

Cyflwynwyd yr ymateb hwn i ymchwiliad y [Pwyllgor Plant, Pobl Ifanc ac Addysg](#) i egwyddorion cyffredinol y Bil [Addysg Drydyddol ac Ymchwil \(Cymru\)](#)

This response was submitted to the [Children, Young People and Education Committee](#) inquiry into the general principles of the [Tertiary Education and Research \(Wales\) Bill](#)

TER 32

Ymateb gan: Coyngor Cyllido Addysg Uwch Cymru

Response from: Higher Education Funding Council for Wales (HEFCW)

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Higher Education Funding
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hefcw

Submission from the Higher Education Funding Council for Wales (HEFCW) to the Children, Young People and Education Committee consultation on the General Principles of the Bill.



Noddir gan
Lywodraeth Cymru
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Executive Summary

- A. We support the Welsh Government's stated aims for the new Commission, despite that resulting in HEFCW being dissolved. However, this response proposes a number of amendments to the legislation. Our view is that these amendments would enable the Commission to deliver on its aims and justify the resource being invested. Without such changes to the Bill, our concern is that public funds and resources across Wales will be invested without delivering the intended benefits.
- B. Our response is informed by HEFCW's position as the current regulator and funder of higher education in Wales. We have drawn from relevant specialist expertise across both our executive and Council. As we were not involved in the drafting of the Bill, we are now using this opportunity to suggest where amendments can be made.
- C. The Welsh Government has accepted that an arms-length body is required in order to provide regulatory, funding and strategic oversight of the Commission. We are concerned that in a number of provisions have been included in the Bill that will undermine that oversight. Paragraph 2.4 of our response refers to where those areas are of most significant risk.
- D. The Bill sets out quality assessment functions that will involve statutory responsibilities for the Commission, Estyn and Welsh Government. This retains current arrangements, missing an opportunity to simplify current arrangements and perpetuating discrete treatment of different parts of the PCET sector. This risks undermining the intention to secure parity of esteem across the sector. It also risks creating issues of accountability and the Commission's ability to maintain its strategic oversight. Our recommendations in paragraphs 2.5-2.7 look to address this.
- E. Excellent research will enable an economically, socially, culturally and environmentally sustainable Wales. The Bill introduces risks to this vision by including provisions that could drive the Commission to focus on short term priorities at the expense of long term outcomes. Our response sets out, in paragraphs 2.8 - 2.13, proposals for how the Bill can be amended and strengthened for greatest impact, including the suggestion that an additional strategic duty should be included to focus on collaboration and competitiveness in relation to research and innovation activity.
- F. There is a clear risk to the implementation of the Bill's provisions without clear plans in place for the vast range of operational matters required to ensure the Commission's success. The risk includes that in relation to uncertainty over the future of HEFCW staff, still not clear despite the Hazelkorn Review recommending the new Commission six years ago, which presents a risk of loss of specialist expertise necessary for the successful establishment of the Commission. This is set out in paragraphs 2.14 & 2.15.
- G. There are a number of unintended consequences in the Bill which we have suggested that amendments to the Bill could address. These consequences could result in significant bureaucracy, barriers to delivering on regulation, an increase in nugatory competition, a lack of agility both within the Commission

and the tertiary education sector, contradictory duties, and unregulated profit driven providers receiving support from public funds.

Introduction

1. HEFCW role and summary of submission

- 1.1 This is our response to the Children, Young People and Education Committee's (the Committee) public inquiry into the general principles of the Tertiary Education and Research (Wales) Bill (the Bill). We have already provided a [written submission](#) to the Committee to support the oral evidence given on Thursday 18 November. Given the time between the request for the submission and the submission date, that submission was made by the HEFCW executive. This response has also involved discussions with our [Council](#), whose members are appointed through the public appointments process. Whilst we have tried to avoid duplication with our previous response there is some inevitable overlap.
- 1.2 We are a Welsh Government sponsored body established with powers under the Further and Higher Education Act 1992, and additional powers conferred by the Higher Education (Wales) Act 2015. We are required to take account of, or adhere to, other legislative requirements such as the Equalities Act 2010, the Well-being of Future Generations Act 2015 and Welsh language standards. We regulate, fund and influence higher education providers as well as deliver on Welsh Government priorities including those set out in the Minister for Education and the Welsh Language's annual remit letter to our Council. Further detail on our role and our success as an organisation can be found in the aforementioned written submission to the Committee.
- 1.3 Whilst the Bill was being developed by the Welsh Government, we were afforded the status of external stakeholder. We have not been involved in developing the Bill.
- 1.4 We remain supportive, in principle, of the broad thrust of the proposals¹ set out by Professor Ellen Hazelkorn, six years ago, resulting in the Bill. We agree the post-16/post-compulsory sector should be cohesive and integrated, with administrative arrangements that better facilitate the meeting of employer and student needs, both Wales-wide and regionally, whilst removing the tensions around interfaces between the current sectors.
- 1.5 In that context, we support the principle of establishing a new public body responsible for the oversight, strategic direction and leadership of the Post-Compulsory Education & Training sector. A new public body with the appropriate legislative powers would be well-placed to deliver on Welsh Government and Plaid Cymru's aim "to empower education providers to be part of a diverse, agile and collaborative sector that delivers for learners, employers and communities."²
- 1.6 However, we believe that that the Bill, as introduced, will not achieve fully the ambition set out by Professor Hazelkorn nor indeed the aims of Welsh Government. The Bill is over-specified in some key areas and unclear in

¹ The Recommendations of [towards-2030-a-framework-for-building-a-world-class-post-compulsory-education-system-for-wales.pdf \(gov.wales\)](#), can be found in p53 to 57

² As set out in the Welsh Government-Plaid Cymru [co-operation agreement](#).

others. This is largely as a result of hard-wiring many of the complexities within the current system in Wales, as identified by Professor Hazelkorn, into the new legislation.

- 1.7 Additionally, given the extent of Ministerial powers, as set out in the legislation, there is a risk that the Commission, as an ‘arms-length body’³, will not be able to discharge its duties and responsibilities effectively, with confusion at the heart of its governance and accountability. The Bill also over-specifies matters of detail, which risks the Commission being insufficiently agile to be able to respond to evolving economic, social, cultural or environmental events. We have experienced difficulties of this nature in operating the Higher Education (Wales) 2015 Act, as we have shared previously with the [Committee](#).
- 1.8 This response strongly recommends that the Bill be amended to mitigate against risks to achieving the legislative aims and the vision of the Commission.
- 1.9 Separately, we have highlighted specific amendments which could be made to the Bill, to support these recommendations. This is attached to this submission as an Annex. We have also shared this submission and the Annex with Welsh Government.

Consultation on General Principles

2. HEFCW’s response to the key points identified by the Children, Young People and Education Committee

The general principles of the Tertiary Education and Research (Wales) Bill and the need for legislation to deliver the stated policy intention

- 2.1. There is a need for new legislation to deliver the vision set out by Professor Hazelkorn and the Welsh Government’s stated aims (set out in paragraph 1.5 above). Only a single body empowered and entrusted with the necessary legislative powers strategically to regulate and fund all providers in the tertiary education sector can achieve those aims. It is our view that there is a very real risk that these aims ultimately will not be achieved, or will be secured in a sub-optimal manner, because of the way in which the legislation is currently drafted. Set out below are recommendations which cover three themes that, if addressed, could mitigate these risks.

Enabling a public body to operate at arms-length

- 2.2. There is a clear risk that this single body will not be able to achieve the strategic outcomes for which it is being created, if its arms-length function is compromised. The rationale for an arms-length body in higher education is that its individual institutions have a high degree of autonomy from government, thus ensuring that research and teaching are not subject to direct interference or curtailment stemming directly from political decision-making. In order to maintain that principle, the arms-length principle will need to be

³ The benefits of a body at arms-length from Government were set out in p38 of Professor Hazelkorn’s review

extended into the wider responsibilities of the planned Commission for Tertiary Education and Research. It follows in practical terms that an arms-length body is required to provide the expertise for the regulation, funding and oversight of tertiary education providers. With that expertise available to Welsh Ministers via the Commission, there should be no need for Welsh Ministers to have powers to fund or determine the exact nature of how the Commission delivers its duties. As an arms-length body, like other Welsh Government sponsored bodies, the Commission should be trusted, and be seen to be trusted, to deliver Welsh Ministerial priorities, broad steers for which would be provided by an annual remit letter. A suitable distance between the Commission and Welsh Government would ensure that the Government does not become embroiled in operational issues associated with funding, regulation and monitoring the performance of providers. Respect for the expertise, and a relationship built on trust, are fundamental and set out explicitly in the Welsh Government's own [framework agreement](#) which governs the way it operates. These arrangements should apply to the Commission.

2.3. As is the case with HEFCW, the Commission would:

- be directly accountable to the Minister and to the Senedd;
- be captured by a raft of legislation;
- have its strategic plan, and its annual operating plans, approved by the Minister;
- be required to respond to Welsh Government policy priorities; and
- depend on the Minister for its funding settlement annually.

We believe that these arrangements provide sufficient safeguards for other public bodies and that further controls are unnecessary. There is a danger that the introduction of provisions which allow the government to take action at an operational level would create unclear governance arrangements, cause confusion and delay, and undermine the ability of the Commission to deliver properly for the benefit of Wales. This could significantly hamper the Commission from fulfilling its strategic leadership role and the tertiary education sector from being agile and collaborative. It could also undermine institutional autonomy and their NPISH⁴ status.

2.4. We recommend removing the following provisions relating to Welsh Ministers' powers to mitigate the risks we have identified

- Section 13 – Powers that enable Ministers to unilaterally modify the Commission's plan should be removed. Ministers can reject a plan and invite it to be resubmitted for approval. Unilaterally amending a plan risks undermining the strategic role of the Commission and its expertise and compromises the Government's role in appeals.
- Section 19 (4) (5) – Ministers directing the Commission to exercise its functions in relation to particular courses or areas of research should be removed. There is a significant risk that a Minister exercising such power could narrow the focus of course provision and research activity in Wales onto short term Ministerial priorities which would destabilise the long-term position of the sector. Research excellence depends on supporting the many different types of research which are necessary to provide both insights into the challenges we face today as well as expanding our

⁴ Non-profit institutions serving households.

knowledge in areas which we will need in the future. Funding focused on specific areas can encourage impactful research on challenges that matter, but will inevitably be selective and cannot cover everything that is important. Consistent investment across the full breadth of the research base is mutually reinforcing.

- Sections 94 -100 – Those powers enabling Welsh Ministers to fund further education and training at the same time and in the same way as the Commission should be removed and should remain the preserve of the Commission. Ministers funding in parallel to the Commission will likely result in unclear strategic priorities, blurring the lines of accountability and adding unnecessary complexity for providers.
- Section 106 – Powers to enable Welsh Ministers to give the Commission financial support directions muddies the water in terms of respective responsibilities and should be removed. If such a power were used it would risk undermining institutions' NPISH status. This in turn could bring the accounts and associated debts of those institutions onto the Welsh Government's books.
- Section 111 – Welsh Ministers specifying requirements in relation to approved Welsh apprenticeships should be removed. This power would allow Ministers to specify in considerable detail the content of apprenticeship frameworks for which the Commission will have a statutory responsibility. This unnecessary level of intervention risks undermining the strategic ambition for the Commission and obscuring responsibilities. It will be clearer for all stakeholders, reduce complexity and bureaucracy if the Commission has sole statutory responsibility and is the single point of contact.
- Section 126 - Requiring the Commission to provide information to Ministers⁵ should be removed. For the Commission to be effective as a regulator, it must maintain the confidence of regulated bodies so that they can provide commercially sensitive information safely. Requiring the Commission to share any and all of that information with Welsh Ministers for undefined purposes risks undermining the capacity of the Commission to fulfil its regulatory functions. It could hinder the supply of confidential information from providers to fulfil its statutory duties. We make this recommendation based on our experience as a regulator that operates within the trust of providers. The permission provision in subsection 3 should be sufficient here.
- Schedule 1 – Section 11. Removing the power for Welsh Ministers to determine the Chair of the Research and Innovation Committee and with it the position of Deputy Chair of the Commission. There is no rationale provided for this and it could risk the balance of expertise on the Commission's Board.

Quality assessment

- 2.5. The legislation places a duty on the Commission to assess, monitor and promote improvement in the quality of education and training across providers registered with, and funded by, the Commission. However, it also specifies what Estyn must inspect and requires the Commission to fund Estyn to deliver

⁵ The Further and Higher Education Act 1992 has a similar provision which is expressed in terms of shall rather than must. The new legislation strengthens the duty on the Commission to provide information and does not reflect the current working arrangements.

on that. That means that both Estyn and the Commission will have statutory powers and responsibilities for quality and Estyn's plans for delivering its duties will have to be approved by both the Commission and Welsh Government. If the new Commission is responsible for providing strategic leadership and direction, there is a risk that the complex and detailed arrangements set out in the Bill will not deliver the Welsh Government's intention. Additionally, it treats further education and higher education differently, undermining the concept of a single sector and parity of esteem across tertiary education.

- 2.6. Our recommendation is to remove such detailed arrangements, as set out in section 52 through to section 70 of the legislation. This would leave those sections of the Bill that enable the Commission to determine how it can discharge its functions. This is not intended to undermine Estyn: far from it. The Commission should be empowered to deliver strategic leadership and, in partnership with Estyn, determine how those functions are delivered. The QAA does not need separate statutory powers to function now. Estyn should not either for post-compulsory education. This will also enable Estyn to inspect provision to meet the ever-changing demands of education and training in Wales without being constrained by current requirements that can date quickly. It is our view this will be of benefit to the Commission, to Estyn and, mostly importantly, to students, employers and education provision in Wales.
- 2.7. We recommend removing the provision for a quality body to be designated for assessing higher education provision (section 54 and schedule 3). If the sector and the Commission are to be agile in response to the demands of a dynamic education and economic environment, the Commission must be able to determine how it assesses, or makes arrangements to assess, the quality of education. Adding a rigid layer of process to determine how these arrangements should be made risks preventing the Commission responding with agility to situations where quality should be assessed to safeguard student interest, employer needs, the reputation of the education system in Wales and the public purse. We recognise that the provisions of a designated quality body is mirrored on provisions in English legislation, but the context in Wales is different and will remain so with the Commission, so it is not necessary to mirror the arrangements. The legislation as drafted includes powers for the Commission to provide grant funding (section 100) which could be used to secure services of an external organisation to carry out the assessment of quality, without the need to designate a named body to carry out this function.

Research and innovation

- 2.8. We have recommended that a new strategic duty for collaboration and competitiveness be added to the Bill as well as amending the collaboration and coherence duty to focus only on education. We believe that a duty on the Commission to take coherence into account when discharging its functions relating to research could risk preventing universities from being able to compete for external research funding. The UK-wide research funding system, of which Welsh universities are part of, is predicated on driving excellence through competition. Therefore, a duty on competitiveness will place a specific duty on the Commission to enable Welsh universities to punch above their

weight, which in turn brings benefits back to Wales. This does not prevent the commission from promoting collaboration, indeed we agree that this should also be a strategic duty with regard to research and innovation, but only with a focus on competitiveness will the Commission be able to deliver on its other strategic duties, in particular the duty to contribute to a sustainable and innovative economy.

