training suitable to the requirements of persons who are above compulsory school age and organised leisure-time occupation connected with such training.
- (5) For the purposes of subsections (2) and (4) –
 - (a) education includes both full-time and part-time education;
 - (b) training includes both full-time and part-time training;
 - (c) training includes vocational, social, physical and recreational training.
- (6) In this Act –
 - (a) references to institutions within the further education sector are references to institutions falling within section 91(3) of the Further and Higher Education Act 1992 (c. 13), and
 - (b) references to institutions within the higher education sector are references to institutions falling within section 91(5) of the Further and Higher Education Act 1992.

- (7) Subsections (2) and (3) of section 8 of the Education Act 1996 (c. 56) apply to determine, for the purposes of this Act, whether a person is of compulsory school age, so far as that section applies in relation to Wales.
- (8) In subsection (1), “training provider” means a person who provides training for members of the school workforce (within the meaning given by section 100 of the Education Act 2005 (c. 18)).
- (9) In this Act, references to an institution in Wales are to an institution whose activities are wholly or mainly carried on in Wales.
- (10) For the purposes of this Act, tertiary education provided outside Wales is to be treated as provided in Wales if it is provided as part of a course that is provided mainly in Wales.

131 Power to provide for the Open University to be treated as an institution in Wales

- (1) The Welsh Ministers may, by regulations, provide for the Open University to be treated as an institution in Wales for the purpose of any provision in, or made under, this Act.
- (2) Regulations under subsection (1) may modify the effect of a provision in, or made under, this Act so far as it applies to the Open University, whether as an institution in Wales or a registered institution (if it becomes one).

132 Power to make consequential and transitional provision etc.

- (1) If the Welsh Ministers consider it appropriate for the purposes of, in consequence of, or for giving full effect to any provision of this Act, they may, by regulations, make –
 - (a) supplementary, incidental or consequential provision;
 - (b) transitional, transitory or saving provision.
- (2) Regulations under subsection (1) may amend, modify, repeal or revoke any enactment (including an enactment contained in this Act).

133 Minor and consequential amendments

Schedule 4 makes minor provision and provision in consequence of this Act.

134 Coming into force

- (1) The following provisions of this Act come into force on the day after the day on which this Act receives Royal Assent –
 - (a) sections 129 to 132;
 - (b) this section;
 - (c) section 135.
- (2) The other provisions of this Act come into force on a day appointed by the Welsh Ministers in an order made by statutory instrument.

- (3) An order under subsection (2) may –
 - (a) appoint different days for different purposes;
 - (b) make transitory, transitional or saving provision in connection with the coming into force of a provision brought into force by the order.

135 Short title

- (1) The short title of this Act is the Tertiary Education and Research (Wales) Act 2021.
- (2) This Act is to be included in the list of Education Acts set out in section 578 of the Education Act 1996 (c. 56).

SCHEDULE 1
(introduced by section 1)

COMMISSION FOR TERTIARY EDUCATION AND RESEARCH

Status

- 1 The Commission is not to be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

Membership

- 2 (1) The members of the Commission are –
- (a) the person appointed by the Welsh Ministers to chair the Commission (“the chair”);
 - (b) the person appointed by the Welsh Ministers as the chair of RIW under paragraph 11(2)(a) who is to be the deputy chair of the Commission;
 - (c) at least 4 and no more than 14 other persons appointed by the Welsh Ministers under this paragraph (“ordinary members”);
 - (d) the person appointed under paragraph 10 as chief executive of the Commission (“the chief executive”).
- (2) In appointing the chair and ordinary members the Welsh Ministers must have regard to the desirability of the Commission’s members (between them) having experience of, and having shown capability in –
- (a) the provision of education or training;
 - (b) the carrying out or administration of research;
 - (c) industrial, commercial or financial matters or the practice of any profession;
 - (d) promoting the needs of learners in tertiary education.

The chair and ordinary members

- 3 (1) The chair and ordinary members hold and vacate office in accordance with the terms and conditions of their appointment.
- (2) Those terms and conditions are to be determined by the Welsh Ministers, subject to the provisions of this Schedule.
- (3) A person is disqualified from being the chair or an ordinary member if the person is –
- (a) a Member of the Senedd;
 - (b) a member of the House of Commons or the House of Lords;
 - (c) a member of the governing body of an institution in Wales within the further education sector;
 - (d) a member of the governing body of an institution in Wales within the higher education sector.

- (4) A person who becomes disqualified ceases to hold office as the chair or as an ordinary member.
- (5) The chair and ordinary members are to be appointed for a term of up to 5 years.
- (6) A person who has held office as the chair or as an ordinary member may be reappointed.
- (7) The chair or an ordinary member may resign from office by giving notice to the Welsh Ministers and to the Commission.
- (8) The Commission may, with the Welsh Ministers' approval, pay or make provision for the payment of remuneration, allowances and pension to, or in respect of, a person who is or has been the chair or an ordinary member.
- (9) The Welsh Ministers may by notice to the chair, the deputy chair or an ordinary member remove that person from office if they are satisfied that the person is unable or unfit to carry out the functions of office, or is otherwise failing to do so.
- (10) The Welsh Ministers may by notice to the chair, the deputy chair or an ordinary member suspend that person from office, if it appears to them that there may be grounds to exercise the power in sub-paragraph (9).
- (11) A suspension by notice under sub-paragraph (10) has effect –
 - (a) for a period specified in the notice, or
 - (b) if no period is specified in the notice, until further notice by the Welsh Ministers to the person suspended.
- (12) A person removed from office as the deputy chair also ceases to hold office as the chair of RIW.
- (13) A person suspended from office as the deputy chair is also suspended from office as the chair of RIW.

Associate membership

- 4 (1) The associate members of the Commission are –
 - (a) at least two persons appointed by the Welsh Ministers in accordance with paragraph 5 to represent the wider tertiary education workforce (“associate workforce members”), where at least one is appointed to represent the academic tertiary education workforce and at least one is appointed to represent the non-academic tertiary education workforce;
 - (b) where one or more trade unions are recognised by the Commission, a person appointed in accordance with paragraph 6 to represent the staff of the Commission (“associate Commission staff member”);
 - (c) at least one person appointed by the Welsh Ministers in accordance with paragraph 7 to represent learners in tertiary education (“associate learner member”).
- (2) In this paragraph, paragraph 5 and paragraph 6, “trade union” has the meaning given by the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52).