- 2.9. In order for Wales to produce high quality research outcomes, and successfully compete for external research funding, universities' funding via the Commission should enable them to be agile in responding to new areas of emerging research. Additionally, if the Commission is to provide strategic leadership in research its expertise in UK and international research policy should enable it to determine how higher education research funding is allocated. There is a risk, therefore, that Welsh Ministers retaining powers under the Science and Technology Act 1965 and the Higher Education Act 2004⁶ to enable them to fund higher education research undermines that strategic leadership and the Commission's ability to act at a UK level. It also undermines the arms-length principle that ensures that research in higher education is free from direct government influence or control.
- 2.10. The UK's "dual support" system for research funding is widely understood to be a key contributor to our ability to punch above our weight in terms of the quality of research produced. Block grants, such as the QR (quality-related) funding currently allocated by HEFCW underpin research activity across disciplines, allowing institutions to set long term strategies and to invest in bottom-up, curiosity driven research that can flourish into larger, more targeted programmes. It will be important for the Commission to be able to maintain strategic oversight of the balance between different funding schemes, which will be compromised if powers are retained by Welsh Ministers to fund higher education research.
- 2.11. We, therefore, recommend that the related powers in the Science and Technology Act 1965 and the Higher Education Act 2004 are dissolved. Should these powers remain, then there should be amendments to those existing pieces of legislation to include a legal commitment for Government to involve the Commission when deciding on how it allocates higher education research funding.
- 2.12. Government specifying research areas in the Commission's strategic plan, or directing the Commission to fund specific areas of research, risks reducing overall research capacity funding in order to focus on short-term priorities. This limits the capacity to compete for external research income sources that do not align with the specified areas and to direct resource to emerging areas of research that will solve the challenges of the future. Indeed, the semi-conductor expertise in south east Wales was only enabled by research capacity funding, decades before it was identified as an area of strategic importance. We would recommend the removal of reference and powers in relation to research areas to mitigate the risk to long term strategic outcomes being achieved.

⁶ The evidence for retaining these powers has not been provided in any supporting documentation.

- 2.13. The Commission will have to be reasonable in its allocation of funding, or be challenged. Section 103 (4) seems to be a level of operational detail too far for legislation, so we propose it is removed. The Commission will have to be reasonable and have a robust basis on which to make allocations. The extant protections of public law are sufficient protections in this context. We do propose, though, that section 102 (3) is amended to include a duty that the Commission takes account of the principle of balanced types of funding for research when exercising its functions. This balanced approach will further strengthen the duty on the Commission to support universities in order that they can respond to future research priorities.

Any potential barriers to the implementation of the Bill's provisions and whether the Bill takes account of them (including commencement and the United Kingdom Internal Market Act)

- 2.14. It is difficult for us to assess barriers to implementation without an understanding of what the operational arrangements are for implementing the Bill if enacted, including the timing for commencement orders, and the transfer of HEFCW and Welsh Government staff into the Commission. Whilst it is not for the Bill to take account of the operational arrangements, there is a clear risk to the implementation of the Bill's provisions without clear plans in place for the vast range of operational matters required to ensure the Commission's success. HEFCW staff have continued to deliver HEFCW's duties with the prospect of HEFCW being dissolved since 2016. They are still not clear when they will be transferred into the new body, nor what role they will have in developing the processes to implement the legislation. With such uncertainty HEFCW staff are now looking at other opportunities for employment, with some already being appointed to new positions elsewhere. This loss of expertise will be a barrier to any provisions contained in the Bill being delivered effectively as well as the ongoing delivery of HEFCW's functions. We are firmly of the view that, on the assumption that the Bill is passed, implementation should be progressed without delay to mitigate against these business continuity risks. We would also strongly recommend that the approach to implementation makes use, wherever possible, of existing arrangements and systems in order to minimise complexity, and associated transitional risks. In this regard, we believe that note should be taken of lessons learned from similar developments, such as ELWa.
- 2.15. An additional risk is that, without an understanding of the operational arrangements, a full impact assessment of how the Bill will be delivered has not been completed. Consequently, negative impacts on individual protected characteristics, the Welsh language and the well-being of Future Generations may have been missed.

The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)

- 2.16. Regulations for setting up the register are generally appropriate. There is a risk, however, that the policy intention to use the register only as a means to regulate providers seeking higher education student support will prohibit the

Commission from achieving parity of esteem and a harmonised system. We would advocate Ministers creating a broader range of registration categories with equitable baseline requirements. Our view is that this will enable greater strategic oversight whilst recognising the diversity of providers.

- 2.17. Detailing in regulations the operational detail that the Commission would have to take into account when consenting to funds being paid to a collaborative body, risks the Commission expending significant resource on, and impeding the agility of response to, consenting to collaborative partnerships. Institutions should be able to collaborate and work flexibly to meet new and emerging needs and respond to Welsh Government and UK priorities. They must be accountable for funding they receive from the Commission and provide assurances on appropriate collaboration. It is our view that the expectations for partnership should be set out in guidance to the Commission rather than in regulations. Such expectations should be indicative rather than specific, allowing the Commission to provide advice and guidance on what and how it requires assurance. There are long established arrangements for management and oversight of partnerships both for delivery of education and research collaboration, and the explanatory memorandum has not made the case for why more detailed legislation is required. As such, it is our view that section 105 (1) should be removed from the Bill.
- 2.18. It is our view that section 86 of the Bill should be removed. If there are strategic gaps in provision the Commission should have the necessary funding and use its powers to fund, influence and regulate providers. There is a risk that, should this power be used, funds could be allocated to a provider where the Commission has no regulatory or funding oversight and would not be able to provide assurance on the proper use of public funding. Additionally, this section enables Welsh Ministers through regulations to fund provision, potentially undermining the Commission's strategic position.

Whether there are any unintended consequences arising from the Bill

- 2.19. There is a risk that including the level of detail that the Commission should take into account to deliver on the strategic duties of the legislation could compromise the Commission's ability to deliver across all the ambitions the Welsh Government has for it. One example of this relates to delivering on the duty for lifelong learning whilst also ensuring that all students are retained to the end of a course. Some students may gain credit as a valuable part of their lifelong learning, rather than as part of a course or qualification. Additionally, in discharging the Commission's function to promote collaboration and coherence, there is a requirement to align provision with research priorities. This would risk focusing provision too narrowly and not on the broad range of provision which enables individuals and providers to be agile to changing environments and demands that cannot be predicted by government or the Commission. It would be our recommendation to remove the level of detail under each strategic duty, with Welsh Ministers providing guidance to the Commission regarding its expectations.
- 2.20. Not placing a duty on the Commission to secure proper facilities for all provision in Wales, risks some provision being funded disproportionately to

other areas of provision. We recommend that the Bill should either place a duty to secure proper facilities for all students, or place a duty to ensure that there is a balanced approach to funding across all provision funded by the Commission.

- 2.21. One of the gaps in the oversight of higher education quality in Wales is the oversight of provision validated, franchised, or delivered directly by a provider with awarding powers in Wales but delivered outside of Wales, including overseas. This can be the riskiest type of provision, which could have reputational damage to the whole tertiary education sector in Wales. It is not clear why the legislation does not introduce powers for the Commission to have oversight over this in the way that the Office for Students has oversight of quality and standards (i.e. the quality of the awards being delivered by a university).
- 2.22. Sections 67-70 provide powers to intervene in the conduct of only further education institutions. Section 71 and 72 of the Bill provide for only further education institutions to cooperate and allow the Commission to access facilities as part of its quality role. If there is an aim to break down the barriers between the different sectors in the broader tertiary education sector then it would seem prudent to signal this through the legislation and ensure that these powers are in place for all providers. We have signalled in an amended version of the Bill where powers should be in place for all providers.
- 2.23. The duty in section 78 for the Commission to monitor and report on the financial sustainability of the providers it regulates and funds currently includes a requirement to submit a financial outlook of each provider it regulates and funds. Given the confidential and commercially sensitive nature of the financial information the Commission will receive, there is a risk that some providers will be reluctant to share that information if that then is shared with Welsh Ministers (paragraph 2.4 – bullet 6). This would prevent the Commission from fulfilling its strategic oversight function. Our recommendation would be that the legislation should only require a reasonable summary to be shared and it should be for the Commission to determine what is relevant to include. This would balance providing assurances to Welsh Ministers whilst enabling the Commission to deliver on its responsibilities.
- 2.24. The hard-wiring of existing legislation that enables Ministers to fund particular higher education courses could undermine the concept of a single tertiary education sector and the Commission's strategic oversight of all provision within that sector. The rationale in the explanatory memorandum that the retention of these powers enables current initiatives to be funded in the short to medium term does not appear proportionate. The current legislation could be repealed, as necessary, and the Commission could fund courses at providers where it supports the Welsh Government aims in this short to medium term. We have suggested that section 89 of the Bill is, therefore, removed. Should section 89 of the Bill remain then it should include a duty on Ministers to involve the Commission in its decisions to fund courses using that power.

- 2.25. The Commission will need to be agile to respond to changing circumstances and that will include being able to share information with other organisations, and for them, in turn, to be able to share information with the Commission. By listing those persons that can share information with the Commission, in section 128 (1), there is a risk that those not listed which may be excluded. The Commission will need to be able to share information with organisations not on the list, and will need to request information from organisations not on the list, in a flexible and equitable manner. Currently the list only includes one funding and regulatory body in England (the Office for Students) and so immediately requires further legislation (as per section 128 (1) (k)) should information from other funding or regulatory bodies outside Wales be required. We suggest that in order to enable reciprocal information sharing consideration should be given to enabling this, by amendment to section 128 (1) (k) to be more in line with the provision made in section 128 (2). Otherwise, the Commission would need to rely on regulations being amended via the legislative process, which risks prohibiting the Commission from operating flexibly and promptly to unique circumstances or emerging challenges (the COVID19 pandemic being a case in point) and particularly as required in a UK-wide context.
- 2.26. While we recognise that the Commission and Welsh Ministers will require information about applications and acceptances, sections 129 and 130 are overly prescriptive, particularly in comparison to other areas of interest such as enrolments on higher education courses. For example, section 130 (2) covers publication of research into application and acceptance information. Such provision is not made in the Bill for publication of other information, such as analysis of student enrolments. Publication of statistical information would be generally be covered under the publication scheme and data disclosure control procedures of the bodies mentioned in 130(2). The organisation currently holding data about applications and acceptances, UCAS, would seem to be covered in section 128(1)(j) and so sections 129 and 130 are not necessary so should be removed. These sections are also not clear in their terminology (there are references to 'tertiary education providers', 'institutions', and 'the higher education sector').
- 2.27. The fact that the statement of intent sets out that providers in the alternative category of the proposed register will not require charitable status could increase the risk of more providers delivering higher education in Wales and increasing nugatory competition. The introduction of the requirement that all institutions regulated under the Higher Education (Wales) Act 2015 should be charities was a positive move. We note that Welsh Government previously tried to make charitable status a requirement for specific course designation in Wales. The Bill should be used to enable this positive policy outcome to be achieved.

The financial implications of the Bill

- 2.28. By Government's own estimates, the cost of introducing the legislation could be £45m and take several years for the new system to be fully operational. Based on our experience of implementing the 2015 HE Act it will take much longer and cost more for all of its functions to be fully implemented. We would estimate that it would be ambitious to expect the Commission to be fully

operational, delivering on the full range of its duties and meeting its intended aims, by the beginning of the 2026/27 academic year at the earliest.

- 2.29. There is a risk, without adjustment to some of the legislative proposals, of substantial disruption and reputational risk to the tertiary education in Wales. As stated at the outset of this paper, HEFCW supports the principles that lie behind the reforms and support also overarching aim of establishing a single arms-length funding and regulatory body for tertiary education. We believe that the suggested changes above and attached will enable the optimal delivery of the vision and intended impacts of the new Commission, and will stand the tests of time and investment.

3. Conclusion

- 3.1 This Bill provides an opportunity for Wales to deliver a higher education system which doesn't seek homogeneity, but harmony; which focuses on complementarity rather than the current competition. That is the prize. That is worth public investment. It is why we supported the recommendations of the Hazelkorn review and why we support the Welsh Government's stated aims to establish the new Commission, despite that resulting in HEFCW being dissolved. That is why we have responded to this consultation providing the recommendations we have. It is our view that if these changes are made then that vision could be achieved. Without such changes to the Bill, our concern is that public funds and resources across Wales will be invested without delivering the intended benefits.

ACCOMPANYING DOCUMENTS

Explanatory Notes and an Explanatory Memorandum are printed separately.

Tertiary Education and Research (Wales) Bill

[AS INTRODUCED]

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Tertiary Education and Research (Wales) Bill

[AS INTRODUCED]

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
5 enacted as follows:

PART 1

STRATEGIC FRAMEWORK FOR TERTIARY EDUCATION AND RESEARCH

The Commission

1 Establishment of the Commission for Tertiary Education and Research

- 10 (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.

The Commission’s strategic duties

2 Promoting life-long learning

- 15 ~~The Commission must promote tertiary education for the people of Wales that—~~
~~provides opportunities for people to participate in tertiary education throughout their lives from the age of 16;~~
~~includes a variety of levels of study and types of qualification;~~
~~includes a variety of educational settings and modes of study;~~
20 ~~—(d) is organised coherently to facilitate movement of learners through different stages of tertiary education and into employment or business;~~
~~(e) otherwise meets the different requirements of those who may wish to undertake tertiary education.~~

3 Promoting equality of opportunity

- 25 ~~(1) The Commission must promote—~~
~~increased participation in tertiary education provided in Wales by persons who are members of under-represented groups;~~
~~retention of students who are members of under-represented groups to the end of courses of tertiary education provided in Wales;~~
30 ~~—(c) reduction of any gaps in attainment in tertiary education provided in Wales between different groups of students where the differences arise from social, cultural, economic or organisational factors;~~

~~(d) the provision of support for students finishing courses of tertiary education provided in Wales who are members of under-represented groups to continue their tertiary education, find employment or start a business.~~

~~(2) In this section, “under-represented groups” are groups that are under-represented in~~
~~5 tertiary education provided in Wales as a result of social, cultural, economic or organisational factors.~~

4 Encouraging participation in tertiary education

~~The Commission must—~~

- ~~(a) encourage individuals who are ordinarily resident in Wales to participate in tertiary~~
~~10 education, and~~
- ~~(b) encourage employers in Wales to participate in the provision of tertiary education.~~

5 Promoting continuous improvement in tertiary education and research

~~(1) The Commission must promote continuous improvement in the quality of—~~

- ~~(a) tertiary education in Wales, and~~
- ~~15 (b) research and innovation carried out in Wales.~~

~~(2) In discharging this duty, the Commission must have regard (among other things) to—~~

- ~~(a) the importance of ensuring that members of the tertiary education workforce are capable of providing tertiary education of a high quality;~~
 - ~~(b) the reasonable requirements of members of the tertiary education workforce for~~
~~20 continuous professional development.~~
- ~~(3) In this section, “members of the tertiary education workforce” 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.~~

6 Promoting collaboration and coherence in tertiary education ~~and research~~

Promoting collaboration and competitiveness in research

~~The Commission must promote—~~

- ~~(a) collaboration between providers of tertiary education in Wales, schools in Wales and employers;~~
- ~~(b) coherence in the provision of tertiary education in Wales and the alignment of such~~
~~30 provision with research and innovation priorities.~~

7 Contributing to a sustainable and innovative economy

~~(1) The Commission must promote tertiary education and research in a way that contributes to the development of a sustainable and innovative economy in Wales.~~

~~(2) In discharging this duty, the Commission must have regard (among other things) to the~~
~~35 reasonable requirements of industry, commerce, finance, the professions, other employers and workers.~~

~~(3) For the purpose of subsection (1), a sustainable economy is an economy in which the needs of the present are met without compromising the ability of future generations to meet their own needs.~~

8 Promoting tertiary education through the medium of Welsh

~~5 The Commission must—~~

~~encourage people to participate in tertiary education provided in Wales through the medium of Welsh;
take all reasonable steps to ensure that there is sufficient tertiary education provided in Wales through the medium of Welsh to meet reasonable demand;~~

~~10 (c) encourage the provision of tertiary education through the medium of Welsh by—
registered providers in Wales, and
other persons providing tertiary education funded or otherwise secured by the Commission.~~

9 Promoting a civic mission

~~15 (1) The Commission must promote the pursuit of a civic mission by tertiary education providers in Wales that are institutions within the further education sector and the higher education sector.~~

~~The Commission may exercise its functions under this Act to promote the pursuit of a civic mission by other persons (other than the tertiary education providers mentioned in~~

~~20 subsection (1)) who are funded by the Commission under this Act.~~

~~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 aimed at achieving any of the well-being goals in section 4 of the Well-being of Future Generations (Wales) Act 2015 (anaw 2)).~~

~~25 (4) In subsection (3) and in section 10, “well-being of Wales” includes the well-being of—
the whole or any part of Wales;
all or any persons resident or present in Wales.~~

10 Promoting a global outlook

~~The Commission must promote—~~

~~30 (a) opportunities in tertiary education for persons ordinarily resident in Wales to study or teach elsewhere in the world;~~

~~(b) opportunities to study or teach in tertiary education in Wales for persons ordinarily resident outside Wales;~~

~~35 (c) opportunities for the benefits gained from study and teaching of the kind mentioned in paragraphs (a) and (b) to be used for the economic, social, environmental or cultural well-being of Wales;~~

~~(d) collaboration in tertiary education between providers of tertiary education in Wales and those elsewhere in the world;~~

~~(e) opportunities for persons ordinarily resident in Wales and tertiary education providers in Wales to carry out research elsewhere in the world or collaborate on research internationally.~~

Strategy for tertiary education and research

5 **11 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).
- 10 (3) The Welsh Ministers must publish any amendments they make to the statement.