Appointment of associate workforce members

- 5 (1) The Welsh Ministers must publish –
- (a) a list of one or more trade unions for the purpose of appointing associate workforce members to represent the academic tertiary education workforce, and
 - (b) a list of one or more trade unions for the purpose of appointing associate workforce members to represent the non-academic tertiary education workforce.
- (2) Before publishing a list (including a replacement list) under sub-paragraph (1), the Welsh Ministers must consult –
- (a) the Commission, and
 - (b) such other persons as they consider appropriate.
- (3) Sub-paragraph (4) applies if no-one holds the position of associate workforce member to represent the academic tertiary education workforce.
- (4) The Welsh Ministers must invite each of the trade unions on the most recently published list under sub-paragraph (1)(a) to nominate an eligible candidate for appointment as an associate workforce member to represent the academic tertiary education workforce.
- (5) Sub-paragraph (6) applies if no-one holds the position of associate workforce member to represent the non-academic tertiary education workforce.
- (6) The Welsh Ministers must invite each of the trade unions on the most recently published list under sub-paragraph (1)(b) to nominate an eligible candidate for appointment as an associate workforce member to represent the non-academic tertiary education workforce.
- (7) The Welsh Ministers must specify the period within which a nomination under sub-paragraph (4) or (6) is to be made.
- (8) The Welsh Ministers must appoint at least one person, from among the eligible candidates nominated during the period specified under sub-paragraph (7), as an associate workforce member to represent the academic tertiary education workforce.
- (9) The Welsh Ministers must appoint at least one person, from among the eligible candidates nominated during the period specified under sub-paragraph (7), as an associate workforce member to represent the non-academic tertiary education workforce.
- (10) A person is an eligible candidate for appointment as an associate workforce member to represent the academic tertiary education workforce only if the person is –
- (a) employed by a person who provides tertiary education in Wales, and
 - (b) a member of a trade union on the most recently published list under sub-paragraph (1)(a).
- (11) A person is an eligible candidate for appointment as an associate workforce member to represent the non-academic tertiary education workforce only if the person is –
- (a) employed by a person who provides tertiary education in Wales, and
 - (b) a member of a trade union on the most recently published list under sub-paragraph (1)(b).

Appointment of associate Commission staff member

- 6 (1) Sub-paragraph (2) applies where –
- (a) one or more trade unions are recognised by the Commission, and
 - (b) the position of associate Commission staff member is unoccupied.
- (2) The staff member appointment committee (see paragraph 12(3)) must invite each of the trade unions recognised by the Commission to nominate an eligible candidate for appointment as the associate Commission staff member.
- (3) The staff member appointment committee must specify the period within which a nomination is to be made.
- (4) The staff member appointment committee must appoint a person, from among the eligible candidates nominated during the period specified under sub-paragraph (3), as the associate Commission staff member.
- (5) A person is an eligible candidate for appointment as the associate Commission staff member only if the person is –
- (a) employed by the Commission, and
 - (b) a member of a trade union recognised by the Commission.
- (6) In this paragraph “recognised”, in relation to a trade union, has the meaning given by the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52).

Appointment of associate learner member

- 7 (1) The Welsh Ministers must publish a list of one or more bodies (whether corporate or unincorporate) appearing to them to represent the interests of learners undertaking tertiary education in Wales for the purpose of appointing the associate learner member.
- (2) Before publishing a list (including a replacement list) under sub-paragraph (1), the Welsh Ministers must consult –
- (a) the Commission, and
 - (b) such other persons as they consider appropriate.
- (3) Sub-paragraph (4) applies if no-one holds the position of associate learner member.
- (4) The Welsh Ministers must invite each of the bodies on the list most recently published under sub-paragraph (1) to nominate an eligible candidate for appointment as the associate learner member.
- (5) The Welsh Ministers must specify the period within which a nomination under sub-paragraph (4) is to be made.
- (6) The Welsh Ministers must appoint a person, from among the eligible candidates nominated during the period specified under sub-paragraph (5), as the associate learner member.

- (7) A person is an eligible candidate for appointment as an associate learner member only if—
- (a) the person has been a learner undertaking tertiary education at any time during the period of 3 years ending on the day of the appointment, and
 - (b) the person holds an office or any form of membership of a body on the list most recently published under sub-paragraph (1).

Terms of associate membership etc.

- 8 (1) An associate member is not eligible to vote in any proceedings of the Commission.
- (2) An associate workforce member and an associate learner member hold and vacate office in accordance with the terms and conditions of their appointment.
- (3) Those terms and conditions are to be determined by the Welsh Ministers, subject to the provisions of this Schedule.
- (4) An associate Commission staff member holds and vacates office in accordance with the terms and conditions of their appointment.
- (5) Those terms and conditions are to be determined by the staff member appointment committee, subject to the provisions of this Schedule.
- (6) The period of office specified in an associate member's terms of appointment may not exceed 4 years.
- (7) A person who has held office as an associate member may be reappointed as an associate member (and sub-paragraph (6) applies in relation to the appointment).
- (8) An associate workforce member and an associate learner member may resign from office by giving notice to the Welsh Ministers and the chair.
- (9) An associate Commission staff member may resign from office by giving notice to the staff member appointment committee.
- (10) The Commission may, with the approval of the Welsh Ministers, pay an associate member expenses and allowances.

Removal of associate member from office

- 9 (1) The relevant decision maker may by notice to an associate member remove that person from office, if they are satisfied that the person is unable or unfit to carry out the functions of office, or is otherwise failing to do so.
- (2) The relevant decision maker may by notice to an associate member suspend that person from office, if it appears to the relevant decision maker that there may be grounds to exercise the power in sub-paragraph (1).
- (3) A suspension by notice under sub-paragraph (2) has effect—
- (a) for a period specified in the notice, or
 - (b) if no period is specified in the notice, until further notice by the relevant decision maker to the person suspended.

- (4) In this paragraph, the “relevant decision maker” is –
 - (a) the Welsh Ministers, where the associate member is an associate workforce member or an associate learner member;
 - (b) the staff member appointment committee, where the associate member is an associate Commission staff member.
- (5) An associate member ceases to hold office if the member ceases to be an eligible candidate for appointment to the type of associate membership to which they were appointed (see paragraph 5(10) and (11), paragraph 6(5) and paragraph 7(7)).

Chief executive and other staff

- 10 (1) The first person appointed as chief executive of the Commission is to be appointed by the Welsh Ministers –
 - (a) on such terms and conditions (including conditions as to remuneration, allowances and pension) as the Welsh Ministers determine, and
 - (b) for a term of up to 4 years.
- (2) Subsequent appointments (or reappointments) of a person as chief executive are to be made by the Commission, with the approval of the Welsh Ministers.
- (3) A person may not be appointed as chief executive if the person is –
 - (a) a Member of the Senedd;
 - (b) a member of the House of Commons or the House of Lords;
 - (c) a member of the governing body of an institution in Wales within the further education sector;
 - (d) a member of the governing body of an institution in Wales within the higher education sector.
- (4) The chief executive is a member of the Commission’s staff.
- (5) The Commission may appoint other members of staff.
- (6) Except in relation to the first person appointed as chief executive under sub-paragraph (1), the following are to be determined by the Commission, with the approval of the Welsh Ministers –
 - (a) the terms and conditions of its staff (including remuneration and allowances);
 - (b) the payment or provision for the payment of pension to or in respect of a member of its staff or a former member of its staff.
- (7) Service as a member of the Commission’s staff is not service in the civil service of the State.

Research and Innovation Wales Committee

- 11 (1) The Commission is to have a committee known as the Research and Innovation Wales Committee (“RIW”) for the purpose of advising the Commission on the exercise of its functions under sections 95, 96 and 97 (research and innovation functions).

- (2) The members of RIW are –
 - (a) a person appointed by the Welsh Ministers to chair the RIW (“the chair of RIW”);
 - (b) at least 8 and no more than 12 other persons appointed by the Welsh Ministers under this paragraph (“ordinary RIW members”).
- (3) The chair of RIW and the ordinary RIW members hold and vacate office in accordance with the terms and conditions of their appointment.
- (4) Those terms and conditions are to be determined by the Welsh Ministers, subject to the provisions of this Schedule.
- (5) A person is disqualified from being the chair of RIW if the person is –
 - (a) a Member of the Senedd;
 - (b) a member of the House of Commons or the House of Lords;
 - (c) a member of the governing body of an institution in Wales within the further education sector;
 - (d) a member of the governing body of an institution in Wales within the higher education sector.
- (6) A person who becomes disqualified ceases to hold office as the chair of RIW.
- (7) The chair of RIW and the ordinary RIW members are to be appointed for a term of up to 5 years.
- (8) A person who has held office as the chair of RIW or as an ordinary RIW member may be reappointed.
- (9) The chair of RIW or an ordinary RIW member may resign from office at any time by giving notice to the Welsh Ministers and to the Commission.
- (10) The Commission may, with the Welsh Ministers’ approval, pay or make provision for the payment of remuneration, allowances and pension to, or in respect of, a person who is or has been the chair of RIW or an ordinary RIW member.
- (11) The Welsh Ministers may remove the chair of RIW or an ordinary RIW member from office if they are satisfied that the person is unable or unfit to carry out the functions of office, or is otherwise failing to do so.
- (12) The Welsh Ministers may by notice to the chair of RIW or an ordinary RIW member suspend that person from office, if it appears to them that there may be grounds to exercise the power in sub-paragraph (11).
- (13) A suspension by notice under sub-paragraph (12) has effect –
 - (a) for a period specified in the notice, or
 - (b) if no period is specified in the notice, until further notice by the Welsh Ministers to the person suspended.
- (14) A person who ceases to hold office as the chair of RIW also ceases to hold office as the deputy chair of the Commission.
- (15) A person suspended from office as chair of RIW is also suspended from office as the deputy chair of the Commission.

- (16) RIW may –
 - (a) establish sub-committees;
 - (b) dissolve sub-committees established by it.
- (17) The Commission may also dissolve sub-committees established under sub-paragraph (16).

Quality Committee and other committees

- 12 (1) The Commission must establish a committee (“the Quality Committee”) for the purpose of advising the Commission on the quality of all tertiary education funded or otherwise secured by the Commission.
- (2) The Commission must appoint one of its ordinary members to chair meetings of the Quality Committee.
- (3) The Commission must establish a committee composed of the chair and the ordinary members to be the staff member appointment committee.
- (4) The Commission may establish other committees.
- (5) The Quality Committee or other committee established under sub-paragraph (4) may –
 - (a) establish sub-committees;
 - (b) dissolve sub-committees established by it.
- (6) The Commission may also dissolve sub-committees established under sub-paragraph (5).
- (7) The members of the Quality Committee or other committee established under sub-paragraph (4) or a sub-committee established under sub-paragraph (5) may include persons who are not members of the Commission.
- (8) The Commission may pay remuneration and allowances to any person who –
 - (a) is a member of the Quality Committee or other committee established under sub-paragraph (4) or a sub-committee established under sub-paragraph (5), but
 - (b) is not a member of the Commission or a member of its staff.

Joint committees

- 13 (1) The Commission may, in connection with the exercise of its functions, establish a committee jointly with any person.
- (2) In this Schedule a committee established under this paragraph is referred to as a “joint committee”.
- (3) The Commission may pay remuneration and allowances to any person who –
 - (a) is a member of a joint committee, but
 - (b) is not a member of the Commission or a member of its staff.

Accounting officer

- 14 (1) The chief executive is to be the Commission’s accounting officer.

- (2) The accounting officer has, in relation to the Commission's accounts and finances, the responsibilities specified in a direction by the Welsh Ministers.
- (3) The responsibilities that may be specified include –
 - (a) responsibilities in relation to the signing of accounts;
 - (b) responsibilities for the propriety and regularity of the Commission's finances;
 - (c) responsibilities for the economy, efficiency and effectiveness with which the Commission uses its resources;
 - (d) responsibilities owed to the Welsh Ministers, Senedd Cymru or the Public Accounts Committee of the Senedd;
 - (e) responsibilities owed to the House of Commons or the Committee of Public Accounts of that House.
- (4) In sub-paragraph (3)(d), "the Public Accounts Committee of the Senedd" means the committee referred to as the "Audit Committee" in section 30 of the Government of Wales Act 2006 (c. 32).

Accounts and audit

- 15 (1) The Commission must –
- (a) keep proper accounts and proper records in relation to them, and
 - (b) prepare a statement of accounts in respect of each financial year in accordance with directions given by the Welsh Ministers.
- (2) The directions may make provision as to –
- (a) the information to be contained in the statement;
 - (b) the manner in which the information is to be presented;
 - (c) the methods and principles according to which the statement is to be prepared;
 - (d) additional information that is to accompany the statement.
- (3) No later than 31 August after the end of each financial year the Commission must submit its statement of accounts to –
- (a) the Auditor General for Wales, and
 - (b) the Welsh Ministers.
- (4) The Auditor General must –
- (a) examine, certify and report on the statement of accounts, and
 - (b) no later than 4 months after the statement was submitted, lay before Senedd Cymru a copy of the certified statement and report.

Annual reports

- 16 (1) As soon as reasonably practicable after the end of each financial year the Commission must prepare a report ("the annual report") that –
- (a) gives details of how the Commission has exercised its functions during the year;

- (b) explains the progress the Commission has made during the year towards achieving the objectives set out in its strategic plan approved under section 5 and the extent to which what it has done during the year has addressed the Welsh Ministers' strategic priorities set out in the statement published under section 3;
 - (c) gives details of the following matters for the Welsh education reporting period, and explains how they compare with the details of those matters for the 12 months preceding that period –
 - (i) the extent to which tertiary education in Wales was provided through the medium of Welsh, and
 - (ii) the extent to which Welsh was taught to persons above compulsory school age in Wales;
 - (d) gives an assessment of the quality of tertiary education the Commission is required to monitor by section 43;
 - (e) includes the information required by section 72(3) (information about financial position of institutions);
 - (f) includes the information required by section 97(3) (monitoring of funding for research and innovation);
 - (g) includes the information required by section 114(9) (effectiveness of learner protection plans);
 - (h) includes the information required by section 117(8) (effectiveness of Learner Engagement Code);
 - (i) gives details of how a body designated under Schedule 3 has performed its functions during the academic year.
- (2) In sub-paragraph (1)(c) “Welsh education reporting period” means the most recent period of 12 months ending on 31 August in respect of which information about the matters set out in sub-paragraph (1)(c)(i) and (ii) is available to the Commission.
- (3) The annual report may include any other information the Commission considers appropriate.
- (4) As soon as possible after the report is prepared the Commission must send a copy to the Welsh Ministers.
- (5) As soon as possible after receiving the annual report the Welsh Ministers must lay a copy of it before Senedd Cymru.

Meaning of “financial year” and “academic year”

- 17 (1) In paragraphs 15 and 16 “financial year” means –
- (a) the period beginning on the day on which section 1 comes into force and ending on the following 31 March;
 - (b) subsequently, each successive period of 12 months.
- (2) In paragraph 16 “academic year” means the period of 12 months ending on 31 August in the financial year.