12 Strategic plan for the Commission

- (1) The Commission must prepare a strategic plan setting out how it intends to –
 - (a) discharge its strategic duties under sections 2 to 10, and
 - (b) address the priorities in the Welsh Ministers' statement under section 11.
- 15 (2) In preparing the plan, the Commission must consult such persons as it considers appropriate.

13 Approval, publication and implementation of strategic plan

- (1) The Commission must send a strategic plan prepared under section 12 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 11(1).
- 20 (2) The Welsh Ministers may –
 - (a) approve the plan, or
 - (b) ~~approve-reject~~ the plan, with ~~modifications~~ reasons, and ask for an amended plan to be resubmitted for approval.

~~(3) The Welsh Ministers must consult the Commission before they modify its plan under subsection (2)(b).~~

~~(4)~~(3) The Commission must publish its approved strategic plan.

~~(5)~~(4) 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.

30 ~~(6)~~(5) The Commission must take all reasonable steps to implement its approved strategic plan.

14 Review of strategic plan

- (1) If the Welsh Ministers amend their statement under section 11(2) after the Commission has published its approved strategic plan under section 13(4), the Commission must review its strategic plan.
- 35 (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 12 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 (65) of section 13 apply to a plan revised under this section as they apply to a plan prepared under section 12.

Academic freedom

15 Academic freedom of providers of higher education

- (1) In exercising their functions under this Act, the Welsh Ministers and the Commission must have regard to the importance of protecting the academic freedom of tertiary education providers in Wales ~~that provide higher education (so far as the freedom relates to higher education).~~
- (2) In this section, “academic freedom” includes (among other things) the freedom of tertiary education providers—
- (a) to determine the contents of particular ~~higher-tertiary~~ education courses and the manner in which they are taught, supervised or assessed,
 - (b) to determine the criteria for admission of students to ~~higher-tertiary~~ 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.

16 Freedom of speech of academic staff at providers of higher education

In exercising their functions under this Act, the Welsh Ministers and the Commission must have regard to the importance of protecting the freedom within the law of academic staff at tertiary education providers in Wales that provide ~~higher-tertiary~~ education—

- (a) to question and test received wisdom, and
- (b) to put forward new ideas and controversial or unpopular opinions,

without placing themselves in jeopardy of losing their jobs or privileges they may have at the tertiary education providers.

*Compatibility with charity law***17 Compatibility with charity law and governing documents of tertiary education providers**

- (1) Nothing in this Act confers power on the Commission to require the governing body of a tertiary education provider to do anything that is incompatible with –
- (a) any legal obligation or legal restriction that applies to the governing body by virtue of the provider being a charity, or
 - (b) the governing documents of the provider.
- (2) For the purposes of subsection (1), the governing documents of a tertiary education provider are –
- (a) in the case of a provider established by Royal Charter –
 - (i) the provider's Charter, and
 - (ii) any instrument relating to the conduct of the provider the making or amendment of which requires the approval of the Privy Council;
 - (b) in the case of a provider 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 articles of government;
 - (c) in the case of a provider 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 a provider that is 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 provider's instrument of government and articles of government;
 - (e) in the case of a provider not falling within paragraphs (a) to (d) that is conducted by a company, the company's memorandum and articles of association.

*Welsh Ministers' guidance and directions***18 Guidance**

In exercising its functions, the Commission must have regard to guidance given to it by the Welsh Ministers.

19 The Welsh Ministers' power to give general directions

- (1) The Welsh Ministers may give the Commission general directions about the exercise of any of its functions but must not require the Commission to exercise a function in a way which prohibits or requires the provision of a particular course of study.
- ~~(2) Directions under this section may be framed by reference to a particular course of study, but must not require the Commission to exercise a function in a way which prohibits or requires the provision of a particular course of study.~~
- ~~(3)~~(2) The directions must not be framed by reference to –
- (a) a particular registered provider,

- (b) a particular person other than a registered provider in receipt of financial resources provided or secured by the Commission under Part 3,
- (c) particular parts of courses of study,
- (d) particular programmes of research or innovation projects,
- (e) the content of courses of study, programmes of research or innovation projects,
- (f) the manner in which such courses, programmes or projects are taught, supervised or assessed,
- (g) the criteria for the selection, appointment or dismissal of academic staff, or how they are applied, or
- (h) the criteria for the admission of students, or how they are applied.

~~(4) Subsections (2) and (3) do not prevent directions under this section being framed by reference to courses of study or parts of courses of study being provided and assessed through the medium of Welsh.~~

~~(5) Directions under this section 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 13.~~

~~(6)~~(3) Before giving a direction under this section, the Welsh Ministers must consult the Commission.

~~(7)~~(4) If the Welsh Ministers give a direction under this section, they must –

- (a) publish the direction,
- (b) report to Senedd Cymru that a direction has been given and lay a copy of the direction before the Senedd, and
- (c) keep the direction under review.

~~(8)~~(5) The Commission must comply with a direction given under this section.

Additional functions

20 Additional functions of the Commission

(1) The Welsh Ministers may, by regulations, confer on the Commission supplementary functions.

(2) A “supplementary function” is a function that –

- (a) is exercisable for the purposes of a function of the Welsh Ministers, and
- (b) relates to –
 - (i) the provision, or proposed provision, of tertiary education, or
 - (ii) the carrying out, or proposed carrying out, of research and innovation.

(3) Subsections (4) and (5) apply where –

- (a) land or other property is or was used or held for the purposes of a tertiary education provider in Wales that is a higher education or a further education institution ~~within the higher education sector or the further education sector~~, and

(b) the Welsh Ministers are entitled to any right or interest in respect of the property, or would be so entitled on the occurrence of an event.

(4) The Welsh Ministers may direct that all or any of the Welsh Ministers' functions in respect of the property are exercisable on their behalf by the Commission.

(5) The Commission must exercise those functions in accordance with directions given by the Welsh Ministers.

Dissolution of Higher Education Funding Council for Wales

21 Dissolution of the Higher Education Funding Council for Wales

The Higher Education Funding Council for Wales ceases to exist.

22 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

23 The register

(1) The Commission must establish and maintain a register of tertiary education providers in Wales (referred to in this Act as "the register").

(2) The Welsh Ministers must, by regulations, specify one or more categories of registration for which the Commission must make provision in the register.

(3) A category of registration specified in the regulations must relate to the provision of one or more kinds of tertiary education.

(4) The Commission must register a tertiary education provider in a category of the register if—

(a) its governing body applies for it to be registered in the category,

(b) it is a tertiary education provider 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 25),

(e) registration is not prohibited by provision made in regulations under subsection (5), and

(f) the application complies with any requirements imposed under subsection (7).

- (5) The Welsh Ministers may, by regulations, prohibit the registration of a tertiary education provider in one category of the register at the same time that it is registered in one or more of the other categories.
- (6) The Commission must not register a tertiary education provider in the register otherwise than –
- (a) in a category of registration specified in regulations under subsection (2);
 - (b) in accordance with subsection (4), section 42 (change in registration category without application) and any regulations made under subsection (5).
- (7) 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.
- (8) The Welsh Ministers may, by regulations, make provision about the information which must be contained in a tertiary education provider's entry in the register.
- (9) Once registered, a tertiary education provider's ongoing registration in a category of the register is subject to the provider satisfying –
- (a) the general ongoing registration conditions applicable to the provider's registration in the category and as they may be later revised (see section 26), 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 27).
- (10) References in this Part to the ongoing registration conditions of a tertiary education provider are to the conditions mentioned in subsection (9)(a) and (b).
- (11) 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.

24 Registration procedure

- (1) Before refusing an application to register a tertiary education provider in a category of the register, the Commission must notify the governing body of the provider that it proposes to do so.
- (2) The notice must specify –
- (a) the Commission's reasons for proposing to refuse to register the tertiary education provider in the category,
 - (b) the period during which the governing body of the provider 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 tertiary education provider in accordance with the notice in deciding whether to register it in the category.

- (5) Having decided whether or not to register the tertiary education provider in the category, the Commission must notify the governing body of the provider of its decision.
- (6) Where the decision is to register the tertiary education provider in the category, the notice must specify –
- 5 (a) the date of entry in the register in the category, and
- (b) the ongoing registration conditions applicable to the provider's registration in the category at that time.
- (7) Where the decision is to refuse to register the provider in the category, the notice must specify –
- 10 (a) the grounds for the refusal,
- (b) information as to the right of review, and
- (c) the period specified in regulations under section 77(4)(c) within which an application for a review may be made.

Registration conditions

15 **25 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 tertiary education provider to which the category of the register relates;
- 20 (b) the effectiveness of the governance and management of the applicant tertiary education provider (including its financial management);
- (c) the financial sustainability of the applicant tertiary education provider.
- (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).
- 25 (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;
- 30 (b) provide for further initial conditions of registration relating to –
- (i) the charitable or other status of tertiary education providers;
- (ii) the information provided to prospective students about a provider, its courses, and its terms and conditions of contracts with students;
- (iii) complaints procedures of providers.

35 **26 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 tertiary education provider.
- (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 (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.
- 10 (8) The Commission may, at the time of a tertiary education provider'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 provider, subject to the requirements under this Part relating to mandatory ongoing registration conditions.
- 15 (9) Where the decision is made after the tertiary education provider's registration in that category of the register, the Commission must notify the governing body of the provider of its decision.

27 Specific ongoing registration conditions

- (1) The Commission may, at the time of a tertiary education provider'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").
- 20 (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,
- 25 the Commission must notify the governing body of the tertiary education provider 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 tertiary education provider may make representations about the proposal ("the specified period"),
- 30 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.
- 35 (6) The Commission must have regard to any representations made by the governing body of the tertiary education provider 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 –

- (a) notify the governing body of the tertiary education provider of its decision, and
- (b) publish the notice.

(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 77(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 43(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 tertiary education provider 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 43(b) in respect of the decision to impose or vary the condition.

28 Proportionate conditions etc.

(1) The Commission must ensure that –

- (a) the requirements specified under section 25(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.

29 Mandatory ongoing registration conditions for each registered provider

The Commission must ensure that the ongoing registration conditions of each tertiary education provider 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 provider to which the category of registration relates;
- (b) a condition relating to the effectiveness of the governance and management of the provider (including its financial management);
- 5 (c) a condition relating to the financial sustainability of the provider;
- (d) a condition requiring the governing body of the provider to notify the Commission of any change of which it becomes aware which affects the accuracy of the information contained in the provider's entry in the register;
- 10 (e) a condition requiring the governing body of the provider, if it has been given notice under section 122(1), to have in place a learner protection plan approved by the Commission (under section 122(3) or (5)) on or before the date specified in the condition and to give effect to the plan;
- 15 (f) a condition requiring the governing body of the provider to comply with the requirements contained in the Learner Engagement Code published under section 125(1) or any revised code published under section 125(3);
- (g) a condition requiring the governing body of the provider 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;
- 20 (h) a condition requiring the governing body of the provider to provide the Commission, or a person authorised by the Commission, with such information, assistance and access to the provider's facilities, systems and equipment as the Commission may reasonably require for the purpose of exercising the Commission's functions under this Part.

30 **Mandatory ongoing registration condition on fee limits**

- 25 (1) The Commission must ensure that the ongoing registration conditions of each registered provider—
 - (a) falling within a fee limit category, and
 - (b) providing qualifying courses, or having qualifying courses provided on its behalf, include a fee limit condition.
- 30 (2) A fee limit category is a category of registration—
 - (a) for which the Commission must make provision in the register, and
 - (b) which is specified for the purpose of this section in regulations made by the Welsh Ministers.
- 35 (3) A fee limit condition is a condition that requires the governing body of a registered provider to—
 - (a) have a fee limit statement approved under section 45, and
 - (b) secure that regulated course fees do not exceed the applicable fee limit.
- (4) A qualifying course is a course of a description specified in regulations made by the Welsh Ministers.

- (5) The power to specify a description of course under subsection (4) 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.
- (6) Regulated course fees are fees payable to the tertiary education provider 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 the year begins on a day when the applicable provisions in the fee limit statement have effect.
- (7) The applicable fee limit is –
- (a) in a case where the tertiary education provider's fee limit statement specifies a fee limit for the course and year in question, that limit;
 - (b) in a case where the provider's fee limit statement provides for the determination of a fee limit for the course and year in question, that limit as determined in accordance with the statement.
- (8) 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.
- (9) An international student is a person who may or must be charged higher fees by virtue of regulations made 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).
- (10) 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 a tertiary education provider, are to be treated for the purposes of subsection (6) and section 44 as being payable to that provider in connection with the qualifying person's undertaking the course.

31 Mandatory ongoing registration conditions on equal opportunity

- (1) The Commission must ensure that the ongoing registration conditions of each tertiary education provider registered in a category specified in regulations made by the Welsh Ministers for the purposes of this section include conditions requiring the delivery of measurable outcomes to further each of the aims in subsection (2).
- (2) The aims are –
- (a) increasing participation in relevant tertiary education provided in Wales by persons who are members of under-represented groups;

- (b) retention of students who are members of under-represented groups ~~to the end of courses of relevant tertiary education provided~~ in Wales;
- (c) reduction of any gaps in attainment in relevant tertiary education provided in Wales between different groups of students specified in the conditions, where the differences arise from social, cultural, economic or organisational factors;
- (d) provision of support for students finishing courses of tertiary education provided in Wales who are members of under-represented groups to continue their tertiary education, find employment or start a business.

(3) In this section—

“relevant tertiary education” (“*addysg drydyddol berthnasol*”) means the kind of tertiary education that relates to a category of the register specified under subsection (1);

“under-represented groups” (“*grwpiau sydd heb gynrychiolaeth ddigonol*”) are groups specified in the conditions that are under-represented in relevant tertiary education in Wales as a result of social, cultural, economic or organisational factors.

32 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.

33 Commission duty to give guidance about ongoing registration conditions

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

Monitoring and enforcement of registration conditions

34 Commission duty to monitor compliance with ongoing registration conditions

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

35 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 provider for the purpose of securing compliance by the provider with its ongoing registration conditions.

36 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 provider with its ongoing registration conditions.

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

- (1) The Commission may give the governing body of a tertiary education provider 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) 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.
- (3) 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 (2), direct the governing body to reimburse excess fees paid to the tertiary education provider.
- (4) 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.
- (5) A direction of the kind described in subsection (3) may specify the manner in which reimbursement of excess fees is to be, or may be, effected.
- (6) 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.
- (7) “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 30 with which the governing body has failed to comply).
- (8) For procedural provision about directions under this section, see sections 73 to 76.