Delegation by the Commission

- 18 (1) The Commission may delegate any of its functions to—
- (a) a member of the Commission or a member of its staff;
 - (b) RIW or a sub-committee of RIW established under paragraph 11(16);
 - (c) the Quality Committee or other committee established by the Commission under paragraph 12(4), or a sub-committee established under paragraph 12(5);
 - (d) a joint committee.
- (2) A function is delegated under this paragraph to the extent and on the terms that the Commission determines.
- (3) The delegation of a function does not affect—
- (a) the Commission’s ability to exercise the function;
 - (b) the Commission’s responsibility for the exercise of the function.

Delegation by committees

- 19 (1) RIW, the Quality Committee or other committee established under paragraph 12(4) may delegate any of its functions to a sub-committee established by it.
- (2) A function is delegated under this paragraph to the extent and on the terms that the committee delegating the function determines.

Proceedings

- 20 (1) The Commission may determine its own procedure (including quorum) and that of its committees and sub-committees.
- (2) The validity of proceedings of the Commission, of its committees or sub-committees, or of a joint committee, is not affected by—
- (a) a vacancy or suspension;
 - (b) a defective appointment.
- (3) A person suspended from office under this Schedule may not take part in proceedings of the Commission, of its committees or sub-committees, or of a joint committee during the period in which the suspension has effect.

Register of interests

- 21 (1) The Commission must establish and maintain a register of its members’ interests.
- (2) The Commission must publish entries recorded in the register of members’ interests.

Supplementary powers

- 22 (1) The Commission may do anything that it considers—
- (a) appropriate for the purposes of, or in connection with, its functions, or
 - (b) incidental or conducive to the exercise of those functions.

- (2) The Commission may (among other things) –
 - (a) acquire or dispose of land or other property;
 - (b) enter into contracts;
 - (c) invest sums;
 - (d) accept gifts of money, land or other property.
- (3) But the Commission may not borrow money without the approval of the Welsh Ministers.

SCHEDULE 2
(introduced by section 10)

TRANSFERS OF PROPERTY AND STAFF TO THE COMMISSION

Power to make transfer schemes

- 1 (1) The Welsh Ministers may make one or more schemes providing for—
 - (a) staff of the Higher Education Funding Council for Wales or the Welsh Government to become members of staff of the Commission;
 - (b) the transfer of property, rights and liabilities of the Higher Education Funding Council for Wales or the Welsh Ministers to the Commission.
- (2) The things that may be transferred under a scheme under this Schedule (a “transfer scheme”) include—
 - (a) property, rights and liabilities that could not otherwise be transferred;
 - (b) property acquired, and rights and liabilities arising, after the making of the scheme;
 - (c) criminal liabilities.
- (3) A transfer scheme may make consequential, supplementary, incidental, transitional or transitory provision, for example so as to—
 - (a) create rights, or impose liabilities, in relation to property or rights transferred;
 - (b) make provision about the continuing effect of things done in respect of anything transferred;
 - (c) make provision about the continuation of things (including legal proceedings) in the process of being done in respect of anything transferred;
 - (d) make provision for the shared ownership or use of property;
 - (e) make provision for references to the Higher Education Funding Council for Wales, the Welsh Government or the Welsh Ministers in an instrument or other document in respect of anything transferred to be treated as references to the Commission;
 - (f) make provision which is the same as or similar to a provision made by the TUPE regulations in a case where those regulations do not apply in relation to the transfer.

Modification of transfer schemes

- 2 (1) The Welsh Ministers may modify a transfer scheme.
- (2) But if a transfer under the scheme has taken effect, any modification that relates to the transfer may be made only with the agreement of the person (or persons) affected by the modification.

- (3) A modification takes effect from the date when the original scheme came into effect or such later date as the Welsh Ministers may specify.

Duty to lay transfer schemes before Senedd Cymru

- 3 The Welsh Ministers must lay a copy of a transfer scheme made under this Schedule before Senedd Cymru.

Interpretation

- 4 (1) For the purposes of this Schedule –
 - (a) an individual who holds employment in the civil service is to be treated as employed by virtue of a contract of employment, and
 - (b) the terms of the individual's employment in the civil service are to be regarded as constituting the terms of the contract of employment.
- (2) In this Schedule –
 - “civil service” (“*gwasanaeth sifil*”) means the civil service of the State;
 - “TUPE regulations” (“*rheoliadau TUPE*”) means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246);
 - references to rights and liabilities include rights and liabilities relating to a contract of employment;
 - references to the transfer of property include the grant of a lease.

SCHEDULE 3
(Introduced by section 48)

ASSESSING HIGHER EDUCATION: DESIGNATED BODY

PART 1

DESIGNATION

Recommendation

- 1 (1) The Commission may recommend to the Welsh Ministers that a body be designated to perform its assessment functions.
- (2) Before making a recommendation under sub-paragraph (1), the Commission must consult—
 - (a) each registered institution providing higher education, and
 - (b) such other persons as it considers appropriate.

Designation

- 2 (1) This paragraph applies where, in accordance with paragraph 1, the Commission recommends that a body (“the recommended body”) be designated to perform the assessment functions.
- (2) The Welsh Ministers may designate the recommended body only if the Welsh Ministers consider that—
 - (a) the body is suitable to perform the assessment functions, and
 - (b) designating the body would be appropriate for securing the effective assessment of the quality of higher education provided by institutions in Wales.
- (3) If the Welsh Ministers decide to designate the recommended body, the Welsh Ministers must—
 - (a) notify the body of the designation before the date on which the designation takes effect (“the effective date”), and
 - (b) publish notice of the designation before that date.
- (4) The notice of the designation must state—
 - (a) the name of the body, and
 - (b) the effective date.
- (5) If the Welsh Ministers decide not to designate the recommended body, the Welsh Ministers must publish the reasons for not doing so.

Bodies suitable to perform assessment functions

- 3 (1) A body is suitable to perform the assessment functions if the body satisfies conditions A to C.
- (2) Condition A is that the body is capable of performing the assessment functions in an effective manner.

- (3) Condition B is that –
- (a) the persons who determine the strategic priorities of the body represent a broad range of registered institutions providing higher education,
 - (b) the body commands the confidence of registered institutions providing higher education, and
 - (c) the body exercises its functions independent of any particular higher education provider.
- (4) Condition C is that the body consents to being designated under this Schedule.

Removal of designation

- 4 (1) The Welsh Ministers may by notice remove a designation under this Schedule.
- (2) The notice must –
- (a) include the reasons for the Welsh Ministers' decision, and
 - (b) specify the date on which the designation is removed.
- (3) The Welsh Ministers may only remove the designation if –
- (a) the Welsh Ministers are satisfied that removing the designation would be appropriate for securing the effective assessment of the quality of higher education provided by institutions in Wales, or
 - (b) the designated body consents to the removal of the designation.
- (4) Before removing the designation the Welsh Ministers must consult –
- (a) the Commission,
 - (b) each registered institution providing higher education, and
 - (c) such other persons as the Welsh Ministers consider appropriate.
- (5) In determining whether a designation under this Schedule should be removed, the Welsh Ministers must have regard to any relevant information that the Commission has provided to the Welsh Ministers.
- (6) The Welsh Ministers must publish a notice under this paragraph.