38 Supplementary provision about directions under section 37

- (1) The Commission may issue guidance about steps to be taken for the purpose of complying with a direction under section 37.
- (2) Before issuing guidance under this section the Commission must consult the governing body of each registered provider; and may consult the governing body of any other tertiary education provider in Wales as it considers appropriate.

*De-registration***39 De-registration**

- (1) The Commission must remove a tertiary education provider from a category of the register if the Commission becomes aware that the provider –
- (a) is no longer a tertiary education provider 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 provider must be removed from one or more categories of the register or all categories of the register.

(3) The Commission may remove a registered provider 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 37 (directions in respect of failure to comply with ongoing registration conditions) in relation to breach of one of the tertiary education provider's ongoing registration conditions that apply 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 provider'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 tertiary education provider's ongoing registration conditions that apply to the category of registration, and

(b) its powers under section 37 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 a tertiary education provider from a category of the register under this section.

(7) Regulations under subsection (6) may include provision treating the tertiary education provider as a registered provider for such purposes as the regulations may specify.

(8) The Commission must –

(a) maintain a list of tertiary education providers 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.

40 De-registration: procedure

(1) Before removing a registered provider from a category of the register under section 39, the Commission must notify the governing body of the provider that it proposes to do so.

(2) The notice must specify –

(a) the Commission's reasons for proposing to remove the provider from a category of the register,

(b) the period during which the governing body of the provider 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 provider 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 provider from a category of the register, the Commission must notify the governing body of the provider of its decision.
- (6) Where the decision is to remove the provider from a category of the register, the notice must specify the date on which the removal takes effect.
- (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 77(4)(c) within which an application for review may be made.
- (8) A removal under section 39 may not take effect at any time when –
- (a) an application for a review under section 43(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 provider 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 43(c) or (d) in respect of the decision to remove.

41 Voluntary de-registration and de-registration with consent

- (1) The Commission must remove a registered provider from a category of the register if –
- (a) the governing body of the provider applies to the Commission for the provider 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 23(4)(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 provider in the other category in accordance with the application under section 23(4)(a).
- (4) The conditions in this subsection are –
- (a) that the Commission would be required to register the provider in the other category in accordance with the application under section 23(4)(a) were it not for the effect of section 23(4)(e) in relation to the categories of registration that are the subject of the application under subsection (1)(a) and section 23(4)(a), and

(b) that the Commission would be required to register the provider in the other category if the provider is removed from the category in respect of which the application under subsection (1)(a) is made.

5 (5) The Commission may remove a registered provider from a category of the register if the governing body of the provider 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.

10 (7) The Commission must notify the governing body of the provider of the date on which the provider 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 provider.

15 (9) A removal under this section may not take effect at any time when –

(a) an application for a review under section 43(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.

20 (10) But that does not prevent a removal taking effect if the governing body of the provider 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.

25 (12) But that is subject to what has been determined by the Commission following any review under section 43(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 a provider from a category of the register under this section.

(14) Regulations under subsection (13) may include provision treating the provider as a registered provider in that category for such purposes as the regulations may specify.

30 (15) The Commission must –

(a) maintain a list of tertiary education providers 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.

42 Change of registration category without application

Where a registered provider is removed from a category of the register under section 39(3) or 41(5), the Commission may register the provider in another category without an application under section 23(4)(a) if—

- (a) the governing body of the provider consents,
- (b) it continues to be a tertiary education provider 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 25), and
- (e) registration in the other category is not prohibited by provision made in regulations under section 23(5).

*Registration decision reviews***43 Registration decision reviews**

The governing body of a tertiary education provider 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 provider in a category of the register under section 23;
- (b) a decision of the Commission to impose or vary a specific ongoing registration condition on the provider under section 27;
- (c) a decision of the Commission to remove the provider from a category of the register under section 39;
- (d) a decision of the Commission as to the date specified under section 40(6) or section 41(7) or (8) as the date on which a removal of the provider from a category of the register takes effect.

*Fee limit statements***44 Requirements of a fee limit statement**

- (1) A fee limit statement is a document that complies with this section.
- (2) A fee limit statement 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.
- (3) A fee limit statement may specify, or provide for the determination of, different fee limits in relation to different courses and in respect of different relevant academic years.
- (4) A fee limit statement must specify the date on which it begins to have effect and any variation of a fee limit statement must specify the date on which the variation begins to have effect.

(5) In this Part—

(a) a fee limit, in relation to a course, is a limit that the fees payable to the tertiary education provider by a qualifying person, in connection with the person's undertaking the course, must 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 provider, and which begins on a day when the applicable provisions in the fee limit statement have effect.

(6) Where a fee limit statement 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").

(7) Where a fee limit statement provides for the determination of a fee limit in relation to a year and course, the statement must specify that the fee limit determined in accordance with the statement is not to exceed the maximum amount.

45 Approval of fee limit statement

(1) The governing body of a tertiary education provider in Wales may apply to the Commission for the Commission's approval of a proposed fee limit statement relating to the provider.

(2) If an application for approval of a fee limit statement is made to the Commission, the Commission must by notice to the governing body concerned either—

(a) approve the statement, or

(b) reject the statement.

(3) The governing body of a provider with an approved fee limit statement may apply to the Commission for approval of a variation or replacement of the statement.

(4) If an application for approval of a variation or replacement is made, the Commission must by notice to the governing body either—

(a) approve the variation or replacement, or

(b) reject the variation or replacement.

(5) An approved fee limit statement ceases to be approved if the provider to which it relates ceases to be registered in a category of registration specified under section 30(2)(b) to which the statement relates.

(6) For procedural provision about notice under subsections (2)(b) and (4)(b), see sections 73 to 76.

46 Publication of approved fee limit statement

(1) Where the Commission has approved a fee limit statement, the governing body of the provider to which the statement relates must publish the statement (and any approved variation or replacement of the statement).

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

47 **Validity of contracts**

- (1) This section applies to a contract that provides for the payment of regulated course fees to a tertiary education provider, 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.

CHAPTER 2

QUALITY ASSURANCE AND IMPROVING QUALITY

General quality assurance functions

48 **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 provider,
 - (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 54).
- (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 5.

49 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 providers (so far as the tertiary education relates to the providers' categories of registration);
- (b) funded or otherwise secured by the Commission.

50 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 provider,
 - (b) funded or otherwise secured by the Commission, or
 - (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.

51 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 provider,
- (b) funded or otherwise secured by the Commission, or
- (c) provided in Wales and not falling within paragraph (a) or (b).

Assessment of quality and standards in ~~higher~~ education

52 Assessment of quality and standards of ~~higher~~ education

The Commission must assess, or make arrangements for the assessment of, the quality and standards of ~~higher~~ education provided –

(a) provided by, or on behalf of, a registered provider,

(b) funded or otherwise secured by the Commission, or

20 (c) provided in Wales and not falling within paragraph (a) or (b).

5 ~~— (a) by each registered provider;~~

~~(b) on behalf of each registered provider (whether by another registered provider or by an external provider).~~

The duty in subsection (1) applies to the assessment of ~~higher~~ education relating to the provider's category of registration.

10 (3) The Commission may assess, or make arrangements for the assessment of, the quality of ~~higher~~ education provided in Wales by any tertiary education provider.

The Commission must publish a report of each assessment carried out under this section.

~~The Welsh Ministers may, by regulations—~~

~~require assessments under subsection (1) to be conducted at intervals specified in~~

15 ~~the regulations;~~

~~require reports under subsection (4) to be published before the end of a period specified in the regulations.~~

~~Before making regulations under subsection (5), the Welsh Ministers must consult the Commission.~~

20 (7) In this Part, references to an external provider are references to a person who –

is not a registered provider, but

is responsible for providing all or part of a course of higher education on behalf of a registered provider;

and references to a governing body in relation to an external provider that is not an

25 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).

53 Action plans following assessments under section 52

30 ~~(1) This section applies to assessments conducted under section 52(1)(a) and (b) and published in accordance with section 52(4).~~

~~The governing body of a registered provider that provides the higher education assessed, or on behalf of which the higher education is provided (as the case may be), must—~~

~~prepare a written statement of the action it proposes to take in the light of the report~~

35 ~~and the period within which it proposes to take it;~~

~~send the statement to the Commission and, if the assessment was conducted by a designated body, the designated body.~~

~~The governing body making the statement must publish it.~~

~~Compliance with the duties under subsections (2) and (3) is to be treated as an ongoing~~

~~registration condition that applies to the registered provider for the purposes of section 37~~

~~(directions in respect of failure to comply with ongoing registration conditions) and section~~

~~39 (de-registration).~~

~~54 Exercise of higher education assessment functions by a designated body
Schedule 3 makes provision—~~

~~(a) about the designation of a body to exercise the assessment functions;~~

~~(b) about oversight of the designated body by the Commission;~~

~~(c) for the body to charge fees.~~

~~10 (2) For the purposes of this Chapter, “the assessment functions” are the functions of the Commission under section 52 (assessing the quality of higher education).~~

~~(3) Where a body has been designated under Schedule 3 to exercise the assessment functions, the functions under section 52 do not cease to be exercisable by the Commission.~~

~~Inspection of further education or training etc.~~

~~15 55 Duty of the Chief Inspector to inspect and report~~

~~The Chief Inspector must inspect—~~

~~further education or training funded or otherwise secured by the Commission;~~

~~further education or training funded or otherwise secured by the Welsh Ministers;~~

~~further education or training funded by a local authority;~~

~~20 (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 by a tertiary education provider in Wales that is an institution within the further education sector or the higher education sector;~~

~~25 (f) education or training provided in Wales and specified by the Welsh Ministers in regulations (if any).~~

~~Paragraphs (a), (b) and (c) of subsection (1) do not apply to—~~

~~education of a kind that may or must be inspected under Part 1 of the Education Act 2005 (c. 18) (school inspections), or~~

~~30 (b) if the funding mentioned in those paragraphs is given for a specific purpose, education or training at which that support is not directed.~~

~~The Chief Inspector must publish a report of each inspection carried out under this section including views on—~~

~~the quality of the education or training inspected,~~

35 ~~(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.~~

~~The Welsh Ministers may, by regulations,—~~

~~require inspections under subsection (1) (except paragraph (d)) to be conducted at~~

~~5 ——— intervals specified in the regulations;~~

~~require reports under subsection (3) to be made before the end of a period specified in the regulations.~~

~~Before making regulations under this section the Welsh Ministers must consult—
the Commission;~~

~~10 ——— (b) the Chief Inspector.~~

~~56 ——— Power of the Chief Inspector to inspect and report~~

~~The Chief Inspector may inspect, and report on, any education or training described in section 55(1).~~

~~The Chief Inspector may inspect, and report on, any education or training—~~

~~15 ——— (a) which is not of a kind described in section 55(1), but~~

~~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.~~

~~The Chief Inspector may charge for the cost of an inspection conducted under subsection (2).~~

~~20 ——— (4) Subsections (3) to (5) of section 55 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.~~

~~57 ——— Duty to provide information and advice to the Commission~~

~~25 ——— (1) This section applies in relation to education or training described in section 55(1) that is funded or otherwise secured by the Commission.~~

~~The Chief Inspector must keep the Commission informed about—~~

~~the quality of the education or training to which this section applies,~~

~~the standards achieved by those receiving that education or training, and~~

~~30 ——— (c) whether the financial resources made available to those providing it are managed efficiently and used so as to provide value for money.~~

~~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;~~
- ~~5 (c) report on the result of an inspection conducted under this section.~~

58 Duty to provide information and advice to the Welsh Ministers

- ~~(1) This section applies in relation to education and training described in section 55(1) that is not funded or otherwise secured by the Commission.~~
- ~~(2) The Chief Inspector must keep the Welsh Ministers informed about—~~
 - ~~10 (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—~~
 - ~~15 (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.~~

20 59 Additional functions of the Chief Inspector

- ~~(1) The Welsh Ministers may, by regulations, confer other functions on the Chief Inspector in connection with the education or training described in section 55(1).~~
- ~~(2) The functions conferred by the regulations may include functions with respect to training of or for teachers, lecturers, trainers or other persons engaged in the provision of such~~
 - ~~25 education or training.~~

60 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 56(2), or~~
 - ~~30 (b) under section 61.~~

~~(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.~~

~~5 (4) The person making the statement must publish it.~~

~~(5) Subsection (6) applies if—~~

~~(a) a person subject to the duties in subsections (3) and (4) is the governing body of a registered provider, and~~

~~10 (b) the education or training which is the subject of the report relates to the provider's category of registration.~~

~~(6) Compliance with the duties in subsections (3) and (4) is to be treated as an ongoing registration condition that applies to the registered provider for the purposes of section 37 (directions in respect of failure to comply with ongoing registration conditions) and section 39 (de-registration).~~

~~15 (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.~~

61 Area inspections

~~20 (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~~

~~25 (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.~~

~~30 (3) The education or training that may be made the subject of an area inspection is any education or training described in section 55 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—~~

~~35 (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.~~

62 — 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 (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.~~

~~(7) The powers conferred by this section do not include the power to enter a dwelling without the agreement of the occupier.~~

~~(8) In this section, “premises” means premises in Wales or England.~~

63 — 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.~~

~~5~~ **64 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.~~

~~10 (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 55(1).~~

65 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 exercised effectively, and~~

~~15 (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 66 of this Act (funding by the Commission), and~~

~~20 (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,~~

~~25 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.~~

~~30~~ **66 Funding of inspections and reports on further education and training etc.**

~~The Commission must provide such funding to the Chief Inspector as it considers appropriate for the exercise 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.~~

~~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 exercise the functions.~~

~~Before the beginning of each financial year, the Commission must consult the Chief~~

~~5 Inspector about the funding it is to provide to the Chief Inspector in that financial year.~~

~~The Commission must—~~

~~approve such part (or parts) of the plan prepared by the Chief Inspector under section 65 as relate to functions in respect of which the Commission is required to provide funding under this section, and~~

~~10 (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.~~

~~But before it approves the plan under subsection (4) the Commission may require the Chief Inspector to modify the plan.~~

~~Section 104 of the Government of Wales Act 1998 (c. 38) is amended as follows—~~

~~15 (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 2 of Part 2 of the Tertiary Education and Research (Wales) Act 2022 so far as they relate to education or training that is~~

~~20 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 65 of the Tertiary Education and~~

~~25 Research (Wales) Act 2022 as relate to functions in respect of which they are required to provide funding under this section, and”.~~

CHAPTER 3

FURTHER ENFORCEMENT AND PROCEDURAL PROVISIONS

30 *Intervention in the conduct of further education institutions*

67 Grounds for intervention

For the purposes of sections 68 and 69, the grounds for intervention in the conduct of a tertiary education provider in Wales that is an institution within the further education sector are as follows —

- 35
- (a) the provider’s affairs have been or are being mismanaged by its governing body;
 - (b) the provider’s governing body has failed to comply with a duty under any enactment;
 - (c) the provider’s governing body has acted or is proposing to act unreasonably in the exercise of its functions under any enactment;

- (d) the provider is performing significantly less well than it might in all the circumstances reasonably be expected to perform, or is failing or likely to fail to give an acceptable standard of education or training.