PART 2

OVERSIGHT BY THE COMMISSION

Application

- 5 This Part applies if there is a body designated under this Schedule to perform the assessment functions.

Power to provide funding

- 6 The Commission may provide funding to the designated body for performance of the assessment functions.

Oversight arrangements

- 7 The Commission must make arrangements for holding the designated body to account for the performance of the assessment functions.

Annual report by the designated body

- 8 (1) As soon as reasonably practicable after the end of each annual reporting period, the designated body must prepare and send to the Commission a report about the performance of the assessment functions during the period.
- (2) “Annual reporting period”, in relation to a designated body, means –
- (a) the period of 12 months beginning with the effective date, and
 - (b) each successive period of 12 months.

Power of the Commission to give directions

- 9 (1) The Commission may give the designated body general directions about the performance of the assessment functions.
- (2) In giving such directions, the Commission must have regard to the need to protect –
- (a) the expertise of the designated body, and
 - (b) the designated body’s ability to make, or make arrangements for, an impartial assessment of the quality of higher education provided by an institution.
- (3) The directions must relate –
- (a) to institutions in Wales providing higher education or registered institutions providing higher education generally, or
 - (b) a description of such institutions.
- (4) The designated body must comply with any directions given under this paragraph.

Duty of the Commission to inform the Welsh Ministers about significant concerns

- 10 The Commission must inform the Welsh Ministers if it has significant concerns about –
- (a) how the designated body is performing the assessment functions, or
 - (b) the continued suitability of the designated body to perform those functions.

PART 3

POWER TO CHARGE FEES

- 11 (1) The designated body may charge a fee, or fees, to any institution in relation to which the body performs the assessment functions.
- (2) Any fees charged by the designated body under sub-paragraph (1) must be charged in accordance with a scheme prepared and published by the designated body that sets out –
- (a) the fees which the body charges under sub-paragraph (1), and
 - (b) the basis on which such fees are calculated.

- (3) The amount of a fee payable by any institution under sub-paragraph (1) may be calculated by reference to costs incurred, or to be incurred, by the body in the performance of any of its functions under this Act which—
 - (a) are unconnected with the institution;
 - (b) are performed, or are to be performed, over a period specified in the scheme.
- (4) But the total fees payable under the scheme in any period must not exceed the cost to the designated body of performing its functions under this Act during the same period.
- (5) For the purposes of sub-paragraph (4), the cost to the designated body of performing its functions under this Act is the amount of the costs incurred, or to be incurred, by the designated body in the performance of any of its functions under this Act in any given period less any funding received by the body under paragraph 6 of this Schedule in the same period.
- (6) The designated body may revise the scheme.
- (7) The scheme (and any revised scheme) is to be treated as having effect only if approved by the Commission.

PART 4

INTERPRETATION

- 12 (1) In this Schedule—
 - “the assessment functions” (*“y swyddogaethau asesu”*) has the meaning given in section 48(2);
 - “designated body” (*“corff dynodedig”*) means a body for the time being designated under this Schedule;
 - “the effective date” (*“y dyddiad effeithiol”*), in relation to a designated body, has the meaning given in paragraph 2;
- (2) References in this Schedule to a body that is suitable to perform the assessment functions are to be read in accordance with paragraph 3.

SCHEDULE 4
(Introduced by section 133)

MINOR AND CONSEQUENTIAL AMENDMENTS

Further and Higher Education Act 1992 (c. 13)

- 1 (1) The Further and Higher Education Act 1992 is amended as follows.
- (2) In section 49B (destination information) –
- (a) in subsection (2) for “The Welsh Ministers” substitute “The Commission for Tertiary Education and Research”;
 - (b) in subsection (4) for “the Welsh Ministers” in the first place where it occurs substitute “the Commission for Tertiary Education and Research”.
- (3) Omit –
- (a) section 57 (intervention:Wales);
 - (b) section 62 (establishment of the Higher Education Funding Council for Wales);
 - (c) section 65 (administration of funds by the HEFCW);
 - (d) section 66 (administration of funds: supplementary);
 - (e) section 68 (grants to the HEFCW);
 - (f) section 69 (supplementary functions);
 - (g) section 79 (duty to give information to HEFCW);
 - (h) section 81 (directions).
- (4) In section 83 (efficiency studies), in the table in subsection (1B) omit the entries for “the Welsh Ministers” and “the HEFCW”.
- (5) In section 91 (interpretation), omit subsection (4).
- (6) In section 92 (index), omit the entries for “the HEFCW” and “institution in Wales (in relation to the HEFCW)”.
- (7) Omit Schedule 1 (the Further and Higher Education Funding Councils).

Education Act 1996 (c. 56)

- 2 (1) The Education Act 1996 is amended as follows.
- (2) In section 530 (compulsory purchase of land), in subsection (3) in paragraph (b) omit “(including that paragraph as applied by section 76(3) of that Act)”.
- (3) In Schedule 36A (education functions of local authorities), in the table in paragraph 2 in the entry for the Learning and Skills Act 2000 –
- (a) in the entry for section 33J, for “the Welsh Ministers” substitute “the Commission for Tertiary Education and Research”;
 - (b) omit the entry for section 83;
 - (c) omit the entry for section 84;
 - (d) omit the entry for Schedules 7 and 7A.

Teaching and Higher Education Act 1998 (c. 30)

- 3 Omit section 27 of the Teaching and Higher Education Act 1998 (expenditure eligible for funding).

School Standards and Framework Act 1998 (c. 31)

- 4 (1) The School Standards and Framework Act 1998 is amended as follows.
- (2) In section 49 (maintained schools to have delegated budgets), in subsection (6), in paragraph (b) omit “section 75(2)(b) of,”.
- (3) In Part 1 of Schedule 22 (disposals of land: foundation and voluntary schools in Wales) –
- (a) in paragraph 1, in sub-paragraph (1)(aa) omit “, under that paragraph as applied by section 76(1) of that Act”;
 - (b) in paragraph 2, in sub-paragraph (1)(aa) omit “, under either of those paragraphs as applied by section 76(1) or (3) of that Act”;
 - (c) in paragraph 2A, in sub-paragraph (1)(aa) omit “, under that paragraph as applied by section 76(1) of that Act”;
 - (d) in paragraph 3, in sub-paragraph (1)(aa) omit “, under those paragraphs as applied by section 76(1) or (3) of that Act”.

Learning and Skills Act 2000 (c. 21)

- 5 (1) The Learning and Skills Act 2000 is amended as follows.
- (2) Omit sections 31 to 33 (main duties in relation to post 16 education and training).
- (3) In section 33A (formation of local curricula for students aged 16 to 18) –
- (a) in subsection (1) for “The Welsh Ministers” substitute “The Commission”;
 - (b) in subsection (2)(b) for “the Welsh Ministers” substitute “the Commission”.
- (4) In section 33B (local curricula: Welsh language) for “The Welsh Ministers” substitute “The Commission” and for “their” substitute “its”.
- (5) In section 33C (areas with more than one local curriculum) –
- (a) in subsection (1) for “the Welsh Ministers form” substitute “the Commission forms”;
 - (b) in subsection (2) for “the Welsh Ministers” substitute “the Commission”.
- (6) In section 33D, after subsection (3) insert –
- “(3A) The Welsh Ministers must consult the Commission before making regulations under subsection (3).”
- (7) In section 33E (pupils’ choice of local curriculum courses) –
- (a) after subsection (3) insert –
- “(3A) The Welsh Ministers must consult the Commission before making regulations under subsection (3).”;

- (b) in subsection (4) for “the Welsh Ministers have” in each place substitute “the Commission has”.
- (8) In section 33G (head teacher’s or principal’s decision as to entitlement), after subsection (5) insert –
- “(6) The Welsh Ministers must consult the Commission before making regulations under subsection (3), giving guidance under subsection (4) or making an order under subsection (5).”
- (9) In section 33I (head teacher’s or principal’s decision to remove entitlement), after subsection (5) insert –
- “(6) The Welsh Ministers must consult the Commission before making regulations under subsection (3), giving guidance under subsection (4) or making an order under subsection (5).”
- (10) In section 33J (planning the local curriculum) –
- (a) in subsection (1) for “the Welsh Ministers” substitute “the Commission”;
- (b) in subsection (2) for “the Welsh Ministers decide” substitute “the Commission decides”;
- (c) omit subsections (3) and (4).
- (11) In section 33K (delivery of local curriculum entitlements: joint working), in subsection (6) for “the Welsh Ministers have” in each place substitute “the Commission has”.
- (12) In section 33L (joint working: guidance and directions), after subsection (2) insert –
- “(2A) The Welsh Ministers must consult the Commission before giving guidance under subsection (1).”
- (13) In section 33M (power to amend learning domains), the existing text becomes subsection (1) and after that subsection insert –
- “(2) The Welsh Ministers must consult the Commission before making an order under subsection (1).”
- (14) In section 33N (the local curriculum: interpretation), in subsection (1) –
- (a) for “33L” substitute “33M”;
- (b) after the definition of “academic year” insert –
- ““the Commission” means the Commission for Tertiary Education and Research;”.
- (15) In section 33O (local curriculum: directions), omit “, 33J(3)”.
- (16) In section 33P (application of local curriculum provisions to students who are registered pupils of special schools or who have additional learning needs) –
- (a) in subsection (1) after “Regulations” insert “made by the Welsh Ministers”;

- (b) after subsection (3) insert –
 - “(4) The Welsh Ministers must consult the Commission for Tertiary Education and Research before making regulations under subsection (1).”
- (17) In section 33Q (application of local curriculum provisions to institutions within the higher education sector) –
 - (a) in subsection (1) after “Regulations” insert “made by the Welsh Ministers”;
 - (b) after subsection (3) insert –
 - “(4) The Welsh Ministers must consult the Commission for Tertiary Education and Research before making regulations under subsection (1).”
- (18) Omit sections 34 to 38 (main powers).
- (19) In section 40 (research and information), omit subsections (5) and (6).
- (20) Omit section 41 (persons with additional learning needs).
- (21) In section 73 (inspectors of education and training in Wales), omit subsections (1) and (2).
- (22) In section 74 (defined terms), in subsection (2) for “the person mentioned in section 73(1)” substitute “Her Majesty’s Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru”.
- (23) Omit sections 75 to 80 and 83 to 88 (inspections in Wales).

Education Act 2002 (c. 32)

- 6 (1) The Education Act 2002 is amended as follows.
 - (2) In section 178 (training and education provided in the workplace for 14 to 16 year olds), omit subsections (1) and (4).
 - (3) In Schedule 21 (minor and consequential amendments), omit paragraph 125.

Higher Education Act 2004 (c. 8)

- 7 (1) The Higher Education Act 2004 is amended as follows.
 - (2) In section 20A (institutions that cease to be qualifying institutions), in subsection (4) after “(f) of” insert “subsection (1) of”.

Education Act 2005 (c. 18)

- 8 (1) The Education Act 2005 is amended as follows.
 - (2) In section 20 (functions on Chief Inspector), in subsection (7) for “which is brought within the remit of the Chief Inspector by Part 4 of the Learning and Skills Act 2000 (c. 21)” substitute “to which the functions of the Chief Inspector under Part 2 of the Tertiary Education and Research (Wales) Act 2021 apply”.

- (3) In section 24 (power of Chief Inspector to arrange for inspections), in subsection (6) for “brought within the remit of the Chief Inspector by Part 4 of the Learning and Skills Act 2000 (c. 21)” substitute “to which the functions of the Chief Inspector under Part 2 of the Tertiary Education and Research (Wales) Act 2021 apply”.
- (4) In section 28 (duty to arrange regular inspections of certain schools), in paragraph (a) of subsection (7) for “which is brought within the remit of the Chief Inspector by Part 4 of the Learning and Skills Act 2000 (c. 21)” substitute “to which the functions of the Chief Inspector under Part 2 of the Tertiary Education and Research (Wales) Act 2021 apply”.
- (5) In section 44C (report after area inspection on schools with sixth forms requiring significant improvement), in subsection (1) for “section 83 of the Learning and Skills Act 2000” substitute “section 55 of the Tertiary Education and Research (Wales) Act 2021”.
- (6) In section 44D (copies of report and action plan), in subsection (3) –
 - (a) for “paragraph” substitute “section”;
 - (b) in paragraph (a), for “38(2)” substitute “38(3)”.
- (7) In section 44E (report on sixth form schools causing concern after area inspection), in subsection (1) for “section 83 of the Learning and Skills Act 2000” substitute “section 55 of the Tertiary Education and Research (Wales) Act 2021”.
- (8) Omit sections 85 to 88 (funding of teacher training by Higher Education Funding Council for Wales).
- (9) In Schedule 9 (amendments relating to school inspection), omit paragraphs 24 and 25.
- (10) In Schedule 18 (further amendments), omit paragraph 13.

Commissioner for Older People (Wales) Act 2006 (c. 30)

- 9 In Schedule 2 to the Commissioner for Older People (Wales) Act 2006 (persons whose functions are subject to review under section 3), under the sub-heading “Education and training” for “The Higher Education Funding Council for Wales” substitute “The Commission for Tertiary Education and Research”.

Government of Wales Act 2006 (c. 32)

- 10 (1) The Government of Wales Act 2006 is amended as follows.
- (2) In section 148 (meaning of Welsh public records), in subsection (2) –
- (a) after paragraph (a), insert –

“(aa) the Commission for Tertiary Education and Research,”;
 - (b) omit paragraph (h).

Education and Skills Act 2008 (c. 25)

- 11 (1) The Education and Skills Act 2008 is amended as follows.

- (2) In section 91 (information: supplementary), in subsection (3) after paragraph (b) insert –
“(c) the Commission for Tertiary Education and Research.”