68 Powers to intervene

- (1) If the Welsh Ministers are satisfied that one or more of the grounds for intervention exist in relation to a tertiary education provider in Wales that is an institution within the further education sector, the Welsh Ministers may give a direction to the provider's governing body.
- (2) Before giving a direction under this section, the Welsh Ministers must consult the Commission.
- (3) A direction under this section may –
 - (a) contain provision that has effect to remove all or any of the members of the provider's governing body;
 - (b) contain provision that has effect to appoint new members of that body if there are vacancies (however arising);
 - (c) specify steps that are (or are not) to be taken by the governing body for the purpose of dealing with the grounds of intervention.
- (4) A direction under subsection (3)(c) may (among other things) require the governing body –
 - (a) to exercise powers under section 5(2)(b) to (f) and (h) of the Education (Wales) Measure 2011 (nawm 7) to collaborate with such persons and on such terms as may be specified in the direction;
 - (b) to make a resolution under section 27A(1) of the Further and Higher Education Act 1992 (c. 13) ("the 1992 Act") for the body to be dissolved on a date specified in the direction.
- (5) A governing body to which a direction such as is mentioned in subsection (4)(b) is given is to be taken for the purposes of section 27A(1) of the 1992 Act to have complied with section 27 of that Act before making the resolution required by the direction.
- (6) Directions may be given under this section despite any enactment making the exercise of a power or discharge of a duty contingent on a governing body's opinion.
- (7) The Welsh Ministers may not direct a governing body under this section to dismiss a member of staff.
- (8) But subsection (7) does not prevent the Welsh Ministers, where they consider that it may be appropriate to dismiss a member of staff whom the governing body has power under the provider's articles of government to dismiss, from giving the governing body such directions under this section as are necessary to secure that the procedures applicable to the consideration of the case for dismissal of that member of staff are given effect to in relation to that member of staff.
- (9) An appointment of a member of a governing body under this section has effect as if made in accordance with the instrument of government and articles of government of the provider concerned.

69 Notification by the Commission of grounds for intervention

- (1) If the Commission is of the view that any one or more of the grounds for intervention exist in relation to a tertiary education provider in Wales that is an institution within the further education sector, the Commission must notify the Welsh Ministers of that view.
- (2) The Welsh Ministers must have regard to the Commission's view in deciding whether to exercise the powers under section 68.

70 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 68.
- (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***71 Duty to co-operate**

- (1) The governing body of an external provider must ensure that a person exercising a function by virtue of section 49, 51 or 52(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 72).
- (2) The governing body of a provider of further education or training funded under section 94 must ensure that a person exercising a function by virtue of section 49 or 51 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 72).
- (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 provider.
- (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 73 to 76.

72 Powers of entry and inspection

- (1) For the purpose of the exercise of a function by virtue of section 34, 36, 49, 51 or 52(1), an authorised person may –
- (a) enter the premises of a registered provider;
 - (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 49, 51 or 52(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 provider or external provider in relation to whose premises the authorised person intends to exercise the power, and
 - (b) the governing body of any registered provider on whose behalf that provider 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

73 Application of sections 74 to 76

- (1) Sections 74 to 76 apply to –
- (a) a direction under section 37 (directions in respect of failure to comply with ongoing registration conditions);
 - (b) notice under section 45(2)(b) (rejection of proposed fee limit statement);
 - (c) notice under section 45(4)(b) (rejection of proposed variation or replacement of a fee limit statement);
 - (d) a direction under section 71(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.

74 Proposed notices and directions: requirement to give warning notice

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

75 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 77(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 76 could be brought in respect of the notice or direction, or
 - (b) a review or a decision by the Commission following such a review is pending.
- (4) But that does not prevent a notice or direction taking effect if the governing body notifies the Commission that it does not intend to apply for a review.
- (5) Where subsection (3) ceases to prevent a notice or direction taking effect on the date specified under subsection (1), the Commission must determine a future date on which the notice or direction takes effect.
- (6) But that is subject to what has been determined by the Commission following any review under section 76 in respect of the notice or direction.

76 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.

77 Decision reviewer

- (1) The Welsh Ministers must appoint a person, or a panel of persons, to review decisions under sections 43 and 76.
- (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 43 and 76.
- (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).

5

Miscellaneous duties

78 Duty to monitor and report on financial sustainability

- (1) The Commission must monitor the financial sustainability of –

- (a) registered providers;
- (b) tertiary education providers in Wales that –

10 ~~(i) are institutions within the further education sector,~~
are funded by the Commission ~~under section 94, and~~
~~are not registered providers;~~

other tertiary education providers of a kind specified in regulations made by the Welsh Ministers.

- 15 (2) The Welsh Ministers may, by regulations, provide for exceptions to subsection (1)(a) and (b).

- (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.~~

20 ~~(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.

- 25 (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~~

30 ~~(b) the Commission considers that they are appropriate to be brought to the attention of the Welsh Ministers.~~

~~(7)~~(6) In this section –

“annual report” (“*adroddiad blynyddol*”) means the annual report under paragraph 16 of Schedule 1;

35 “financial year” (“*blwyddyn ariannol*”) has the same meaning as in that Schedule (see paragraph 17).

79 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 provider, and
 - (b) any other persons it considers appropriate.
- (4) The Commission's intervention functions are its functions under the following provisions –
 - (a) section 34 (duty to monitor compliance with ongoing registration conditions);
 - (b) section 35 (advice and assistance in respect of compliance with ongoing registration conditions);
 - (c) section 36 (reviews relevant to compliance with conditions);
 - (d) section 37 (directions in respect of failure to comply with ongoing registration conditions);
 - (e) section 39 (de-registration);
 - (f) section 49 (duty to monitor, and promote improvement in, the quality of regulated tertiary education);
 - (g) section 50 (advice and assistance in respect of quality of tertiary education);
 - (h) section 51 (reviews relevant to quality of tertiary education);
 - (i) section 71(4) (directions in respect of failure to comply with a duty to co-operate).

*Directions***80 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 4

GENERAL

81 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)).

82 Interpretation of Part 2

In this Part –

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

“applicable fee limit” (*“terfyn ffioedd cymwys”*) has the meaning given by section 30(7);

“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 77(5);

“excess fees” (*“ffioedd uwchlaw’r terfyn”*) has the meaning given by section 37(7);

“external provider” (*“darparwr allanol”*) has the meaning given by section 52(7);

“fee limit” (*“terfyn ffioedd”*) has the meaning given by section 44(5);

“fee limit condition” (*“amod terfyn ffioedd”*) has the meaning given by section 30(3);

“fee limit statement” (*“datganiad terfyn ffioedd”*) has the meaning given by section 44(1);

“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 a tertiary education provider 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;

“governing body” (*“corff llywodraethu”*), in relation to an external provider that is not an institution, has the meaning given by section 52(7) (see section 139 for the meaning of “governing body” generally);

“ongoing registration condition” (*“amod cofrestru parhaus”*) has the meaning given by section 23(10);

“qualifying course” (*“cwrs cymhwysol”*) means a course specified in regulations under section 30(4);

“qualifying person” (*“person cymhwysol”*) has the meaning given by section 30(8);

“regulated course fees” (*“ffioedd cwrs rheoleiddiedig”*) has the meaning given by section 30(6);

“relevant academic year” (*“blwyddyn academaidd berthnasol”*), in relation to a tertiary education provider to which a fee limit statement relates, has the meaning given in section 44(5).

PART 3

SECURING AND FUNDING TERTIARY EDUCATION AND RESEARCH

Funding the Commission

83 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 exercise 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 implementation of the Commission’s strategic plan approved under section 13.
- (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.

84 Funding the Commission: limitations on terms and conditions

- (1) Terms and conditions under section 83 relating to the provision of financial resources by the Commission to a person under section 85 or 86 (higher education), section 94 (further education or training) or section 102 (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 83 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 83 relating to the provision of financial resources by the Commission under section 102 (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 13.~~

~~(5)~~(4) Terms and conditions under section 83 relating to the provision of financial resources by the Commission under section 85 or 86 (higher education) may be framed by reference to a particular course of study, but must not require the Commission to exercise a function in a way which prohibits or requires the provision of a particular course of study.

(6) Terms and conditions under section 83 relating to the provision of financial resources by the Commission under section 85 or 86 (higher education) or section 102 (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

85 Financial support to specified providers for higher education

(1) The Commission may provide financial resources to the governing body of a specified provider 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 provider;
- (b) the provision of facilities, and the carrying on of other activities, by or on behalf of the specified provider which its governing body considers it necessary or desirable to provide or carry on for the purposes of or in connection with higher education it provides or has provided on its behalf.

(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 provider.

(3) In this section –

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

- (a) to whom the governing body of the specified provider 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 provider, or who is working, or has worked, in collaboration with the provider for the purpose for which the financial resources are provided;

“specified provider” (*“darparwr penodedig”*) means a registered provider 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.

5 **86 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) –
- 10 (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 –
- 15 (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 –
- 20 (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.

25 **87 Financial support under sections 85 and 86: terms and conditions**

- (1) Financial resources may be provided by the Commission under section 85 or 86 on the terms and conditions that the Commission considers appropriate.
- (2) The terms and conditions may (among other things) –
- 30 (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.
- 35 (4) The terms and conditions in relation to financial resources provided under section 86(3)(a) to a person who is not a registered provider, must include a requirement that the person –

- (a) if given notice under section 122(1), has in place a learner protection plan approved by the Commission (under section 122(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 a tertiary education provider in Wales, complies with the requirements contained in the Learner Engagement Code published under section 125(1) or any revised code published under section 125(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 85 or 86, the Commission must consult such persons as it considers appropriate.

88 Financial support under sections 85 and 86: supplementary

- (1) In exercising its functions under section 85 or 86 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 85 or 86 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 tertiary education provider for whose activities financial resources are provided.

89 ~~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

90 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 over 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).

91 Education and training for eligible persons over 19

- (1) The Commission must secure the provision of proper facilities in Wales for relevant education and training for eligible persons that is suitable to their requirements.
- (2) Facilities are proper if they are—
 - (a) of a quantity sufficient to meet the reasonable needs of individuals, and
 - (b) of a quality adequate to meet those needs.
- (3) The Welsh Ministers must, by regulations, specify as relevant education and training for the purpose of subsection (1) a description of further education or training.
- (4) Regulations under subsection (3) may describe further education or training by reference to (among other things)—
 - (a) subject;
 - (b) level of study, including by reference to levels 1, 2 and 3;
 - (c) type of qualification.

(5) In subsection (4) –

“level 1” means the level of attainment which, in the opinion of the Welsh Ministers, is demonstrated by the General Certificate of Secondary Education at Grade D, E, F or G;

“level 2” means the level of attainment which, in the opinion of the Welsh Ministers, is demonstrated by the General Certificate of Secondary Education at Grade C or above;

“level 3” means the level of attainment which, in the opinion of the Welsh Ministers, is demonstrated by the General Certificate of Education at the advanced level.

(6) In forming an opinion for the purposes of subsection (5), the Welsh Ministers may have regard, in particular, to advice or information relating to qualifications which is provided by Qualifications Wales.

(7) An eligible person is a person who –

(a) has attained the age of 19, and

(b) falls within a description specified in regulations made by the Welsh Ministers (if any).

(8) Regulations under subsection (7)(b) –

(a) may describe an eligible person by reference to (among other things) –

(i) age;

(ii) qualifications or other educational attainment;

(iii) status;

(iv) income;

(b) may specify different descriptions of eligible person in relation to different descriptions of further education or training.

92 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.

93 Requirements on Commission when securing further education and training

(1) In discharging the duties imposed on it by sections 90 to 92, 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.

- (2) Provision is not to be considered as giving rise to disproportionate expenditure only because that provision is more expensive than comparable provision.

94 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 them or 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) tertiary education providers in Wales that are institutions 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 97.
- (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 subsection (1)(a) or (b) 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) The Commission may not provide its financial resources under subsection (1)(a) or (b), or make arrangements for a local authority to provide such resources under subsection (2)(b), to the governing body of a maintained school in Wales for the purpose of, or for a purpose connected with, the provision by the school of education suitable to the requirements of persons over compulsory school age (for provision as to the funding of school sixth-forms, see section 98).

(5) But the Commission may provide its financial resources under this subsection, or make arrangements for a local authority to provide such resources, to the governing body of a maintained school in Wales that provides education suitable to the requirements of persons over compulsory school age for the purpose of innovative activities.

(6) An innovative activity is an activity that –

(a) in the Commission’s opinion will contribute to the raising of standards of tertiary education, and

(b) is described in a document prepared by the Commission and approved by the Welsh Ministers.

95 Financial support for further education or training: further provision

(1) In exercising the power under section 94(1)(d) or (e), 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).

(2) The Welsh Ministers may, by regulations, provide that the provision of financial resources for specified purposes must only be secured under section 94(1)(a) or (b) to registered providers in specified categories.

(3) Regulations under subsection (2) 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.

(4) In subsections (2) and (3), “specified” means specified in the regulations.

96 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 94, 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 over 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 terms and conditions must also prohibit a person providing, or proposing to provide, relevant education and training suitable to the requirements of eligible persons from charging eligible persons who are receiving that education or training; in this subsection “relevant education and training” and “eligible persons” have the same meaning as in section 91.
- (6) The Welsh Ministers may, by regulations, provide for exceptions to the requirement in subsection (4) or (5).
- (7) Terms and conditions imposed by the Commission in relation to financial resources provided under section 94(1)(a) to a person who is not a registered provider, must –
 - (a) require the person, if given notice under section 122(1), to have in place a learner protection plan approved by the Commission (under section 122(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 a tertiary education provider in Wales, to comply with the requirements contained in the Learner Engagement Code published under section 125(1) or any revised code published under section 125(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) If the Commission has made arrangements under section 94(2)(b) for another person to provide the Commission's financial resources, the Commission –

(a) may require that person to provide the resources subject to such terms and conditions that the Commission considers appropriate (including terms and conditions of a kind that could be imposed under subsection (2)), and

(b) must require that person to provide the resources subject to the terms and conditions described in subsections (4) to (7).

97 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 section 94(1)(d) or (e).

98 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 over 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 96(2)).

(3) The governing body of a maintained school in Wales that provides education suitable to the requirements of persons over compulsory school age must comply with the requirements contained in the Learner Engagement Code published under section 125(1) or any revised code published under section 125(3).

(4) The following must 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 –

(a) a local authority in receipt of a grant under this section, and

- (b) the governing body of a maintained school in Wales that provides education suitable to the requirements of persons over compulsory school age.

(5) 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).

99 Persons with additional learning needs

- (1) In exercising 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 90 (education and training for persons aged 16 to 19);

(b) section 91 (education and training for eligible persons over 19);

(c) section 92 (education and training for persons over 19);

(d) section 94(1)(a) to (e) and (5) (financial support for further education or training);

(e) section 100(1) (financial support for provision of information, advice, guidance and to form links with employers);

(f) section 100(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

100 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 over compulsory school age in Wales;
- (c) 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) The Commission may not provide its financial resources under subsection (2), or make arrangements for a local authority to provide such resources under subsection (3)(b), to the governing body of a maintained school in Wales for the purpose of, or for a purpose connected with, the provision by the school of education suitable to the requirements of persons over compulsory school age (for provision as to the funding of school sixth-forms, see section 98).

(5) 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.

(6) 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.

(7) If the Commission has made arrangements under subsection (3) for another person to provide the Commission's financial resources, the Commission may require that person to provide the resources subject to such terms and conditions that the Commission considers appropriate (including terms and conditions of a kind that could be imposed under subsection (6)).

Financial support for apprenticeships

101 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.

5 (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
10 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 tertiary education providers registered in categories specified in the regulations.

15 (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.

20 (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
25 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.

30 (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 provider, must –

- (a) require the person, if given notice under section 122(1), to have in place a learner protection plan approved by the Commission (under section 122(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 a tertiary education provider in Wales, to comply
35 with the requirements contained in the Learner Engagement Code published under section 125(1) or any revised code published under section 125(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.

40 (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 tertiary education provider for whose activities financial resources are provided.

(9) In this section –

“apprenticeship framework” (*“fframwaith prentisiaeth”*) has the meaning given by section 110;

“approved Welsh apprenticeship” (*“prentisiaeth Gymreig gymeradwy”*) has the meaning given by section 107.