Apprenticeships, Skills, Children and Learning Act 2009 (c. 22)

- 12 (1) The Apprenticeships, Skills, Children and Learning Act 2009 is amended as follows.
- (2) Omit –
- (a) section 2 (meaning of completing Welsh apprenticeship);
 - (b) sections 7 to 12 (apprenticeship certificates and frameworks);
 - (c) sections 18 to 22 (apprenticeship frameworks);
 - (d) sections 28 to 36 (apprenticeship standards and agreements);
 - (e) sections 38 and 39 (apprenticeship sectors and interpretation).
- (3) In section 262 (orders and regulations), in subsection (9), omit “under Chapter 1 of Part 1 (other than an order under section 10) or”.

Learning and Skills (Wales) Measure 2009 (nawm 1)

- 13 (1) The Learning and Skills (Wales) Measure 2009 is amended as follows.
- (2) Omit section 21 (education and training for persons aged 16 to 18).
- (3) In section 43 (the learning pathway document), after subsection (6) insert –
“(7) The Welsh Ministers must consult the Commission for Tertiary Education and Research before giving guidance under subsection (6).”
- (4) In the Schedule (minor and consequential amendments), omit paragraphs 1 to 9.

Children and Families (Wales) Measure 2010 (nawm 1)

- 14 In section 6 of the Children and Families (Wales) Measure 2010 (meaning of Welsh authority), in subsection (1)(g), for “the Higher Education Funding Council for Wales” substitute “the Commission for Tertiary Education and Research”.

Welsh Language (Wales) Measure 2011 (nawm 1)

- 15 In Schedule 6 to the Welsh Language (Wales) Measure 2011 (persons liable to be required to comply with standards: public bodies etc), in the table under the heading “General” –

- (a) insert at the appropriate place—

Table 1

“The Commission for Tertiary Education and Research (“Y Comisiwn Addysg Drydyddol ac Ymchwil”)	Service delivery standards
	Policy making standards
	Operational Standards
	Record keeping standards”

- (b) omit the entry relating to the Higher Education Funding Council for Wales.

School Standards and Organisation (Wales) Act 2013 (anaw 1)

16 (1) The School Standards and Organisation (Wales) Act 2013 is amended as follows.

(2) In section 1 (overview)—

(a) after subsection (9) insert—

“(9A) Chapter 3A provides for powers for the Commission for Tertiary Education and Research to rationalise sixth form education.”

(b) omit subsection (11).

(3) In section 38 (school organisation code)—

(a) in subsection (2), after paragraph (c) insert—

“(ca) the Commission for Tertiary Education and Research;”;

(b) in subsection (5), at the end of paragraph (c) omit “or” and after that paragraph insert—

“(ca) the Commission for Tertiary Education and Research, or”.

(4) In section 39 (making and approval of school organisation code), in subsection (1), at the end of paragraph (c) omit “and” and after that paragraph insert—

“(ca) the Commission for Tertiary Education and Research, and”.

(5) In section 50 (approval by Welsh Ministers)—

(a) in subsection (1), omit paragraph (a);

(b) omit subsection (2).

(6) In section 54 (referral to the Welsh Ministers)—

(a) in subsection (2) after paragraph (f) insert—

“(g) if the proposals affect sixth form education, the Commission for Tertiary Education and Research.”;

- (b) after subsection (3) insert—
 - “(3A) Proposals affect sixth form education for the purpose of subsection (2) (g) if—
 - (a) they are proposals to establish or discontinue a school providing education suitable only to the requirements of persons above compulsory school age, or
 - (b) they are proposals to make a regulated alteration to a school, the effect of which would be that provision of education suitable to the requirements of persons above compulsory school age at the school increases or decreases.”
- (7) In section 61 (local inquiry into proposals)—
 - (a) in subsection (4) for “70 and 73” substitute “63F, 63G and 70”;
 - (b) in subsection (6) in paragraph (d) for “68 or 71” substitute “63C or 68”;
 - (c) in subsection (8) for “the direction under section 57(2)” substitute “a direction under section 57(2) or 63A(1)”;
 - (d) in subsection (9)—
 - (i) in paragraph (a) for “70 or 73” substitute “63F or 70”;
 - (ii) in paragraph (b) after “53” insert “or 63G”.
- (8) After section 63 insert—

“CHAPTER 3A

PROPOSALS FOR THE RATIONALISATION OF SIXTH FORM PROVISION

63A Directions by the Commission to make sixth form proposals

- (1) The Commission may, in accordance with the Code—
 - (a) direct a local authority to exercise its powers to make proposals to—
 - (i) establish or discontinue a school providing education suitable only to the requirements of persons above compulsory school age, or
 - (ii) make an alteration described in Schedule 2 to a school, the effect of which would be that provision of education suitable to the requirements of persons above compulsory school age at the school increases or decreases.
 - (b) direct the governing body of a foundation or voluntary school to exercise its powers to make an alteration described in Schedule 2 to a school, the effect of which would be that provision of education suitable to the requirements of persons above compulsory school age at the school increases or decreases.

- (2) A direction under subsection (1) must—
 - (a) require the proposals to be published no later than the date specified in the direction, and
 - (b) require the proposals, in giving effect to the direction, to apply any principles specified in it.

63B Further provision about proposals made after a direction under section 63A(1)

- (1) Proposals made in accordance with a direction under section 63A(1) may not be withdrawn without the consent of the Commission.
- (2) The Commission may give consent for the purposes of subsection (1) subject to conditions.
- (3) A local authority must reimburse expenditure reasonably incurred by a governing body of a school maintained by it in making proposals in accordance with a direction under section 63A(1).
- (4) Despite anything in Part 1 of Schedule 3 (responsibility for implementation of statutory proposals), a local authority must meet the cost of implementing proposals made by a governing body of a school maintained by it in accordance with a direction under section 63A(1) which have been approved or determined to be implemented.

63C Making of proposals by the Commission

- (1) This section applies where—
 - (a) the Commission has made a direction under section 63A(1), and
 - (b) either—
 - (i) proposals have been published in accordance with the direction, or
 - (ii) the time allowed under the direction for the publication of the proposals has expired.
- (2) The Commission may make any proposals that could have been made in accordance with the direction.
- (3) But the Commission must obtain the consent of the Welsh Ministers before making a proposal to make an alteration described in paragraph 6 of Schedule 2 (opening or closing a school's sixth form) to a voluntary or foundation school.
- (4) Where the Commission makes proposals under this section, any proposals that have been made by a local authority or governing body and published in accordance with the direction are to be treated as having been withdrawn.

63D Publication of Commission’s proposals and consultation

- (1) The Commission must publish proposals made under section 63C in accordance with the Code.
- (2) Before publishing proposals made under section 63C, the Commission must consult on its proposals in accordance with the Code.
- (3) The requirement to consult does not apply to proposals to discontinue a school which is a small school within the meaning given by section 56.
- (4) Before the end of 7 days beginning with the day on which they were published, the Commission must send copies of the published proposals to—
 - (a) the Welsh Ministers,
 - (b) the local authority that maintains, or that it is proposed will maintain, the school to which the proposals relate, and
 - (c) the governing body (if any) of the school to which the proposals relate.
- (5) The Commission must publish a report on the consultation it has carried out in accordance with the Code.

63E Objections to the Commission’s proposals

- (1) Any person may object to proposals published under section 63D.
- (2) Objections must be sent in writing to the Commission before the end of 28 days beginning with the day on which the proposals were published (“the objection period”).
- (3) The Commission must publish a summary of all objections made in accordance with subsection (2) (and not withdrawn) and its response to those objections before the end of 28 days beginning with the end of the objection period.

63F Approval by Welsh Ministers

- (1) Proposals published by the Commission under section 63D require approval under this section if an objection has been made in accordance with section 63E(2) and has not been withdrawn in writing before the end of 28 days beginning with the end of the objection period.
- (2) Where proposals require approval under this section, the Commission must send a copy of the documents listed in subsection (3) to the Welsh Ministers before the end of 35 days beginning with the end of the objection period.

- (3) The documents are –
 - (a) the report published under section 63D(5),
 - (b) the published proposals,
 - (c) any objections made in accordance with section 63E(2) (and not withdrawn), and
 - (d) where objections have been so made (and not withdrawn), the response published under section 63E(3).
- (4) Where proposals require approval under this section, the Welsh Ministers may –
 - (a) reject the proposals,
 - (b) approve them without modification, or
 - (c) approve them with modifications –
 - (i) after obtaining the consent of the Commission to the modifications, and
 - (ii) after consulting the local authority that maintains, or that it is proposed will maintain, the school to which the proposals relate and the governing body (if any) of the school to which the proposals relate.
- (5) An approval may be expressed to take effect only if an event specified in the approval occurs by a date so specified.
- (6) The Welsh Ministers may, at the request of the Commission, specify a later date by which the event referred to in subsection (5) is to occur.
- (7) Subsection (1) does not prevent proposals from being withdrawn by notice in writing given by the Commission to the Welsh Ministers at any time before they are approved under this section.
- (8) No approval is required under this section for proposals to discontinue a school which is a small school within the meaning given by section 56.

63G Determination

- (1) Where proposals published under section 63D do not require approval under section 63F, the Commission must determine whether the proposals should be implemented.
- (2) If a determination under subsection (1) is not made before the end of 16 weeks beginning with the end of the objection period, the Commission is to be taken to have withdrawn the proposals.

- (3) Before the end of 7 days beginning with the day of its determination under subsection (1), the Commission must notify the following of the determination—
- (a) the Welsh Ministers;
 - (b) the local authority that maintains, or that it is proposed will maintain, the school to which the proposals relate;
 - (c) the governing body (if any) of the school to which the proposals relate.

63H Implementation of proposals

- (1) Proposals approved by the Welsh Ministers under section 63F or determined to be implemented by the Commission under section 63G have effect as if they had been approved by the Welsh Ministers under section 50 after having been made—
- (a) by the local authority under its powers to make proposals to establish, alter or discontinue schools, or
 - (b) in the case of proposals to alter a foundation or voluntary school, by the governing body under its powers to make proposals to alter its school.
- (2) Despite anything in Part 1 of Schedule 3 (responsibility for implementation of statutory proposals), the local authority that maintains the school in question must meet the cost of implementing proposals approved under section 63F or determined to be implemented under section 63G which have effect as mentioned in subsection (1)(b).

63I Interpretation of Chapter 3A

In this Chapter—

“the Code” (“*y Cod*”) means the code on school organisation issued under section 38(1);

“the Commission” (“*y Comisiwn*”) means the Commission for Tertiary Education and Research.”

- (9) Omit sections 71 to 76 (proposals for restructuring sixth form education).
- (10) In section 80 (notice by governing body to discontinue foundation or voluntary school), in subsection (3) for “the Welsh Ministers” substitute “the Commission for Tertiary Education and Research”.
- (11) In section 82 (transitional exemption orders for purposes of Equality Act 2010), in subsection (2) for “, 68 or 71” substitute “or 68”.
- (12) In section 98 (general interpretation and index of defined expressions), in subsection (3)—
- (a) insert in the appropriate place—

“the Commission” (“*y Comisiwn*”) in Chapter 3A of Part 3 means the Commission for Tertiary Education and Research;”

- (b) in the definition of “the Code” for “Chapter 2” substitute “Chapters 2 and 3A”;
 - (c) in the definition of “objection period” after “Part 3” insert “and in section 63E(2) for the purposes of Chapter 3A of Part 3”.
- (13) In Schedule 2 (regulated alterations)—
- (a) in paragraph 10 (alterations to premises), in sub-paragraph (3)(c)(i), after “59,” insert “63D,”;
 - (b) in paragraph 19 (increase in pupils: special schools), in sub-paragraph (2)(c)(i), after “59,” insert “63D,”.
- (14) In Schedule 5 (minor and consequential amendments), omit paragraph 20(3).

Well-being of Future Generations (Wales) Act 2015 (anaw 2)

- 17 In section 6 of the Well-being of Future Generations (Wales) Act 2015 (meaning of public body), in subsection (1)(h), for “the Higher Education Funding Council for Wales” substitute “the Commission for Tertiary Education and Research”.

Higher Education (Wales) Act 2015 (anaw 1)

- 18 The Higher Education (Wales) Act 2015 is repealed.

Deregulation Act 2015 (c. 20)

- 19 (1) The Deregulation Act 2015 is amended as follows.
- (2) In section 3 (apprenticeships), omit subsection (4).
 - (3) In Schedule 1 (apprenticeships), omit Part 3.

Environment (Wales) Act 2016 (anaw 3)

- 20 In section 10 of the Environment (Wales) Act 2016 (meaning of public body), in subsection (1)(f), for “the Higher Education Funding Council for Wales” substitute “the Commission for Tertiary Education and Research”.

Public Health (Wales) Act 2017 (anaw 2)

- 21 In section 110 of the Public Health (Wales) Act 2017 (meaning of public body), in subsection (1)(h), for “the Higher Education Funding Council for Wales” substitute “the Commission for Tertiary Education and Research”.

Higher Education and Research Act 2017 (c. 29)

- 22 (1) The Higher Education and Research Act 2017 is amended as follows.
- (2) In Schedule 11 (minor and consequential amendments relating to Part 1), omit paragraphs 14, 15, 16, 17, 18, 25, 26(3) and (4).

Additional Learning Needs and Education Tribunal (Wales) Act 2018 (anaw 2)

- 23 (1) The Additional Learning Needs and Education Tribunal (Wales) Act 2018 is amended as follows.

- (2) In section 4 (additional learning needs code), in subsection (3), after paragraph (c) insert—
 - “(ca) the Commission for Tertiary Education and Research;
 - (cb) the Welsh Ministers;”.
- (3) In section 5 (procedure for making the additional learning needs code), in subsection (1), after paragraph (d) insert—
 - “(da) the Commission for Tertiary Education and Research;”.
- (4) In section 50 (Welsh Ministers’ duties to secure post-16 education and training), omit subsections (1) to (4).
- (5) In section 65 (duties to provide information and other help), in subsection (4) after paragraph (d) insert—
 - “(da) the Commission for Tertiary Education and Research;
 - (db) the Welsh Ministers;”.

Public Services Ombudsman (Wales) Act 2019 (anaw 3)

- 24 In Schedule 3 to the Public Services Ombudsman (Wales) Act 2019 (listed authorities), under the sub-heading “Education and training” for “The Higher Education Funding Council for Wales” substitute “The Commission for Tertiary Education and Research”.