Research and innovation

102 Financial support for research and innovation

(1) The Commission may provide financial resources to the governing body of a specified provider 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 provider.

(3) In exercising its functions under this section to provide financial resources to a specified provider, the Commission must have regard to:

(a) -the desirability of not discouraging that provider from maintaining or developing funding from other sources.

(b) the balanced funding principle

(3)(4) In this section –

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

(a) to whom the governing body of the specified provider 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 provider for the purpose for which the financial resources are provided;

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

103 Financial support for research and innovation: terms and conditions

(1) Financial resources may be provided by the Commission under section 102 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—~~

- ~~10 (a) deciding to provide financial resources under section 102, 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~~
- ~~15 impact of the proposals (such as a peer review process).~~

104 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;
 - 20 (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 102 are used.
- ~~35 (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 research and innovation performance of the persons it funds, extent to which the activities it funds, for the financial year to which the report relates—~~
- ~~(4) are achieving successful results,~~
 - ~~(5) 30 (b) are being delivered effectively, and~~
 - ~~(6)(3) (c) represent value for money.~~

Collaborating bodies: consent

105 Consent for payments to collaborating bodies

- ~~35 (1) The Welsh Ministers may, by regulations, specify the matters to be taken into account by the Commission when deciding whether to give its consent for the purpose of section 85(3) (see paragraph (a) in the definition of “collaborating body”), 86(4)(a), 94(3)(a), 101(2)(a) or 102(4) (see paragraph (a) in the definition of “collaborating body”).~~

~~(2)~~(1) The Commission may give consent for the purpose of any of those provisions subject to conditions.

~~(3)~~(2) The Commission may withdraw, suspend or vary consent given for the purpose of any of those provisions.

(4) Before withdrawing, varying or suspending consent, the Commission must give notice to the person to whom financial resources are being provided or secured under section 85, 86, 94, 101 or 102 (as the case may be).

(5) The notice must state —

(a) the reasons for proposing to withdraw, vary or suspend consent,

(b) the period during which representations about the proposed action may be made, and

(c) the way in which those representations may be made.

(6) The Commission must have regard to any representations made in accordance with the notice in deciding whether to withdraw, vary or suspend consent.

(7) The requirements in subsections (4) to (6) do not apply if the Commission is satisfied that it is necessary to withdraw, vary or suspend consent before it would be practicable to comply with those requirements.

(8) The Commission must keep consent given for the purpose of section 85(3) (see paragraph (a) in the definition of “collaborating body”), 86(4)(a), 94(3)(a), 101(2)(a) or 102(4) (see paragraph (a) in the definition of “collaborating body”) under review.

Financial support directions

106 Financial support directions

~~(1) The Welsh Ministers may give the Commission financial support directions in relation to a relevant person.~~

~~(2) Financial support directions may be given only if it appears to the Welsh Ministers that the financial affairs of the relevant person have been or are being mismanaged.~~

~~(3) “Financial support directions” are such directions about the provision or securing of financial resources under section 85, 86, 94, 98, 100, 101 or 102 to a relevant person as the Welsh Ministers consider necessary or expedient because of the mismanagement.~~

~~(4) In this section, “relevant person” means —~~

~~(a) a registered provider;~~

~~(b) a person (other than a registered provider or the governing body of a maintained school) in receipt of financial resources provided or secured by the Commission under section 85(2), 86, 94, 98, 100, 101 or 102(2).~~

~~(5) Before giving a financial support direction, the Welsh Ministers must consult the Commission and the relevant person unless the Welsh Ministers are satisfied that —~~

~~(a) it is necessary to give the direction before it would be practicable to consult the Commission and the relevant person, or~~

~~(b) consultation would defeat the object of giving the direction.~~

~~(6) If the Welsh Ministers give a financial support direction, they must—~~

~~(a) publish the direction,~~

~~(b) report to Senedd Cymru that a direction has been given and lay a copy of the direction before the Senedd, and~~

~~(c) keep the direction under review.~~

~~(7) The Commission must comply with a financial support direction given under this section.~~

PART 4

APPRENTICESHIPS

Introductory

107 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.

108 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 113 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.

109 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.

110 Meaning of “apprenticeship framework”

(1) An apprenticeship framework is a document that specifies requirements for the completion of approved Welsh apprenticeships in an occupation or a group of occupations, 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.

(2) This section applies for the purposes of this Part.

Functions of the Welsh Ministers

~~111 — Specification of requirements in relation to approved Welsh apprenticeship~~

~~(1) The Welsh Ministers may specify requirements in relation to approved Welsh apprenticeships for the purposes of this Part.~~

~~(2) A requirement may relate to the content of apprenticeship frameworks, including (but not limited to) —~~

- ~~(a) specification of the occupational sectors to which the occupation or group of occupations covered by an apprenticeship framework must relate;~~
- ~~(b) general standards of attainment needed for completion of approved Welsh apprenticeships;~~
- ~~(c) the type of qualifications needed for completion of approved Welsh apprenticeships;~~
- ~~(d) the type or amount of training needed for completion of approved Welsh apprenticeships.~~

~~(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 approved Welsh apprenticeships generally or approved Welsh apprenticeships in one or more occupations.~~

~~(5) 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.~~

~~(6) A requirement specified under this section (including a revision and a specification that includes a withdrawal) must be published.~~

~~(7) 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.~~

112 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 a requirement under section 111 (including revised requirements);~~

~~(b) withdrawing a requirement under section 111.~~

Functions of the Commission

113 Preparation and publication of apprenticeship frameworks

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

~~(2)(1)~~ The Commission may publish apprenticeship frameworks prepared by itself or by other persons (whether or not the Commission secured their preparation).

~~(3)(2)~~ An apprenticeship framework published under this section must comply with any requirements specified under section 111.

(4) 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.

(5) 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.

(6) 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.

(7) 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).

(8) An apprenticeship framework published under this section must state the date on which it comes into force.

(9) References to an apprenticeship framework in this section include a revised framework.

114 Register of apprenticeship frameworks

- (1) The Commission must maintain a register of the apprenticeship frameworks published under section 113.
- (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.

115 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 Commission may, following an application, supply a copy of an apprenticeship certificate to a person in respect of whom the certificate was issued.
- (3) The Commission may determine –
 - (a) the way in which applications for certificates or copies of certificates must be made;
 - (b) the contents of certificates.
- (4) The Commission may charge a fee for issuing an apprenticeship certificate or supplying a copy of it only if, and to the extent that, the charging of the fee is authorised by regulations made by the Welsh Ministers.

116 Delegation of Commission functions

- (1) The functions of the Commission under section 113(2) or 115 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

117 Ineffective provisions of approved Welsh apprenticeship agreements

- (1) If an agreement –
- (a) contains provision that satisfies the conditions mentioned in section 108(1)(a) to (c), 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 section 108(1)(a) to (c) 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.

118 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.

119 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 113(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.

120 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 118(2) does not apply in relation to an approved Welsh apprenticeship agreement that is an agreement within subsection (1).
- (4) Without prejudice to section 138(2), the power conferred by section 108(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 the Welsh Government, a United Kingdom 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***121 Interpretation of Part 4**

In this Part—

“apprenticeship certificate” (*“tystysgrif brentisiaeth”*) means a certificate issued section 115;

“apprenticeship framework” (*“fframwaith prentisiaeth”*) has the meaning given by section 110;

“approved Welsh apprenticeship” (*“prentisiaeth Gymreig gymeradwy”*) has the meaning given by section 107;

“approved Welsh apprenticeship agreement” (*“cytundeb prentisiaeth Gymreig gymeradwy”*) has the meaning given by section 108;

PART 5

LEARNER PROTECTION, COMPLAINTS PROCEDURES AND LEARNER
ENGAGEMENT

122 Learner protection plans

- (1) The Commission may give notice to a relevant 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 relevant 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 relevant 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 123 –

“relevant course” (*“cwrw perthnasol”*), in relation to a relevant tertiary education provider, is –

(a) where the provider is a registered provider, any course of tertiary education provided by it or on its behalf;

(b) where the provider is not a registered provider, a course of tertiary education provided by it or on its behalf which is funded by the Commission under –

(i) section 86(3)(a) (higher education courses specified in regulations),

(ii) section 94(1)(a) (further education or training), or

(iii) section 101(1)(a) (apprenticeships);

“relevant tertiary education provider” (*“darparwr addysg drydyddol perthnasol”*) is –

(a) a registered provider;

(b) a person other than a registered provider in receipt of financial resources provided or secured by the Commission under –

(i) section 86(3)(a) (higher education courses specified in regulations),

(ii) section 94(1)(a) (further education or training), or

(iii) section 101(1)(a) (apprenticeships).

123 Complaints procedures

- (1) The Commission must take such steps as appear to it appropriate to ensure that a relevant 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 “relevant tertiary education provider”, see section 122(10).

124 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 provider, or
 - (b) a tertiary education provider in Wales other than a registered provider in receipt of financial resources –
 - (i) provided by the Commission for Tertiary Education and Research under section 86(3)(a) of the Tertiary Education and Research (Wales) Act 2022 (higher education courses specified in regulations),
 - (ii) secured by the Commission for Tertiary Education and Research or the Welsh Ministers under section 94(1)(a) of that Act (further education or training), or
 - (iii) provided by the Commission for Tertiary Education and Research under section 101(1)(a) of that Act (apprenticeships).
- (3) In subsection (2) –
- “registered provider” means a tertiary education provider registered in the register established and maintained by the Commission for Tertiary Education and Research under section 23 of the Tertiary Education and Research (Wales) Act 2022;
 - “tertiary education provider in Wales” has the meaning given by section 139 of the Tertiary Education and Research (Wales) Act 2022.
- (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 86(3)(a) of the Tertiary Education and Research (Wales) Act 2022 (higher education courses specified in regulations),

(b) section 94(1)(a) of that Act (further education or training), or

(c) section 101(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,”.

125 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 provider (“learners”) in the making of relevant decisions by the provider.

(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 provider,

(b) how to ensure that learners have the opportunity to participate in the making of relevant decisions by the relevant provider, and

(c) how to ensure that learners have the opportunity to give their views to the relevant provider 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 providers or different descriptions of relevant provider).

- (7) The Commission must monitor compliance by relevant providers 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 provider,
 - (b) where provided by, or on behalf, of a tertiary education provider other than a registered provider, funded by the Commission under –
 - (i) section 86(3)(a) (higher education courses specified in regulations),
 - (ii) section 94(1)(a) (further education or training), or
 - (iii) section 101(1)(a) (apprenticeships), or
 - (c) provided by the governing body of a maintained school in Wales;
- “relevant provider” (*“darparwr perthnasol”*) means –
- (a) a registered provider;
 - (b) a tertiary education provider in Wales other than a registered provider in receipt of financial resources provided or secured by the Commission under –
 - (i) section 86(3)(a) (higher education courses specified in regulations),
 - (ii) section 94(1)(a) (further education or training), or
 - (iii) section 101(1)(a) (apprenticeships);
 - (c) the governing body of a maintained school in Wales that provides education suitable to the requirements of persons over compulsory school age.

PART 6

INFORMATION, ADVICE AND GUIDANCE

126 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 exercise 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)~~(2) The Commission may give the Welsh Ministers –

- (a) information relating to any of its functions or obtained in the exercise of any of its functions, or
- (b) advice relating to any of its functions.

~~(4)~~(3) The Welsh Ministers may give the Commission information for the purposes of the exercise of any of its functions.

127 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 provider;
 - (b) a person other than a registered provider in receipt of financial resources provided under –
 - (i) section 85(2) (services provided in connection with higher education),
 - (ii) section 86 (higher education courses specified in regulations),
 - (iii) section 94 (further education or training),
 - (iv) section 100 (other activities connected to tertiary education),
 - (v) section 101 (apprenticeships),
 - (vi) section 102(2) (services provided in connection with research and innovation), or
 - (vii) section 132 (research by the Commission or the Welsh Ministers);
 - (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 exercise the Commission's functions under section 52 (assessment of quality of higher education);
 - (f) a person designated by the Commission under section 116 to exercise the Commission's functions under section 113(2) (publication of apprenticeship frameworks) or section 115 (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 subsection (2)(c) to (g) may not require the person to give information other than –
- (a) in the case of a person mentioned in subsection (2)(c), (d) or (g), information held by the person for the purpose of the provision of tertiary education;

(b) in the case of a body mentioned in subsection (2)(e), information held by the body for the purpose of the exercise of any of the Commission's functions under section 52;

(c) in the case of a person mentioned in subsection (2)(f), information held by the person for the purpose of the exercise of any of the Commission's functions under section 113(2) or 115.

(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.

128 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) a body designated under Schedule 3 to exercise the Commission's functions under section 52 (assessment of quality of higher education);~~

(g) 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;

(h) 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);

(i) 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;

(j) a person providing services to one or more tertiary education providers in Wales that are institutions within the higher education sector relating to applications for admission on to higher education courses provided by them;

(k) a person specified in regulations made by the Welsh Ministers (1) and any other person it considers appropriate information about any matter in relation to which it has a function.

- (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.

129 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 tertiary education providers in Wales that are institutions 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 tertiary education providers in Wales that are institutions 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 tertiary education providers in Wales that are institutions within the higher education sector; or~~
 - ~~(ii) considering whether to accept an offer for admission on such a course from such a provider;~~
 - ~~(b) research into equality of opportunity in connection with access to and participation in higher education provided by tertiary education providers in Wales that are institutions 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.~~

130 Use of application to acceptance information for research purposes

- ~~(1) The Welsh Ministers may—~~
- ~~(a) use information obtained under section 129 for qualifying research, and~~

~~(b) give information obtained under section 129 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 129 so long as —~~

~~5 — (a) a purpose in publishing it is to provide statistical information;~~

~~(b) no individual to whom the information obtained under section 129 relates may be identified from the publication; and~~

~~(c) the publication does not include information obtained under section 129 that may be regarded as commercially sensitive.~~

~~10 — (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”).~~

~~15 — (4) An approved body may give information obtained under section 129 to an approved researcher, but an approved researcher may not give that information to —~~

~~(a) another approved researcher; or~~

~~(b) another approved body.~~

~~20 — (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 129~~

131 Other information, advice and guidance

~~25 (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.~~

~~30 (3) The persons specified in this subsection are —~~

~~(a) a registered provider,~~

~~(b) a person other than a registered provider providing tertiary education funded or otherwise secured by the Commission.~~

~~(4) The Commission must publish any guidance it issues under subsections (1) and (2).~~

~~35 (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.~~

132 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.
- (6) If the Commission has made arrangements under subsection (3)(b) for another person to provide the Commission's financial resources, the Commission may require that person to provide the resources subject to such terms and conditions that the Commission considers appropriate (including terms and conditions of a kind that could be imposed under subsection (5)).

PART 7**MISCELLANEOUS AND GENERAL***Higher education corporations***133 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).”

134 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 124A, 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 124A or 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”.

135 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.”

*Consultation about careers services***136 Duty to consult the Commission on careers services**

In the Employment and Training Act 1973 (c.50), after section 9 insert –

“9A Duty of Welsh Ministers to consult the Commission for Tertiary Education and Research

- (1) In each financial year the Welsh Ministers must consult the Commission for Tertiary Education and Research on strategic priorities in the next financial year for the performance of their duty in section 8 and the exercise of their power in section 9.
- (2) In this section, “financial year” means a period of 12 months ending on 31 March.”

*General***137 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.

138 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 1, section 20(1);
 - (b) from Part 2, sections 23(2), 25(3), 30(2)(b), 31(1), 32, 39(2), 44(6), and 81(4);
 - (c) from Part 3, sections 85(3), 91(3) and (7)(b), 95(2), 96(6), 101(3) and 102(4);
 - (d) from Part 4, sections 107(4), 108(1)(c) and 109(1);
 - (e) from this Part –
 - (i) section 140;
 - (ii) section 141, 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 39(6) or 41(13), is subject to annulment in pursuance of a resolution of Senedd Cymru.

139 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 81, 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;

“maintained school” (*“ysgol a gynhelir”*) means a community, foundation or voluntary school, or a community special school;

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

“the register” (*“y gofrestr”*) means the register established and maintained under section 23;

“registered provider” (*“darparwr cofrestredig”*) means a tertiary education provider which is registered in the register; and references to “registration” (*“cofrestru”*) are to be read accordingly;

“school” (“ysgol”) has the meaning given by section 4 of the Education Act 1996 (c. 56);

“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;

“tertiary education provider in Wales” (“darparwr addysg drydyddol yng Nghymru”) means an institution providing tertiary education, including tertiary education provided on its behalf, whose activities are wholly or mainly carried on in Wales.

- (2) References in this Act to further education are to education (other than higher education) suitable to the requirements of persons who are over 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 over 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) 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.

140 Power to provide for the Open University to be treated as a tertiary education provider in Wales

- 5 (1) The Welsh Ministers may, by regulations, provide for the Open University to be treated as a tertiary education provider 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 a tertiary education provider in Wales or a registered provider (if it becomes one).

141 Power to make consequential and transitional provision etc.

- 10 (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.
- 15 (2) Regulations under subsection (1) may amend, modify, repeal or revoke any enactment (including an enactment contained in this Act).

142 Minor and consequential amendments

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

143 Coming into force

- 20 (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 138 to 141;
 - (b) this section;
 - (c) section 144.
- 25 (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.

144 Short title

- 30 (1) The short title of this Act is the Tertiary Education and Research (Wales) Act 2022.
- (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

- 5 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—
- 10 (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 the RIC under paragraph 12(1) 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”);
- 15 (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—
- 20 (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

- 25 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—
- 30 (a) a Member of the Senedd;
- (b) a member of the House of Commons;
- ~~(c) a member of the governing body of a tertiary education provider in Wales that is an institution within the further education sector;~~
- ~~(d) a member of the governing body of a tertiary education provider in Wales that is an institution within the higher education sector.~~
- 35 (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 ~~45~~ years.
- (6) A person who has held office as the chair or as an ordinary member may be reappointed up to a maximum of 10 years.
- (7) The chair or an ordinary member may resign from office by giving notice to the Welsh Ministers and to the Commission.
- 5 (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
- 10 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 –
- 15 (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 the RIC.
- 20 (13) A person suspended from office as the deputy chair is also suspended from office as the chair of the RIC.

Associate membership

4 (1) The associate members of the Commission are –

- 25 (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;
- 30 (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).
- 35 (3) In this paragraph and paragraph 6, "recognised", in relation to a trade union, has the meaning given by the Trade Union and Labour Relations (Consolidation) Act 1992.

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

5 (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

10 (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
15 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
20 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
25 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

40 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 11(5)) 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.

15 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.
- 5 (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.
- 10 (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.
- 15 (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

- 20 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
25 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.
- 30 (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.
- 35 (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 –
- 5 (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 –
- 10 (a) a Member of the Senedd;
- (b) a member of the House of Commons;
- ~~(c) a member of the governing body of a tertiary education provider in Wales that is an institution within the further education sector;~~
- ~~(d) a member of the governing body of a tertiary education provider in Wales that is an~~
- ~~(e)(c) 15 institution 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
- 20 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.

25 Research and Innovation Committee, Quality Committee and other committees

- 11 (1) The Commission is to have a committee known as the Research and Innovation Committee ("the RIC") for the purpose of advising the Commission on the exercise of its functions under sections 102, 103 and 104 (research and innovation functions).
- (2) For provision as to the chair of the RIC, see paragraph 12.
- 30 (3) 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.
- (4) The Commission must appoint one of its ordinary members to chair meetings of the Quality Committee.
- 35 (5) The Commission must establish a committee composed of the chair and the ordinary members to be the staff member appointment committee.
- (6) The Commission may establish other committees.
- (7) The RIC, the Quality Committee or other committee established under sub-paragraph (6) may –

- (a) establish sub-committees;
 - (b) dissolve sub-committees established by it.
- (8) The Commission may also dissolve sub-committees established under sub-paragraph (7).
- (9) The members of the RIC, the Quality Committee or other committee established under sub-paragraph (6) or a sub-committee established under sub-paragraph (7) may include persons who are not members of the Commission.
- (10) The Commission may pay remuneration and allowances to any person who —
- (a) is a member of the RIC, the Quality Committee or other committee established under sub-paragraph (6) or a sub-committee established under sub-paragraph (7), but
 - (b) is not a member of the Commission or a member of its staff.

Chair of the RIC

12 (1) ~~The Welsh Ministers must appoint a person to chair the RIC ("the chair of the RIC").~~

~~(2) The chair of the RIC holds and vacates office in accordance with the terms and conditions of the appointment.~~

~~(3) Those terms and conditions are to be determined by the Welsh Ministers, subject to the provisions of this Schedule.~~

~~(4) A person is disqualified from being the chair of the RIC if the person is —~~

~~(a) a Member of the Senedd;~~

~~(b) a member of the House of Commons;~~

~~(c) a member of the governing body of a tertiary education provider in Wales that is an institution within the further education sector;~~

~~(d) a member of the governing body of a tertiary education provider in Wales that is an institution within the higher education sector.~~

~~(5) A person who becomes disqualified ceases to hold office as the chair of the RIC.~~

~~(6) The chair of the RIC is to be appointed for a term of up to 5 years.~~

~~(7) A person who has held office as the chair of the RIC may be reappointed.~~

~~(8) The chair of the RIC may resign from office at any time by giving notice to the Welsh Ministers and to the Commission.~~

~~(9) 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 the RIC.~~

~~(10) The Welsh Ministers may, by notice to the chair of the RIC, remove the chair from office if they are satisfied that the chair is unable or unfit to carry out the functions of office, or is otherwise failing to do so.~~

~~(11) The Welsh Ministers may, by notice to the chair of the RIC, suspend the chair from office if it appears to them that there may be grounds to exercise the power in sub-paragraph (10).~~

~~(12) A suspension by notice under sub-paragraph (11) 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 chair.~~

~~(13) A person who ceases to hold office as the chair of the RIC also ceases to hold office as the deputy chair of the Commission.~~

~~(14)(10) A person suspended from office as chair of the RIC is also suspended from office as the deputy chair of the Commission.~~

Joint committees

- 10 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 –
- 15 (a) is a member of a joint committee, but
- (b) is not a member of the Commission or a member of its staff.

Duty to ensure good value

- 14 14 The Commission must have regard to the need to ensure good value in relation to financial resources provided out of public funds.

Accounts and audit

- 20 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 –
- 25 (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 –
- 30 (a) the Auditor General for Wales, and
- (b) the Welsh Ministers.
- (4) The Auditor General for Wales must examine, certify and report on the statement of accounts.
- 35 (5) The Auditor General for Wales must, before the expiry of the 4-month period, lay before Senedd Cymru –

- (a) a copy of the certified statement and report, or
 - (b) if it is not reasonably practicable to do so, a statement to that effect, which must include reasons as to why this is the case.
- 5 (6) Where a statement has been laid under sub-paragraph (5)(b), the Auditor General must lay a copy of the certified statement and report before Senedd Cymru as soon as reasonably practicable after the expiry of the 4-month period.
- (7) In sub-paragraphs (5) and (6), “the 4-month period” means the period of 4 months beginning with the day on which the statement of accounts is submitted to the Auditor General for Wales under sub-paragraph (3).

10 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;
- 15 (b) explains the progress the Commission has made during the year towards implementing its strategic plan approved under section 13 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 11;
- 20 (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 over compulsory school age in Wales;
- 25 (d) gives an assessment of the quality of tertiary education the Commission is required to monitor by section 49;
- (e) includes the information required by section 78(3) (information about financial sustainability);
- 30 (f) includes the information required by section 104(3) (monitoring of funding for research and innovation);
- (g) includes the information required by section 122(9) (effectiveness of learner protection plans);
- (h) includes the information required by section 125(8) (effectiveness of Learner Engagement Code);
- 35 (i) gives details of how a body designated under Schedule 3 has exercised 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 (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—

- 10 (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

15 18 (1) The Commission may delegate any of its functions to—

- (a) a member of the Commission or a member of its staff;
- (b) the RIC, the Quality Committee or other committee established by the Commission under paragraph 11(6), or a sub-committee established under paragraph 11(7);
- (c) a joint committee.

20 (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.

25 *Delegation by committees*

19 (1) The RIC, the Quality Committee or other committee established under paragraph 11(6) 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.

30 *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—

- 35 (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

- 5 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
10 (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;
15 (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 22)

TRANSFERS OF PROPERTY AND STAFF TO THE COMMISSION

Power to make transfer schemes

- 5 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.
- 10 (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.
- 15 (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;

20 (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

25 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.
- 30 (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
5 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
- 10 (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
15 (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 54)~~ASSESSING HIGHER EDUCATION: DESIGNATED BODY~~

PART 1

~~5 DESIGNATION~~*Designation*

- ~~1 (1) The Commission may designate a body to exercise its assessment functions.~~
- ~~(2) The Commission may designate a body under sub-paragraph (1) only if it considers that—~~
- ~~(a) the body is suitable to exercise the assessment functions, and~~
- ~~10 (b) designating the body would be appropriate for securing the effective assessment of the quality of higher education provided by tertiary education providers in Wales.~~
- ~~(3) Before designating a body, the Commission must—~~
- ~~(a) obtain the consent of the Welsh Ministers, and~~
- ~~(b) consult—~~
- ~~15 (i) each registered provider providing higher education, and~~
- ~~(ii) such other persons as it considers appropriate.~~
- ~~(4) If the Commission decides to designate a body under sub-paragraph (1) it must—~~
- ~~(a) notify the body of the designation before the date on which the designation takes effect (“the effective date”), and~~
- ~~20 (b) publish notice of the designation before that date.~~
- ~~(5) The notice of the designation must state—~~
- ~~(a) the name of the body, and~~
- ~~(b) the effective date.~~
- ~~(6) If the Welsh Ministers do not give their consent under sub-paragraph (3)(a), they must~~
- ~~25 publish the reasons for not doing so.~~

Bodies suitable to exercise assessment functions

- ~~2 (1) A body is suitable to exercise the assessment functions if the body satisfies the conditions in sub-paragraph (2).~~
- ~~(2) The conditions are—~~
- ~~30 (a) that the body is capable of exercising the assessment functions in an effective manner,~~
- ~~(b) the persons who determine the strategic priorities of the body represent a broad range of registered providers providing higher education,~~
- ~~(c) the body commands the confidence of registered providers providing higher~~
- ~~35 education,~~

~~(d) the body exercises its functions independent of any particular higher education provider, and~~

~~(e) the body consents to being designated under this Schedule.~~

Removal of designation

~~5 3 (1) The Commission may by notice remove a designation under this Schedule.~~

~~(2) The notice must—~~

~~(a) include the reasons for the Commission's decision, and~~

~~(b) specify the date on which the designation is removed.~~

~~(3) The Commission may remove a designation only if—~~

~~10 (a) the Commission is satisfied that removing the designation would be appropriate for securing the effective assessment of the quality of higher education provided by tertiary education providers in Wales, or~~

~~(b) the designated body consents to the removal of the designation.~~

~~15 (4) Unless sub-paragraph (3)(b) applies, the Commission must, before removing the designation—~~

~~(a) obtain the consent of the Welsh Ministers, and~~

~~(b) consult—~~

~~(i) each registered provider providing higher education, and~~

~~(ii) such other persons as it considers appropriate.~~

~~20 (5) The Commission must publish a notice under this paragraph.~~

~~(6) If the Welsh Ministers do not give their consent under sub-paragraph (4)(a), they must publish the reasons for not doing so.~~

PART 2

OVERSIGHT BY THE COMMISSION

Application

~~4 This Part applies if there is a body designated under this Schedule to exercise the assessment functions.~~

Power to provide funding

~~5 The Commission may provide funding to the designated body for exercising the
30 assessment functions.~~

Oversight arrangements

~~6 The Commission must make arrangements for holding the designated body to account for the exercise of the assessment functions.~~

Annual report by the designated body

- ~~7 (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 exercise of the assessment functions during the period.~~
- ~~5 (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

- ~~8 (1) The Commission may give the designated body general directions about the exercise of the~~
~~10 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 a tertiary education~~
~~15 provider.~~
- ~~(3) The directions must relate—~~
- ~~(a) to tertiary education providers in Wales providing higher education or registered providers providing higher education generally, or~~
 - ~~(b) a description of such providers.~~
- ~~20 (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

- ~~9 The Commission must inform the Welsh Ministers if it has significant concerns about—~~
- ~~(a) how the designated body is exercising the assessment functions, or~~
 - ~~(b) the continued suitability of the designated body to exercise those functions.~~

~~25~~ PART 3

POWER TO CHARGE FEES

- ~~10 (1) The designated body may charge a fee, or fees, to any tertiary education provider in relation to which the body exercises the assessment functions.~~
- ~~(2) Any fees charged by the designated body under sub-paragraph (1) must be charged in~~
~~30 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 tertiary education provider under sub-paragraph (1) may be calculated by reference to costs incurred, or to be incurred, by the body in the~~
~~35 exercise of any of its functions under this Act which—~~

~~(a) are unconnected with the provider;~~

~~(b) are exercised, or are to be exercised, 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 exercising its functions under this Act during the same period.~~

~~5 (5) For the purposes of sub-paragraph (4), the cost to the designated body of exercising its functions under this Act is the amount of the costs incurred, or to be incurred, by the designated body in the exercise of any of its functions under this Act in any given period less any funding received by the body under paragraph 5 of this Schedule in the same period.~~

~~10 (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

~~15 11 (1) In this Schedule—~~

~~“the assessment functions” (“y swyddogaethau asesu”) has the meaning given in section 54(2);~~

~~“designated body” (“corff dynodedig”) means a body for the time being designated under this Schedule;~~

~~20 “the effective date” (“y dyddiad effeithiol”), in relation to a designated body, has the meaning given in paragraph 1;~~

~~(2) References in this Schedule to a body that is suitable to exercise the assessment functions are to be read in accordance with paragraph 2.~~

SCHEDULE 4
(introduced by section 142)

MINOR AND CONSEQUENTIAL AMENDMENTS

Education (No. 2) Act 1986 (c. 61)

- 5 1 (1) The Education (No. 2) Act 1986 is amended as follows.
- (2) In section 43 (freedom of speech in universities, etc.), in subsection (6), for paragraph (b) substitute –
- “(b) in relation to an institution in Wales within the higher education
sector or the further education sector has the meaning given by
10 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;”.

Employment Act 1988 (c. 19)

- 2 (1) The Employment Act 1988 is amended as follows.
- 15 (2) In section 26 (status of trainees etc.), in subsection (1A), for “under section 34(1)(c) of the Learning and Skills Act 2000” substitute “or the Commission for Tertiary Education and Research under section 94(1)(d) or (e) of the Tertiary Education and Research (Wales) Act 2022”.

Education Reform Act 1988 (c. 40)

- 20 3 (1) The Education Reform Act 1988 is amended as follows.
- (2) In section 120 (powers of local authorities with respect to higher education), after subsection (4) insert –
- “(4A) In exercising its powers under subsection (3) a local authority must
25 have regard to the Commission for Tertiary Education and Research’s
strategic plan approved under section 13 of the Tertiary Education and
Research (Wales) Act 2022.”
- (3) In section 124B (accounts), in subsection (2)(b), for “the Higher Education Funding Council for Wales” substitute “the Commission for Tertiary Education and Research”.
- (4) In section 129 (designation of institutions) –
- 30 (a) in subsection (1) –
- (i) for “the Secretary of State” substitute “the Welsh Ministers”;
- (ii) for “as an institution eligible to receive support from funds administered by the Higher Education Funding Council for Wales” substitute “for the purposes of this section”;
- 35 (iii) in paragraph (a) for “him” substitute “them”;
- (iv) in paragraphs (a) and (b) after “institution” insert “in Wales”;
- (b) in subsection (5)(d), for “the Secretary of State” substitute “the Welsh Ministers”.

- (5) In section 133 (payments in respect of persons employed in the provision of higher or further education), in subsection (1) –
- (a) for “and the Higher Education Funding Council for Wales each have” substitute “has”;
 - (b) for “they think” substitute “it thinks”;
 - (c) in paragraph (a) for “their” substitute “its”.
- (6) In section 198 (transfers), in subsection (5), for “the higher education funding council” substitute “the Commission for Tertiary Education and Research”.
- (7) In Schedule 7 (higher education corporations in Wales established before the appointed day), in paragraph 18(2)(b), for “the Higher Education Funding Council for Wales” substitute “the Commission for Tertiary Education and Research”.

Further and Higher Education Act 1992 (c. 13)

(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 1994 (c. 30)

(1) The Education Act 1994 is amended as follows.

(2) In section 18 (power to reimburse certain payments to persons formerly employed in teacher training) –

(a) in subsection (1) –

(i) omit “or the Higher Education Funding Council for Wales”;

(ii) for “they think” substitute “it thinks”;

(b) in subsection (4) –

(i) omit “or (as the case may be) the Higher Education Funding Council for Wales”;

(ii) for “they” substitute “it” and for “their” substitute “its”.

(3) In section 18C (inspection of teacher training in Wales) –

(a) in subsection (3) for paragraph (b) substitute –

“(b) the Commission for Tertiary Education and Research, or”;

(b) in subsection (12) omit paragraph (b).

(4) In section 21 (establishments to which Part 2 on students’ unions applies) –

(a) in subsection (1) –

(i) in paragraph (a) for “section 65 of the Further and Higher Education Act 1992” substitute “section 85 of the Tertiary Education and Research (Wales) Act 2022”;

(ii) in paragraph (b) for “that Act” substitute “the Further and Higher Education Act 1992”;

(iii) in paragraph (c) omit “as eligible to receive support from funds administered by a higher education funding council”;

(iv) after paragraph (d) insert –

“(da) any institution in Wales designated under section 28 of the Further and Higher Education Act 1992;”.

(b) in subsection (2A) for “has the meaning given by section 62(7) of the Further and Higher Education Act 1992” substitute “means an institution whose activities are wholly or mainly carried out in Wales”.

Education Act 1996 (c. 56)

6 (1) The Education Act 1996 is amended as follows.

(2) In section 13 (general responsibility for education), in subsection (2) for paragraphs (aa) and (b) substitute –

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

(3) In section 15A (local authority powers in respect of education and training for 16 to 18 year olds), after subsection (3) insert –

“(3A) In exercising its functions under this section a local authority in Wales must also have regard to the Commission for Tertiary Education and Research’s strategic plan approved under section 13 of the Tertiary Education and Research (Wales) Act 2022.”

(4) In section 15B (local authority powers in respect of education for persons over 19), after subsection (3)(b) insert –

“(c) a local authority in Wales must also have regard to the Commission for Tertiary Education and Research’s strategic plan approved under section 13 of the Tertiary Education and Research (Wales) Act 2022.”

5 (5) Omit section 484 (education standard grants).

(6) In section 489 (conditions as to payment of grants) –

(a) in subsection (1) for “under any of sections 484 to 488” substitute “section 485”;

(b) omit subsection (2);

(c) in the heading for “sections 484 to 488” substitute “section 485”.

10 (7) In section 508 (local authority functions in respect of facilities for recreation and social and physical training), after subsection (3) insert –

“(4) In exercising its functions under this section a local authority must have regard to the Commission for Tertiary Education and Research’s strategic plan approved under section 13 of the Tertiary Education and Research (Wales) Act 2022.”

15 (8) 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)”.

(9) In section 580 (index), omit the entry for “grants for education support and training”.

20 (10) 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 “Welsh Ministers” substitute “the Commission for Tertiary Education and Research”;

(b) omit the entry for section 83;

(c) omit the entry for section 84;

25 (d) omit the entry for Schedules 7 and 7A.

Teaching and Higher Education Act 1998 (c. 30)

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

School Standards and Framework Act 1998 (c. 31)

30 8 (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) –

35 (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”.

(4) In Schedule 30 (minor and consequential amendments), omit paragraphs 125 and 126.

Government of Wales Act 1998 (c.38)

9 (1) The Government of Wales Act 1998 is amended as follows.

10 (2) In section 145B (studies in relation to educational bodies) –

(a) in subsection (1), in the Table –

(i) in the entry for the governing body of an institution in Wales within the higher education sector, in the second column, for “the Higher Education Funding Council for Wales” substitute “the Commission for Tertiary Education and Research”;

(ii) omit the entry for a governing body receiving financial support under section 86 of the Education Act 2005;

(iii) in the entry for a governing body of an institution in Wales within the further education sector, in the second column, for “or the Assembly” substitute “, the Commission or the Welsh Ministers”;

(b) in subsection (4), for “the Higher Education Funding Council for Wales” substitute “the Commission for Tertiary Education and Research” and for “the council” substitute “the Commission”.

(3) In Part 3 of Schedule 4 (bodies subject to reform), omit paragraph 16.

(4) In Part 1 of Schedule 17 (bodies subject generally to audit etc. provisions) –

(a) in paragraph 1 omit “or III”;

(b) after paragraph 11 insert –

“11A The Commission for Tertiary Education and Research.”

Care Standards Act 2000 (c. 14)

10 (1) The Care Standards Act 2000 is amended as follows.

(2) In Schedule 2A (persons subject to review by the Children’s Commissioner for Wales), after paragraph 8 insert –

“8A The Commission for Tertiary Education and Research.”

(3) In Schedule 2B (persons whose arrangements are subject to review by the Children’s Commissioner for Wales), after paragraph 10 insert –

“11 The Commission for Tertiary Education and Research.”

Learning and Skills Act 2000 (c. 21)

11 (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) –

5 (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) –

10 (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 (determination of a pupil’s relevant school or institution), after subsection (3) insert –

15 “(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 –

20 “(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 –

25 “(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 –

30 “(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”;

35 (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).

(24) In section 125 (consultation in connection with provision of youth support services), in subsection (2), after paragraph (a) insert –

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

(25) In section 126 (educational institutions: information and access), in subsection (3) in paragraph (f) for “National Assembly for Wales in the discharge of its functions under Part 2” substitute “Commission for Tertiary Education and Research under section 94 or 101 of the Tertiary Education and Research (Wales) Act 2022”.

(26) In section 138 (Wales: provision of information by public bodies), in subsection (3) after paragraph (c) insert—

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

(27) In section 144 (designated institutions: disposal of land, etc.)—

(a) in subsection (4A), in paragraph (b) for “the Welsh Ministers” substitute “the Commission for Tertiary Education and Research”;

(b) in subsection (9), in paragraph (b) for “the National Assembly for Wales” substitute “the Commission for Tertiary Education and Research”.

Education Act 2002 (c. 32)

(1) The Education Act 2002 is amended as follows.

(2) In section 18 (repeal of specific grant-making powers), omit subsection (2).

(3) In section 28A (power of governing body to provide higher education), in subsection (3) for “The National Assembly for Wales” substitute “The Commission for Tertiary Education and Research”.

(4) In section 140 (further education: general)—

(a) in subsection (3), in the definition of “higher education institution”, for “section 65 of the Further and Higher Education Act 1992 (c. 13) (administration of funds by higher education funding councils)” substitute “section 85 of the Tertiary Education and Research (Wales) Act 2022”;

(b) omit subsections (4) and (5).

(5) In section 145 (specification of qualification or course), in subsections (1)(c) and (3) for “the Higher Education Funding Council for Wales” substitute “the Commission for Tertiary Education and Research”.

(6) In section 178 (training and education provided in the workplace for 14 to 16 year olds), omit subsections (1) and (4).

(7) In Schedule 21 (minor and consequential amendments), omit paragraphs 49 and 125.

Higher Education Act 2004 (c. 8)

(1) The Higher Education Act 2004 is amended as follows.

(2) In section 11 (qualifying institutions), in subsection (1) (as renumbered by section 124(2)(a)), in paragraph (a) for “section 65 of the 1992 Act” substitute “Part 3 of the Tertiary Education and Research (Wales) Act 2022”.

- (3) In section 20A (institutions that cease to be qualifying institutions), in subsection (4) for “section 11” substitute “subsection (1) of section 11, or a qualifying institution specified in regulations made under subsection (2) of that section,”.

Children Act 2004 (c. 31)

14 (1) The Children Act 2004 is amended as follows.

- (2) In section 25 (co-operation to improve well-being: Wales), in subsection (4) for paragraph (f) substitute –

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

- (3) In section 29 (information databases), in subsection (7) for paragraph (b) substitute –

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

Education Act 2005 (c. 18)

15 (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 2022 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 2022 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 2022 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 61 of the Tertiary Education and Research (Wales) Act 2022”.

- (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 61 of the Tertiary Education and Research (Wales) Act 2022”.

- (8) Omit sections 85 to 91 (Higher Education Funding Council for Wales’ functions in relation to teacher training).

- (9) In section 92 (joint exercise of functions) –

(a) in subsection (1) omit “, HEFCW”;

(b) in subsection (2) omit “or the Assembly to the extent that it is discharging its functions under Part 2 of the Learning and Skills Act 2000”;

(c) omit subsection (4).

(10) In section 93 (efficiency studies) –

(a) in subsection (1) omit “and HEFCW”;

(b) in subsection (2) omit “or HEFCW”;

(c) in subsection (3) omit paragraph (b) and the “or” preceding it.

(11) In section 94 (provision of information) –

(a) omit subsections (1) and (2);

(b) in subsection (3) omit paragraph (b);

(c) in subsection (4), in paragraph (a) omit “, a grant, loan or other payment under section 86, or”.

(12) Omit section 97 (institutions of a denominational character).

(13) In section 100 (interpretation of Part 3) –

(a) in subsection (1) omit the definitions of “the Chief Inspector for Wales”, “denominational character”, “governing body” and “HEFCW”;

(b) omit subsection (2).

(14) In Schedule 9 (amendments relating to school inspection), omit paragraphs 24 and 25.

(15) In Schedule 18 (further amendments), omit paragraph 13.

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

16 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”.

25 Government of Wales Act 2006 (c. 32)

17 (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).

(3) In Schedule 11 (transitional provisions), in paragraph 35, in sub-paragraph (4), in Table 2 –

(a) omit the entries relating to sections 77(4) and 83(7) of the Learning and Skills Act 2000;

(b) in the entry relating to section 128(4)(b) of the Learning and Skills Act 2000 for “that Act” substitute “the Learning and Skills Act 2000 (c. 21)”;

- (c) omit the entries relating to sections 85(3)(d), 90(1), 91(1), 92(4) and 100(2) of the Education Act 2005.

Safeguarding Vulnerable Groups Act 2006 (c. 47)

18 (1) The Safeguarding Vulnerable Groups Act 2006 is amended as follows.

- 5 (2) In Schedule 7, in paragraph 1, in the table, in entry 18, for “section 34(1) of the Learning and Skills Act 2000 (c. 21)” substitute “section 85(1) or (2), 86(3), 89(1), 94(1) or (5), 100(1) or (2), 101(1)(a) or 132(1) of the Tertiary Education and Research (Wales) Act 2022”.

Education and Skills Act 2008 (c. 25)

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

- 10 (2) In section 66 (interpretation), in subsection (1), in the definition of “apprenticeship agreement” –
- (a) omit the words “an apprenticeship agreement within the meaning given in section 32 of the Apprenticeships, Skills, Children and Learning Act 2009 or”;
- (b) for “that Act” substitute “the Apprenticeships, Skills, Children and Learning Act
- 15 (3) In section 91 (information: supplementary), in subsection (3) after paragraph (b) insert –
- “(c) the Commission for Tertiary Education and Research.”

Learner Travel (Wales) Measure 2008 (nawm 2)

20 (1) The Learner Travel (Wales) Measure 2008 is amended as follows.

- 20 (2) In section 1 (main terms used in the Measure), in subsection (4)(g) for “the Welsh Ministers under section 34(1) of the Learning and Skills Act 2000 (c. 21)” substitute “the Commission for Tertiary Education and Research or the Welsh Ministers under section 94 of the Tertiary Education and Research (Wales) Act 2022”.
- (3) In section 7 (travel arrangements for learners in post-16 education or training) –
- 25 (a) in subsection (1)(b)(ii) after “funded by” insert “the Commission for Tertiary Education and Research or”;
- (b) in subsection (3)(a) before sub-paragraph (i) insert –
- “(ai) the Commission for Tertiary Education and Research;”.

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

30 21 (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);
- 35 (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)

22 (1) The Learning and Skills (Wales) Measure 2009 is amended as follows.

5 (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.

10 *Equality Act 2010 (c. 15)*

23 (1) The Equality Act 2010 is amended as follows.

(2) In Schedule 26 (amendments), omit paragraph 23.

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

24 In section 6 of the Children and Families (Wales) Measure 2010 (meaning of Welsh
15 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)

25 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” –

20 (a) insert at the appropriate place –

TABLE 1

25	“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)

30 26 (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 over 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 over 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 over 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 over 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 over 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 paragraphs 2(3) and 20(3).

Higher Education (Wales) Act 2015 (anaw 1)

The Higher Education (Wales) Act 2015 is repealed.

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

(1) The Well-being of Future Generations (Wales) Act 2015 is amended as follows.

- (2) In section 6 (meaning of public body), in subsection (1)(h), for “the Higher Education Funding Council for Wales” substitute “the Commission for Tertiary Education and Research”.
- (3) In section 32 (other partners), in subsection (1) for paragraph (e) substitute –

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

Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 (anaw 3)

29 (1) The Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 is amended as follows.

(2) In section 10 (guidance to further and higher education institutions) –

- 5 (a) in subsection (1) for “The Welsh Ministers” substitute “The Commission for Tertiary Education and Research (“the Commission”)”;
- (b) in subsection (2) for “The Higher Education Funding Council for Wales (“HEFCW”)” substitute “The Commission”;
- 10 (c) in subsection (3) for “the Welsh Ministers and HEFCW” substitute “the Commission”;
- (d) in subsection (5) for “the Welsh Ministers and HEFCW” substitute “the Commission” and for “they consider” substitute “it considers”;
- (e) omit subsection (8).

Qualifications Wales Act 2015 (anaw 5)

15 30 (1) The Qualifications Wales Act 2015 is amended as follows.

(2) In section 34 (restriction on funding and provision of certain courses), in subsection (12) in the definition of “authorised body” after paragraph (b) insert –

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

Deregulation Act 2015 (c. 20)

20 31 (1) The Deregulation Act 2015 is amended as follows.

- (2) In section 3 (apprenticeships), omit subsection (4).
- (3) In Schedule 1 (apprenticeships) –
 - (a) in Part 2, omit paragraphs 9(a) and 15;
 - (b) omit Part 3.

Environment (Wales) Act 2016 (anaw 3)

32 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)

30 33 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)

34 (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 7, 8, 11, 14, 15, 16, 17, 18, 20, 22, 24, 25, 26(3) and (4).

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

- 5 35 (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;”.
- 10 (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 (2) to (4).
- 15 (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;”.

The Welsh Language Standards (No. 6) Regulations 2017 (S.I. 2017/90)

- 36 (1) The Welsh Language Standards (No. 6) Regulations 2017 are amended as follows.
- 20 (2) In regulation 3(4) for “The Higher Education Funding Council for Wales” substitute “the Commission for Tertiary Education and Research”.

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

- 37 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
- 25 Council for Wales” substitute “The Commission for Tertiary Education and Research”.